

James Kunjwal vs The State Of Uttarakhand on 13 August, 2024

Author: Sanjay Karol

Bench: Sanjay Karol, B.R. Gavai

2024 INSC 601

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO..... OF 2024
(Arising out of SLP(Crl.) No.9783/2023)

JAMES KUNJWAL

...

Versus

STATE OF UTTARAKHAND & ANR.

...

JUDGMENT

SANJAY KAROL, J.

Leave Granted.

2. Impugned in the present appeal is the final order dated 1 st October 2022, passed by the High Court of Uttarakhand at Nainital in Bail Cancellation Application No.24/2022, whereby, although the said application was dismissed, it was observed that James Kunjwal, the present appellant had intentionally filed a false affidavit before the High Court and as such, a direction was issued to the Registrar (Judl.) of the High Court to file a complaint against him. This, in a 12:56:01 IST Reason:

nutshell, forms the basis for this appeal.

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3. It would be necessary to appreciate the background in which the impugned order came to be passed. Briefly stated, the facts are :-

3.1 The appellant was made an accused in FIR No.109 of 2021 dated 2 nd May, 2021 under Sections 376 & 504 of the Indian Penal Code, (45 of 1860)1 by the second respondent 'X'2 on the ground that the appellant had established relations with her

on the false pretext of marriage, and the same continued after efforts towards marriage by the complainant repeatedly fell through.

3.2 In reference to the said FIR, the appellant applied for bail, before the learned Additional District and Sessions Judge, Nainital which was rejected.³ Aggrieved thereby, the appellant pleaded his case for bail before the High Court.⁴ Vide order dated 8th June, 2021, such an application was allowed.

3.3 The complainant sought cancellation of such order of bail by way of Bail Cancellation Application No.24/2022. Various grounds were urged therein, including the appellant having made contradictory statements.

3.4 The High Court, while dismissing the application for cancellation of bail, vide impugned judgment made observations and issued 'IPC' hereinafter 2 Complainant First Bail Petition No.180 of 2021, at Annexure P-3 First Bail Application No.1190 of 2021, at Annexure P-4

2|Crl. Appeal a/o SLP (Crl) 9783 of 2023 directions, now the subject matter of adjudication in appeal before this Court.

4. The order dated 1st October, 2022 of the learned Single Judge, while dismissing the bail cancellation application, made reference to the conflict of facts in the affidavits filed by the complainant and the present appellant. While the complainant submitted in her affidavit that certain events took place, the present appellant denied the same with certain explanations. It was further noted that the State's affidavit supported the position of the present respondent. Despite the said contradiction having been brought to the notice of the present appellant, he "did not assist the Court in finding the truth about the incident of 24.07.2022". It was, as such, concluded that the appellant had intentionally filed a false affidavit before the Court. Accordingly, in the penultimate paragraph of the judgment, issued the following directions:

"28. The above narration establishes that the respondent no.2 intentionally filed false affidavit before the Court, Therefore, this Court requests Registrar, Judicial of this Court to file a complaint against the respondent no.2 in, the court of competent jurisdiction for filing a false affidavit."

5. Pursuant to such an Order by the High Court, a complaint under Section 193 of the IPC was filed before the Chief Judicial Magistrate, Nainital bearing the following particulars - Criminal Complaint No.2991 of 2022, titled as State Through Registrar (Judicial), Hon'ble High Court of Uttarakhand at Nainital v. James Kunjwal.

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6. By way of the special leave petition it is urged that mere denial of the averments in the pleadings would not constitute the offence of perjury. Further, it was urged that a Court is not "bound" to

make a complaint under Section 195(1)(b), Code of Criminal Procedure, 1973, unless it is of the opinion that it is expedient in the interest of justice to do so. Reliance is placed on a Constitution Bench judgment of this Court in *Iqbal Singh Marwah v. Meenakshi Marwah*⁵.

7. In the counter affidavit it has been claimed that the appellant has misrepresented and twisted certain facts, for instance, that he continued to have relations with the 2nd Respondent despite his marriage being fixed with someone else; that the appellant had forced the complainant to terminate her pregnancy etc. The respondent, in view of the above, has submitted that the High Court was justified in directing the filing of the complaint against the appellant. At this juncture, for ready reference, we extract the relevant portion of what the complainant had said in her bail cancellation application. It reads as under:-

“9 That the applicant want to seek the kind attention of the Hon’ble court that on today’s date. It is evident and obvious that the personal status of the applicant and her family would be again in knowledge of the accused but still accused James Kunjwal is chasing applicant opting various ways, asking and pressurizing her to settle down the case by stating that he loves applicant, giving her love proposal, asking her to meet, to call etc and also sending obscene text, and status to applicant and on denial by the applicant and asking him to put his words before the respected hon’ble court and trial court started abusing her and her family badly also talking obscene to her. For the kind perusal of this Hon’ble court a true photo copy of the WhatsApp messages and status text and instagram messages are being filed herewith and marked as Annexure No.7 to this bail cancellation application.

(2005) 4 SCC 370

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10. That being aggrieved by the aforesaid objectionable activities of the accused the applicant/complainant made a complaint before the police station - kathgodam on 24-7-2022. For the kind perusal of this Hon’ble court a true photo copy of the complaint letter along with its type copy is being filed herewith and marked as Annexure No.8 to this bail cancellation application.

11. That pursuant to this complaint the accused was called at police station and before police station he made a statement that he made a statement he will not repeat the any action in any manner but after returning from the police station when he reach his home the accused again started abusing her badly and also passing obscene comments to applicant through Whatsapp text status. For the kind perusal of this Hon’ble court a true photo copy of the whatsapp text status is being filed herewith and marked as Annexure No.9 to this bail cancellation application.

12. That despite the promise made before the police station the accused did not stop the sending 10 abusing watsapp status messages therefore she again informed to the

concerned police station kathgodam, on the perusal of which they called accused again where he accepted that he is doing this intentionally therefore police gave warning to him not to repeat the same again and again and police told the applicant that thought they can lodge the F.I.R. against the accused but the applicant cannot proof just on the basis of the various messages through social media platforms (WhatsApp and Instagram).”

8. In response thereto, the appellant in his affidavit had averred as under :

“9. That the contents of the para no 9 are denied.

10. That the contents of the Para no 10 are matter of record and hence need no comments.

11. That the contents of the para no 10, 11 & 12 are denied. That the no such incident took place in the Police station and there is no material evidence to prove this. The respondent no 2 did not approach the applicant in fact it was the applicant who messaged and abused the respondent no.2 and communicated said indecent things about respondent no.2. The applicant alleged regarding depicting whatsapp status, but the respondent no2 denies communicating the status to the applicant. It is pertinent to mention here that Whatsapp status is not a message and is not sent or deliver to a specific person. It requires positive act by viewer to look into somebody status which is his own privacy. If someone is seeing a whatsapp status than that person is invading/barging into the privacy of other person who has allegedly depicted his status. Thus it cannot be said that respondent no.2 somehow threatened or abused the applicant. It is a case where the applicant is hoodwinking the whole process,

5|Crl. Appeal a/o SLP (Crl) 9783 of 2023 moreover the applicant has not mentioned on which dates these status were uploaded, the applicant is just using these random screenshot to file a frivolous case.”

9. Hence, in the attending facts, the short question that falls for consideration of this Court is whether the contents of the affidavit filed before the High Court, as taken note of in the impugned order, constitutes an offence under Section 193 IPC, as defined in Section 191 IPC?

10. Section 191 IPC which defines the offence, reads as under :-

“191. Giving false evidence. Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence. Explanation 1.— A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.— A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.” Section 193 IPC, under which the appellant is sought to be prosecuted is extracted below for reference.

“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 is a judicial proceeding.

6|CrI. Appeal a/o SLP (CrI) 9783 of 2023 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.”

11. Section 195(b)(1) of Cr.P.C. (relevant portion reproduced hereinbelow) provides that no Court shall take cognizance of an offence committed under Sections 193 to 196, 199, 200, 205-211; except on the complaint in writing of the Court or by an officer of the Court, duly authorized. Section 340 mentions the procedure in respect of the prosecution as delineated under Section 195.

“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)

(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)

(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)... (2) ... (3) ... (4) ...”

12. The proper approach in cases where Section 193 is in play, it has been held by this Court in Dr. S.P. Kohli, Civil Surgeon, Ferozepur v. High Court of Haryana Through Registrar⁶ as under :

(1979) 1 SCC 212

7|Crl. Appeal a/o SLP (Crl) 9783 of 2023 “16. It is true that what the courts have to see before issuing the process against the accused is whether there is evidence in support of the allegations made by the complainant to justify the initiation of proceedings against the accused and not whether the evidence is sufficient to warrant his conviction, but this does not mean that the courts should not prima facie be of the opinion that there are sufficient and reasonable grounds for setting the machinery of criminal law in motion against the accused. The moment this guiding principle is overlooked, the prosecution degenerates itself into persecution which often is fraught with evil consequences.” (Emphasis supplied) Referred to in Himanshu Kumar & Ors. v. State of Chhattisgarh & Ors.

13. When prosecution should be sanctioned under this Section by Courts has been expounded on by a Bench of three learned Judges in Chajoo Ram v. Radhey Shyam & Anr.⁸ “7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge...” (Emphasis supplied) Referred to in Himanshu Kumar (supra); Narendra Kumar Srivastava v. State of Bihar & Ors.⁹ 7 2022 SCC OnLine SC 884 (1971) 1 SCC 774 9 (2019) 3 SCC 318

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14. In this regard we may also notice the pronouncement in R.S. Sujatha v. State of Karnataka¹⁰, referred to in Aarish Asgar Qureshi v. Fareed Ahmad Qureshi¹¹ wherein it was observed :

“9. Both these judgments were referred to and relied upon with approval in R.S. Sujatha v. State of Karnataka [R.S. Sujatha v. State of Karnataka, (2011) 5 SCC 689 : (2011) 2 SCC (Cri) 757] (at paras

15 and 16). This court, after setting down the law laid down in these two judgments concluded : (SCC pp. 694-95, para 18) “18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.” (Emphasis supplied)

15. The three essential factors which can be said to be sine qua non for the application of Section 193 IPC as held in *Bhima Razu Prasad v. State Rep. by Deputy Supdt. of Police, CBI/SPE/ACU-II12* are :-

(1) false statement made on oath or in affidavits;

(2) that such statements be made in a judicial proceeding; or (3) such statement be made before an authority that has been expressly deemed to be a 'Court'.

(2011) 5 SCC 689 (2019) 18 SCC 172 12(2021) 19 SCC 25

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16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:-

(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);

(ii) Such proceedings should be initiated when doing the same is "expedient in the interests of justice to punish the delinquent" and not merely because of inaccuracy in statements that may be innocent/immaterial;

(iii) There should be "deliberate falsehood on a matter of substance";

(iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;

(v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.

17. The statement made by the appellant, that has been deemed to be befitting the offence of giving false evidence before the Court, which is known commonly as perjury, was more in the nature of denial of the statements made in the affidavits of the complainant herein.

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18. We are of the view that, in the present facts, a denial simpliciter cannot meet the threshold, as described in the judgments above, particularly when no malafide intention/deliberate attempt can be understood from the statement made by the appellant in the affidavit. As has already been observed, mere suspicion or inaccurate statements do not attract the offence under the Section. It cannot be disputed that the statements made in the affidavit were only to state his version of events and/or deny the version put forth by the complainant.

19. We are also of the firm opinion that such statements do not make it expedient in the interest of justice, nor constitute exceptional circumstances in which such Sections may be invoked. Given that these proceedings would constitute an offence, independent of the one for which the appellant is already facing trial, it cannot be unequivocally held that there was deliberate falsehood on a matter of substance.

20. We find that at least three of the possible scenarios, as discussed supra, in which a court would be justified in invoking these powers on the face of it appear to be unmet, prosecution, therefore, would be unjust. We say so for the reason that the respondent in her counter affidavit filed before this Court makes no particular allegation nor does she provide any of the material that was allegedly placed before the competent prosecuting authorities or the Court. She only alleges untruth on the part of the appellant 8/12/2024 stating that the Court was correct in initiating proceedings against him for making the false statement. She further makes certain statements that fall outside the scope of the present adjudication

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21. Consequent to the above discussion, we set aside the direction of the High Court of Uttarakhand in regard to registering a complaint against the present appellant. Any proceedings arising therefrom shall stand quashed. The appeal is, accordingly allowed. Before parting with the matter, it stands clarified that the decision in this appeal shall have no bearing on the criminal case pending against the appellant which shall proceed on its own merits as per law.

Pending application(s), if any, shall stand disposed of.

.....J. (B.R. GAVAI)J. (SANJAY KAROL)J.
(K.V. VISWANATHAN) Dated : August 13, 2024;

Place : New Delhi.

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