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M.Cr.C. No.8770/2016
(Smt. Kamla Sharma and others Vs. Sukhdevlal and others)

HIGH COURT OF MADHYA PRADESH
GWALIOR BENCH

SINGLE BENCH

JUSTICE G.S. AHLUWALIA

M.Cr.C. No.8770/2016

Smt. Kamla Sharma and others

Vs.

Sukhdevlal and others

Shri K.S. Tomar, learned senior counsel with Shri Atul Sharma,
counsel for the applicants.
Shri Siddharth Sharma, counsel for respondents.

Date of Hearing : 11/04/2022
Date of Judgment/Order : 18th/04/2022
Whether Approved for Reporting : Yes

O R D E R
18th- APRIL- 2022

This application under Section 482 of Cr.P.C. has been filed against the order dated 30/6/2016 passed by Eleventh Additional Sessions Judge, Gwalior in Criminal Appeal No.65/2016, thereby affirming the order dated 7/1/2016 passed by Thirteenth Civil Judge, Class-II, Gwalior in MJC No.0/2015, by which the application filed by the applicants under Section 340 of Cr.P.C. has been rejected.

2. The necessary facts for disposal of the present application in short are that the respondents filed a suit for declaration of title and permanent injunction. It is the case of the respondents that they are the

real brother and sister. The land in dispute, i.e. survey nos.519, 529, 532, total area 3.889 hectare situated in Patwari Halka No.92, village Morar, District Gwalior is the joint property of the respondents as well as the applicants and the respondents have 1/2 share in the said joint property. The mother of the respondents, namely, Smt. Raksha Devi and husband of the applicant no.1 and father of the applicants no.2 to 4 were the joint owners and after their death, the respondents as well as the applicants became the joint owner of the said property. The respondents started residing in Punjab, whereas the land was being cultivated through the labourers and after the death of their mother, the respondents are in cultivating possession of half portion of the land through their labourers. The applicants are the wife and children of the maternal uncle of the respondents and, therefore, the respondents never had any doubt on the honesty of the applicants. Since the respondents were residing in Punjab, therefore, taking advantage of the said fact, the applicants prepared a forged Will of Smt. Raksha Devi dated 12/2/1991 and on the basis of the said forged Will, they moved an application for mutation of their names. The respondents got an information through their reliable sources and filed an objection to the mutation application and also prayed that since the applicants are relying upon the forged Will of Smt. Raksha Devi, therefore, the said forged Will should be got examined by a handwriting expert because their mother had already expired on

3/12/2001 and she had never executed any Will in favour of the applicants or any other person. It was further pleaded that the forged Will dated 12/2/1991 does not contain the thumb impression of their mother. However, without verifying the correctness and genuineness of the Will, the Tahsildar passed a mutation order in favour of the applicants, against which, an appeal is pending before the Court of SDO, Gwalior. It was further alleged that after the mutation was done by the Tahsildar, the applicants came to the disputed land alongwith armed persons on 8/7/2012. The respondent no.1 was present on the spot. The applicants extended a threat that now as they have won their case from the Tahsil Office, therefore, the respondent no.1 should handover the vacant possession of the disputed property, otherwise they would alienate the same to the powerful persons, who in their turn would dispossess the respondents forcefully. The respondent no.1 made an oral complaint to the Police Station Morar, but since the dispute was of civil in nature, therefore, no action was taken and under these circumstances, the suit for declaration of title and permanent injunction was filed.

3. It appears that in the said civil suit, the respondents filed an application under Section 45 of the Evidence Act on the ground that the disputed Will dated 12/2/1991 is a forged document. The father of the respondent was a government employee and after his death, their mother was getting family pension and, therefore, her disputed

signatures/thumb impressions can be compared with the admitted signatures or thumb impressions on the ID proof as well as original passbook. The said application was allowed by order dated 27/11/2013. Thereafter, an another affidavit was filed to the effect that by mistake the averments that the father of the respondents was in a government job and their mother was getting pension, have been wrongly mentioned, whereas their mother was receiving Old Age Pension (Vriddha Pension). It appears that thereafter the applicants filed an application under Section 340 of Cr.P.C. on the ground that the application under Section 45 of the Evidence Act was filed alongwith an affidavit pleading *inter alia* that after the death of their father, their mother Smt. Raksha Devi was getting family pension and, therefore, her signatures on the ID proof as well as original passbook may be compared with the disputed signatures/thumb impressions, but the father of the respondents died on 29/8/2000, whereas the ID proof as well as the passbook is of the year 1999. The application filed by the applicants under Section 340 read with Section 195 of Cr.P.C. was rejected by the Trial Court by order dated 7/1/2016 on the ground that affidavit was manipulated outside the Court.

4. Being aggrieved by the said order, the applicants preferred a Criminal Appeal No.65/2016 before the Court of Eleventh Additional Sessions Judge, Gwalior, which too has been dismissed by impugned order dated 30/6/2016.

5. Challenging the order passed by the Courts below, it is submitted by the counsel for the applicants that the Trial Court committed material illegality by rejecting the application on the ground that the affidavit was forged outside the Court, therefore, the bar as contained under Section 195 of Cr.P.C. would not apply and the complaint could have been filed only if the affidavit was manipulated or forged while it was in *custodia legis*. It is submitted that it is not a case of forging a document, but it was a case of filing a false affidavit and, therefore, the judgment passed by the Supreme Court in the case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah** reported in **AIR 2005 SC 2119** is not applicable. It is further submitted that the Appellate Court has also rejected the appeal in *limine* on the similar grounds. It is submitted by the counsel for the applicants that filing of false affidavit before the Court is a serious offence and the Courts should not tolerate the same. The affidavit has a solemn declaration of a statement upon oath, which can be used as an evidence and nowadays a tendency is increasing to file false affidavits in a most casual manner without realizing their effect on the case. This increasing tendency of filing false affidavits should be checked by the Court by taking a very serious view in the matter. In support of his contentions, the counsel for the applicants has relied upon the judgments passed by the Supreme Court in the case of **State of HP Vs. Suresh Kumar Verma** reported in **1997 (1) MPWN 150** as

well as by the coordinate Bench of this Court (Jabalpur) in the case of **Mohammad Ibrahim Mohammad Yusuf Vs. Imdadulla Haji Abdul Sattar and others** reported in **1995 MPLJ 255**.

6. *Per contra*, the application is vehemently opposed by the counsel for the respondents. It is submitted that it is true that the contents of the initial affidavit were incorrect, but the said incorrect affidavit was not filed with deliberate intention to mislead the Court. The basic dispute before the Trial Court was as to whether the mother of the respondents, namely, Late Smt. Raksha Devi had executed a Will in favour of the applicants or not. The respondents had moved an application for comparison of the thumb impression on the disputed Will with the admitted thumb impression / signatures of Late Smt. Raksha Devi and, therefore, under a mistaken belief that the mother of the respondents, namely, Late Smt. Raksha Devi was getting a family pension, made an application, but in fact she was getting Old Age Pension and her admitted thumb impressions / signatures were already available on her passbook and ID proof. Thus, the mistake, which does not affect the very foundation of the litigation or the purpose of application, can be ignored. However, it is submitted that the mistake, which had crept in the first affidavit, should not have been committed by the respondents and the respondents should have filed the affidavit only after considering and verifying the facts mentioned in the same.

7. Heard learned counsel for the parties.

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8. Section 3(3) of the General Clauses Act, 1897 reads as under:-

“3(3) “affidavit” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing;”

9. Sections 3 and 4 of the Oaths Act, 1969 reads as under:-

3. **Power to administer oaths.-** (1) The following courts and persons shall have power to administer, by themselves or, subject to the provisions of sub-section (2) of section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:--

- (a) all courts and persons having by law or consent of parties authority to receive evidence;
- (b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf--

(a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or

(b) by the State Government, in respect of other affidavits.

4. **Oaths or affirmations to be made by witnesses, interpreters and jurors.-**(1) Oaths or affirmations shall be made by the following persons, namely:--

- (a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;
- (b) interpreters of questions put to, and evidence given by, witnesses; and
- (c) jurors:

Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

10. Thus, it is clear that the affidavit is a statement of declaration made by an affiant under oath for the affirmation which is administered by a person, who is authorized to do so by law. Therefore, an affidavit is an another form of evidence which contains the verification of its mode under oath on penalty perjury.

11. Section 24 of IPC reads as under:-

“24. **“Dishonestly”**.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

11.1. Section 25 of IPC reads as under:-

“25. **“Fraudulently”**.—A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.”

11.2. Section 191 of IPC 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.”

11.3. Section 192 of IPC reads as under:-

“192. Fabricating false evidence.—Whoever causes any circumstance to exist or 1[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said “to fabricate false evidence”.

11.4. Section 193 of IPC reads as under:-

“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; 1[***] is a judicial proceeding.

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.”

12. The Supreme Court in the case of **Dalip Singh Vs. State of Uttar Pradesh and others** reported in (2010) 2 SCC 114 has held as under:-

“1. For many centuries Indian society cherished two basic values of life i.e. “satya” (truth) and “ahimsa” (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”

12.1. The Supreme Court in the case of **Muthu Karuppan,**

Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and

another reported in (2011) 5 SCC 496 has held as under:-

“15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a *prima facie* case of “deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.”

12.2. The Supreme Court in the case of **Dhananjay Sharma Vs.**

State of Haryana and others reported in (1995) 3 SCC 757 has held

as under:-

“38. Section 2(c) of the Contempt of Courts Act, 1971 (for short the Act) defines criminal contempt as “the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or *the doing of any other act whatsoever* to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) *prejudice or interfere or tend to interfere with the due course of judicial proceedings* or (3) *interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner*. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the party concerned in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery of by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine

or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in courts aims at striking a blow at the rule of law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi v. Anil Kumar Verma* [(1995) 1 SCC 421 : 1995 SCC (Cri) 239] the respondents produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Hansaria, J. speaking for the Bench observed: (SCC pp. 423-24, paras 1 and 2)

“The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.”

12.3. The Supreme Court in the case of **Baban Singh and another vs. Jagdish Singh and others** reported in **AIR 1967 SC 68** has held as under:-

7. The matter has to be considered from three stand points. Does the swearing of the false affidavits amount to an offence under S. 199, Indian Penal Code or under either S. 191 or 192, Indian Penal Code ? If it comes under the two latter sections, the present prosecution cannot be sustained. Section 199 deals with a declaration and does not state that the declaration must be on oath. The only condition necessary is that the declaration must be capable of being used as evidence and which any Court of justice or any public servant or other person, is bound or authorised by law to receive as evidence. Section 191 deals with evidence on oath and S. 192 with fabricating false evidence. If we consider this matter from the standpoint of S. 191, Indian Penal Code the offence is constituted by swearing falsely when one is bound by oath to state the truth because an affidavit is a declaration made under an oath. The definition of the offence of giving false evidence thus applies to the affidavits. The offence may also fall within S. 192. It lays down inter alia that a person is said to fabricate false evidence if he makes a document containing a false statement intending that such false statement may appear in evidence in a judicial proceeding and so appearing in evidence may cause any person who, in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding. When Baban Singh and Dharichhan Kuer made declarations in their affidavits which were tendered in the High Court to be taken into consideration, they intended the statements to appear in evidence in a judicial proceeding, and so appearing, to cause the Court to entertain an erroneous opinion regarding the compromise. In this way their offence came within the words of Ss. 191/192 rather than S. 199 of the Indian Penal Code. They were thus prima facie guilty of an offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding.

13. Filing a false affidavit also amounts to contempt of Court. In the case of **Chandra Shashi Vs. Anil Kumar Verma** reported in (1995) 1

SCC 421 the Supreme Court has held as under:-

8. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in courts when they would find that “सत्यमेव जयते” (truth alone triumphs) is an achievable aim there; or “यतो धर्मस्ततो जय” (it is virtue which ends in victory) is not only inscribed in emblem but really happens in the portals of courts.

9. The aforesaid thoughts receive due support from the definition of criminal contempt as given in Section 2(c) of the Act, according to which an act would amount to be so if, inter alia, the same interferes or tends to interfere, or obstructs or tends to obstruct the administration of justice. The word ‘interfere’, means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty, as stated at p. 255 of *Words and Phrases (Permanent Edn.)*, Vol. 22. As per what has been stated in the aforesaid work at p. 147 of Vol. 29 obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.

10. A reference to standard textbooks on contempt, to wit, C.J. Miller's *Contempt of Court*; Oswald's *Contempt of Court*; and Anthony Arlidge & David Eady's *The Law of Contempt* would amply bear what has been stated above; and that if a forged and fabricated document is filed, the same may amount to interference with the administration of justice. Of course, for the act to take this colour there is required to

be an element of deceit or the knowledge of the statement being forged or fabricated. This is what finds place at pages 399 to 401 (2nd Edn.); page 62 (1993 Reprint); and pages 186 and 188 (1982 Edn.) respectively of the aforesaid treatises.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt.

14. The judgment passed in the case of **Dhananjay Sharma (supra)** has been relied upon by the Supreme Court in the case of **Rita Markandey Vs. Surjit Singh Arora** reported in (1996) 6 SCC 14. Thus, it is clear that a false affidavit which is executed deliberately knowing the fact that the declaration given on oath is false, has to be viewed with all seriousness and this practice of filing of such affidavit has to be deprecated. Therefore, counsel for the applicants is right in submitting that filing of the affidavit should be dealt with heavily.

15. Now the next question for consideration as to whether false affidavit which was filed by the respondents was filed with an intention to interfere with the justice dispensation system or contents of the false affidavit have no material effect on the outcome of the order.

16. Section 340 of CrPC reads as under:-

“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 may be, 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."

17. The Supreme Court in the case of **Aarish Asgar Qureshi Vs.**

Fareed Ahmed Qureshi and another reported in (2019) 18 SCC 172

has held as under:-

“**10.** It is clear therefore from a reading of these judgments that there should be something deliberate — a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise.....”

17.1. The Supreme Court in the case of **Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and another** reported in **(2011) 5 SCC 496** has held as under:-

15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of “deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.

16. In a series of decisions, this Court held that the enquiry/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 making false statement, more so, the court has to determine as on facts whether it is expedient in the interest of justice to enquire into offence which appears to have been committed.

18. Therefore, before proceeding further with the matter, the Court must form an opinion as to whether it is expedient in the interest of justice or not. One of the criteria for proceeding under Section 340 of CrPC may be that only due to false statement one party has succeeded

in getting favourable order which otherwise he would not have got, therefore, if the false statement affects the very nature of the order passed by the Court, then that can be one of the circumstance where the proceedings under Section 340 of CrPC can be initiated. If the facts of the present case are considered, then it is clear that the respondents had moved an application for comparison of the disputed signatures/thumb impressions of Late Smt. Raksha Devi with her admitted thumb impressions / signatures.

19. The crux of the matter is that as to whether there was any document containing admitted signatures/thumb impressions of Late Smt. Raksha Devi or not. It is true that the application under Section 45 of the Evidence Act was made on the basis of submissions that father of the respondents was in government job and after his death, their mother Late Smt. Raksha Devi was getting family pension and, therefore, I.D. as well as passbook contain her admitted thumb impressions/signatures, but later on, it was pleaded that in fact, the mother of the respondents was not getting the family pension, but she was getting old age pension and was having I.D. and passbook. Thus, there were certain documents which were containing admitted signatures/thumb impressions of Late Smt. Raksha Devi. Even if the respondents had mentioned in their application under Section 45 of the Evidence Act that the admitted signatures / thumb impressions of Late Smt. Raksha Devi are available on the ID as well as passbook

account of Old Age Pension, then still it would not have made any impact on the outcome of the application, therefore, this Court is of the considered opinion that although the application was filed in a most casual manner without realizing the sanctity attached to an affidavit, but since the false statement made in the application filed under Section 45 of the Evidence Act did not have any impact on the outcome of the said application, therefore, it is not a fit case to proceed against the respondents under Section 340 of Cr.P.C.

20. Accordingly, the application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Arun*