

"F.R."
m. J. Ali

IN THE HIGH COURT OF SIKKIM

CRIMINAL MISC. APPLICATION NO.19 OF 2003

Registrar General
High Court of Sikkim
Gangtok. ... *Applicant.*

-VERSUS-

Shri Hem Lall Bhandari,
Advocate
Permanent Resident of C-73
Rawte-Rumtek
P.O. Rumtek, P.S. Ranipool
East Sikkim. ... *Respondent.*

Coram : Hon'ble Mr. Justice N.S. Singh, Acting Chief Justice.

Present: Mr. S. P. Wangdi, Senior Advocate assisted
by Mr. J. B. Pradhan and Mr. Karma
Thinlay, Advocates for the applicant.

Mr. H. K. Sharma, Joint Registrar, High
Court of Sikkim in person for the applicant.

Mr. S. K. Home Choudhury, Senior Advocate
assisted by Mr. D. K. Singh, Advocate along
with Mr. Hem Lall Bhandari, the respondent
in person.

Date of Decision : June 30, 2003.

JUDGMENT

SINGH, Acting C.J.

Heard Mr. S. P. Wangdi, learned Senior Advocate
assisted by Mr. J. B. Pradhan and Mr. Karma Thinlay,

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Advocates for the applicant. Also heard Mr. S. K. Home Choudhury, learned Senior Advocate assisted by Mr. D. K. Singh, Advocate.

2. In this application under Section 340 of the Code of Criminal Procedure, 1973, the applicant, namely, Registrar General, High Court of Sikkim, Gangtok made a prayer for drawing up proceedings under Section 193 of the Indian Penal Code against the respondent, Shri Hem Lall Bhandari, an Advocate by profession by contending, inter alia;

- a) that, the respondent filed a writ petition bearing Writ Petition (C) No.10 of 2003 before this Court intentionally making false allegations against the former Hon'ble the Chief Justice, Shri Justice R. Dayal in order to bring the High Court of Sikkim in disrepute so that the judiciary in the State may not function smoothly and independently without fear and, therefore, it is expedient in the interest of justice that the respondent is prosecuted for giving false evidence in a judicial proceeding under Section 193 of the Indian Penal Code;

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- b) that, it is not necessary to take action in respect of all the false allegations and it would be sufficient if action is taken in respect of false allegations concerning the drawal of conveyance allowance by the former Hon'ble the Chief Justice;
- c) that, the respondent made certain allegations in paragraphs 14, 17 and 20 and ground IV of the writ petition and those allegations have been shown by the respondent in his affidavit and those statements are relevant: -

"14. The Petitioner further states that in spite of being provided with an official car bearing Registration No.Sk-02/0006, the Respondent No.2 herein drew @ Rs.10,000/- per month till date while continuously using the aforesaid Government vehicle by virtue of Notification dated 24.05.2002.

17.The Petitioner states that with a view to cover up the illegal drawl of conveyance allowance inspite of being provided with an official staff car, the record of Registration of Government vehicle No.SK-02/0006 attached to the Hon'ble Chief Justice as his official car, which was registered on 21.03.1990, has been tampered with and manipulated to depict the said Government vehicle as 'private car' of Respondent No.2.

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20. The Petitioner further submits that the tampering and manipulation of the Certificate of Registration of Government vehicle No. SK-02/0006 registered on 21.03.1990 and attached to the Hon'ble Chief Justice as is evident from Annexure-P/6 (Colly) is a very serious matter and calls for an immediate inquiry into the entire affair by the C.B.I. to probe and book the persons responsible for the illegal act.

IV. For that the manipulation and tampering with the certificate of Registration of official car No.SK-02/0006 to depict/convert it as the private car of Respondent No.2 is a very serious and it is a fit case for probing the entire matter by the C.B.I. to book the wrong doers."

3. In the said application under Section 340, the applicant also highlighted the following facts: -


"The fact is that the Hon'ble the Chief Justice never used the Government NE 118 car 1990 model. He always used in Sikkim his private vehicle NE 118 car 1994 model bearing chassis No.060211 and engine No.059242. That vehicle was purchased by the Hon'ble the Chief Justice in the year January 1998 while he was posted as Judge in Calcutta High Court. That vehicle was bearing No.MH-01-P5948 and road tax for that vehicle was also paid in Calcutta. Insurance also stood

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in his name. On being appointed as Chief Justice of the Sikkim High Court, the said vehicle was brought to Sikkim from Calcutta by truck upto Siliguri and thereafter was driven on the road. Thereafter, SK-02/0006 number was applied for and the private vehicle was given the said number. In Sikkim also, token tax and insurance premium were paid by the Hon'ble the Chief Justice. No official vehicle was provided to the Hon'ble the Chief Justice until 14th August, 2002. Then, the aforesaid private vehicle was sold to Shri Bimal Kumar Sarma Choudhury. This position is made clear by the averments and documents contained in the preliminary objections filed today.

Since the petitioner was aware of the contents of Writ Petition (C) No.331 of 2002 filed in the Hon'ble Supreme Court, necessarily, he was aware of the counter-affidavits filed in that case.

It is expedient in the interest of justice and to eradicate the evil of perjury that the respondent is prosecuted for intentionally giving false evidence in respect of the allegations extracted from paragraphs 14, 17, 20 and ground IV of the Writ Petition reproduced in paragraph 3 above which he knew to be false and

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believed to be false or did not believe the same to be true.”

4. The application is resisted by the respondent and contended that the complaint/application is based on misleading and incorrect allegations inasmuch as:

“(i) Undisputedly while providing two official residence, the government also provided two official cars bearing registration number reserved for VIPs, namely, NE 118 car (off white colour) bearing registration number SK-02/0006 for the Hon’ble Chief Justice and Ambassador car bearing registration number SK-01/0035 for the Hon’ble Puisne Judge since 1990. The complainant in the application of preliminary objection has stated on oath that after demitting the office of Chief Justice by Hon’ble Justice Tanikkachalam in 1997 the official car NE 118 (off white colour) bearing registration No.SK-02/0006 became old and unfit for use of the Hon’ble Chief Justice and was allotted to the Joint Registrar of the High Court. The complainant also stated on oath that my contention that official vehicle bearing registration No.SK-02/0006 attached to the Hon’ble Chief Justice since 1990 was attached to and used by the Hon’ble Justice Anup Deb while functioning as Acting Chief Justice is a blatant lie and Justice Anup Deb never used NE 118 car of 1990 model and the ambassador car bearing registration

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No.SK-02/0035 was under his use. But while the Hon'ble Justice Anup Deb was functioning as Acting Chief Justice in the year 1997-98, Justice Moloy Sengupta had been the Puisne Judge upto his retirement in November 1998 and that official vehicle No.SK-02/0035 had all along been attached to Justice Moloy Sengupta. How the ambassador car No.SK-02/0035 could be attached to the Hon'ble Acting Chief Justice during 1997-98 while the said vehicle was attached to the Hon'ble Justice Moloy Sengupta till his retirement in November 1998, is inexplicable. The official record evidencing use of VIP vehicle No.SK-02/0006 and SK-02/0035 during the period from January 1998 to November 1998 would support my statement in the Writ Petition and will give a lie direct to the contention of the complainant as regards attachment and use of vehicle No.SK-02/0006 during that period.

- (ii) The statement on oath of the complainant both in the instant application and in the application raising preliminary objections (CMA 57 of 2003) in Writ Petition No.10 of 2003 that Respondent No.2 of the Writ Petition was not provided with an official car until issue of notification dated 12.08.2002 or that Respondent No.2 always used his private car upto 12.08.2002 from the date of assumption of office on 03.02.2002 from the date of assumption of office on 03.02.1999. Since assumption of office on 03.02.1999, the Respondent No.2 was seen using NE 118 (off-white

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colour) VIP car, bearing registration No.SK-02/0006 driven by government paid uniformed chauffeur and he was never seen using car bearing registration No.MH-01-P5948. The questionable and illegal entries made in the registration of official car NE 118 of 1990 model as revealed from the document marked as Annexure P-6, the registration number of private vehicle of the Respondent No.2 was illegally and arbitrarily shown to be SK-02/0006 with effect from 03.04.1999. If such arbitrary and questionable change is accepted, it becomes apparent that Respondent No.2 did not use his private vehicle at least during the period from 03.02.1999 to 02.04.1999.

- (iii) The copy of document annexed to CMA No.58 of 2003 as Annexure-1 also belies the statement of the complainant that after retirement of the Hon'ble Justice Thanikkachalam on 26.09.1997, the official car NE 118 of 1990 model became old and unfit for use and that it was surrendered.

That the complainant has the privilege of having the following documents/record which would throw light to the correct state of affairs and for the ends of justice and proper adjudication of the complaint/application, the complainant in all fairness, should produce the following documents before this Hon'ble court.

- (i) The official records evidencing attachment of official vehicle to the Hon'ble Justice late Anup

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Deb while functioning as Acting Chief Justice after his transfer from Orissa High Court and the official vehicle attached to the Hon'ble Justice Moloy Sengupta till his retirement in November, 1998.

- (ii) The official records of vehicle attached to and used by Respondent No.2 from 03.02.1999 upto the date of alleged insertion of registration No.SK-02/0006 to his private vehicle.
- (iii) Service book and/or other service record of Chogay Bhutia, who has all along been driving the VIP official car of the Hon'ble High Court.
- (iv) Record leading to cancellation of registration of official vehicle NE 118 (off white colour) of 1990 model and insertion of that registration number to the private vehicle of Respondent No.2 bearing registration No.MH-01-P5948.
- (v) Insurance policies against third party risk of the private vehicle of Respondent No.2, from April 1999 to August, 2002, allegedly bearing registration SK-02/0006."

5. It was also stated by the respondent that he filed the said writ petition for upholding the dignity and ensuring the independence of judiciary in the State of Sikkim. According to the respondent, the registration number assigned to the

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position, an enquiry as required under Section 340 of Code of Criminal Procedure is called for and apart from that a prima facie case is made out. It is also argued by Mr. Wangdi, learned senior counsel that if such an enquiry, irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrefuted, may have a reasonable likelihood to establish the specified offence. At this stage, the learned senior counsel has relied upon a decision of the Apex Court rendered in *K. Karunakaran v. T. V. Eashara Warriar* and another reported in AIR 1978 SC 290. It was also contended by Mr. Wangdi, learned senior counsel that it is a fit case and also expedient in the interest of justice to take necessary legal action as against the respondent as required under Section 340 of the Code of Criminal Procedure.

7. At the hearing, Mr. S. K. Home Choudhury, learned senior counsel for the respondent, argued that there is no prima facie case and it is also not expedient in the interest of justice to take any such action under Section 340 Cr.P.C. as against the respondent in view of the existing facts and circumstances of the case. According to Mr. S. K. Home Choudhury, learned senior counsel, undisputedly the official

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car of the former Hon'ble the Chief Justice of High Court of Sikkim had all along been off white colour NE 118, bearing registration No.SK-02/0006 and the former Hon'ble the Chief Justice since assumption of office in February 1999 as the Chief Justice of this High Court had all along been seen to be using that off white colour NE 118 car, bearing registration No.SK-02/0006 driven by Government paid uniformed chauffeur till 14th August 2002 and the private vehicle bearing registration No.MH-01-P5948 was not seen to have been used by the former Hon'ble the Chief Justice for a single day since assumption of office of the Chief Justice of this High Court. It was also argued that Motor Vehicle Act is applicable in Sikkim and the registrations of both public and private vehicle are done as per provision of Motor Vehicle Act and the Rules framed thereunder and, neither in the Motor Vehicle Act nor in the Rules framed thereunder, there is no provision authorising, grafting or taking out of registration number of a public vehicle on road and assign the same to private vehicle even if owned by Hon'ble Chief Justice or any other V.I.P. and the former Hon'ble the Chief Justice, Mr. Justice R. Dayal, by virtue of his position obtained undue financial benefit to which he was not entitled under the law on account of house-rent and conveyance allowance. According to Mr. S. K. Home Choudhury, learned senior

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counsel, all the statements made by the writ petitioner in the related writ petition are all based on material evidence and it has its basis and those were not false statements and as such, in any case, no action can be taken as against the respondent under Section 340 Cr.P.C.

8. Now, this Court is to see and examine as to whether any legal action can be taken against the respondent as required under Section 340 Cr.P.C. or whether the prayer made by the applicant in the present application can be granted or not.

9. At the very outset, it may be mentioned that the parties have the knowledge of the existing^{one} of a document which is the letter dated 8th August 2002 issued by the Arputham Aruna & Co., 242, New Lawyers Chambers, Supreme Court of India, New Delhi under the seal and signature of Shri A. Mariarputham, Advocate which finds its place in the Affidavit-in-Reply of the respondent and is marked as Annexure-R1 which according to me is relevant in the instant case for just determination of real points in controversies between the parties and accordingly, it is reproduced as hereunder: -

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Annexure - R-1

“ A. MARIARPUTHAM ARPUTHAM ARUNA & CO. Ph.3070017
 ARUNA MATHUR 242, New Lawyers Chambers 3070946
 ADVOCATES Supreme Court of India
 SUPREME COURT OF INDIA New Delhi-110001 Fax.3070946

BY FAX
VERY URGENT

8.8.2002

The Chief Secretary,
 Government of Sikkim,
 Gangtok-737 101,
 Sikkim.

W.P.(C) No.331 of 2002

Gulshan Rai Nagpal
 Vs.
 State of Sikkim & Ors.

Sir,

The issues arising out of the above writ petition was discussed with Shri Arun Jaitely, Senior Advocate and former Law Minister, Govt. of India. He was of the opinion that the existing arrangement of allowing the Chief Justice to draw Rs.10,000/- per month as house rent allowance while availing of a government accommodation on a monthly rent of Rs.1,000/- can not be justified and the bungalow in the possession of the Chief Justice should be treated as official residence and payment of house rent allowance should be stopped.

The matter was discussed again with Shri Harish Salve, Solicitor General of India who mentioned that since the Union of India is a party he would not appear for any other party. He however, indicated that paying house rent allowance after providing a government accommodation to the Chief Justice is contrary to the statutory provisions and such an arrangement can not be justified and should be discontinued forthwith. He has further expressed the view that even in regard to providing conveyance allowance to the Chief Justice, in as much as the same is not provided in the Act and rules it would not be justified and that the Hon'ble Chief Justice should be provided an official vehicle and the practice of paying conveyance allowance should be

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discontinued. He is independently seeking the views of the Union of India in the matter.

The State Govt. may take a decision in regard to the above two items and issue an appropriate communication/ notification in the light of the above immediately. I would advise the State Govt. to discontinue the existing arrangement in regard to both items forthwith.

With regards,

Yours faithfully,

Sd/-

(A. MARIARPUTHAM)
Advocate”

10. The object of Section 340 Cr.P.C. is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in Court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action as required under Section 340 Cr.P.C.

11. I have perused all the available materials on record and exercised my judicial discretion in the matter keeping in view of all the relevant facts and circumstances of the case. In my considered view, the respondent had made those statements and allegations in the connected writ petition being Writ Petition (C) No.10 of 2003 in support of his case on the basis

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of the available materials and to the best of his knowledge and as such those statements did not affect the administration of justice and the same do not constitute any offence for taking legal action under Section 340 Cr.P.C. as against the respondent. In other words, no prima facie case is made out as against the respondent as there is no deliberation of falsehood on the matter of evidence and there is no reasonable foundation for the charge levelled by the applicant as against the respondent. From the available materials on record, it is also seen that no offence is made out affecting the administration of justice as those allegations and statements were made by the respondent for establishing his case and apart from that there are materials on record showing the factum of existence of those related facts as, for instance, the filing of writ petition being Writ Petition (C) No.331 of 2002 before the Hon'ble Supreme Court and the existence of the legal opinion/letter dated 8th August 2002 as highlighted above. It is also not disputed that the said writ petition being Writ Petition (C) No.10 of 2003 had already attained its finality as it was finally disposed of on its own merit on 17th May 2003.

12. This Court need not go more into depth as suffice is made with the above observations and discussions for not

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entertaining the present application filed by the applicant under Section 340 Cr.P.C.

13. In the result, application is devoid of merit and accordingly, it is dismissed, but no order as to costs.

N. S. Singh

(N. S. Singh)
Acting Chief Justice
30-06-2003