IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2023

BEFORE

THE HON'BLE MR JUSTICE SHIVASHANKAR AMARANNAVAR

CRIMINAL APPEAL NO. 1378 OF 2023

BETWEEN:

SRI RAJESH K N

...APPELLANT

(BY SRI BALARAM M L, ADVOCATE)

AND:

1. SRI K R UMESH

2. SMT. RAJANI

...RESPONDENTS

(BY SRI P N NANJA REDDY, ADVOCATE FOR R1 AND R2)

THIS CRL.A IS FILED U/S 341 OF CR.P.C. PRAYING TO SET ASIDE THE ORDER PASSED IN I.A.No.3, DATED 08.06.2023, FOR THE OFFENCE P/U/S 195 OF CR.P.C. FILED TO INITIATE ENQUIRY U/S 340 OF CR.P.C. AND ALLOW THE APPLICATION IN I.A.No.3 FILED TO INITIATE ENQUIRY U/S 340 OF CR.P.C.

THIS APPEAL COMING ON FOR DICTATING JUDGMENT THIS DAY, THE COURT DELIVERED THE FOLLOWING:

JUDGMENT

1. This appeal is filed praying to set-aside the order dated 08.06.2023 passed on I.A.No.3 in O.S.No.8170/2019, by the XXIX Additional City Civil and Sessions Judge, Bengaluru, whereunder the application filed by the appellant under Section 195 r/w Section 340 of Cr.P.C seeking action against the respondents for the offences punishable under Sections 177, 191, 196, 199, 200 and 209 of IPC, came to be rejected.

2. Heard learned counsel for the appellant and learned counsel for the respondents.

3. The respondents were the plaintiffs and the appellant was the defendant in O.S.No.8170/2019. The said suit in

O.S.No.8170/2019 has been filed by the respondents against the appellant, seeking the relief of ejectment. The respondents – plaintiffs in Pargraph No.3 of the plaint has contended that the said lease agreement dated 15.02.2009 was for a period of eleven months. It is averred in the said plaint that the appellant – defendant has paid rent upto July 2019 and defaulted in payment of rent thereafter.

4. The appellant – defendant appeared in the said suit and filed the written statement. The appellant – defendant has not disputed that the plaintiffs are the landlords and the defendant is the tenant.

5. The appellant – defendant contended that there was an understanding that the plaintiffs shall not consider the defendant as their tenant and the defendant will have to pay as gratuitous with a specific understanding that the plaintiffs shall not have any right to disturb the possession or make any attempt to take any physical possession of

the rented property for a period of twenty years from the year 2009.

6. In the said suit, respondent No.1 – Sri.K.R.Umesh has tendered an affidavit filed in lieu of examination-in-chief and has been examined as PW1 and got marked the documents as Exs.P1 to P9.

7. In the said affidavit filed by respondent No.1, in Paragraph No.4, it is stated that the lease deed dated 15.02.2009 was for a period of eleven months. The notarized copy of the lease agreement dated 15.02.2009 has been marked as Ex.P5.

8. Learned counsel for the appellant – defendant filed I.A.No.3 under Section 195 r/w Section 340 of Cr.P.C to initiate enquiry as to the perjury committed by the plaintiffs by making false and misleading statements under Section 195 of Cr.P.C and to draw a complaint as contemplated under Section 340 of Cr.P.C for the offences under Sections 177, 191, 196, 199, 200 and 209 of IPC.

The respondents – plaintiffs filed statement of objections to the said application.

9. After hearing both the parties, the Trial Court has rejected the said application - I.A.No.3 by the impugned order dated 08.06.2023, which is challenged in this appeal.

10. Learned counsel for the appellant would contend that the plaintiffs knowingly that the lease is for a period of ten years have made a false averment in the plaint and also in the affidavit filed in lieu of examination-in-chief by respondent No.1 and it amounts to giving false evidence / perjury. He further submitted that the said lease agreement is unregistered one. The said averment made by the respondents in the plaint and in the affidavit filed in lieu of examination-in-chief is to deceive the exchequer for payment of stamp duty and payment of registration charges to stealthily get the lease agreement marked as exhibit and to file ejectment suit by paying meager Court

fee, instead of filing the suit for possession based on the value of the property.

11. Learned counsel for the appellant placed reliance on the decision of this Court in the case of ***Dr.Praveen R. Vs. Dr.Arpitha*** reported in ***2021 SCC Online Kar 15703***. He contended that the Trial Court erred in not taking any action against the respondents for making false statements in the averments of the plaint and the evidence as required under Section 340 of Cr.P.C. With this, he prayed to allow the appeal and consequently, allow I.A.No.3.

12. *Per contra*, learned counsel for the respondents has contended that the relationship of the landlord and the tenant, between the appellant and the respondents is not in dispute. The respondents have got issued notice as required under Section 106 of the Transfer of Property Act, 1882 *(for short hereinafter referred to as 'the T.P Act'),* terminated the tenancy of the appellant and as on the date of issuing the said notice dated 29.09.2019, the

tenancy period was over. There is no deliberate intention on the part of the respondents to make a false statement to get any orders from the Court. The appellant with an intent to drag on the proceedings of the ejectment suit is filing one application after the other. The Trial Court considering all these aspects has rightly rejected the application of the appellant. With this, he prayed to dismiss the appeal.

13. The respondents have filed a suit against the appellant in O.S.No.8170/2019 seeking the relief of ejectment of the appellant from the suit schedule property.

14. As per the averments of the plaint, the appellant – defendant was a tenant of the suit schedule premises under the plaintiffs who are the respondents herein. There was a lease agreement dated 15.02.2009 between the appellant and the respondents. The jural relationship of the landlords and the tenant between the appellant and the respondents is not in dispute. The appellant –

defendant in his written statement has contended that there was an understanding that the plaintiff shall not consider the defendant as his tenant and the defendant will have to pay as a gratuitous for a period of twenty years from the year 2009 and the plaintiffs' and their representatives have no rights to disturb possession of the appellant – defendant.

15. Respondent No.1 – plaintiff No.1 filed an affidavit in lieu of examination-in-chief dated 14.12.2021 and he has been examined as PW1 and got marked Exs.P1 to P9. Ex.P5 is notarized copy of the lease agreement dated 15.02.2009. There was no objection raised by the appellant – defendant at the time of marking the said document. As per Clause (2) of the said lease agreement dated 15.09.2009, the lease was for a period of ten years commencing from 15.02.2009, and the renewable option remains with the lessor and as per Clause (6) there was a provision for enhancement of the rent @ 15% for every three years from 15.02.2009. The respondents in

Paragraph No.3 of the plaint stated that the lease deed dated 15.02.2009 was for a period of eleven months. In the affidavit of respondent No.1 filed in lieu of examination-in-chief, in Paragraph No.4, it is stated that the lease deed dated 15.02.2009 was for a period of eleven months. Relying on the said averments made in the plaint and the affidavit of respondent No.1, the appellant – defendant contended that this is a false evidence led by the respondents in the said suit. On that contention, he filed application in I.A.No.3 to initiate action against the respondents for giving false evidence under Section 340 of Cr.P.C.

16. The respondents – plaintiffs got issued legal notice dated 20.09.2019 (Ex.P1) terminating the tenancy of the appellant – defendant. Learned counsel for the respondents contended that the said notice has been issued as required under Section 106 of the T.P.Act.

17. Even on the date of said notice dated 20.09.2019, the ten years term as per the lease agreement dated

15.02.2009 was over. It appears that the said lease agreement has been produced to establish the landlord and the tenant relationship between the appellant and the respondents. Merely because the respondents in the plaint and in their affidavit filed in lieu of examination-in-chief, have stated period of eleven months instead of ten years, does not amount to giving false evidence, as they had no intention to take any orders of the Court based on the said statement. As the said period of ten years was over as on the date of issuing of legal notice, terminating the tenancy, any statement regarding period of lease does not have bearing on the result of the suit.

18. There must be *prima facie* case of deliberate false on a matter of substance and the Court must be satisfied and there must be reasonable foundation for the charge and the prosecution of the offender is necessary in the interest of justice. Otherwise, time of the Court, which has to be usefully devoted for dispensation of justice, will be wasted on such enquires. The same has been held by the Hon'ble

Apex Court in the case of ***N.Natarajan Vs. B.K.Subba Rao*** reported in ***AIR 2003 SC 541***.

19. The Court before directing a complaint to be lodged, must form an opinion on being satisfied or come to the conclusion on such satisfaction that the person charged has intentionally given false evidence and such formation of opinion must be on consideration of materials duly placed. The same is the observation by the Calcutta High Court in the case of ***Bibhuti Basu Vs. Corporation of Calcutta*** reported in ***1982 Cr.L.J page 909***. In the said decision, the Calcutta High Court has observed thus;

> *"27. The provisions of Section 340, are more or less procedural and indicates how a complaint in respect of offence referred to in Section 195(1)(b) is to be made. The Court, in a proceeding Under Section 340 or before directing a complaint to be lodged must in my view, form the opinion on being satisfied or come to the conclusion on such satisfaction that the person charged, has intentionally given false evidence and that, for the eradication of the evils of perjury and in the interest of justice, it is expedient that he should be*

prosecuted for the offence and furthermore the Court, at the time of or before delivering the judgment, must, as mentioned above, duly form the opinion that the person charged, gave false evidence and such formation of opinion, must be on consideration of materials duly placed. These apart, the Court should, before directing a complaint to be filed, also consider, if the evidence as led, was intentionally done and knowing the same to be false or the same was intended to have some unlawful gain over the adversary and was aimed at having some advantage irregularly. Thus, like all other Criminal trials or proceedings, the existence of mens rea or the criminal intention behind the act as complained of will also have to be looked into and considered, before any action Under Section 340 is recommended. Mere sufferance of the petitioner, because of the inaction or irregular or improper or wrong action of his adversary, would not be enough. If there is any doubt or any semblance such doubt in the mind of the Court, in respect of the bona fides of the defence of the person charged of the action, the Court, in my view, will not be justified in exercising the power to direct the lodging of a complaint Under Section 340 simply because such action has been filed. The purpose of making a complaint against a person, would be for intentionally giving false evidence or for intentionally fabricating such evidence and that too with

the aim and object as mentioned hereinbefore, at any stage of the proceeding."

20. The Kerala High Court in the case of ***Kuriakose Vs. State of Kerala*** reported in ***1995 Cri.L.J 1751*** has observed that the proceedings under Section 340 of Cr.P.C. should not be initiated as a matter of course, even when the witnesses give contradictory evidence. It appears that Section 340 of Cr.P.C should be exercised with care and due consideration in the interest of justice.

21. It is not every false statement that is intended to be the subject matter of the prosecution.

22. The respondents had no deliberate intention while making the averments in the plaint and in the affidavit filed in lieu of examination-in-chief as they have filed notarized copy of the lease agreement which came to be marked as Ex.P5, wherein the lease term is stated as ten years.

23. The decision relied on by learned counsel for the appellant in the case of *Dr.Praveen R (supra),* does not apply to the facts of the case on hand, since in that case the respondent – wife who was a practicing doctor made a false allegation that she is unemployed and lack of income in order to claim maintenance.

24. In the case on hand, the said statement made by the respondents that the lease term is for eleven months instead of ten years is not to get any favourable orders and it is only to establish the landlord and tenant relationship.

25. Considering all these aspects, learned XXIX Additional City Civil and Sessions Judge has rightly rejected the prayer of the appellant for an action under Section 340 of Cr.P.C by the impugned order passed on I.A.No.3. There are no grounds to interfere with the said findings.

26. In the result, the appeal is ***dismissed.***

27. In view of disposal of the appeal, I.A.No.1/2023 seeking stay, does not survive for consideration.

Sd/-
JUDGE

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List No.: 1 Sl No.: 5