

\$~J~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 6th February 2023

+ O.M.P. (COMM) 361/2019 & I.A.15453/2022

MILAN SAINI

..... Petitioner

Through: Mr. Ambar Qamaruddin with Mr. Varun Nischal, Mr. Vaibhav Mishra and Ms. Harshita Gautam, Advocates with Mr Milan Saini/ petitioner *via* video conferencing.
Mr. Gautam Narayan, *Amicus Curiae*

versus

KAMAL KUMAR & ANR.

..... Respondents

Through: Mr. Anirudh Bakhru with Mr. Ayush Puri, Mr. Tejaswini Chandrashekhar, Mr. Umang Tyagi and Mr. Prateek Kumar Jha, Advocates for R1.
Ms. Kruttika Vijay, Advocate for R2.

+ OMP (CONT.) 1/2017

KAMAL KUMAR

..... Decree Holder

Through: Mr. Anirudh Bakhru with Mr. Ayush Puri, Ms. Tejaswini Chandrashekhar, Mr. Umang Tyagi and Mr. Prateek Kumar Jha, Advocates.

versus

MILAN SAINI

..... Judgement Debtor

Through: Mr. Ambar Qamaruddin with Mr. Varun Nischal, Mr. Vaibhav Mishra and Ms. Harshita Gautam, Advocates with Mr Milan Saini *via* video conferencing.
Mr. Gautam Narayan, *Amicus Curiae*.
Ms. Nidhi Raman CGSC with Mr. Zubin Singh and Ms. Devika Bajaj, Advocates for UOI.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI J.

CRL.M.A.19908/2022 in O.M.P. (COMM) 361/2019

CRL.M.A. 19909/2022 in OMP (CONT.) 1/2017

By way of the present application bearing CrI. M.A. No.19908/2022 filed in OMP (COMM.) No.361/2019 under section 340 of the Code of Criminal Procedure 1973 ('Cr.P.C.' for short), the applicant Kamal Kumar, seeks action against the petitioner Milan Saini and his Special Power of Attorney-holder ('SPA-holder' for short) Siri Chand Saini *inter-alia* for committing perjury. Another application bearing CrI. M.A. No.19909/2022 has been filed by the same applicant in OMP (CONT.) No.1/2017 under section 340 Cr.P.C., containing identical allegations.

2. In view of the commonality of the allegations and issues involved, both applications are being decided by the present common judgment.
3. To crystallize the allegations made in the applications, reference may be made to the following paragraphs of one of the applications, which are *mutatis mutandis* the same in the other application :

Paras of CrI. M.A. 19908/2022

"8. That a bare look at the aforesaid purported signatures [on the documents listed at S. Nos. a to c of Para 7, above] of the alleged Attorney (Mr. Siri Chand Saini) vis-à-vis his signature on the alleged Power of Attorney (dated 09.07.2019) would reveal that the same are starkly different and ex-facie have been signed by different persons. As submitted above, a copy of the alleged Power of Attorney (dated 09.07.2019) it is available at pages 4 to 6 of Index-II of the petition Paper-book before this Hon'ble Court.

“9. That the Applicant has filed the present application after noticing the said difference in the signatures of the alleged Attorney. Out of abundant caution, the Applicant obtained certified copies of the above documents (listed at S. Nos. a to c of Para 7, above) from this Hon’ble Court and approached M/s Truth Labs Forensic Services, A-1/106, Ground Floor, Safdarjung Enclave, New Delhi-110029 for forensic examination of those signatures.

“10. That M/s Truth Labs Forensic Services has since given its Report dated 04.08.2022 to the effect that **differences between the admitted signatures (on the Power of Attorney) and the questioned signatures (on the above documents -listed at S. Nos. a to c of para 7, above) are fundamental in nature and beyond the limit of natural variations.**

* * * * *

“12 It further observed that **“Both questioned and admitted signatures also do not agree in their general handwriting characteristics such as relative size and different alignment of characters with respect to each other, relative spacing between them, speed and skill, movement, slant etc.”**

“12 That with the above observations and findings, M/s Truth Labs Forensic Services has opined that **“Cumulative consideration of all the above led me to the opinion that the person who write admitted signatures marked a1 to A6 did not write the questioned signatures marked OI state that to O10.”**

(there is a second para 12 in the application)

* * * * *

“14. Now that the Report and finding of a Forensic expert is available, it is quite certain beyond the realm of any doubt that signatures the above documents (listed at S. Nos. a to c of para 7, above) are forged and not genuine. The same are not that of the purported Attorney (Mr. Siri Chand Saini). It is also evident that someone, other than the alleged Attorney (Mr. Siri Chand Saini) has signed the documents the above documents (listed at S. Nos. a to c of para 7, above) and presented/filed the above-captioned petition under Section 34 of the Act before this Hon’ble Court as if the same has been signed, sworn and filed by the alleged Attorney (Mr. Siri Chand Saini).

“15. It is submitted that after it was revealed that such fake/forged signatures were used by the Petitioner and his Power of Attorney, the Applicant also compared the same with the signatures and details in affidavits, vakalatnama, applications and other documents filed by the Petitioner through the same alleged Power of Attorney in the enforcement petition under Section 36(OMP (ENF) (COMM) No. 16/2020), the Appeal under Section 37 of the Act (FAO(Comm) 63/2022) and the contempt petition numbered as OMP (CONT) 1/2017. All these proceedings arise from the same arbitral award under challenge in the captioned petition. It was further revealed that there was several discrepancies it is also fully established that fake and forged signatures of the alleged Attorney (Mr. Siri Chand Saini), have been used before this Hon’ble Court in the above-captioned present proceedings, as genuine signatures of the alleged Attorney (Mr. Siri Chand Saini), with utmost dishonest and mala fide intentions.

... ..

“16. The Applicant submits that the above documents (listed at S. Nos. a to c of para 7, above) with the fake and forged signatures of the alleged Attorney (Mr. Siri Chand Saini) are not correct and genuine documents, but the same have been used (sic,used) in these proceedings as genuine documents to the gross prejudice of the Applicant and also deceiving this Hon’ble Court.

“17. The Applicant made further enquiries and came to know that there is no address as “House No.396, BasaiDarapur, New Delhi-110015”. The address of the alleged Attorney (Mr. Siri Chand Saini), as given in the alleged Power of Attorney dated 09.07.2019 is wrong. It is pertinent to mention here that the affidavits filed in the appeal also states the address as “396, BasaiDarapur, New Delhi”

*“18. That the Applicant also made on-line enquiries of the **“Electoral Roll 2022 U05 NCT of Delhi”** and came to know that in WZ Block, there is House No.396. The complete address therefore is WZ-396, BasaiDarapur, New Delhi-110015.*

“18.1 It further transpired that the name of the person residing at WZ-396, Basai Darapur, New Delhi-110015 is ‘**Shri Chand**’, and not ‘**Siri Chand Saini**’, as stated in the Power of Attorney dated 09.07.2019, and in various affidavits filed before this Hon’ble Court in the name of the said alleged Attorney.

“18.2 Furthermore, the age of the said Shri Chand is ‘**71**’ years, as on 2019, whereas in the affidavits filed before this Hon’ble Court in the name of the said alleged Attorney, the age of the said alleged Attorney has wrongly been stated as ‘**62**’ years. The same age is stated in affidavit in support of the above captioned petition.

“18.3 Still further, the father’s name of ‘Shri Chand’, as per the aforesaid Electoral Roll is ‘**Prithwi Singh**’, whereas in the Power of Attorney dated 09.07.2019, the name of Siri Chand has been stated as ‘**Pirithi**’. The affidavit in support of the above captioned petition bears the different fathers name i.e. Prithi.

“18.4 Clearly, therefore, the name, the age, the father’s name and the address of the alleged Attorney (Mr. Siri Chand Saini), as given in the Power of Attorney dated 09.07.2019, as also in various Affidavits filed before this Hon’ble Court in the name of the said alleged Attorney, are wrong.

“18.5 The identity of the alleged Attorney of the Petitioner is not ascertainable and of doubtful providence. In the respectful submission of the Applicant, there exists no person in the name of Siri Chand, son of Prithi, residing at 396, Basai Darapur, New Delhi-110015.

... ..

“18.6 All this has been done purposely to mislead this Hon’ble Court and a huge fraud has been, and is still being played upon this Hon’ble Court and the Applicant by the Petitioner. The Respondent has also committed perjury upon this Hon’ble Court.

* * * * *

“22. From the above it is quite obvious that various grievous offences including under sections 177, 181, 182, 205, 463, 466, 471, 471 (sic, mentioned twice), etc. of Indian Penal Code, 1860 have been committed by the Petitioner, his Special Power of Attorney and various other unknown persons under criminal conspiracy with each other. It is respectfully submitted that even the attempt to commit such offences as well as the abetment is also punishable under the law. Though the commission of various offences is a matter of record, however, the individual role of each of such persons who have been part of the criminal conspiracy and/or who are guilty of abetment of such offences will be revealed only after a proper investigation by the trial (sic) court/investigation agency. The Applicant has, therefore, filed the present application under the provisions of the section 340 read with section 195 and 482 of the Code of Criminal Procedure, 1973 further read with section 151 of the Code of Civil Procedure, 1908 as it is expedient in the interests of justice that an inquiry should be made into these offences which have been committed in or in relation to the proceedings before this Hon’ble Court.”

(underscoring and bold in original)

4. Based upon the allegations extracted above, the applicant seeks initiation of an inquiry in terms of section 340 Cr.P.C. into the alleged offences committed by the petitioner, his SPA-holder and other unknown persons, in relation to the present proceedings; and upon such inquiry being made, for filing of a complaint before the concerned criminal court for prosecution of the accused persons.
5. In essence and substance, the allegations made in the applications, based on which the applicant seeks initiation of inquiry under section 340 Cr.P.C. are the following:
 - 5.1. That the SPA-holder Siri Chand Saini has *forged his own signatures* on the *vakalatnama*, at the foot of the pleadings at

various points, and in the affidavits filed in support of the pleadings/applications in the present matters;

- 5.2. That the true name of the SPA-holder is not Siri Chand Saini but Shri Chand Saini; that his father's name is not Pirthi but Prithwi; and that his true address is not House No.396 Basai Darapur, New Delhi but WZ-396 Basai Darapur, New Delhi;
 - 5.3. The allegation that the SPA-holder has forged his own signatures is sought to be supported by a purported Forensic Analysis Report dated 04.08.2022 rendered by a private forensic laboratory called M/s Truth Labs Forensic Services. In that report the author says, that upon comparison with the admitted signatures of the SPA-holder on Special Power of Attorney dated 09.07.2019, *in his opinion*, the SPA-holder “...did not write the questioned signatures...” that appear on the various pleadings, applications and documents filed in the present proceedings;
 - 5.4. The allegation that the name, parentage, address and age of the SPA-holder are also not his true name, parentage, address and age, proceeds on the basis of the records available in the Electoral Roll 2022 for the concerned Assembly Constituency where the SPA-holder is enrolled as a voter.
6. The applicant seeks to rely upon the verdicts of the Supreme Court in ***Iqbal Singh Marwah vs. Meenakshi Marwah***¹ and a later decision in ***State of Punjab vs. Jasbir Singh***².

¹ (2005) 4 SCC 370

² (2020) 12 SCC 96

7. At the preliminary hearing of the present applications on 28.09.2022, Mr. Siri Chand Saini was present in-person. Since Mr. Milan Saini ordinarily resides in California USA, he had joined the hearing *via* video-conferencing. In order to ascertain the essential position as regards the allegations in the applications, at the hearing on 28.09.2022 this court had put certain queries to elucidate answers from the said persons. The gist of the answers was recorded in order dated 28.09.2022. The within-named Siri Chand Saini and Milan Saini had this to say:

7.1. Milan Saini confirmed that he had appointed Siri Chand Saini as his SPA-holder *vide* Special Power of Attorney dated 09.07.2019;

7.2. On being queried, Milan Saini further confirmed that he had instructed Siri Chand Saini to sign the *vakalatnama*, pleadings and affidavits which are subject-matter of the allegations in the present applications, *for and on his behalf*; and further confirmed that he stands by the contents of the pleadings and affidavits so signed and filed;

7.3. Furthermore, Siri Chand Saini presented his identity credentials by way of his PAN Card and Aadhaar Card, which were seen and copies were retained on the court record. Siri Chand Saini was also identified by his counsel, thereby confirming his identity.

7.4. On being queried as to whether the signatures appearing on the *vakalatnama*, pleadings and affidavits were his signatures, Siri Chand Saini confirmed that they are.

8. Suffice it to say therefore, that insofar as Milan Saini, the petitioner who appointed the SPA-holder to represent him in the matter; and Siri Chand Saini, the SPA-holder so appointed, are concerned, there is neither any dispute nor discord between them as to the authenticity and validity of the signatures of the SPA-holder appearing on the record of these proceedings; nor does Milan Saini dispute the contents of what has been said thereby. *Factually* therefore, the applicant has no case to allege forgery, or creation of any false documents, on any count whatsoever.
9. Though there are also allegations as to the name, parentage, address and age of Siri Chand Saini being false, in the opinion of this court, to say that someone's name is not *Siri Chand Saini* but *Shri Chand Saini*; that his father's name is not *Pirthi* but *Prithwi*; that his address is not *396* but *WZ-396*; or that his age is not *62* but *71* as per some other records, when there is no dispute about those aspects between the principal and the appointed attorney; nor does anything on merits even remotely turn upon these frivolous typographical errors or omissions, is, to say the least, an exercise in utter uselessness; which must be considered only to be summarily rejected.
10. Now, to answer the interpretation and construction sought to be placed by the applicant on when a person can be alleged to have forged his own signatures, the essential ingredients of the offences under sections 436 and 464 of the Indian Penal Code, 1860 ('IPC' for short) are required to be noticed.

11. The relevant portions of the aforesaid provisions are extracted below:

Section 463 IPC

463. Forgery.—Whoever makes any false documents or false electronic record or 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.

Section 464 IPC

464. Making a false document.—A person is said to make a false document or false electronic record—

First.—Who dishonestly or fraudulently—

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any electronic signature on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of a document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.

Thirdly.

Illustrations

(a) – (k)

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations

(a) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(b) – (e)

Explanation 2.

Illustration

... ..

Explanation 3.”

(emphasis supplied)

12. In one of its recent decisions in *Sheila Sebastian vs. R. Jawaharaj and Anr.*³ the Supreme Court explains the crux of sections 463 and 464 IPC, where it *inter-alia* observes as follows:

“19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

* * * * *

“21. It is observed in *Mohd. Ibrahim v. State of Bihar* [*Mohd. Ibrahim v. State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] that: (SCC p. 756, para 14)

“14. ... a person is said to have made a “false document”, if
(i) he made or executed a document claiming to be someone else or authorised by someone else; or

³ (2018) 7 SCC 581

- (ii) he altered or tampered a document; or
- (iii) he obtained a document by practising deception, or from a person not in control of his senses.”

“22. In *Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929]*, this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467 IPC) and using of forged document as genuine (Section 471 IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463 IPC depends upon creation of a document as defined under Section 464 IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471 IPC even if title of property did not vest in the executant.

* * * * *

“24. In *Mir Nagvi Askari v. CBI [Mir Nagvi Askari v. CBI, (2009) 15 SCC 643 : (2010) 2 SCC (Cri) 718]*, this Court, after analysing the facts of that case, came to observe as follows: (SCC p. 687, para 164)

“164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the

said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.”

* * * * *

“26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. “Forgery” and “fraud” are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that “false document”. Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.”

(emphasis supplied)

13. In the first place therefore, to allege that a person has *forged his own signatures*, is a very tall order. The foundation of that allegation falls once the person signing *admits* the signatures to be his own. It falls even further once the person on whose behalf he has signed *also admits* such person’s authority to sign, as also the latter’s signatures. That is not to mention that both the principal and the SPA-holder even admit to the contents of the documents so signed.

14. Explanation I to section 464 IPC which says that a man's signatures of his own name *may* amount to forgery, is contextualized by the illustration that follows, to say that a person signing a document (a bill of exchange in the illustration) *intending* that it may be believed that the document was drawn by *some other person* of the *same name*, commits forgery. There is nothing even remotely similar happening in the present case.
15. Before concluding, a word about the applicability of section 340 Cr.P.C. to the principal allegation made in the present case may also be in order. In the leading decision on the point in *Iqbal Singh Marwah* (supra), while upholding the decision in *Sachida Nand Singh & Anr vs. State of Bihar & Anr.*⁴, the Supreme Court has ruled as follows:

*“33. In view of the discussion made above, we are of the opinion that Sachida Nand Singh [(1998) 2 SCC 493 : 1998 SCC (Cri) 660] has been correctly decided and the view taken therein is the correct view. Section 195(1)(b)(ii) CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document **after** it has been produced or given in evidence in a proceeding in any court i.e. during the time when the document was in custodia legis.”*

(emphasis supplied)

In the present case, the allegation is of signatures having been forged on the *vakalatnama*, pleadings and applications *before* these were filed in court. There is no allegation of any forgery having been committed during the time when the documents were in *custodia*

⁴ (1998) 2 SCC 493

legis. Clearly therefore, section 195(1)(b)(ii) Cr.P.C. would not be attracted. Besides, the Supreme Court has further opined that :

“23. 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), as canvassed by learned counsel for the appellants, 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.”

(emphasis supplied)

As observed above, what is alleged to have been done by the petitioner and the SPA-holder, though the allegations are meritless even otherwise, does not affect the administration of justice even minimally. For this additional reason, the applications are wholly without merit.

16. Accordingly, the allegations contained in the applications are so completely bereft of a factual basis or merit, that in the opinion of this court, no further judicial time or ink need be wasted on them.
17. The applications are accordingly dismissed *in-limine*. In order to emphasize the frivolity of the applications, the dismissal is subject to payment of costs of Re.1/- by the applicant.
18. Costs be treated as paid.
19. Applications stand disposed of.

ANUP JAIRAM BHAMBHANI, J.

FEBRUARY 06, 2023

Ne