

MHNG020029452024



**IN THE COURT OF CIVIL JUDGE, SR.DN., NAGPUR.**

(Presided over by Shri S.B. Pawar )

**MJC No. : 301 of 2024.**

**Prakash Gopalrao Pohare**

**// Versus //**

**Serum Institute of India Pvt. Ltd. and two others**

**ORDER BELOW EXHIBIT 1**

(Passed on 02.08.2024)

This is an application filed by the applicant under Section 340 read with Section 195 of the Code of Criminal Procedure, 1973 for direction to initiate prosecution under Sections 115, 191, 192, 193, 199, 200, 201, 420, 471, 474 read with Section 120(B) and 34 of the Indian Penal Code, 1860, Section 27 of the Drugs and Cosmetic Act and Sections 4, 7 and 9 of the Drugs and Magix Remedies Act against all the Directors of Serum Institute including Shri Adar Poonawalla and Shri Cyrus Poonawalla for filing false and misleading affidavit dated 29<sup>th</sup> April, 2023 in the Court.

2] Heard Shri Nilesh Ojha, the learned counsel for the applicant. The applicant who is the plaintiff in Special Civil Suit No. 417/2023 has filed the instant application praying for action under Section 340 read with Section 195 of the Code of

Criminal Procedure against the non-applicants who are defendants in the said suit. The applicant has adduced evidence by examining himself in support of his contentions raised in the said application.

3] The case made out by the applicant is that in the affidavit dated 29.04.2023 in application for rejection of plaint, the non-applicants have dishonestly suppressed, concealed material facts and made false statements on oath with malice and ill will.

4] In para No. 5 of the said affidavit dated 29.04.2023, the non-applicants have made a statement that the said complaint filed by defendant No. 1 is not made against the plaintiff but against Mr. Ajinkya, Mr. Chetan, Mr. Hemant, Mr. Yusuf and Mr. Yohan Tengra, therefore, in the aforesaid circumstances, the plaintiff has no locus and cause of action to file the present suit against the defendants.

5] In this regard Shri Nilesh Ojha, the learned counsel for the applicant submitted that the aforesaid statement in para No. 5 of the affidavit dated 29.04.2023 is false and misleading and amounts to interference in administration of justice. He relied on the judgment in the case of ***Rahul Gandhi Vs. Rajesh, (2015 SCC OnLine Bom 522)*** and ***Mathrubhoomi Illustrated Weekly Vs. P. Gopalankutty and another, [(2022) SCC OnLine Ker 137]*** and submitted that when there is a defamation of organization, then any member of the organization can approach the Court for redressal of grievances.

6] He pointed out the subject of the complaint which reads as under :

*“ To register an offence against Group called ‘Awaken India Movement’ and its Team members for organizing an illegal march on 1<sup>st</sup> October 2022 towards Serum Institute to handover Hamdast to Adar Poonawala and to take precautionary measures. ”*

7] The learned counsel for the applicant further submitted that on perusal of complaint including its specific subject it would be crystal clear that the said complaint was made against the group call Awaken India Movement and its team members. The plaintiff is an active member of Awaken India Movement, therefore, the statement made in para No. 5 of the said affidavit that the said complaint is not made against the plaintiff appears to be false and misleading.

8] On perusal of the complaint including its subject it is crystal clear that the same is made against Awaken India Movement and its team members which includes the plaintiff. This being so, the statement in para No. 5 to the effect that the said complaint filed by defendant No. 1 is not made against the plaintiff appears to be a false statement.

9] The learned counsel for the applicant further submitted that in para No. 2 of the said affidavit, the non-applicants have denied all and any singular statement, averment, allegation and contention against defendant No. 1 contained in the said plaint. According to him, by complete denial the non-applicants have denied all the Government records, other proofs of sterling nature including the cases

decided and pending before the Hon'ble High Courts and the Hon'ble Supreme Court. He further submitted that this complete denial itself constitutes an offence under Section 209 of the Indian Penal Code. In this regard, the learned counsel relied on the judgment in the case of ***H.S. Bedi Vs. National Highway Authority of India, (2016 SCC OnLine Del 432)***. He pointed out para No. 15.5 thereof which reads as under :

*“15.5. The word ‘claim’ for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.”*

10] The learned counsel for the applicant by pointing out the aforesaid facts and judgment submitted that the non-applicants have denied Government reports pertain to death of one Dr. Snehal Lunawat and others which show that the death of Dr. Snehal Lunawat was due to side effects of Covishield Vaccine. The non-applicants have denied warnings, ban etc. even warning issued by the WHO in respect of Covishield Vaccine. The non-applicants have went to the extent of denying the litigations decided and pending before the Hon'ble High Courts and the Supreme Court.

11] On perusal of record it appears that the non-applicants though aware of the abovesaid warnings, ban in various countries due to serious side effects of deaths of their COVID vaccines, including the warnings issued by the WHO and

the Health Department of various countries, other various research showing many serious side effects, warnings by the Health Ministry of India that the covishield vaccine is having death causing side effects and the litigations pending and decided by the Hon'ble High Courts and Supreme Court as pointed out by the applicant including the orders passed therein have deliberately denied all averments in the plaint. In view of the observations made in the case **H.S. Bedi** (cited supra), the said denial amounts to a fraudulent and frivolous claim in the form of defence and is an abuse of process of law and deliberate falsehoods thereby perverting the course of justice and undermining the authority of law.

12] The learned counsel for the applicant Shri Nilesh Ojha further points out that in para No. 4 of the said affidavit, the non-applicants made a false statement that the plaintiff has failed to highlight in the plaint the purported specific words/sentences/paragraphs of the said complaint, which according to him, are defamatory per se. He pointed out para No. 19 of the plaint and submitted that in para No. 19 relevant part of the complaint dated 1.10.2022 is reproduced. Similarly, in paras Nos. 20 and 21 of the plaint, according to him, specific contentions are made regarding defamation.

13] In support of his contentions, he relied on the judgment in the case of **Essel Infraprojects Ltd. Vs. Devendra Prakash Mishra, (MANU/MH/2159/2014)** and submitted that when words are defamatory and said words are reproduced, then there is no need to give further details as to what is meaning of those defamatory allegations.

14] In view of above facts and the law laid down in the said judgment it appears that the statement made by the non-applicants that the plaintiff failed to highlight in the plaint the purported specific words/sentences/paragraphs of the said complaint which according to him are defamatory per se is a false and misleading statement.

15] The non-applicants again in paragraph No. 4 of the said affidavit have stated that lodging of police complaint with police authorities could not be considered to be a publication of alleged defamatory statement. In this regard, the learned counsel for the applicant submitted that this statement is nothing but dishonest and misleading pleadings.

16] The learned counsel for the applicant in respect of said police complaint submitted that the suit is not only based on the said complaint but also on publication of same allegations everywhere and repeating said defamatory allegations knowing fully well that the said allegations are false and police had rejected their complaint.

17] The learned counsel for the applicant further pointed out para 33 of the suit which reads as under :

*“33. That, despite the exposure of the falsity of the defendants Nos. 1 to 3 before the police, the defendants Nos. 1 to 3 repeated the said allegations many a times using the said letter dated 1.10.2022 everywhere including the Court proceedings.”*

18] The learned counsel for the applicant further pointed out the observations made in the case of ***Prabhakaran Vs. Gangadharan, (2006 SCC OnLine Ker 302)***; ***Joy Anto Vs. C.R. Jaison, (MANU/KE/0632/2021)***; ***M.N. Damani Vs. S.K. Sinha and others, [(2001)5 SCC 156]***; ***Rosario Colaco Vs. Amelia Mariquinha Zuzarte and another (2009 SCC OnLine Bom 110)*** and ***Sopullo Datta Naik Vs. Yashwant (2009 SCC OnLine Bom 1400)***.

19] The learned counsel for the applicant further submitted that the non-applicants deliberately suppressed that the said complaint was not entertained/rejected by the police as no substance was found therein. He has placed reliance on the case of ***Ram Jethmalani Vs Subramanian Swamy, (2006, SCC OnLine Del 14)*** to submit that even otherwise law is very well settled that when any person acts with malice and ill will then they cannot claim any privilege and action under defamation cannot be challenged on this ground.

20] The learned counsel for the applicant Shri Nilesh Ojha further submitted that the non-applicants acted with malice and ill will, therefore, now they cannot claim any privilege and the action pertains to defamation cannot be challenged in view of the law that filing of a case also amounts to publication and defamation and action upon that is maintainable.

21] In view of the abovesaid submissions and the observations of the Hon'ble High Courts and the Supreme Court it is crystal clear that even lodging of complaint/case amounts to

publication and action of defamation is maintainable for such publication. Thus, *prima facie* I found substances in the submission of the learned counsel for the applicant.

22] In the said affidavit dated 29.04.2023 the non-applicants/defendants again in para No. 4 have stated that the plaintiff has not produced letter of authorization and on this count also, the suit needs to be rejected.

23] In this regard, the learned counsel for applicant submitted that the suit is filed in individual capacity. He further submits that even if authority of Awaken India Movement is obtained subsequently, that cannot be a ground for rejection of plaint. In order to buttress his submissions, he pointed out prayer clause (iii) of the plaint which reads as under:

*“ (iii) pass a decree and thereby direct the defendants Nos. 1 to 3 to pay sum of Rs. 10,000 Crores to the plaintiff in the form of damages and compensation as quantified in the instant suit and also direct the defendants Nos. 1 to 3 to pay the plaintiff cost of instant litigation.”*

24] The learned counsel for applicant relied on the observations made in para No. 12 in the case of ***M.M.T.C. Ltd. Vs. Medchl Chemicals and Pharma (P) Ltd., [(2002) 1 SCC 234]***, wherein it is held that :

*“ 12 [...] It has been held that it is open to the de jure complainant company to seek permission of the court for sending any other person to represent the company in the court. Thus, even presuming, that initially there was no authority, still the company*



*can, at any stage, rectify that defect. At a subsequent stage the company can send a person who is competent to represent the company. The complaints could thus not have been quashed on this ground.”*

25] In view of abovesaid facts, circumstances and the contentions of the non-applicants in support of their prayer for rejection of plaint, *prima facie* it seems not to be in accordance with law. It further appears that the non-applicants have made false and misleading statements on oath. Similarly, they made suppression and concealment of material facts by not disclosing the true and correct state of affairs before this Court. It further appears that the non-applicants deliberately suppressed the bans imposed, warnings given in respect of Covishield Vaccine. Similarly, on perusal of record it appears that the non-applicants have deliberately suppressed the decisions of the Hon’ble High Court and Hon’ble Apex Court and pendency of various litigations before the Hon’ble High Courts and the Hon’ble Supreme Court and also the reports of the Government.

26] The learned counsel for the applicant relied on the judgment in the case of ***ABCD Vs. Union of India, [(2020) 2 SCC 52]*** to submit that making a false statement on oath is an offence. A person makes an attempt to deceive the Court interferes with administration of justice and can be held guilty of contempt of Court. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation which has no place in equitable and prerogative jurisdiction. The learned counsel for the applicant further relied on the observations made by the Hon’ble Supreme

Court in paragraphs Nos. 14 to 19 in the aforesaid judgment. According to him, ratio laid down in this case is squarely applicable to the case at hands. He submitted that by making false statements on oath, the defendants made attempt to deceive the Court and interfered with the administration of justice. The paragraph Nos. 17 to 19 in the said judgment are reproduced as under :

*“17. In K.D. Sharma Vs. SAIL it was observed : (SCC p. 493, para 39)*

*“39. If the primary object as highlighted in Kensington Income Tax Commrs is kept in mind, an applicant who does not come with candid facts and “clean breast” cannot hold a writ of the court with “soiled hands”. Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on the ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court”.*

18. In Dhananjay Sharma Vs. State of Haryana filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished.

19. *In the circumstances a notice is required to be issued to the petitioner in suo motu exercise of power of this Court “why action in contempt be not initiated against her and why appropriate direction be not passed under Section 195(1)(a)(i) of the Code”. The Registry is directed to register the matter as suo motu proceedings and send a copy of this order to the petitioner, who is directed to appear in-person before this Court on 14.1.2020.”*

27] The learned counsel for the applicant further relied on the judgment in case of ***Samson Arthur Vs. Quinn Logistic, (2015 SCC OnLine Hyd 403)*** wherein he has pointed out the observations made in para No. 52 of the said judgment which reads as under :

*“52. If the aforesaid submissions of Sri. S. Niranjan Reddy, Leanred Counsel, were to merit acceptance, it would then mean that relevant facts have been deliberately suppressed from the Company Court. If a wrong or misleading statement is deliberately and willfully made by a party to a litigation with a view to obtain a favourable order, it would prejudice or interfere with the due course of the judicial proceeding. (Naraindas Vs. The Government of Madhya Pradesh; Afzal Vs. State of Haryana; Sri V. Satyanarayana Rao Vs. State of A.P.; S.R. Ramaraj Vs. Special Court, Bombay; V. Satyanarayana Rao). “Suppressio veri”, i.e., the suppression of relevant and material facts is as bad as Suggestio falsi i.e., a false representation deliberately made. Both are intended to dilute-one by inaction and the other by action. “Suppressio veri Suggestio falsi” – suppression of the truth is equivalent to the suggestion of what is false. (Black’s Law*

*Dictionary with pronunciations-Sixth edition). A false statement willfully and deliberately made, and a suppression of a relevant and material fact, interfere with the due course of justice and obstruct the administration of justice. (V. Satyanarayana Rao).”*

28] In this case, the Hon’ble High Court was pleased to justify the order of the Company Judge in directing the Registrar (Judicial) to depute an officer not below the rank of Assistant Registrar to file a complaint under Section 340(1) read with Sections 191, 193, 209 of the Indian Penal Code against the appellants therein. The learned counsel for the applicant further relied on the observations made in paragraphs Nos. 64, 65 and 69 of the said Judgment.

29] In addition to above, the learned counsel for the applicant relied on the following judgments in support of his submissions :

- [i] ***K. Jayaram Vs. Bangalore Development Authority, [(2022) 12 SCC 815];***
- [ii] ***K. D. Sharma Vs. Steel Authority of India, [(2008) 12 SCC 481];***
- [iii] ***Sundar @ Sunderrajan Vs. State by Inspector of Police, [2023 SCC OnLine SC 310];***
- [iv] ***Sarvepalli Radhakrishnan University Vs. Union of India, [(2019) 14 SCC 761];***
- [v] ***P. C. Purushothama Vs. Perumal, [1972 (1) SCC 9];***

- [vi] ***Secretary Hailakandi Bar Association Vs. State of Assam, [(1996) 9 SCC 74];***
- [vii] ***Dalip Singh Vs. State of U.P., [(2010) 2 SCC 114];***
- [viii] ***P. Ranga Rao Vs. State of A.P., [2022 Law Suit 1787];*** and
- [ix] ***Godrej and Boyce Manufacturing Co. Vs. The Union of India, [1991 SCC OnLine Bom 496].***

30] I have heard the said counsel at length and gone through the application, affidavit, documents placed on record and the judgments cited by the applicant. In the case of ***P. Ranga Rao*** (cited supra), the Hon'ble Andhra Pradesh High Court has observed that it is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorized or unjust gain to any one as a result of abuse of process of the Court and one way to curb this tendency is to impose realistic and punitive costs.

31] In the case of ***Sarvepalli Radhakrishnan*** (cited supra), the Hon'ble Apex Court was pleased to observe that filing of false affidavit in a Court of law has the tendency of causing obstruction in the due course of justice. The stream of justice has to be kept clear and pure and no one can be permitted to take liberties with it by sailing its purity. In this case, the Hon'ble Supreme Court was pleased to direct prosecution under Section 193 of the I.P.C. and a penalty of Rs. 5 Crore was imposed on the petitioner College for playing fraud on the Court.

32] Recently, Three Judge Bench of the Hon'ble Supreme Court in case of **Sundar Vs. State, (2023 SCC OnLine SC 310)** had taken action for filing false and misleading affidavit concealing material facts and documents. It was ruled that the non-disclosure of material facts amounts to misleading this Court and to an attempt of interfering with the administration of justice and the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court. It is ruled as under :

***“87. The non-disclosure of material facts amounts to misleading this Court and to an attempt at interfering with the administration of justice. In the Suo Motu Contempt Petition (Civil) No 3 of 2021 titled In Re: Perry Kansagra, this Court discussed the line of precedent of this Court dealing with tendering of affidavits and undertakings containing false statements or suppressing/concealing material facts amounting to contempt of court :***

***15. It is thus well settled that a person who makes a false statement before the Court and makes an attempt to deceive the Court, interferes with the administration of justice and is guilty of contempt of Court. The extracted portion above clearly shows that in such circumstances, the Court not only has the inherent power but it would be failing in its duty if the alleged contemnor is not dealt with in contempt jurisdiction for abusing the process of the Court.***

*98. Separately, a notice is required to be issued to the Inspector of Police, Kammapuram Police Station, Cuddalore District, State of Tamil Nadu to offer an explanation as to why action should not be*

*taken for the filing of the affidavit dated 26 September 2021. In this case, prima facie, material information regarding the conduct of the petitioner in the prison was concealed from this Court. Accordingly, the Registry is directed to register the matter as a suomotu proceeding for contempt of court.”*

33] On perusal of entire record including the plaint, documents, affidavit etc. *prima facie* it appears that the non-applicants have made false and misleading statements on oath. Similarly, they have played fraud on this Court by suppressing and concealing material facts. The abovesaid acts committed by the non-applicants amount to misleading the Court and an attempt of interfering with the administration of justice. The non-applicants by committing the said acts, *prima facie* appear to have committed offences punishable under Sections 181, 182, 193, 196, 199, 200, 209, 465, 471, 474 and 120-B read with Section 34 of the Indian Penal Code.

34] Similarly, as pointed out earlier, the non-applicants interfered with the due course of justice and tried to obstruct administration of justice, therefore, it would be expedient in the interest of justice to take action under Section 340 of the Code of Criminal Procedure in respect of the said offences *prima facie* appear to have been committed by the non-applicants.

35] In view of abovesaid facts, circumstances, submissions, documents on record in the light of law of the land, I proceed to pass the following order :

**ORDER**

**[i] The application (Exh.1) is partly allowed.**

- [ii] The Superintendent of this Court is directed to prepare a complaint under Section 340 read with Section 343 of the Code of Criminal Procedure for the offences punishable under Sections 181, 182, 193, 196, 199, 200, 209, 465, 471, 474 and 120-B read with Section 34 of the Indian Penal Code against the non-applicants and get it verified from this Court and institute the same before a competent Magistrate having jurisdiction.

SHANKAR BABU PAWAR Digitally signed  
by SHANKAR  
BABU PAWAR  
Date: 2024.08.02  
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Nagpur.

( S.B. Pawar )

Dated : 02.08.2024

Civil Judge, Senior Division,  
Nagpur.

### **CERTIFICATE**

I affirm that the contents of this PDF file Order are same word to word, as per the original Order.

Name of Stenographer : P.K. Tambe