

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**MISC APPLICATIN NO.391 OF 2019  
IN  
ORIGINAL APPLICATION NO.400 OF 2019**

**DISTRICT : THANE**

Shri Bhimraj @ Bhimrao Rohidas Ghadge )  
Age : 53 years, Occ. Police Inspector, )  
R/at.1004, A Type , B-Wing, Wadhwa Meadows, )  
Bhoirwadi, Khadakpada, Kalyan (W), )  
Dist.Thane 421 301. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Addl. Secretary, Home Dept, )  
M. S. Mantralaya, Mumbai – 400 032. )
2. Director General of Police, Shahid )  
Bhagat Singh Road, Colaba, )  
Mumbai 400001. )
3. Parambir Singh, Then Commissioner of )  
Police, Police Commissioner Office Build. )  
Near Kelwa Bridge, Thane West, )  
Thane 400601, At present working in the )  
Office of Director General of Police, Anti- )  
Corruption Bureau, M.S. Worli, Mumbai )
4. Tanaji Dadasaheb Patil, Age : 57years, )  
Working as Asst. Commissioner of Police, )  
Admin. Thane City. )...**Respondents**

**Shri B. S. Ghadge, Applicant in Person.**

**Shri A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER-J**

**DATE : 04.10.2019**

**JUDGEMENT**

1. Heard the Applicant in person and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant has filed the present M.A. to initiate criminal prosecution of perjury against the Respondent Nos.3 and 4 as contemplated under section 340 of C.R.P.C.

3. The Applicant had earlier filed O.A. No.400/2018 challenging the suspension order dated 26.08.2015. He was placed under suspension in view of the registration of offence under provisions of Prevention of Corruption Act, 1988 on the complaint of Shri Madan Sharad Darade. Original Application is disposed of by order dated 30.11.2018 in view of revocation of suspension and reinstatement in service. Now, M.A. No.391/2019 is filed to take action of perjury against the Respondent Nos.3 and 4 by filing complaint as per procedure laid down in Section 340 of C.R.P.C.

4. The Applicant in person states that in reply filed by the Respondent No.3 in O.A.No.400/2018 in Para No.2, it is stated as follows:-

“The Applicant has raised demand of bribe and tortured Shri Madan Darade by making abuses. Shri Madan Darade has filed one complaint before Anti Corruption Bureau, which was registered as C.R.No.II 48/2015 with Bajarpeth Police station, Kalyan. The case is pending before the Sessions Court, Kalyan and the Applicant came to be suspended.”

The Applicant sought to contend that the contents of para no.2 to extent that Shri Madan Darade has filed complaint before Anti Corruption Bureau is absolutely false to knowledge of Respondent No.3 as there was no such complaint before Anti Corruption Bureau. This aspect, according to him amounts to false statement in Affidavit and, therefore, the offence of perjury is *prima-facie* made out. The said affidavit was filed by the Respondent No.4-Shri Tanaji Patil who allegedly committed perjury. Respondent No.4-Shri Tanaji Patil has filed Affidavit in M.A. wherein he stated that mistakenly there was reference of Anti Corruption Bureau instead of Assistant

Commissioner of Police. In para No.3 of the affidavit, he stated as follows:-

“3. I say and submit that, when I was working as Asst. Commissioner of Thane City had filed affidavit in reply on behalf of respondent No.3 in original application no.400 of 2018 on 24.07.2018. In the said affidavit all the facts mentioned are true. However inadvertently in the said affidavit it is stated that Madan Darade had filed on complaint before Anti Corruption Bureau which was registered as C.R. No.II, 48/2015 with Bajarpeth Police Stateion, Kalyan.

3.1) The words “before Anti Corruption Bureau” inadvertently used instead of “before Assit. Commissioner of Police, Kalyan Divison, Kalyan”. Thus Respondents humbly stated and submits that there is inaccuracy in the statement which is made innocently, without any ill or malafide intention.”

5. The Respondent No.3 thus tendered unconditional apology in the affidavit and stated that due to inadvertence reference of Anti Corruption Bureau was made instead of Assistant Commissioner of Police, Kalyan Division, Kalyan.

6. On the above background, the question is whether this is fit case to exercise the powers u/s 340 of CRPC to launch prosecution of perjury against the Respondent No.4. Here it would be apposite to reproduce Section 340 which is as follows:-

**“340. Procedure in cases mentioned in section 195.** (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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 maybe, 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 of 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."

7. As such, the procedure under Section 340 of C.R.P.C. can be invoked where it is expedient in the interest of justice that an enquiry should be made into offence referred under clause (b) of Sub-Section 1 of Section 195 which appears to have committed in or in relation to a proceeding before the court. In other word if offence contemplated u/s 195 of CRPC is committed in relation to court proceeding in respect of documents produced in the Court this court may after such enquiry can initiate prosecution in the manner laid down in section 340 of CRPC.

8. In the present case, Respondent No.3 on affidavit has admitted that mistakenly he referred word before Anti Corruption Bureau instead of word "before Assistant Commissioner of Police, Kalyan Division Kalyan." He also tendered unconditional apology in affidavit. As such, he admits that reference was made inadvertently. Thus, it is not intentional nor made with an purpose to cause loss or injury to the Applicant. This being the position, this is not a fit case to initiate the prosecution of perjury.

9. At this juncture reference may be made to the decision of the Hon'ble High Court in **2019 (3) Mh.L.J.189 (Dr. Santosh Chandrashekar Shetty V/s Ameeta Santosh Shetty & Anr.)** wherein it has been held that action u/s 340 is to be initiated at discretion of Court and discretion will have to be exercised considering parameter laid down by Hon'ble Apex Court, which are summarized as under :-

“27. The law laid down by the Apex Court on section 340 of Criminal Procedure Code in the aforesaid decisions can be summarized as under:-

A] The Court is not bound to make a complaint regarding commission of offence and the said course will be adopted only if the Court is of the opinion that it is expedient in the interests of justice to do so and not in every case;

B] Before ordering filing of complaint, the Court may hold a preliminary enquiry. But it is not necessary to hold preliminary enquiry in every case and when the Court is otherwise in a position to form an opinion which is a condition precedent for initiating action under section 340, the Court may dispense with the enquiry;

C] Even if the Court comes to the conclusion that prima facie, a case of commission of offence is made out, it is not necessary in every case to direct filing of a complaint. The Court cannot direct filing of a complaint unless on the basis of material on record it is of the opinion that it is expedient in the interests of justice to direct filing of a complaint. As held by the Constitution Bench of the Apex Court in the case of *Iqbal Singh* (supra), expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by the alleged offence but having regard to the effect or impact of such commission of offence has upon the administration of justice.

D] As observed in paragraph 24 of the decision of the Constitution Bench in the case of *Iqbal Singh*, normally a direction for filing of a complaint is not made during the pendency of proceedings and that is done at the stage when proceeding is concluded and final judgment is rendered.”

10. In my considered opinion, present case does not fall in the parameters laid down above and in view of the Affidavit filed by the

Respondent No.4 explaining the mistake, no case is made out to initiate the action for perjury.

11. For the aforesaid reasons, Misc. Application is dismissed with no order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Place : Mumbai

Date : 04.10.2019

Dictation taken by : VSM