

DEDICATED TO THE VICTIMS OF 498A/406 IPC AND DOMESTIC VIOLENCE ACT, 2005

340 CR PC AN EFFECTIVE TOOL TO COUNTER AND TO DEFEND

It is quite remarkable that the women laws has not been used for the purpose they are created but in fact are misused to its fullest extent by the women by filing false and frivolous dowry related cases against their husband and his family and in most of the cases there is no iota of evidence but mere false allegations by the women folk to harass and humiliate the husband and his family to settle their own ego and oblique motives.

In this scenario the husband is always at the receiving end and look out for defenses and ways to better protect himself from the clutches of the women laws wherein the women assumes a superior and dominating position in spite of the fact that she is stating false facts before Courts and various foras. In all this one provision in Criminal Procedure Code can act as an effective tool to counter such false allegations and creating a fear in the mind of the women who alleges and state false facts before the Court to gain advantage and to harass and humiliate the husband.

Section 340 Cr PC has been devised as a way to prohibit and create a fear in the mind of those who file false documents or give false evidence in the Court of Law.

The provision certainly acts as a deterrent to those who states false facts before the Court of Law.

The Provision is as follows:

(1) When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) Record a finding to that effect;

(b) Make a complaint thereof in writing;

(c) Send it to a Magistrate of the first class having jurisdiction;

(d) Take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) Bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed, -

(a) Where the court making the complaint is a High Court, by such officer of the court as the court may appoint;

(b) In any other case, by the presiding officer of the court.

(4) In this section, "court" has the same meaning as in section 195.

Now I think we should understand the provision by breaking into parts:

“When upon an application made to it in this behalf or otherwise any court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,-

In Section 340 Cr PC the aforesaid expression has been used which certainly states and throws light that if any offence as mentioned in Section 195 Cr PC (1) (b) has been committed which certainly means the offence of stating false facts and producing fabricated documents in the Court than the same Court in whose proceedings the falsity has been done or a fabricated document has been submitted has the power to take cognizance and the decision is with that particular Court as to whether to take cognizance or not and if the said Court is satisfied it will hold a preliminary enquiry.

Now we should throw light as to what Section 195 (1) (b) states as to know as to what offences the Court has the power to take cognizance and what offences can only be taken cognizance by the Court:

195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No court shall take cognizance-

(a)

(i) If any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) Of any abetment of, attempt to commit, such offence, or

(iii) Of any criminal conspiracy to commit, such offence,

Except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)

(i) Of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or

(ii) Of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, or

(iii) Of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that court, or of some other court to which that court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the court; and upon its receipt by the court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term “court” means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from appeal able decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies, to the principal court having ordinary original civil jurisdiction within whose local jurisdiction such civil court is situate:

Provided that-

(a) Where appeals lie to more than one court, the Appellate Court of inferior jurisdiction shall be the court to which such court shall be deemed subordinate;

(b) Where appeals lie to a Civil and to Revenue Court, such court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

The Provision Section 195 clearly list various offences wherein the Court has no power to take cognizance in certain offences except on the complaint before the Court or the complaint made by the subordinate Court and the offences on which the Court will not take cognizance except on a complaint are enumerated as follows:

Section 193. Punishment for false evidence

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1-A trial before a Court-martial; 1[* * *] is a judicial proceeding.

Explanation 2- An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. This enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3-An investigation directed by a Court of Justice, according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration

A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

1. The words “or before a Military Court of Request” rep. by Act 13 of 1889. sec. 2 and Sch.

Section 194. Giving or fabricating false evidence with intent to procure conviction of capital offence

Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital 1[by the law for the time being in force in 2[India]] shall be punished with 3[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;

if innocent person be thereby convicted and executed.-and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

1. Subs. by the A. O.1948, for “by the Law of British India or England”.
2. Subs. by Act 3 of 1951, sec. 3 and sch., for “the States”.
3. Subs. by Act 26 of 1955, sec.117 and sch., for “Transportation for life” (w.e.f. 1-1-1956).

Section 195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which 1[by the law for the time being in force in 2[India] is not capital, but punishable with 3[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Illustration

A gives false evidence before a Court of Justice intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is 3[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to 3[imprisonment for life] or imprisonment, with or without fine.

1. Subs. by the A. O.1948, for “by the Law of British India or England”.
2. Sub. by Act 3 of 1951, sec. 3 and Sch., for “the States”.
3. Subs. by Act 26 of 1955, sec.117 and sch., for “transportation for life” (w.e.f. 1-1-1956).

Section 196. Using evidence known to be false

Whoever corruptly uses or attempts to use as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Section 199. False statement made in declaration which is by law receivable as evidence

Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Section 200. using as true such declaration knowing it to be false

Whoever corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation-A declaration which is inadmissible merely upon the ground of some informality, is a declaration within the meaning of sections 199 to 200.

Section 205. False personation for purpose of act or proceeding in suit or prosecution

Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment of either description for a term which may extend to three years or with fine, or with both.

Section 206. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 207. Fraudulent claim to property to prevent its seizure as forfeited or in execution

Whoever fraudulently accepts, receives or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practices any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or a satisfaction of a fine, under a sentence which has been pronounced, or which he knows to be likely to be pronounced by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made or which knows to be likely to be made by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 208. Fraudulently suffering decree for sum not due.

Whoever fraudulently causes or suffer a decree or order to be passed against him at the suit of any person for a sum not due or for a larger sum that is due to such person or for any property or interest or property to which such person is not entitled, or fraudulently causes or suffers a decree order to be executed against him after it has been satisfied, or for anything in respect of which it has been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

Section 209. Dishonestly making false claim in Court

Whoever fraudulently or dishonestly, or with intent to injure or any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Section 210. Fraudulently obtaining decree for sum not due

Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 211. False charge of offence made with intent to injure

whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

And if such criminal proceeding be instituted on a false charge of an offence punishable with death 1[imprisonment for life], or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, sec.117 and sch., for “transportation for life” (w.e.f. 1-1-1956).

Section 228. Intentional insult or interruption to public servant sitting in judicial proceeding

Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

463. Forgery.

1[Whoever makes any false documents or electronic record part of a document or electronic record with, intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

1. Subs. by Act 21 of 2000, sec. 91 and Sch. I, for certain words (w.e.f. 17-10-2000).

Section 471. Using as genuine a forged document or electronic record
471. Using as genuine a forged 1[document or electronic record].

Whoever fraudulently or dishonestly uses as genuine any 1[document or electronic record] which he knows or has reason to believe to be a forged 1[document or electronic record], shall be punished in the same manner as if he had forged such 2[document or electronic record].

1. Subs. by Act 21 of 2000, sec. 91 and Sch. I, for “document” (w.e.f. 17-10-2000).

2. Subs. by Act 21 of 2000, sec. 91 and Sch. I, for “document forged” (w.e.f. 17-10-12000)

Section 475. Counterfeiting device or mark used for authenticating documents described in Section 467, or possessing counterfeit marked material

Whoever counterfeits upon, or in the substance or, any material, any device or mark used for the purpose of authenticating any document described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who, with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. Subs. by Act 26 of 1955, sec. 117 and sch., for “transportation for life” (w.e.f. 1-1-1956).

Section 476. Counterfeiting device or mark used for authenticating documents or electronic record other than those described in Section 467, or possessing counterfeit marked material

476. Counterfeiting device or mark used for authenticating 1[documents or electronic record], other than those described in Section 467, or possessing counterfeit marked material.

Whoever counterfeits upon, or in the substance of, any material, any device or mark used for the purpose of authenticating any 1[document or electronic record], other than the documents described in Section 467 of this Code, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document or electronic record¹ then forged or thereafter to be forged on such material, or who with such intent, has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

1. Subs. by Act 21 of 2000, sec. 91 and Sch. I, for “any document” (w.e.f. 17-10-2000).

In the aforementioned Section of IPC the relevant section as can be used in dowry related cases are as follows:

Section 193, 196, 209, 211, 463 and 471 Indian Penal Code

Thus coming back to the provision 340 Cr PC it is crystal clear that for the offences mentioned in Section 195 (1)(b) Cr PC the Court cannot take cognizance except on the complaint to the said court by the aggrieved person. Section 193 IPC and various related sections of IPC like 193 to 196, 199, 200, 205 to 211 (both inclusive) and 228, 463 and

related sections mentioned above, the Court only takes cognizance if the aggrieved party comes forward and it is pertinent to mention herein that the Court in whose proceedings a false claim or false document has been submitted does not take any action suo moto, so the aggrieved person has to show and come forward to prove that the other party has in fact stated false facts and has in fact given or submitted false evidence in relation to Court Proceedings.

It is most respectfully submitted that under Section 340 clause 1 sub clause (a) to (e) prescribes a procedure wherein the Court after a preliminary enquiry forwards the complaint to the Magistrate. Herein preliminary enquiry means that the concerned court hears both the parties i.e. the complainant/aggrieved party and the party who is purported to have stated false facts and may either dismiss the complaint under Section 340 Cr PC or may record a finding to that effect and forward it to the magistrate:

a) Record a finding to that effect;

(b) Make a complaint thereof in writing;

(c) Send it to a Magistrate of the first class having jurisdiction;

(d) Take sufficient security for the appearance for the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do send the accused in custody to such Magistrate; and

(e) Bind over any person to appear and give evidence before such Magistrate. In many cases stating false facts or giving false evidence in relation to Court Proceedings, a very serious view has been taken by the Courts and the application under Section 340 Cr PC acts as a deterrent and in fact alarms the other party who has stated false facts that falsity will not subsist long and false statements may entail punishment under Indian Penal Code.

It is important to mention herein that in view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad

concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded and therefore it is abundantly clear that the remedy under Section 340 Cr PC is purely discretionary and it is taken up when a very serious and substantial harm or loss is caused to the aggrieved person and it is upon the aggrieved person to show that the falsity is writ large and if cognizance be not taken the same will have a serious affect upon the main case and the aggrieved person will suffer hardship by which the aggrieved person will be rendered remediless.

The practice of making false and incorrect statements without any justifiable ground, requires to be controlled. For false affidavits or misleading statements in pending proceedings deponents are required to be dealt appropriately by imposing punitive damages/punishment so that in future they or others may not indulge in such practice.

Section 195(1) mandates a complaint in writing of the Court for taking cognizance of the offences enumerated in clauses (b) (i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is –'Provisions As To Offences Affecting The Administration Of Justice'. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the Section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

Important Judgement:

Judgment of the Supreme Court in Re: Suo Motu Proceedings against R. Karuppan, Advocate, (2001) 5 SCC 289.

It has been held that giving false evidence has become a general practice and Courts should take stern and effective action against such offence and stop taking evasive recourse. It would be useful to reproduce the observations made by the Supreme Court in Paras 13 to 17, which are as under: 13. Courts are entrusted with the powers of dispensation and adjudication of justice of the rival claims of the parties besides

determining the criminal liability of the offenders for offences committed against the society. The courts are further expected to do justice quickly and impartially not being biased by any extraneous considerations. Justice dispensation system would be wrecked if statutory restrictions are not imposed upon the litigants, who attempt to mislead the court by filing and relying upon false evidence particularly in cases, the adjudication of which is dependent upon the statement of facts. If the result of the proceedings are to be respected, these issues before the courts must be resolved to the extent possible in accordance with the truth. The purity of

proceedings of the court cannot be permitted to be sullied by a party on frivolous, vexatious or insufficient grounds or relying upon false evidence inspired by extraneous considerations or revengeful desire to harass or spite his opponent. Sanctity of the affidavits has to be preserved and protected discouraging the filing of irresponsible statements, without any regard to accuracy. 14. At common law courts took action against a person who was shown to have made a statement, material in the proceedings, which he knew to be false or did not believe to be true. The offence committed by him is known as perjury. Dealing with the history of the offence, Stanford H. Kadish in Encyclopedia of Crime and Justice (Vol. 3) observed: "History of the offense Before witnesses had any formal role in trials, there was no need for a perjury law. In the Middle Ages, when the English common law was developing, trial by battle was used to test a sworn accusation. Similarly, for the sworn denial of a serious charge based on mere suspicion, an ordeal administered by a priest was the predominant mode of trial until it was abolished in 1215 as superstitious. Finally, at least until the Assize of Clarendon (1166), less serious accusations could be successfully answered by "compurgation", that is, by obtaining a sufficient number of "oath helpers" to support the defendant's credibility. Trials in the modern sense began to

develop only in the thirteenth century. Little is reliably known about the conduct of jury trials prior to the sixteenth century, but in civil cases, it seems that genuine witnesses were permitted to give their accounts, although they could not be compelled to appear. In early criminal cases, community, brought the suspect before a Judge. Those witnesses who did attend these early trials were perceived as part of the jury and retired with them to deliberate, often to make their disclosures in secret. It was the verdict, not the testimony, that was perceived as either true or false; the only remedy for falsehood remotely akin to a perjury prosecution was a seldom invoked procedure called "the writ of attain", created in 1202 and not abolished formally until 1825. Through attain, the jury would be punished for a "false" verdict and the verdict itself overturned. Witnesses first testified under oath in criminal cases on behalf of the Crown in the sixteenth century. No witnesses for the defense were permitted until the mid-seventeenth century, since they would have been witnesses against the Crown, and not until 1702 were defense witnesses permitted to be sworn [1 Anne, St. 2, c. 9, s. 3 (1701) (England) (repealed)]. By the late seventeenth century the jury had lost all its testimonial functions, and witnesses thus became the sole means of bringing facts to the Judge's and jury's attention. Since the early common law had no established mechanism for dealing with false swearing by witnesses, the Court of Star Chamber assumed for itself the power to punish perjury. This authority was confirmed by statute in 1487 [Star Chamber Act, 3 Hen. 5, c. 1 (1487)]

(England) (repealed)]. The first detailed statute against false swearing was enacted in 1562 [5 Eliz. 1, c. 9 (1562) (England) (repealed)]. When the Star Chamber was abolished in 1640, its judicially defined offense of perjury passed into English common law, reaching any cases of false testimony not covered by the terms of the statute. Edward Coke, whose views strongly influenced early American law, wrote in his Third Institute, published in 1641, that perjury was committed when, after a "lawful oath" was administered in a "judicial proceeding", a person swore "absolutely and falsely" concerning a point "material" to the issue in question (*164). In this form, the law remained unchanged into the twentieth century.? 15. In India, law relating to the offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath. Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts which has, to some extent, resulted in polluting the judicial system. It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, concededly let loose by vested interest and professional litigants. The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. If the system is to survive, effective action is the need of the time. The present case is no exception to the general practice being followed by many of the litigants in the country. 16. Keeping in view the facts and circumstances of this case, the record of proceedings in Suo Motu Contempt Petition (Criminal) No. 5 of 2000 and Writ Petition No. 77 of 2001, we are prima facie satisfied that the respondent herein, in his affidavit filed in support of the writ petition (for the purposes of being used in the judicial proceedings i.e. writ petition), has wrongly made a statement that the age of Dr Justice A.S. Anand has not been determined by the President of India in terms of Article 217 of the Constitution. We are satisfied that such a statement supported by an affidavit of the respondent was known to him to be false, which he believed to be false and/or at least did not believe to be true. It is not disputed that an affidavit is evidence within the meaning of Section 191 of the Indian Penal Code and a person swearing to a false affidavit is guilty of perjury punishable under Section 193 IPC. The respondent herein, being legally bound by an oath to state the truth in his affidavit accompanying the petition is prima facie held to have made a false statement which constitutes an offence of giving false evidence as defined under Section 191 IPC, punishable under Section 193 IPC.

IMPORTANT JUDGEMENT

MAHANT SURINDER NATH VS. UNION OF INDIA AND ORS.

SUBJECT: LAND DISPUTE

CS(OS) NO.451/2000 AND

CM NOS.11020/07 (O.1 R.10(2) CPC), 11021/06 (O.6 R.17 CPC), 13855/07 (O.1R.10 CPC),

13923/07 (O.1. R.10 CPC), 14294/07 (O.1 R.10(2) CPC) AND 14295/07

(O.1 R.10 CPC)

DATE OF DECISION : 12.12.2007

This article is an attempt to understand the provision 340 CrPC, its procedure and its evolution and the consequential results thereof. If the Court in which the aggrieved person files the application under Section 340 Cr PC dismisses the said application, than the aggrieved person has the remedy of approaching the higher court under Section 341 Cr PC which is reproduced hereunder:

341. Appeal.

(1) Any person on whose application any court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such court, may appeal to the court to which such former court is subordinate within the meaning of sub-section (4) of section 95, and the superior court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.

The Author at the end welcome opinions and queries and also your valuable inputs and the article is made to help the people who have been harassed unnecessarily and on false allegations and averments. The Article is no way an attempt to show women folk in poor light however is made to enlighten people that falsity in the Court should not be taken lightly as falsity in relation to Court Proceedings is an abuse of the process of the Court and is in fact interfering with the administration of justice.