Court case
By speed post

Prasar Bharati
(Broadcasting Corporation of India)
All India Radio: Patna

No. Pat: 33 (4)/2009- G(ADDEA) 1205 Dated: 29.05.2012

To
The Director General,
(Ms. Anu Kalra DDA, S-IV (B) by name),
All India Radio,
Akashvani Bhawan,
Parliament Street,
New Delhi-110001.

Sub.: Judgment of CAT Bench Patna pronounce on 23-05-2012 for CCPA No. 22/2011 with M.A. No. 73 and 217/2012 arising of OA No. 514/2002.

Madam,

Enclosed please find herewith a copy of the judgment on the subject mentioned above from pages 01-14 for further necessary action at your end.

Thanking you,

Yours faithfully,

Sd/-
(Sanjay Kumar Sinha)
Dy. Director General (Engineering)

Encl: As above

Copy to:

1. Ms. G. Jayanthi, Director, Ministry of Information & Broadcasting, Shashtri Bhawan, New Delhi for information with encloser.
2. The Addl. Director General (Engg.-EZ), (Shri S. Poddar, Asstt. Director (Engineering) by name), All India Radio & Television, Akashvani Bhawan, Eden Garden, Kolkata – 700 001 for information.
3. The Dy. Director General (Administration), Akashvani, Akashvani Bhawan, Parliament Street, New Delhi 110001 for information with encloser.

29/5/12

Dy. Director General (Engineering)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

CCPA 22 of 2011 with M.A. Nos. 73 & 217 of 2012
[Arising out of OA 514 of 2002]

Date of order : 23.09.2012

CORAM
Hon'ble Mr. Naresh Gupta, Member [A]
Hon'ble Mrs. Bidisha Banerjee, Member [J]

Akashvani & Doordarshan Diploma Engineer Association through its President, namely, Brij Kishore Roy, S/o Langtu Roy, r/o CB - 19 Biswas Apartment, Christan Colony, Keshwa Lal Road, Lodipur, posted as Sr. Enginnering Asstt at AIR [CBS], Patna.

2. Harendra Kumar Mishra, S/o Adya Saran Mishra, President of DDK, Patna, posted as Sr. Engg. Asstt. at DDK, Patna.
3. Manoranjan Kumar, S/o Rangu Lal, working as AE DDMC, Gaya.
4. Arjuna Singh, S/o Rangu Lal, working as Assistant Engineer, HPT, Kingway Camp Ground, AIR, New Delhi.
5. Mamta Kumari Sahay, D/o Late H.N. Sahay, working as Assistant Engineer, AIR, Patna.
6. Sudhanshu Kumar, S/o Late Kaleshwar Prasad, posted as Sr. Engg. Asstt at AIR [CBS], Patna.
7. Binod Kumar, S/o Laxmi Prasad Sah, working as Sr. EA, AIR, Patna.
8. Radhika Raman Prasad Singh, S/o Sarju Prasad Singh, working as Sr. EA, Ranchi
9. Prabhati Sinha, W/o Ram Narayan Sinha, R/o Longertoli, Patna.
10. Shyamal Naskar, S/o P. Naskar working as Assistant Engineer, DDK, Kolkata.
11. Om Prakash Ram, S/o Tuntun Ram, working as Sr. E.A., AIR, Patna.
12. Chuni Lal Sharma, S/o Late Gyan Chandra Sharma, AE, DDK, Itanagar, Arunchal Pradesh.

.....Applicant.

By Advocate : Shri S. Alam with Shri S.K. Bariyar.

Vs.

1. Mr. Raghu Menon, Secretary, Ministry of information & Broadcasting, Shastri Bhawan, New Delhi.
2. Mrs. Alka Sirohi, Secretary, Department of Personnel & Training, North Block, New Delhi.
3. Rajiv Takru, Chief Executive Officer, Prasar Bharati, Broadcasting Corporation of India, Doordarshan, Mandi House, New Delhi.
4. Noreen Naqvi, the Director General, AIR, AIR Bhawan, Sansad Marg, New Delhi.

.....Respondents.

By Advocate : Shri A.R.Pandey with Shri P.R. Singh.

ORDER

Naresh Gupta, Member [A]: This CCPA has been filed for alleged wilful disobedience of the order of this Tribunal in OA 514 of 2002 dated 07.09.2009 [Annexure P/1 of CCPA] which was said to have been upheld by the Hon'ble Patna High Court in the CWJC bearing No. 6451 of 2010 filed by the respondents in the OA [Annexure P/2 of CCPA]. The SLP filed by the respondents [in the OA] bearing No. 631 of 2010 was dismissed on 10.01.2011 [Annexure P/3 of CCPA]. The petitioners

filed a CCPA bearing No. 62 of 2009 but in view of the pendency of the above CWJC, this Tribunal dismissed the CCPA with liberty to file a fresh CCPA after disposal of the CWJC [copy of order of this Tribunal marked as Annexure P/4 of CCPA].

2. In almost identical show cause, the respondents [alleged contemnors] have submitted that the Tribunal vide order dated 07.09.2009 in OA 514 of 2002 directed the respondents to grant the applicants the pay scale of Rs. 8000-13500/- as and when they completed 12 years of service in the pay scale of Rs. 6500-10500/-. The aforesaid order was challenged by the Union of India in CWJC No. 6451 of 2010 wherein by order dated 25.08.2010, the Hon'ble Patna High Court modified the order of this Tribunal directing that the case of the applicants be considered individually. The Hon'ble Supreme Court affirmed on 10.01.2011 the order of the Hon'ble High Court, following which the respondents decided to implement the order of the Tribunal after obtaining advice from the Ministries of Personnel & Administrative Reforms, Law and Justice and Finance of GOI. On 24.10.2011, the DPC convened for the purpose, considered the case of the applicants individually and speaking orders were passed individually for the 11 cases on 04.11.2011 [Annexure A series of show cause].

3. It is seen that this Tribunal in its order dated 07.09.2009 in OA 514 of 2002 held [in paras 8 and 9] as follows:

"8. After hearing both the counsels and after perusing the records, we have come to the conclusion that the applicants are entitled for grant of ACP promotion and this promotion should be granted in the pay scale of Assistant Executive Engineer i.e. Rs. 8000-13500/-.

9. This OA is, therefore, allowed. <u>The respondents are directed to grant the applicants the pay scale of Rs. 8000-13500/- as and when they have completed 12 years service in the pay scale of Rs. 6500-10500/-.</u> The arrears should also be paid to the applicants. The respondents are directed to issue orders regarding ACP promotion to the applicants within a period of two months from the date of receipt of a copy of this judgment. The arrears may be calculated and paid to them within one month thereafter]."

4. The matter then travelled to the Hon'ble Patna High 6451 of 2010 which modified the order of this Tribunal to the extent that under the ACP scheme, each case has to be considered individually.

5. The applicants were working as Engineering Assistant, Sr. Engineering Assistant and Assistant Engineers in the Prasar Bharati, Patna in the pay scale of Rs. 6500-10500/- since implementation of the 5th Central Pay Commission [CPC, in short] in 1996. Prior to 4th CPC, i.e. before 1986, the Engineering Asstts and Sr. Engineering Asstts were in a lower scale and after prolonged litigation, all the three categories were brought to a uniform scale of Rs. 2000-3500/- before 1996 which was revised to 6500-10500/- from 1996 [5th CPC].

6. In para 6 of the order of this Tribunal it is said :

"6..... Both the sides agreed that since 6500-10500/- is the pay scale of Assistant Engineer, the ACP promotion should be in the pay scale of the next post in the hierarchy i.e., the post of Assistant Executive Engineer i.e. Rs. 8000-13500/-."

The Hon'ble Patna High Court held on the above aspect:

"We have also been taken through the DOPT dated 10.02.2000 which is Annexure -4 to the supplementary affidavit filed on behalf of the petitioners. The clarification is clear and not in dispute. It provides that an employee who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scale, shall be entitled for up-gradation under ACPs ignoring the said promotion as otherwise he would be placed in a disadvantageous position vis-a-vis the fresh entrant in the merged grade."

7. In the order dated 08.12.2011 in the order sheet, this Tribunal took a view that the orders dated 04.11.2011 were not in consonance with the order of this Tribunal dated 07.09.2009 in OA No. 514 of 2002 as well as the order of the Hon'ble High Court in CWJC No. 6451 of 2010 dated 25.08.2010 and the instructions of the DOPT in letter dated 10.02.2000 and directed the personal appearance of Shri Rajiv Takru, CEO, Prasar Bharati, Doordarshan, New Delhi to explain why charges for contempt should not be framed against him, following which he filed an affidavit on 06.01.2012 stating that when the order dated 07.09.2009 was passed, he was holding the post of DG, NIFT and had nothing to do with the affair of Prasar Bharati or the Ministry of In & B. The case for

Ministry of I & B, ADG, Admn. Doordarshan, the CE AIR and the CE, Doordarshan and that he [Shri Rajiv Takru] was not a Member of the Committee. Further, the cadre controlling authority of the applicants is the D.G., AIR and not the CEO, Prasar Bharati and as such he was not the competent authority to consider the case of the applicants for grant of benefit under the ACP. The Screening Committee had since re-considered the case of the applicants in its meetings held on January 2 and 3 , 2012 wherein the Committee found 8 out of 12 applicants as eligible for the ACP [Annexure A of the Affidavit] and with the aforesaid decision of the Committee, the order of this Tribunal dated 07.09.2009 had been complied with fully.

8. An MA bearing No. 73 of 2012 was also filed seeking exemption from personal appearance of the CEO, Prasar Bharati indicating that vide the aforesaid order [Annexure 'A' of the above affidavit], the order had been complied with.

9. The respondents have cited an order dated 09.03.2011 in CA No. 5600 of 2006 in R.S. Sngh Vs. U.P. Malaria Nirikshak Sangh & Ors wherein the Hon'ble Supreme Court has expressed deep distress over the growing tendency of Courts to pass orders summoning high officials and quite often it was for the ego satisfaction of the Judge.

10. Heard the learned counsel for the petitioners and the respondents on 26.04.2012 and perused the entire record. It is seen that in para 9 of the order of this Tribunal dated 07.09.2009, the portion: *"The respondents are directed to grant the applicants the pay scale of Rs. 8000-13500/- as and when they completed 12 years service in the pay scale of Rs. 6500-10500/-"* has given rise to doubt. The direction of the Hon'ble High Court to the respondents was to consider the grant of benefit of ACPs to the applicants before the Tribunal..... in accordance with law and the observations made in that order and the order of the Tribunal. The respondents have gone by the literal meaning of the words in para 9 of the order of this Tribunal and not taken note of the clarification given by DOPT as indicated in the earlier paras of the order of the Tribunal and also set out in the order of the Hon'ble High Court. Thus, with the issue of the order in Annexure A of the affidavit filed by Shri Rajiv Takru, CEO, there has been compliance in terms of para 9 of the order of this Tribunal. It has provided only partial relief to the petitioners in this CCPA.

11. At the outset, it may be stated that in a contempt proceeding, the jurisdiction of this Tribunal is limited. Section 2(b) of the Contempt of Courts Act defines Civil Contempt to mean wilful disobedience of any judgment, decree, direction, order, writ or other process of a court of wilful breaches of an undertaking given to a court. The only question is whether the contemnor is guilty of willful disobedience. In Niaz Mohammad & Ors. v. State of Haryana & Ors., the law was stated by the Hon'ble Supreme Court on 20 September, 1994 in the following terms:

> *"But such a proceeding is not like an execution proceeding under Code of Civil Procedure. The party in whose favour an order has been passed, is entitled to the benefit of such order. The court while considering the issue as to whether the alleged contemnor should be punished for not having complied with and carried out the direction of the court, has to take into consideration all facts and circumstances of a particular case. That is why the framers of the Act while defining civil contempt, have said that it must be wilful disobedience to any judgment, decree, direction, order, writ or other process of a court. Before a contemnor is punished for non-compliance of the direction of a court, the court must not only be satisfied about the disobedience of any judgment, decree, direction or writ but should also be satisfied that such disobedience was wilful and intentional."*

12. It is beyond our purview in a contempt proceeding to go into the claims if there is a dispute or doubt in regard to the scope of an order and the consequential entitlement of benefits. This will legitimately be the subject matter of a separate proceeding in a fresh OA if filed by the petitioners. In the case of Rakhal Ch. Dey and Ors. vs Dr. Surendra Nath Sarma and Ors. where the averment in the contempt petition was that the contemners had paid less wages than what is provided under the rules, the Hon'ble Gauhati High Court (judgment dated 20 February, 2004) held as follows (para 11 & 12):

> *"11. Contempt jurisdiction is of a special nature and should be sparingly used, it cannot be invoked unless there is real prejudice which can be regarded as substantial interference with the due course of justice. The court will not exercise it upon a mere question of propriety nor as a cloak to invite a decision on an important disputed and collateral question of fact as to whether the petitioners were entitled to any time scale of pay as their wages. It is highly necessary in all questions of that nature where the powers of the court have to be exercised in a summary manner, that the court in dealing*

with the alleged contempt should not proceed otherwise than with great caution and deliberation. A statistical approach in a contempt proceeding is neither proper nor judicial. A contempt proceeding is judicially punitive in nature and not remedial, even though the effect of proceeding in cases of willful disobedience of the Judgment or orders may compel compliance of the same. It is not sufficient in such cases for the purpose of initiating a proceeding of contempt simply because one committed an error in the Judgment or order passed by him in exercise of authority vested in him. The error must be willful and deliberate.

12. In the instant case, the direction as contained in the order dated 7.4.1999 has been carried out howsoever erroneous that could be. The petitioners have sought to put up their case that the wages paid to them are not commensurating to their entitlement and this court having provided to pay the wages in accordance with law, this court-on interpretation of the said law in this contempt proceeding should pass appropriate orders. I am afraid such a course of action/approach is not permissible in a contempt proceeding. In this proceeding it is only to be judge as to whether there is any willful or deliberate violation of the aforesaid order dated 7.4.1999. The Respondents have well explained the exercise they undertook and completed pursuant to the aforesaid order dated 7.4.1999. There is no willful or deliberate violation on the part of the Respondents against the said order dated 7.4.1999. ……. ……. The argument made on behalf of the petitioners is that the law should be interpreted in the contempt proceeding as regards the entitlement of the actual wages by the petitioners. For that purpose, the contempt proceeding cannot be converted into a writ proceeding."

13. It is also trite that partial compliance of an order can be considered as a reason for holding that that there was no intentional and willful violation. In MJC No. 784 of 2008, Ramesh Kumar Singh vs. State of Bihar & Ors. the Honble Patna High Court held on 10 March, 2011 as follows:

This contempt application has been filed alleging violation of order dated 5.8.2004 passed by this Court in C.W.J.C. No. 13774 of 2003. A show cause has been filed showing compliance of the court's order which was disputed by the counsel appearing for the petitioner that the same is partial compliance. In the facts and circumstances of this case, we are of the opinion that if the petitioner is aggrieved by the order passed by the respondents, he can avail the remedy open to him under the law before the appropriate forum. With the aforesaid observation, the contempt proceeding is closed.

14. During the course of the hearing of the case on 26.04.2012, the learned

counsel for the petitioners submitted that the respondent No. 3 [Shri Rajiv Takru] had not appeared in the court notwithstanding the direction for his appearance. The learned counsel for the respondents submitted that an MA bearing No. 73 of 2012 had been filed seeking exemption from his appearance and that in view of the reconsideration of the case of the petitioners and the decision taken in the meeting of the Screening Committee held on January 2 and 3, 2012 [Annexure 'A' in affidavit filed on 06.01.2012 by Shri Rajiv Takru], the order of this Tribunal had been complied with. Though personal appearance had been ordered by this Tribunal, in view of the aforesaid developments, his personal appearance is dispensed with. In this regard, it may be worthwhile to cite the decisions in [1] R.S. Singh vs. U.P. Malaria Nirikshak Sangh & Ors. CA No. 5600 of 2006 [date of judgment: 09.03.2011] [2011 AIR SCW 1840], wherein the Hon'ble Supreme Court held that the Courts should first see whether the order can be complied with, without summoning any official. Government counsels can be asked to communicate to the official concerned regarding the non-compliance of the order. Senior officials can be summoned to give explanation only in some extreme cases where the High Court is convinced that deliberately the order of the court was ignored in a spirit of defiance. There should be mutual respect between the judiciary and the executive, otherwise the system would collapse. In the instant case, the High Court was not justified in summoning the said two Senior Government Officials for non-compliance of the judgment of the High Court at Allahabad, Bench at Lucknow dated 15.11.1989/ 13.12.1989. The direction of the High Court summoning the two high officials was set aside. [2] State of Gujarat vs. Turabali Gulamhussain Hirani in CA [Cr.] 1339 of 2001 [AIR 2008 SC 86] wherein the Hon'ble Supreme Court observed on 1 October, 2001 as follows:

> *6. A large number of cases have come up before this Court where we find that learned Judges of various High Courts have been summoning Chief Secretary, Secretaries to the government (Central and State), Director Generals of Police, Director, CBI or BSF or other senior officials of government.*
>
> *7. There is no doubt that the High Court has power to summon such officials, but in our opinion that should be done in very rare and exceptional cases where there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the drop of a hat.*

8. Judges should have modesty and humility. They should realize that summoning a senior official, except in some very rare and exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official concerned.

9. The judiciary must have respect for the executive and the legislature. Judges should realize that officials like the Chief Secretary, Secretary to the government, Commissioners, District Magistrates, senior police officials etc. are extremely busy persons who are often working from morning till night. No doubt, the ministers lay down the policy, but the actual implementation of the policy and day to day running of the government has to be done by the bureaucrats, and hence the bureaucrats are often working round the clock. If they are summoned by the Court they will, of course, appear before the Court, but then a lot of public money and time may be unnecessarily wasted. Sometimes High Court Judges summon high officials in far off places like Director, CBI or Home Secretary to the Government of India not realizing that it entails heavy expenditure like arranging of a IAF aircraft, coupled with public money and valuable time which would have been otherwise spent on public welfare.

10. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated. We are constrained to make these observations because we are coming across a large number of cases where such orders summoning of high officials are being passed by the High Courts and often it is nothing but for the ego satisfaction of the learned Judge.

11. We do not mean to say that in no circumstances and on no occasion should an official be summoned by the Court. In some extreme and compelling situation that may be done, but on such occasions also the senior official must be given proper respect by the Court and he should not be humiliated. Such senior officials need not be made to stand all the time when the hearing is going on, and they can be offered a chair by the Court to sit. They need to stand only when answering or making a statement in the Court. The senior officials too have their self-respect, and if the Court gives them respect they in turn will respect the Court. Respect begets respect.

[3] State of U.P. & Ors. vs. Jasvir Singh & Ors., JT 2011(1) SC 446

15. In Union of India vs Satish Chandra Sharma, the Hon'ble Supreme Court observed in order/ judgment on 30.11.1979 as follows:

The court shall neither be imperious nor be obsequious. The law, in the area of contempt of court, must avoid the extremes of hyper-reactivity to marginal indifference to judicial authority out of pragmatic difficulties and of basic concept for court commands in a cavalier spirit of 'the court has no

guns. Why care ?'

.....

The question is whether the action for disobedience was legal and justified and, in any case, the draconian punishment of ..... was a desertion of judicial discretion whose hall-mark is to be firm but not authoritarian, liberal but not petulant and ever informed by realism and impressed with contrition.

Is it the path of judicial discretion to temper justice with mercy or practise the opposite ?

To proceed to punish in haste without pausing to realise how government functions is not fair in this drastic jurisdiction where personal freedom is in peril. The description of is processes, as prevalent in the days of Lord Curzon, holds good to-day. Here are his impatient words dipped in pungent ink:

"... the administration had become ponderous, like an elephant very stately, very powerful, with a high standard of intelligence, but with a regal slowness in its gait"

"Round and round, like the diurnal revolution of the earth, went the file, stately, solemn, sure and slow: and now, in due season, it has completed its orbit, and I am invited to register the concluding stage."

We are in no mood to condone willful procrastination nor suffer wanton stagnation in Administration as a ground for default in obeying court orders. The Law does not respect lazy bosses nor 'cheeky' evaders . But no proof of that species of guilt has been brought to our notice. Mere inaction has no long mileage where mens rea is a sine qua non

We, therefore, regard the court's order, holding the appellants in contempt, a hasty measure, probably annoyed by absence of instant compliance. It is well-known that the contempt power should be kept sheathed and the sword should be drawn only sparingly if the court is convinced that there has been willful defiance or disobedience. Moderation lends dignity to power..... ....

16. We find, in the facts and circumstances of the case, that there is no contumacious conduct or willful disobedience of the order of the Tribunal and accordingly the contempt proceedings are ordered to be dropped and the notices issued to the contemnors hereby discharged. It is open to the petitioners to file a representation to any or all the three respondents setting out their case in detail and seek reconsideration or to file a fresh OA, in regard to the entitlement of ACP, if they are aggrieved by the action/decision taken by the authorities. If any representation is filed by the petitioners

[in this CCPA] to the respondents, the latter should go by the letter and spirit of the entire order of this Tribunal in the OA as well as the order of the Hon'ble High Court in CWJC instead of being circumscribed/ limited by para 9 of the order in the OA. It is noticed that the implication of the direction of the Hon'ble Patna High Court was that the order passed by this Tribunal was modified to the extent that the aplicants were not outright entitled to pay scale of Rs. 8000-13500/-, and that the individual cases of the applicants had to be considered in terms of DOPT scheme dated 10.02.2000. The Scheme of DOPT dated 10.02.2010 makes it amply clear and declares unambiguously that "an employee who got promotion from lower pay scale to higher pay scale as a result of promotion before merger of pay scales, shall be entitled for upgradation under ACP ignoring the said promotion". However, the respondents have acted taking the literal meaning of the order passed by this Tribunal [in para 9]. In such view of the matter, the order to comply with the order of this Tribunal as modified by the Hon'ble High Court, the respondents should consider each and every case case in terms of the scheme with the clarifications as it clears their doubts about the entitlement of each and every individual in terms of the DOPT scheme dated 10.02.2010 and thereafter consider the grant of ACP to the applicants. While parting on this subject, we would like to reiterate that a *contempt proceeding is judicially punitive in nature and not remedial, even though the effect of proceeding in cases of willful disobedience of the Judgment or orders may compel compliance of the same.* Accordingly, without resorting to giving any additional direction in the CCPA, the respondents should appropriately examine the case of each and every applicant as ordered by the Hon'ble High Court and accordingly decide on grant of ACP benefits to the applicants in terms of DOPT Scheme of 10.02.2000.

17. The petitioners have also filed an MA bearing No. 217 of 2012 seeking initiation of an inquiry under Section 340 of the Cr.P.C. for alleged perjury by the respondents in furnishing wrong information, according to the MA, in the minutes of the meeting of the Screening Committee held on 2nd and 3rd January 2012, enclosed with the affidavit filed by respondent No. 3, punishable under Section 193 of the IPC. Section 340 of Cr.P.C. reads as follows:

340. Procedure in cases mentioned in Section 195(1). When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it

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) xxxxxx; e) xxxxxx; (2) xxxxxxx; (3) xxxxxxx; (4) xxxxxxx.

The relevant portion of Section 195 of Cr.P.C. deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. The relevant portion of Sub-clause (b) of Section 195(1) thereof reads as under :-

(1) No Court shall take cognizance;

a) xxxxxxxxxx

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) xxxxxxxxxx

(iii) xxxxxxxxxx

except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

The prosecution for the offence under Section 193, IPC is also covered by Sub-clause (b)(i) of Section 195(1) of Cr. P.C. Section 193, IPC is a penal provision which provides for "Punishment for false evidence", "Giving false evidence" is defined and is explained by Section 193, IPC.

The material portion of Section 193, IPC is reproduced below :-

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.

Therefore, if the Court finds that any party to the proceeding or a witness therein has intentionally given false evidence at any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of the proceeding and the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any evidence referred to in Clause (b) of Sub-section (1) of Section 195, Cr.P.C. which appears to have been committed respecting that particular [illegible] proceeding or in respect of a particular document produced therein are given in evidence it may hold a preliminary enquiry and if it thinks necessary then it may record a finding to that effect and then proceed to make a complaint in respect of the prima facie offence/offences stipulated in Clause (b) of Section 195, Cr.P.C. to the concerned Magistrate having jurisdiction against the said person.

The judicial exercise involved in this process on the part of the Presiding Officer of the trial Court calls for prima facie determination of the fact if any such false evidence or fabricated document bearing on the point and issues had been given or produced by a party to the proceeding or a witness therein.

If the particular judicial or legal proceeding relates to trial of civil proceeding or the contentious issues in a legal proceeding, raised therein by respective pleadings of the parties, to which require final adjudication of the trial Court on the merits of the evidence to be let in on record by the parties in support of their respective case, then it goes without saying that the most appropriate stage for the trial Judge in such a trial proceeding is to formulate his opinion on filing or non-filing of complaint contemplated under Section 340 of Cr.P.C, would be at the final stage of disposal of the main matter on merits. Otherwise, if the Presiding Officer of a trial Court is to take a decision relating to alleged perjury or false statement at the initial stage of the proceeding, then in all probability, it will prejudicially affect the fair disposal of the main matter on its merit and therefore it would certainly deflect the course of justice.

[illegible] aptly in Vittappan vs State, the

Hon'ble Kerala High Court held on 9 April, 1987 as follows:

"6. ..... Such an enquiry itself need be conducted only if the court is of opinion that it is expedient in the interests of justice to do so. This means in all cases when it appears to the court that an offence is committed need not conduct an enquiry for the purpose of taking a decision whether or not a complaint has to be filed. Even if an offence appears to have been committed the enquiry, the consequent finding and the complaint need be only in cases where it is expedient to do so in the interest of justice. Recording a finding by the court regarding commission of the offence is therefore a condition precedent to the prosecution.

7. The provision to record a finding is not merely directory, but is mandatory Munuswamy Naidu v. Emperor AIR 1928 Mad 783 : 29 Cri LJ 732. When the section requires a certain thing to be done it is not open to the court to say that it is optional to do it or not. Failure to record a finding is not a curable irregularity but it is an illegality. Though the courts are expected to be zealous in putting down perjury to the extent possible, it is not every case of perjury that should form the subject of the enquiry contemplated in Section 340. Expediency in the interest of justice should be the criterion. Otherwise there could be almost as many prosecutions as the number of witnesses examined because in the evidence of almost each and every witness an element of untruth could be found. 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. To start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material will defeat its very purpose. Some inaccuracy in the statement which may be innocent or immaterial may not justify a prosecution as expedient in the interest of justice. There must be prima facie case of deliberate falsehood on a matter of substance and the court must be satisfied that there is reasonable foundation for the charge. Chajoo Ram v. Radhey Shyam .

8. The provisions of Section 340 are more or less procedural. Before directing a complaint to be lodged the court must form an opinion on being satisfied and come to the conclusion on such satisfaction that the person charged has intentionally given false evidence and that for the vindication of the ends of perjury and in the interest of justice it is expedient that he should be prosecuted. The opinion must be formed at the time or before making the judgment. It may also be only necessary to record briefly the reasons for its giving the false evidence. If there is any doubt as to the bona fides of the court in respect of the bona fides of the defence of the person charged the power may not be justified. Bibhuti Bhusan Basu v. Corporation of Calcutta

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1982 Cri LJ 909 (Cal)

"9. Perjury is a contemnor of a court of law, the question always being one of degree. Even though every act of perjury is strictly an offence, it need not necessarily follow that on that account every perjurer should be charged. Every incorrect or false statement does not make it incumbent on the court to order prosecution. In this particular case these principles were not at all considered or followed by the Sessions Judge before deciding to launch the prosecution. .....

10. A court directing prosecution for perjury is not vindicating the grievance of any party. The action is mainly to safeguard the precincts and the dignity of the court and to maintain the confidence of the people in the efficiency of the judicial process. What the court is mainly interested in is seeing that administration of justice and dignity of the court is not flouted. The Sessions Judge did not specifically find on which aspect the appellant gave false evidence and whether that evidence was purposely made or whether it had any real impact on the decision of the case. In fact he did not even consider whether any perjury was committed. This is evident when he refused to express any opinion on that aspect and said that what he is concerned under Section 340 is only to see whether an enquiry is necessary or not. The only opinion formed by him for filing the complaint is that interest of justice demands an. enquiry as to whether the appellant committed the offence of giving false evidence in court. I am of opinion that the Sessions Judge has not complied with the mandatory provisions of Section 340 of the Code and filed the complaint after passing the impugned order without the requisite satisfaction and without understanding the legal provision correctly. In fact the materials make it clear that this is not a fit case where it was expedient in the interest of justice to have an enquiry under Section 340 of the Code much less a prosecution. The impugned order and consequently the complaint must go.

The Criminal Appeal is allowed and the impugned order is set aside. That means the criminal complaint is also without proper authority and it must also go."

19. In the facts and circumstances of the case and in the light of the position set out above, we do not consider it expedient to take up an inquiry under Section 340 of Cr.P.C. The prayer in the MA is accordingly rejected. The CCPA stands disposed of in terms of para 16 hereinabove. No costs.

"True Copy"

[Bidisha Banerjee] M [J]

[Naresh Gupta] M [A]

Section Officer (J)
Central Administrative Tribunal
Patna Bench, Patna