PROSECUTION OF LITIGANTS FOR RAISING FALSE CLAIMS UNDER SECTION 209 OF INDIAN PENAL CODE

H.S. Bedi v. NHAI, 220 (2015) DLT 179

1. The greatest challenge before the judiciary today is the frivolous litigation. The judicial system in the country is choked with false claims and such litigants are consuming Courts' time for a wrong cause. False claims are a huge strain on the judicial system. Perjury has become a way of life in the Courts.

2. Section 209 of the Indian Penal Code provides an effective mechanism to curb the menace of frivolous litigation. Section 209 of the Indian Penal Code provides that dishonestly making a false claim in a Court is an offence punishable with imprisonment upto two years and fine. Section 209 of the Indian Penal Code is reproduced hereunder: -

> ***"Section 209 - Dishonestly making false claim in Court —*** *Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine."*

3. The essential ingredients of an offence under Section 209 are: (i) The accused made a claim; (ii) The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv) That the accused knew that the claim was false; and (v) The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.

4. The word '*claim*' for the purposes of Section 209 of the Penal Code would include the defence adopted by a defendant in the suit. The reason for criminalizing false claims and defences is that the plaintiff as

well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.

5. Whenever a false claim is made before a Court, it would be appropriate, in the first instance, to issue a show cause notice to the litigant to show cause as to why a complaint be not made under Section 340 CrPC for having made a false claim under Section 209 of the Indian Penal Code and a reasonable opportunity be afforded to the litigant to reply to the same. The Court may record the evidence, if considered necessary.

6. If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 CrPC, the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.

7. Once it prima facie appears that an offence under Section 209 IPC has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section 340 CrPC.

8. The Delhi High examined the scope of Section 209 of the Indian penal Code and held as under:-

> *"16.* ***Conclusions***
> *16.1 Section 209 of the Indian Penal Code, is a salutary provision enacted to preserve the sanctity of the Courts and to safeguard the administration of law by deterring the litigants from making the false claims. However, this provision has been seldom invoked by*

the Courts. The disastrous result of not invoking Section 209 is that the litigants indulge in false claims because of the confidence that no action will be taken.

16.2 Making a false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it has been be treated as an offence.

16.3 False evidence in the vast majority of cases springs out of false pleading, and would entirely banish from the Courts if false pleading could be prevented.

16.4 Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens.

16.5 The justice delivery system has to be pure and should be such that the persons who are approaching the Courts must be afraid of making false claims.

16.6 To enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like false claims 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.

16.7 Whenever a false claim is made before a Court, it would be appropriate, in the first instance, to issue a show cause notice to the litigant to show cause as to why a complaint be not made under Section 340 Cr.P.C. for having made a false claim under Section 209 of the Indian Penal Code and a reasonable opportunity be afforded to the litigant to reply to the same. The Court may record the evidence, if considered it necessary.

16.8 If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.

16.9 Before making a complaint under Section 340 Cr.P.C., the Court shall consider whether it is expedient in the interest of justice to make a complaint.
16.10 Once it prima facie appears that an offence under Section 209 IPC has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section 340 Cr.P.C.

17. This Court hopes that the Courts below shall invoke Section 209 of the Indian Penal Code in appropriate cases to prevent the abuse of process of law, secure the ends of justice, keep the path of justice clear of obstructions and give effect to the principles laid down by the Supreme Court in ***T. Arivandandam v. T.V. Satyapal*** *(supra),* ***S.P. Chengalvaraya Naida v. Jagannath*** *(supra),* ***Dalip Singh v. State of U.P.****(supra),* ***Ramrameshwari Devi v. Nirmala Devi*** *(supra),* ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*** *(supra),* ***Kishore Samrite v. State of Uttar Pradesh*** *(supra) and* ***Subrata Roy Sahara v. Union of India*** *(supra).”*

$~

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

+ RFA 784/2010

% Date of Decision : 22nd January, 2016

HS BEDI ..... Appellant

Through : Mr. Suhail Dutt, Senior Advocate with Mr. Azhar Alam, Advocate.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA ..... Respondent

Through : Mr. Rohit Jain, Advocate for NHAI.

Mr. Siddharth Luthra, Senior Advocate as amicus curiae with Mr. Satyam Thareja, Advocate.

CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA

JUDGMENT

1. In ***Subrata Roy Sahara* v. *Union of India,*** (2014) 8 SCC 470, *J.S. Khehar, J.* observed that the Indian judicial system is grossly afflicted with frivolous litigation and ways and means need to be evolved to deter litigants from their compulsive obsession towards senseless and ill-considered claims. The Supreme Court, discussed the menace of frivolous litigation. Relevant portions of the said judgment are as under:

> ***"191. <u>The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims</u>.***
> *One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?...*
> *xxx xxx xxx*
> *194. Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. ..."*

2. The greatest challenge before the judiciary today is the frivolous litigation. The judicial system in the country is choked with false claims and such litigants are consuming Courts' time for a wrong cause. False claims are a huge strain on the judicial system. Perjury has become a way of life in the Courts. False pleas are often taken and forged documents are filed indiscriminately in the Courts. The reluctance of the Courts to order prosecution encourage the litigants to make false averments in pleadings before the Court. Section 209 of the Indian Penal Code, which provides an effective

mechanism to curb the menace of frivolous litigation, has been seldom invoked.

3. An important question of law of public interest relating to the scope of Section 209 of Indian Penal Code has arisen for consideration before this Court. Section 209 of the Indian Penal Code provides that dishonestly making a false claim in a Court is an offence punishable with punishment of imprisonment upto two years and fine. Section 209 of the Indian Penal Code is reproduced hereunder: -

> *"**Section 209 - Dishonestly making false claim in Court** —*
>
> ***Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.**"*

4. ***Background facts***

4.1. The appellant let out property bearing No.B-529, New Friends Colony to the respondent for a period of three years vide registered lease deed dated 27th April, 1998. Three years' period expired on 14th April, 2001. However, the parties, by exchange of letters, mutually extended the lease upto 30th September, 2001.

4.2. Vide letter dated 24th September, 2001, the respondent intimated the appellant that the suit property would be vacated on 30th September, 2001 and, therefore, the appellant may depute a representative to take over the possession. However, the appellant did not turn up to take the physical possession.

4.3. Vide letter dated 01st October, 2001, the respondent intimated the appellant that the suit property had been vacated on 30th

September, 2001 and once again requested the appellant to take over the possession. However, the appellant kept on delaying the taking over of the possession. The appellant finally took over the possession of the suit property on 18th January, 2002.

4.4. The respondent claimed the refund of security deposit from the appellant, who declined to refund the same on the ground that the same had been adjusted against liquidated damages equivalent to double the rent.

4.5. The respondent instituted a suit for recovery of the security deposit. The Trial Court decreed the respondent's suit which was challenged by the appellant before this Court.

4.6. Vide judgment dated 14th May, 2015, this Court dismissed the appeal. This Court held that the appellant made a false claim before the Court and issued a show cause notice to the appellant to show cause why a complaint be not made against him under Section 340 Cr.P.C. for making a false claim under Section 209 of the Indian Penal Code.

4.7. Paras 14.1 and 14.4 of the judgment dated 14th May, 2015 are reproduced hereunder:

> *"14.1 On careful consideration of the rival contentions of the parties and applying the well-settled principles of law, this Court is of the view that the tenant's lease determined on 30th September, 2001 when the tenant offered the possession to the landlord, who deliberately chose not to take the possession with the dishonest intention of misappropriating the tenant's security deposit and, therefore, the possession is deemed to have been delivered*

to the landlord who is not entitled to rent or mesne profits from the tenant.

14.2 There is no merit in this appeal which is gross abuse and misuse of the process of law. The appeal as well as CM 19620/2012 are, therefore, dismissed with costs of Rs.50,000/-. CM 1320/2013 is disposed of.

xxx xxx xxx

14.4 ***The tenant(sic.landlord) has made a false claim which amounts to an offence under Section 209 of Indian Penal Code and therefore, show cause notice is hereby issued to him as to why the complaint be not made against him under Section 340 of the Code of Criminal Procedure for making a false claim under Section 209 of the Indian Penal Code.****"*

(Emphasis supplied)

4.8. On 19th May, 2015, the appellant tendered an unconditional apology and sought discharge of the show cause notice issued by this Court whereupon this Court accepted the unconditional apology and discharged the show cause notice issued to the appellant subject to further cost of Rs.50,000/- which has been deposited by the appellant. However, the matter was kept pending for considering the scope of Section 209 of the Indian Penal Code.

4.9. This Court appointed Mr. Sidharth Luthra, Senior Advocate, as amicus curiae to assist this Court. Mr. Luthra, learned amicus curiae, has made submissions with respect to the scope of Section 209 of the Indian Penal Code.

4.10. Mr. Suhail Dutt, learned senior counsel for the appellant, has made exhaustive submissions on the scope of Section 209 of the Indian Penal Code. Mr. Dutt, learned senior counsel, has made

submissions giving history and object of Section 209 as well as the corresponding provisions in Singapore, Pakistan, Myanmar and Malaysia.

5. ***History and object of Section 209 IPC***

5.1. On 15th June, 1835, the Governor General of India in Council constituted Indian Law Commission to draft the Indian Penal Code. The Commission comprised of *Lord T.B. Macaulay*, *J.M. Macleod*, *G.W. Anderson* and *F. Millett*, who submitted their report to *George Lord Aukland*, *Governor General of India* on 14th October, 1837. The report of the Commission has been published by Bengal Military Orphan Press, Calcutta in 1837.

5.2. The Law Commission, in their report, proposed Clause 196 which made institution of any civil suit containing a false claim as an offence. Clause 196 was eventually modified and enacted as Section 209 of the Indian Penal Code. Clause 196 of the report of the Commission is reproduced hereunder:

> ***"Clause 196***
> ***Whoever, fraudulently, or for the purpose of annoyance, institutes any civil suit knowing that he has no just ground to institute such suit, shall be punished with imprisonment of either description for a term which may extend to one year, or fine, or both***
>
> ***Explanation: It is not necessary that the party to whom the offender intends to cause wrongful loss or annoyance should be the party against whom the suit is instituted.*"**

5.3. The Indian Law Commission, in Note G of their Report, acknowledged that they were creating a new offence which had no English precedent and they were motivated to criminalise false claims

because it tends to delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude. The primary objective of the provision was to deter the filing of such claims. Relevant portion of Note G is reproduced hereunder:

> *"The rules which we propose touching the offence of attempting to impose on Court of Justice by false evidence differ from those of the English law, and of the Codes which we have had an opportunity of consulting. It appears to us, in the first place, that the offence which we have designated as the fabricating of false evidence is not punished with adequate severity under any of the systems to which we refer. This may perhaps be because the offence, in its aggravated forms, is not one of very frequent occurrence in western countries. It is notorious, however, that in this country the practice is exceedingly common, and for obvious reasons. The mere assertion of witness commands far less respect in India than in Europe, or in the United States of America. In countries in which the standard of morality is high, direct evidence is generally considered as the best evidence. In England assuredly it is so considered, and its value as compared with the value of circumstantial evidence is perhaps overrated by the great majority of the population. But in India we have reason to believe that the case is different. Judge, after he has heard transaction related in the same manner by several persons who declare themselves to be eye-witnesses of it, and of whom he knows no harm, often feels considerable doubt whether the whole from beginning to end be not fiction, and is glad to meet with some circumstance, however slight, which supports the story, and which is not likely to have been devised for the purpose of supporting the story.*
>
> ***We think this the proper place to notice an offence which bears a close affinity to that of giving false evidence, and which we leave, for the present, unpunished, only on account of the defective state of the existing law of procedure. We mean the crime of deliberately and***

knowingly asserting falsehoods in pleading. *Our opinions on this subject may startle persons accustomed to that boundless licence which the English law allows to mendacity in suitors. On what principle that licence is allowed, we must confess ourselves unable to discover.* ***A lends Z money. Z repays it. A brings an action against Z for the money, and affirms in his declaration that he lent the money, and has never been repaid. On the trial A's receipt is produced. It is not doubted, A himself cannot deny, that he asserted falsehood in his declaration. Ought A to enjoy, impunity? Again: Z brings an action against A for debt which is really due. A's plea is a positive averment that he owes Z nothing. The case comes to trial; and it is proved by overwhelming evidence that the debt is a just debt. A does not even attempt a defence. Ought A in this case to enjoy impunity? If, in either of the cases which we have stated, A were to suborn witnesses to support the lie which he has put on the pleadings, every one of these witnesses, as well A himself, would be liable to severe punishment. But false evidence in the vast majority of cases springs out of false pleading, and would be almost entirely banished from the Courts if false pleading could be prevented***.

It appears to us that all the marks which indicate that an act is proper subject for legal punishment meet in the act of false pleading. That false pleading always does some harm is plain. Even when it is not followed up by false evidence it always delays justice. That false pleading produces any compensating good to atone for this harm has never, as far as we know, been even alleged. That false pleading will be more common if it is unpunished than if it is punished appears as certain as that rape, theft, embezzlement, would, if unpunished, be more common than they now are. It is evident also that there will be no more difficulty in trying charge of false pleading than in trying charge of false evidence. The fact that statement has been made in pleading will generally be more clearly proved than the fact that statement has been made in evidence. The falsehood of statement made in pleading will be proved in

exactly the same manner in which the falsehood of statement made in evidence is proved. Whether the accused person knew that he was pleading falsely, the Courts will determine on the same evidence on which they now determine whether witness knew that he was giving false testimony.

We have as yet spoken only of the direct injury produced to honest litigants by false pleading. But this injury appears to us to be only part, and perhaps not the greatest part, of the evil engendered by the practice. ***If there be any place where truth ought to be held in peculiar honor, from which falsehood ought to be driven with peculiar severity, in which exaggerations, which elsewhere would be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is Court of Justice.*** *We object therefore to the use of legal fictions even when the meaning of those fictions is generally understood, and we have done our best to exclude them from this Code. But that person should come before Court, should tell that Court premeditated and circumstantial lies for the purpose of preventing or postponing the settlement of just demand, and that by so doing he should incur no punishment whatever, seems to us to be state of things to which nothing but habit could reconcile wise and honest men. Public opinion is vitiated by the vicious state of the law. Men who, in any other circumstances, would shrink from falsehood, have no scruple about setting up false pleas against just demands.* ***There is one place, and only one, where deliberate untruths, told with the intent to injure, are not considered as discreditable and that place is Court of Justice.*** *Thus the authority of the tribunals operates to lower the standard of morality, and to diminish the esteem in which veracity is held and the very place which ought to be kept sacred from misrepresentations such as would elsewhere be venial, becomes the only place where it is considered as idle scrupulosity to shrink from deliberate falsehood.*

We consider law for punishing false pleading as indispensably necessary to the expeditious and satisfactory

administration of justice, and we trust that the passing of such law will speedily follow the appearance of the Code of procedure. *We do not, as we have stated, at present propose such law, because, while the system of pleading remains unaltered in the Courts of this country, and particularly in the Courts established by royal charter, it will be difficult, or to speak more properly, impossible to enforce such law.* ***We have, therefore, gone no further than to provide punishment for the frivolous and vexatious instituting of civil suits, practice which, even while the existing systems of procedure remain unaltered, may, without any inconvenience, be made an offence.*** *The law on the subject of false evidence will, as it appears to us, render unnecessary any law for punishing the frivolous and vexatious preferring of criminal charges."*

(Emphasis supplied)

6. ***Scope of Section 209 of the Indian Penal Code***

6.1 ***Ingredients of the offence***

The essential ingredients of an offence under Section 209 are as under:

(i) The accused made a claim;

(ii) The claim was made in a Court of Justice;

(iii) The claim was false, either wholly or in part;

(iv) The accused knew that the claim was false; and

(v) The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.

6.2 A litigant makes a '*claim*' before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a '*claim*' for relief necessarily impasses the grounds for obtaining that relief. The offence is complete the moment a false claim is filed in a Court.

6.3 The word "*claim*" in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the "*claim*" to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word "*claim*" would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a "*claim*" to the non-existence of the averred fact. A false "*denial*", except when the person responding is not aware, would constitute making a "*claim*" in Court.

6.4 The word '*claim*' for the purposes of Section 209 would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of Justice and undermining the authority of the law.

6.5 The words "*with intent to injure or annoy any person*" in Section 209 means that the object of injury may be to defraud a third party, which is clear from the Explanation to Clause 196 in the Draft Code namely *"It is not necessary that the party to whom the offender intends to cause wrongful loss or annoyance should be the party against whom the suit was instituted."*

6.6 In ***Queen-Empress v. Bulaki Ram,*** (1890) All WN1, the

plaintiff instituted a suit for recovery of Rs 88-11. In the course of proceedings, the defendant produced a receipt from the plaintiff for Rs 71-3-3. The plaintiff's claim to the extent of Rs 71-3-3 was dismissed but the decree was passed for the balance. The plaintiff was subsequently charged with making a false claim. *Straight J.* held that the Section 209 is not limited to cases where the whole claim made by the accused is false. It applies even where a part of the claim is false. The relevant portion of the judgment is reproduced hereunder:

> *" The petitioner brought a suit against another person to recover from that person a sum of Rs. 88-11, and in his plaint he alleged that the whole of that amount was due and owing from the defendant. In the course of the proceedings the defendant produced a receipt purporting to have been made by the plaintiff for a sum of Rs. 71-3-3. Both the Courts of first instance and the appellate Court which subsequently heard the appeal, were of opinion that the defendant satisfactorily established that he had paid to the plaintiff the sum of Rs. 71-3-3, and that to that extent the claim of the plaintiff was an untrue and unjust one, and accordingly his suit was dismissed to that extent, and the decree given him for the balance. The Munsif, who tried the case, had an application made to him for sanction for prosecution of this plaint for false verification of plaint and also for dishonestly and fraudulently making a false claim, and he sanctioned, prosecution under both sanctions. The learned Judge in appeal, for reasons which are stated in his judgment, and which I need not discuss, considers it unnecessary that the prosecution should be maintained under s. 198, but he affirms the sanction under s. 209 of the Indian Penal Code.*
>
> *The contention urged before me on behalf of the petitioner against that order is first, that s. 209 of the Indian Penal Code has no application to the facts of the case, and secondly, that taking all the circumstances together there is no case in respect of which it is likely a conviction can be sustained. I think it enough, with the exception of one remark I shall have to make,*

to say that I am not trying, nor am I deciding upon the guilt or otherwise of the person to be prosecuted. I have to determine whether in my opinion there is prima facie material to warrant the institution of his prosecution. How that prosecution will proceed or what effect the evidence when produced to support it will have I am unable to say, but there is sufficient prima facie material to warrant prosecution. ***Mr Amiruddin has contended that because a part of the petitioner's claim was held to be well founded and due and owing, therefore his conduct and action does not fall within s. 209 of the Indian Penal Code, and he says that section contemplates that the whole claim and every piece of it must be false. I entirely dissent from this view. As I put an illustration in the course of argument, so I do now, that if that view were adopted, a man having a just claim against another for Rs. 5, may make claim for Rs. 1,000, the Rs. 995 being absolutely false, and he may escape punishment under this section. The law never intended anything so absurd. These provisions were made by those who framed this most admirable Code, which I wish we had in England, with full knowledge that this was a class of offences very common in this country****. We who sit in this Bench and try civil cases know that this is so, and that most dishonest claims are made by persons who thinking to place a judgment-debtor in difficulty, repeat claims against him which are satisfied.."*

(Emphasis supplied)

6.7 In ***Deputy Legal Remembrancer and Public Prosecutor of Bihar and Orissa v. Ram Udar Singh***, AIR 1915 CAL 457, a suit for recovery was dismissed as being false and malicious whereupon an application for prosecution of the accused under Section 209 IPC was filed before the Munsif who dismissed the application on the ground of delay in making the application. The Division Bench of Calcutta High Court held that mere delay cannot be a ground to dismiss the application. The Division Bench further held that the refusal to grant a

sanction to prosecute has resulted in failure of justice. Relevant portion of the said judgment is reproduced hereunder:-

> *"5. ..... The ground for refusing sanction in the Courts below was solely that of delay. Doubtless in many cases where there is delay by a person in applying for the sanction to prosecute, the delay may suggest a want of good faith on the part of the applicant. The present case, however, is in substance a prosecution undertaken by the Government and mere delay cannot, therefore, be taken as suggesting mala fides.*
>
> *6. I think the reasons assigned by the lower Courts for refusing to grant a sanction when they came to the conclusion that the suit was false and malicious, are insufficient and have occasioned a failure of justice. I think the present Rule ought to he made absolute and sanction should be granted to prosecute the opposite party under Section 209 of the Indian Penal Code. We accordingly sanction the prosecution of Ram Udar Singh under Section 209 of the Indian Penal Code for having on the 10th December 1912 dishonestly made a false claim in Court, viz., in Suit No. 308 of 1912 in the second Court of the Munsiff at Muzaffarpore against Naik Lahera and Hira Labera."*

6.8 In ***Badri v. Emperor,*** AIR 1919 All 323, the Allahabad High Court held that Section 209 has used the words '*Court of Justice*' as distinguished from a '*Court of Justice having jurisdiction'*. It is immaterial whether the Court in which the false claim was instituted had jurisdiction to try the suit or not. The relevant portion of the judgment is reproduced hereunder:

> *"2. Now on the learned Judge's finding, which is the only finding with which I am concerned, these four*

> *persons fraudulently, dishonestly and with intent to injure Badri, misrepresenting their residence, went to a Court which they knew had no jurisdiction and obtained by the use of the most dishonest methods decrees for sums not due to them, and in one instance obtained the imprisonment of Jagat for six weeks. It would have been an extraordinary defect in the Indian Penal Code if such acts could pass unpunished, because the Court had no jurisdiction, but I see no reason to suppose that the law contains this defect.* ***The words in Section 209 are "a Court of Justice" not "a Court of justice having jurisdiction in the case." If a person brings a claim in a Court of justice which has no jurisdiction the case falls under Section 209 in my opinion, and similarly, if he obtains a decree fraudulently for a sum of not due, the case will fall under Section 210, whether the Court had, or had not, power to pass the decree****."*
>
> *(Emphasis supplied)*

6.9 In ***Ramnandan Prasad Narayan Singh v. Public Prosecutor, Patna,***(1921) 22 Cr LJ 467, the Patna High Court held that mere dismissal of the plaintiff's claim would not justify sanction under Section 209 of the Indian Penal Code. A mere proof that the accused failed to prove his claim in the civil suit or that Court did not rely upon his evidence on account of discrepancies or improbabilities is not sufficient. The Court held that the plaintiff may have over-estimated his case but that will not necessarily show that he was making a false claim. Relevant portion of the said judgment is reproduced hereunder: -

> *"The case was, therefore, decided upon the question of onus, which was thrown upon the petitioner by reason of the Survey entries. It was not decided that the claim of the plaintiffs was false. Therefore, the decision in the*

> *former case does not at all show that the claim of the plaintiffs, either in those eight suits or in the present ones, was necessarily false, nor does it show that the claim was in bad faith and not bona fide. As the learned Judge has put it,* ***he may have over-estimated his case and even may have claimed more than what was his legal due, but that will not necessarily show that he was making a false claim, and unless there was evidence that the claims made in those suits were false section 209, Indian Penal Code, has no application. The mere dismissal of the plaintiff's claim would not justify sanction under section 209, Indian Penal Code****."*
>
> *(Emphasis supplied)*

6.10 In ***National Insurance Company Limited v. Babloo Pal and Ors***. (1999) ACJ 388, two persons impersonated themselves as son and daughter of the deceased victim of a road accident to claim compensation under Section 166 of the Motor Vehicles Act, 1988. The Madhya Pradesh High Court directed the Claims Tribunal to conduct an inquiry into the matter. From the inquiry report, it was clear that the claimants were not the son and daughter of the deceased and had impersonated to claim compensation. The High Court directed the Registrar to initiate proceeding for prosecution of the two litigants and their lawyer under Section 207, 209, 419 and 420 of the Indian Penal Code. Relevant portion of the judgment is reported hereunder :-

> *"5.* ***After considering objection and the report of the Enquiry Officer, it is apparent that Babloo Pal had impersonated himself as son of deceased Patiram, whereas lady Sukhi, sister of Babloo Pal had impersonated herself as Sukhi, though her name is Ramko.***

6. Babloo Pal has moved an application, after the award, in this inquiry, claiming himself to be adopted son of the deceased Patiram. These facts were not mentioned by him in the application for claim filed under Section 166 of Motor Vehicles Act. From entire proceedings, it is apparent that plea of adoption is an after-thought. The adoption was also not proved by Babloo Pal. There is no evidence on record to demonstrate that there was any ceremony of give and take of Babloo Pal by natural parent to adoptive father. The Claims Tribunal has rightly held that Babloo Pal was not adopted son and he had misrepresented before the Tribunal in getting the claim. Similar finding is recorded that claimant Sukhi in the application is not Sukhi but her name is Ramko and she had impersonated herself as Sukhi. The court also found that complainant is the real daughter of Patiram. The conduct of Mr. N.D. Singhal, Advocate, was also considered and from going through the conduct of Mr. N.D. Singhal, it appears that Mr. N.D. Singhal himself was also involved in playing fraud with the court, and was in a position to get an award in favour of fictitious persons.

7. It is really distressing that an advocate, who is an officer of the court, has neglected to perform his duty. It is the duty of an advocate to be fair in the court and should apprise the court about the correct facts. He being officer of the court is duty bound to assist the court in administration of justice, but the act of Mr. N.D. Singhal was unbecoming of an advocate and he has denied the real claimant of her legitimate right in receiving compensation. The objections of claimants and of Mr. N.D. Singhal are considered. After considering the entire evidence on record, we are of the opinion that the findings recorded by the Claims Tribunal are proper, which have been recorded after appreciating the evidence

on record. Therefore, the report is accepted. As ordered in M.C.C. No. 302 of 1996, ***the Registrar is directed to report in order to initiate proceedings for prosecution against Babloo Pal, Ramko (who impersonated herself as Sukhi) and Mr. N.D. Singhal, Advocate under the provisions of Sections 207, 209, 419 and 420 of Indian Penal Code. It is further ordered that notice of criminal contempt for playing fraud upon the court be also issued to Mr. N.D. Singhal, Advocate, Babloo Pal and Ramko by registering separate proceeding and for their appearance in the court on 24.10.1997.***

8. The grave misconduct is committed by Mr. N.D. Singhal, Advocate. Therefore, a copy of this order be sent to the State Bar Council at Jabalpur for appropriate action against Mr. N.D. Singhal, Advocate.

9. The amount of compensation paid to Babloo Pal and Ramko be recovered from them. Since Mr. N.D. Singhal, Advocate, was instrumental in getting the fraudulent claim, he is also jointly and severally liable to refund the amount of compensation received by the claimants. It is, therefore, ordered that the compensation with interest paid to aforesaid persons, shall be recovered from Babloo Pal, Ramko and Mr. N.D. Singhal, jointly and severally with interest at the rate of 14 per cent per annum from the date of payment till realization."

(Emphasis supplied)

7. ***Recent cases of Delhi High Court in which Section 209 IPC has been invoked***

7.1. In ***Surajpal Singh v. Punjab and Sind Bank*** (Order dated 10th April, 2015 in RFA No.110/2015), the appellant took a loan from Punjab and Sind Bank by mortgaging his immovable property. The bank instituted two suits for recovery of Rs.2,09,201.65 against the

appellant in 1961 and 1963. During the pendency of these suits, the appellant compromised the matter with the bank. The terms of the settlement were that the mortgaged property was given by the appellant to the bank in full and final settlement of the loan amount. The Sub-Judge, First Class recorded the settlement on 09th June, 1965 and passed a comprise decree which recorded that the appellant has transferred the property to the bank, possession has been delivered to the bank, the bank has become the full owner thereof and the appellant has no right or interest therein. On 28th October, 2014 i.e. after about 50 years of the compromise decree, the appellant instituted a suit for cancellation of the decree dated 09th June, 1965. The suit was dismissed by the Trial Court with costs of Rs.50,000/- for filing a frivolous and time barred suit after almost half century. The appellant approached this Court in appeal. On the first date of hearing i.e. 10th April, 2015, this Court issued a show cause notice to the appellant to show cause as to why a complaint be not made against him under Section 340 of the Code of Criminal Procedure for an offence under Section 209 of the Indian Penal Code. Relevant portion of the order dated 10th April, 2015 is reproduced hereunder:

> *"1. The appellant has challenged the impugned judgment dated 3rd November, 2014 whereby the learned Trial Court has dismissed his suit with cost of Rs.50,000/- for filing a frivolous and time barred suit without any justified ground after a lapse of almost half century.*
>
> *2. On 28th October, 2014, the appellant instituted a suit for cancellation of a decree dated 9th June, 1965 passed by the Sub-Judge First Class in Suit No.63/1963 and 495/1961.*
>
> *xxx xxx xxx*

4. The reading of the decree dated 9th June, 1965 makes it clear that in a suit for recovery of Rs.2,09,201.65 with interest, the appellant compromised the matter with the bank and the mortgaged properties were transferred in favour of the bank. The appellant delivered the possession of the property also to the bank. The Court recorded the compromise and declared that bank has become full owner of the property and the appellant has no right, title or interest therein.

5. Learned counsel for the appellant submits that there is no valid transfer of the property in favour of the Bank and therefore, the appellant continues to be the owner. Learned counsel further submits that the bank has not become the owner of the property and therefore, the decree is liable to be set aside.

6. This Court is of the prima facie view that the appellant has made a false claim which amounts to an offence under Section 209 of the Indian Penal Code.

7. ***Before hearing the matter further, a show cause notice is issued to the appellant as to why a complaint be not made against him under Section 340 CrPC for an offence under Section 209 of the Indian Penal Code.***

8. The appellant present in Court accepts the show cause notice and seeks time to file the reply. Let the reply to the show cause notice be filed within one week from today."

(Emphasis supplied)

On 29th May, 2015, the appellant sought permission to withdraw the appeal and tendered unconditional apology which was accepted and the appeal was dismissed with costs.

7.2. In ***Gagan Myne v. Ritika Bakshi*** (order dated 30th April, 2015 in RFA 125/2015), the tenant challenged a decree for possession on the ground that the period of two years of the lease had not expired and upto date rent and post-dated cheques upto the expiry of two years period had been given to the landlord whereupon this Court issued

notice to the landlord and in the meantime, stayed the execution of the impugned decree. The landlord approached this Court for vacation of the stay on the ground that the tenant was in arrears of more than Rs.11 lakh whereupon the tenant admitted being in arrears. This Court dismissed the appeal and issued a show cause notice to the tenant as to why a complaint be not made against him under Section 340 of the Code of Criminal Procedure for making a false claim under Section 209 IPC. Relevant portion of the order dated 30th April, 2015 is reproduced hereunder:

> *"1. The appellant has challenged the impugned decree for possession dated 24th December, 2014 in respect of first floor of property D-415, Defence Colony, New Delhi – 110024 on the ground that the appellant had taken the subject property on lease for a period of two years from 18th September, 2013 to 17th September, 2015 at a monthly rent of Rs.85,000/- to be increased by 10% after 12 months apart from maintenance charges of Rs.10,000/- vide registered lease deed dated 18th September, 2013.*
>
> *2. This appeal was listed for admission on 27th February, 2015 when it was submitted that the appellant has given post-dated cheques for the entire period of lease upto 17th September, 2015 to the respondent. On the basis of the submissions made by the appellant, this Court issued the notice to the respondent returnable on 13th May, 2015 and stayed the execution of the impugned judgment and decree.*
>
> *3. The respondent has approached this Court by filing CM 7659/2015 for vacation of the ex parte stay order on the ground that the appellant has not paid the rent and maintenance charges of the suit property since 18th June, 2014 and the arrears of rent and maintenance are more than Rs.11,00,000/-. Learned counsel for the respondent submits that the appellant has made a false claim before this Court to obtain an ex parte stay order against the decree for possession. Learned counsel*

for the respondent further submits that the appellant did not serve the copy of the order dated 27th February, 2015 on the respondent.

4. The appellant is present in Court and has handed over an undertaking in which he has admitted the arrears of rent as Rs.7,44,000/-. The appellant seeks time to handover the vacant and peaceful possession of the suit property to the respondent on 31st May, 2015. However, the appellant is not prepared to pay the arrears of rent and maintenance charges. He further submits that at present he does not have the means to pay and he seeks time to give a schedule for payment of amount in instalments.

5. ***On careful consideration of the contentions raised by the appellant, this Court is of the view that the appellant has made a false claim before this Court by concealing that he is in arrears of rent and maintenance charges to the tune of more than Rs.7,00,000/- and has played fraud to this Court to obtain an ex parte order from this Court.***

6. The appeal and the pending applications are therefore dismissed with cost of Rs.50,000/-.

7. ***A show cause notice is hereby issued to the appellant why a complaint be not made against him under Section 340 Cr.P.C. for filing a false claim under Section 209 of the Indian Penal Code.*** *The appellant present in Court accepts notice. The reply to the show cause notice be filed within one week from today.*

8. List for considering the appellant's reply to the show cause notice on 8th May, 2015.

9. The appellant shall remain present in Court on the next date of hearing."

(Emphasis supplied)

On 20th May, 2015, the appellant tendered unconditional apology, which was accepted subject to costs.

7.3. In ***Seema Thakur v. Union of India,*** 223 (2015) DLT 132 the

plaintiff, after having sold an immovable property, instituted a frivolous suit to claim the same. This Court dismissed the suit and issued notice under Section 340 Cr.P.C. to the plaintiff as well as her attorney to show cause as to why they be not prosecuted under Section 209 of the Indian Penal Code. Relevant portion of the order dated 19th August, 2015 is reproduced hereunder:

> *"19. Considering the facts of the present case I am of the opinion that the plaintiff has come to this Court with a false case. Section 209 of the Indian Penal Code, 1860 (IPC) provides that when a person comes to court with a false case, such person is liable to be punished by imprisonment for a period upto two years in addition to fine. I therefore issue notice to the plaintiff as also to her attorney, Sh. Vijay Kapoor under Section 340 of the Code of Criminal Procedure, 1973 (Cr. P.C) to show cause as to why a criminal case be not lodged against the plaintiff and her attorney, Sh. Vijay Kapoor by the Registrar General of this Court or by the defendant no.6 in terms of permission to be granted by this Court, under Section 209 IPC...."*

8. ***Cognizance of Offence under Section 209, Indian Penal Code***

The offence under Section 209 is non-cognisable, non-compoundable and triable by a Magistrate of the first class. Under Section 195 of the Code of Criminal Procedure read with Section 340 of the Code of Criminal Procedure, the Court before which the offence under section 209, IPC is committed, or of some other Court to which it is subordinate, has to make a complaint in writing to the Magistrate.

8.1. In ***Sanjeev Kumar Mittal v. State***, 174 (2010) DLT 214, this Court examined the scope of Section 340 of the Code of Criminal Procedure. The relevant portion of the said judgment is reproduced

hereunder:

> *"6.6. If there is falsehood in the pleadings (plaint, written statement or replication), the task of the Court is also multiplied and a lis that could be decided in a short time, then takes several years. It is the legal duty of every party to state in the pleadings the true facts and if they do not, they must suffer the consequences and the Court should not hold back from taking action.*
>
> *xxx xxx xxx*
>
> *6.13. A party, whether he is a petitioner or a respondent, or a witness, has to respect the solemnity of the proceedings in the court and he cannot play with the courts and pollute the stream of justice. It is cases like this, with false claims (or false defences) which load the courts, cause delays, consume judicial time and bring a bad name to the judicial system. This case is a sample where the facts are glaring. Even if they were not so glaring, once falsehood is apparent, to not take action would be improper.*
>
> *6.14. The judicial system has a right and a duty to protect itself from such conduct by the litigants and to ensure that where such conduct has taken place, the matter is investigated and reaches its logical conclusion and depending on the finding which is returned in such proceedings, appropriate punishment is meted out.*
>
> *6.16. In an effort to redeem the situation, not only realistic costs and full compensation in favour of the winning party against the wrongdoer are required, but, depending on the gravity of the wrong, pe*
>
> *nal action against the wrongdoers is also called for.* ***Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens****. Litigation caused by false claims and defences will come to be placed before the courts, load the dockets and delay delivery of justice to those who are genuinely in need of it.* .....

8. <u>False averments in pleadings are sufficient to attract Chapter XI of the Indian Penal Code:</u>

xxx *xxx* *xxx*

8.7. ***Making false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it must be treated as an offence.***

8.8. Where a verification is specific and deliberately false, there is nothing in law to prevent a person from being proceeded for contempt. But it must be remembered that the very essence of crimes of this kind is not how such statements may injure this or that party to litigation but how they may deceive and mislead the courts and thus produce mischievous consequences to the administration of justice. A person is under a legal obligation to verify the allegations of fact made in the pleadings and if he verifies falsely, he comes under the clutches of law.

8.9. Consequently, there cannot be any doubt that if a statement or averment in a pleading is false, it falls within the definition of offence under Section 191 of the Code (and other provisions). ***It is not necessary that a person should have appeared in the witness box. The offence stands committed and completed by the filing of such pleading. There is need for the justice system to protect itself from such wrongdoing so that it can do its task of justice dispensation.***

10. <u>Expedient in the interests of justice under section 340 Cr. P.C.:</u>

*10.1. When an inquiry for having committed an offence as listed in Section 195 Cr.P.C. is proposed to be launched, Section 340 Cr.P.C. provides for the procedure. One of the requirements in sub-section (1) is that the "****court is of opinion that it is expedient in the interests of justice that …****" When is it expedient in the interests of justice?*

10.2. A common thread that can be culled out from these decisions is that perjury, which includes false averments in pleadings, is an evil to eradicate which every effort must be made. ***The reluctance of the courts to order prosecution***

encourage parties to make false averments in pleadings before the Court and produce forged documents.

xxx xxx xxx

10.4 The gravity of the offence, the substantiality of the offenders, the calculated manner in which the offence appears to have been committed and pernicious influence such conduct will have in the working of the Courts and the very faith of the common man in Courts and the system of the administration of justice, all have been reckoned in arriving at a conclusion that action under Section 340 is fully justified.

11. Preliminary Inquiry under Section 340 Cr.P.C.

*11.1. Another question, one of procedure, is about a preliminary inquiry. Section 340(1) Cr.P.C. uses the word "**such court may, after such preliminary inquiry, if any, as it thinks necessary**".*

xxx xxx xxx

11.3. The preliminary inquiry in the second part of Section 340 is not mandatory. The use of the words 'if any' is clearly indicative. This is so because situations can be such where there is strong suspicion, but there is not sufficient evidence to return a finding (although still prima facie) that it appears to have been committed. And there can be cases where there is sufficient material on record to return such a finding. In the former case, preliminary inquiry is necessary, in the latter case, it is not.

xxx xxx xxx

11.5. ***If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.***

xxx xxx xxx

11.6. Ordering of the preliminary inquiry also includes investigation by a State agency where the nature is such that a private party in civil proceedings could not possibly gather and place before the Court those facts, documents, etc. Many times, there can be suspicion, strong suspicion, or even suspicion that borders on conviction, and it is expedient in the interests of justice to proceed to lodge a complaint, but there may be no sufficient legal evidence on the record at that time to so proceed.

12. <u>Case law on ordering investigation by the Police</u>

12.1. The next question is whether as part of the Preliminary Inquiry under Section 340 Cr.P.C., an investigation by the Police or any other State Agency can be ordered.....".

12.2. Thus, the law is settled that the Court has a power to direct the police to investigate and report, which power has been readily exercised by the Courts whenever they felt that the facts of the case so warranted.

12.3. Often, the facts are such on which a private party cannot be expected to itself investigate, gather the evidence and place it before the Court. It needs a State agency exercising its statutory powers and with the State machinery at its command to investigate the matter, gather the evidence, and then place a report before the Court along with the evidence that they have been able to gather. Moreover, the offence(s) may be a stand-alone or as a carefully devised scheme. It may be by a single individual or it may be in conspiracy with others. There may be conspirators, abettors and aiders or those who assisted, who are not before the Court, or even their identity is not known.

12.4. Where the facts are such on which the Court (or a subordinate officer) can conduct the inquiry, it will be so conducted, but where the facts are such which call for tracing out other persons involved, or collection of other material, or simply investigation, it is best carried out by a State agency. The Court has not only the power but also a duty in such cases to exercise this power. However, it may be clarified that a party cannot ask for such direction as a matter of routine. It is only

when the Court is prima facie satisfied that there seems to have been wrongdoing and it needs investigation by the State agency that such a direction would be given."

(Emphasis supplied)

9. ***Comparative analysis of law in other countries***.

9.1. Section 209 of Penal Code of Singapore, Pakistan, Malaysia, Myanmar and Brunei are same as Section 209 of the Indian Penal Code.

Singapore

9.2. In ***Bachoo Mohan Singh v. Public Prosecutor*** *(2010) SGCA 25*, the Singapore Supreme Court exhaustively examined the scope of Section 209 of the Singapore Penal Code, which is similar to Section 209 of Indian Penal Code. In that case, the appellant Bachoo Mohan Singh, an Advocate and solicitor of 36 years' standing, was convicted of abetting his client to dishonestly make a false claim in Court under Section 209 of the Singapore Penal Code in a suit for damages on behalf of sellers of an immovable property against the buyers in which a false claim was made with respect to the sale price of the flat as $ 4,90,000/- instead of $ 3,90,000/- to facilitate illegal cash back of $ 1,00,000/-. It was alleged that the appellant was aware of the sale price of the flat being $ 3,90,000/-. The suit was discontinued at the initial stage itself whereupon the prosecution was launched against the counsel for abetting his client to make a false claim in the Court. The District Judge convicted the appellant under Section 209 of the Singapore Penal Code and sentenced him to three months' imprisonment. The District Judge relied upon the judgment of ***Queen-Empress v. Bulaki Ram*** (supra). The District Judge held that

the appellant was aware that the agreed sale price of the flat in question was $ 3,90,000/- whereas a false claim of $ 4,90,000/- was made by the appellant. The appellant challenged the conviction and sentence before the High Court. The High Court allowed the appeal on sentence in part and reduced the three months' sentence to one month imprisonment with fine of $1,00,000. The High Court also relied upon ***Queen-Empress v. Bulaki Ram***(supra) and held that Section 209 of the Penal Code would apply to cases where whole claim was false as well as cases where the claim was false in a material particular whether by way of a outright lie, deliberate omission or suppression of material facts. The High Court further held that the offence was complete once the claim was filed in Court. The High Court referred to the questions of law of public interest with respect to the scope of Section 209 of the Penal Code to the Supreme Court. The Singapore Supreme Court examined the scope of Section 209 of the Penal Code and set aside the conviction by a majority of 2:1. The brief introduction given in paras 1 and 2 of the judgment are reproduced hereunder:

> *"1 In these criminal references, this court has to consider questions of law of public interest relating to how s 209 of the Penal Code (Cap 224, 1985 Rev Ed) ("the PC") should be construed and the scope of lawyers' duties to verify their client's instructions. These criminal references arise from the conviction of Bachoo Mohan Singh ("BMS"), an advocate and solicitor of some 36 years' standing, in the Subordinate Courts by a district judge ("the District Judge") (**see Public Prosecutor v Bachoo Mohan Singh [2008] SGDC 211** ("BMS (No 1)")). BMS had been convicted of abetting (by aiding) his client to dishonestly make a false claim in court, under s 209*

(read with s 109) of the PC.....

xxx xxx xxx

BMS's conviction was subsequently affirmed by a High Court judge ("the High Court Judge") (see ***Bachoo Mohan Singh v Public Prosecutor*** *[2009] 3 SLR(R) 1037 ("BMS (No 2)")).*

xxx xxx xxx

2 According to BMS's counsel, ***this matter has the dubious distinction of being the first known case in the Commonwealth's legal annals where a lawyer has been convicted of abetting his client in the making of a false claim. This is also the first known case in Singapore involving a prosecution in relation to s 209 of the PC even though this provision has been in force in Singapore for well over a century. In India, no lawyer appears to have ever been prosecuted in connection with such an offence under s 209 of the Penal Code 1860 (Act 45 of 1860) (India) ("the Indian Penal Code") (the progenitor to s 209 of the PC (see [54] below)) since the Indian Penal Code was first enacted.****"*

(Emphasis supplied)

9.3. The Court formulated the questions of law (*paras 29 & 30*) of public interest and the issues considered by the Supreme Court (*para 40*), which are reproduced hereinunder:

"29. The five questions of law of public interest raised by BMS will, for convenience, be referred to, respectively, as "BMS's Question 1", "BMS's Question 2", "BMS's Question 3", "BMS's Question 4", and "BMS's Question 5". They are as follows:

(a) Section 209 of the [PC] makes it an offence for a person to (i) dishonestly (ii) make(iii) before a court of justice (iv) a claim which he (v) knows to be (vi) false. What is the meaning of each these words and the cumulative purport of this provision in the Singapore context? [ie, BMS's Question 1]

(b) In what circumstances would a solicitor be held to have acted dishonestly (causing wrongful gain or wrongful loss, as

defined in s 24 of the [PC] since if he obtains judgment for a client in an action for payment of a debt or for damages, it is bound to cause a loss to the defendant. When is the gain or loss wrongful or unlawful for this purpose? [ie, BMS's Question 2]

(c) In what circumstances is the offence committed: at the point of the filing of the statement of claim or defence in court? [ie, BMS's Question 3]

(d) Can a claim before a court ever be held as false if the defendant settles the claim in whole or in part before the claim is tried in court, or if the defendant submits to judgment to the whole or part of the claim? [ie, BMS's Question 4]

(e) In what circumstances ought a solicitor decline to accept and/or doubt his client's instructions before filing pleadings considering that a solicitor has no general duty imposed on him to verify his client's instructions? [ie, BMS's Question 5]

30. The Prosecution's questions of law of public interest are as follows:

Question 1

If an advocate and solicitor files a statement of claim in court on behalf of his client with the knowledge that the claim is based on facts which are false; and that his client was dishonest in making the false claim, does he commit an offence under section 209 read with section 109 of the [PC]?

Question 2

If the answer to question 1 is in the affirmative, would he still have committed an offence if he was only acting on his client's instructions?

xxx xxx xxx

Overview of the issues

40. I have already set out the questions of law of public interest raised to this court above (at [29]–[30]) and will not repeat them here. It is immediately apparent that BMS's Question 1 (see [29] above) straddles four issues concerning how s 209 should be construed. The issues are as follows:

(a) The meaning of "claim";

(b) The meaning of "makes" a claim;

(c) The meaning of making a claim that one "knows to be false"; and

(d) The meaning of "court of justice".

BMS's Question 3 and BMS's Question 4 will be discussed under (a) and (c) respectively. BMS's Question 2 and BMS's Question 5, in my view, can be discussed together; they relate to one overarching issue, viz, a solicitor's liability for abetting the making of a false claim. I should add that my observations on, and answers to, the questions are made for the purpose of clarifying the ambit of s 209 of the PC, and they should therefore be read in that context."

9.4. *V.K. Rajah, J.* (in his majority judgment) held as under: -

"*Conclusion*

137. I would answer the questions of law of public interest posed by BMS (see [29] above) as follows:

(a) BMS's Question 1:

(i) A "claim" for the purposes of s 209 refers to the relief or remedy sought from the court, as well as the grounds for obtaining that relief or remedy. A "claim" may also be said to be a cause of action.

(ii) In writ actions, a litigant "makes" a claim at the point in time when pleadings have closed, after the statement of claim and reply (if any) (for the plaintiff) and the defence (for the defendant) is filed. For originating summons actions, a litigant "makes" a claim when his affidavit evidence is filed in court as directed.

(iii) To succeed under s 209 of the PC, the Prosecution must establish that the claim was "false" beyond a reasonable doubt and that the accused knew that it was false. A claim is "false" if it is made without factual foundation. A claim is not "false" if it involves a question of law. The test

for falsity is not considered by reference to the pleadings in isolation, but must take into account the wider factual context; this necessarily includes facts not revealed in the pleading itself.

(iv) A "court of justice" for the purposes of s 209 of the PC refers to the legal institution or body where disputes are adjudicated.

(b) BMS's Question 2: This question does not directly affect the outcome of the proceedings below. In my view, a solicitor acts dishonestly if, having actual knowledge about the falsity of a client's claim (or after he subsequently acquires that knowledge), he proceeds to make that claim in court and thereby allows the client to gain something that he is not legally entitled to, or causes the adversary to lose something which he is legally entitled to.

(c) BMS's Question 3: In writ actions, a litigant "makes" a claim at the point in time when pleadings have closed, after the statement of claim and reply (if any) (for the plaintiff) and the defence (for the defendant) is filed. For originating summons actions, a litigant "makes" a claim when his affidavit evidence is filed in court as directed.

(d) BMS's Question 4: If an action is settled before the close of pleadings (for actions commenced by writs) or before affidavits are filed as directed (for actions commenced by originating summonses), no "claim" is "made" for the purposes of s 209 of the PC. Where only part of the action is settled or the defendant submits only to part of the action, a claim would be "made" at or after the close of pleadings stage or the filing of affidavits, as the case may be. Whether that claim is "false" will depend on the facts of the case. Here, it must be borne in mind that not all overstated or exaggerated claims are false.

(e) BMS's Question 5: A solicitor should decline to accept instructions and/or doubt his client's instructions if they plainly appear to be without foundation (eg, lacking in logical and/or legal coherence). A solicitor is not obliged to verify his client's instructions with other sources unless there is

compelling evidence to indicate that it is dubious. The fact that the opposing parties (or parties allied to them) dispute the veracity of his client's instructions is not a reason for a solicitor to disbelieve or refuse to act on those instructions, and a solicitor should not be faulted if there are no reasonable means of objectively assessing the veracity of those instructions."

9.5. The Court considered the report of Indian Law Commission and discussed the object of Section 209 as under:-

> *"55. It follows that s 209 of the PC was clearly intended to deter the abuse of court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy. The essence of this provision is entirely consistent with the desire of the Indian Law Commissioners to preserve the special standing of a court of justice and safeguard the due administration of law by deterring the deliberate making of false claims in formal court documents. I should perhaps round up this discussion on the objectives of s 209 of the PC by pointing out that in India it is the court and not the Public Prosecutor who initiates prosecutions under the equivalent provision. At the end of the day, it can be said with some force that it is the court that is best positioned to assess when its processes have been misused or abused. The court is also well-equipped to deal with litigants and/or solicitors who abuse its processes through a variety of well established judicial remedies including adverse personal costs orders and/or contempt proceedings. In the case of advocates and solicitors, disciplinary proceedings will swiftly follow serious infractions of professional responsibilities. This may explain why other common law jurisdictions have not seen a compelling need to criminalise abuses of the pleading process.*
>
> *56. I summarise. It is imperative to firmly bear in mind the objectives for which the Legislative Council enacted s 209 of the PC. It was clearly not the intention of the Legislative Council or the object of s 209 of the PC to alter or even criminalise, by a side wind, well-established civil pleading practices – this much is obvious from the fact that Singapore*

has, unlike India, all along incorporated and preserved the architecture of contemporary English civil procedure rules.

57. Therefore, in purposively construing the constituent elements of s 209 of the PC (in particular the terms "claim", "makes ... any claim", and "knows to be false"), consideration should be given to the Legislative Council's (and now Parliament's) intention to prevent the abuse of court process by the making of false claims in the context of the applicable civil procedure rules in Singapore and not India."

(Emphasis supplied)

9.6. The Court interpreted the terms '*claim*', "*makes a claim*", "*making a claim that one knows to be false*", "*fraudulently or dishonestly or with the intent to injure or annoy any person*" and "*Court of Justice*" in Section 209.

9.7. ***<u>The meaning of a 'claim' in Section 209</u>***

The Court held that a litigant makes a claim before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a '*claim*' for relief necessarily impasses the grounds for obtaining that relief. The Court further held that the word '*claim*' for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods. The relevant portion of the majority judgment is reproduced hereunder: -

"<u>The meaning of a "claim</u>"

58. The term "claim", while appearing in a number of provisions in the PC, is not defined in the PC, and it therefore falls to this court to determine what should be regarded as a "claim" for the purposes of s 209 of the PC.

59. In The Law Lexicon, it is noted that the word "claim" is "of very extensive signification, embracing every species of legal demand" and "is one of the largest words of law" (at p 329). The protean nature of the word "claim" is illustrated by the fact that various legal dictionaries provide multiple definitions. Among some of the more relevant definitions of the word "claim" for present purposes listed by The Law Lexicon are (at p 330):

(a) a "demand made of a right or supposed right" or a "calling of another to pay something due or supposed to be due";

(b) a demand for something as due, or an assertion of a right to something;

(c) "relief and also any grounds of obtaining the relief"; and

(d) the assertion of a cause of action.

xxx xxx xxx

*62**. In the context of s 209 of the PC, the most helpful definitions of the word "claim" are definitions (c) and (d) as set out at [59] above. Drawing on these definitions, a litigant makes a "claim" before a court of justice for the purposes of s 209 when he seeks certain relief or remedies from the court, and a "claim" for relief necessarily encompasses the grounds for obtaining that relief.***

64. I pause to note that while the word "claim" is ordinarily taken to refer to the relief prayed for by a claimant, s 209 ought not to be restrictively confined to just a plaintiff's claim. It is noteworthy that when the Indian Law Commissioners first contemplated criminalising false pleadings, they plainly regarded false defences as being equally objectionable as false claims. One of the examples given of a false claim in the Law Commission Report (at p 98) (see also [87] below) would be as follows:

> *Z brings an action against A for a debt which is really due. A's plea is a positive averment that he owes Z nothing. The case comes to trial; and it is proved by overwhelming evidence that the debt is a just debt. A does not even*

attempt a defence. Ought A in this case to enjoy impunity?

65. ***The reason for criminalising false defences as well as false claims is obvious when the purpose of s 209 of the PC is recalled: the court process can just as easily be abused by defendants as by plaintiffs in perpetrating deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law. Further, I note that s 209 when finally enacted in India used the broader term "claim" in place of the narrower term "civil suit" as the Indian Law Commissioners originally suggested in the Draft Provision (see [54] above). I am therefore of the view that the word "claim", for the purposes of s 209 of the PC, ought to also refer to defences adopted by a defendant.****"***

(Emphasis supplied)

9.8. ***The meaning of "makes a claim"***

Bachoo Mohan Singh (supra) contains an exhaustive discussion on the term "*makes a claim*". The Court observed that a litigant "*makes a claim*" for the purpose of Section 209 upon the close of pleadings when the respective cases of the parties are crystallised and the parties cannot amend their pleadings without the Court's permission. The relevant portion of the majority judgment is reproduced hereunder:-

"The meaning of "makes a claim"

66. The word "makes" is also not defined anywhere in the PC, and there were vigorous exchanges between BMS's counsel and the Prosecution about what it means. BMS's counsel argued that a claim is not made until just before a judge adjudicates on it, while the Prosecution submitted that a litigant "makes" a claim is as soon as the claim is filed.

xxx xxx xxx

76. It seems to me on the basis of the prevailing civil

procedure rules in Singapore that the only appropriate point in time when it can be said that a litigant "makes" a claim for the purposes of s 209 of the PC is one that takes into account the present notional deadline for the filing of pleadings, viz, the close of pleadings. This is the crucial point of time when the parties' respective cases have crystallised. At the close of pleadings, the issues of fact and law between the parties "should be revealed precisely" (see Sir Jack Jacob & Iain S Goldrein, Pleadings: Principles and Practice (Sweet & Maxwell, 1990) at p 4). Thereafter, the parties cannot amend their pleadings without the court's intervention.

78. ***Deeming the close of pleadings as the point in time a litigant "makes" a claim for the purposes of s 209 of the PC avoids most of the pitfalls inherent in both parties' extreme positions. It is a definitive and determinate point in the litigation process*** *(see Singapore Court Practice 2009 (Jeffrey Pinsler SC gen ed) (LexisNexis, 2009) at paras 18/20/2 and 18/20/3), and it gives full effect to the significance of a plaintiff's ability, as provided for in the Rules of Court, to file a reply. At the same time, making the close of pleadings the decisive point in time also covers the situation where no reply is made by the plaintiff. In that situation, it would not be premature to prosecute an offence under s 209 based solely on what is included in a plaintiff's statement of claim. It is important to appreciate, however, that it is only at the close of pleadings that it becomes possible to say whether the plaintiff's "claim" consists of either the statement of claim and reply or only the statement of claim, for it is only at that stage that the parties are deemed, in law, to have finalised their pleadings.*

79. ***This construction of s 209 of the PC also promotes the purpose of the provision, viz, to prevent litigants from corrupting the administration of justice and abusing the court process by filing false claims*** *(see [57] above). It is only after the close of pleadings that the court's machinery is ordinarily engaged, in the sense that the close of pleadings "signifies the commencement of the timeline under O 25 r 1 of the Rules [of Court] for taking out a summons for directions as well as triggers in appropriate cases the operation of the automatic*

directions under O 25 r 8" (see the passage quoted at [77] above). Beyond that point, parties may only make amendments to their pleadings with leave of court. ***Determining that a plaintiff only "makes" a claim for the purposes of s 209 of the PC at the close of pleadings, therefore, ensures that the conduct Parliament intended to prevent is criminalised neither too early nor too late****, but at the precise point of time at which it would ordinarily cause mischief – that is to say when the interactive curial processes would usually commence."*

9.9. ***The meaning of making a claim which one "knows to be false"***

Bachoo Mohan Singh (supra) contains an exhaustive discussion on this term. The relevant portion of the majority judgment is reproduced hereunder:-

"84. The word "false" is similarly not defined in the PC, though it appears in quite a number of other provisions in relation to different subject matters (eg, false claims (s 209), false evidence (s 191), false information (s 177), false statement (s 181), and false instrument (s 264), etc). What is considered "false" would depend, largely, on the intent and purport of each particular provision. As for the meaning of the word "false" under s 209 of the PC, three points are noteworthy.

85. First, given that these are criminal proceedings, the Prosecution bears the burden of proving the falsity beyond a reasonable doubt. The Prosecution cannot simply assert that the claim would have failed, on a balance of probabilities at the civil trial, or establish that it was probable, possible or could be inferred that the claim was false, as may ordinarily be sufficient in a civil case (see Hiralal Sarda and others v Emperor (1932) 33 Cri LJ 860 at 861). The following observations by Bucknill J in Lalmoni Nonia and another v Emperor (1922) 24 Cri LJ 321 at 325, though made within the context of s 193 of the Indian Penal Code, apply with equal force to s 209 of the PC:

> *[W]hat I do ascertain from the papers which have been placed before me is that there have been inferences drawn as to probabilities which may be deduced from facts and from circumstances which formed the environments of this somewhat peculiar affair; and, where one has to make up one's mind as to inferences and the correctness of those inferences and as to what is probable and what is reasonable and what is possible, there is often introduced … an element of doubt as should properly cause a Court to give accused persons … the benefit of whatever doubt there is. Here, I think there is a loophole in this case; although a suspicious and sinister affair, I cannot think that the charge has been fully maintained against these two men by the prosecution. [emphasis added]*

86. Second, where questions of law are involved, it cannot be plausibly said that the claim made in court by the plaintiff (or defendant, as the case may be) is false. In Baisakhi v The Empress (1888) 7 PR No 38 ("Baisakhi"), the court opined (at 100):

> *When the correctness of the claim depends upon the existence and validity of a custom having the force of law or upon a question of law and not upon a question of fact, it will generally be found impossible to establish the charge. [emphasis added]*

I accept Baisakhi as correctly stating the position under s 209 of the PC. ***It is a legal fiction to say that the courts simply expound the law as it has always been. Existing statements or declarations of legal principle ought not to be considered as being invariably set in stone. Precedents are the servants and not the masters of the judicial process. In ascertaining and applying the law, a court is, of course, bound by the decisions of higher courts. But absent the shackles of stare decisis, a court may undertake its own enquiry into the state of the law and depart from earlier decisions. It is then for the court to make a final determination on any question of law. If it were otherwise, the law would never be able to progressively adapt and advance. The contrary position would also have an***

immediate chilling effect on counsel's ability to uninhibitedly prosecute a client's case comprehensively. Given the above, it is my view that the Prosecution will ordinarily not be able to establish that a claim resting on a question of law is false for the purposes of s 209 of the PC, even if the court eventually rules against the litigant making the claim on that question of law. I would, therefore, emphatically reject the District Judge's suggestion that claims concerning issues of law can also be considered to be false *(see [16] above; see also BMS (No 1) at [239] and [240]).*

87. Third, I will now turn to consider the position in respect of issues of fact. The Indian Law Commissioners gave the following illuminating examples of what they regarded to be "false" claims (the Law Commission Report at p 98):

> *A lends Z money. Z repays it. A brings an action against Z for the money, and affirms in his declaration that he lent the money, and has never been repaid. On the trial A's receipt is produced. It is not doubted, A himself cannot deny, that he asserted a falsehood in his declaration. Ought A to enjoy impunity? Again: Z brings an action against A for a debt which is really due. A's plea is a positive averment that he owes Z nothing. The case comes to trial; and it is proved by overwhelming evidence that the debt is a just debt. A does not even attempt a defence. Ought A in this case to enjoy impunity? If, in either of the cases which we have stated, A were to suborn witnesses to support the lie which he has put on the pleadings, every one of these witnesses, as well as A himself, would be liable to severe punishment. But false evidence in the vast majority of cases springs out of false pleading, and would be almost entirely banished from the Courts if false pleading could be prevented.*

In both examples, it is obvious that the claims made by A were entirely without factual foundation. In the first example, there was no factual basis for A to claim for the money, as it had already been repaid. In the second example, there was absolutely no factual basis raised by A to support his positive averment that he owed Z nothing. It is clear, from these

<u>examples cited by the Indian Law Commissioners, that the mischief that the drafters intended to address under s 209 of the Indian Penal Code was that of making claims without factual foundation.</u>

88. The case of Bulaki Ram, which the High Court Judge and the District Judge (hereafter referred to collectively as "the Judges below") heavily relied on, involved facts that were actually rather strikingly similar to the first example given by the Indian Law Commissioners (see [87] above). The plaintiff in Bulaki Ram brought a claim for Rs 88-11. In the course of proceedings, the defendant produced a receipt from the plaintiff for Rs 71-3-3. Before the courts, the plaintiff's claim to that extent (ie, Rs 71-3-3) was dismissed but he obtained a judgment for the balance. The plaintiff was subsequently charged with making a false claim.

89. On the facts of the case, Straight J held that there was prima facie evidence for the Prosecution to proceed against the plaintiff. He did not decide that the plaintiff was guilty of making a false claim on the facts of the case. On the contrary, he was careful to emphasise, twice in his judgment, that he was not trying the case before him or expressing any opinion on the plaintiff's guilt. However, the Judges below relied on Bulaki Ram as excerpted in ***Justice C K Thakker & M C Thakker, Ratanlal & Dhirajlal's Law of Crimes vol 1 (Bharat Law House, 26th Ed, 2007) (Ratanlal & Dhirajlal's Law of Crimes****), which reads as follows (at p 989):*

> ***This section is not limited to cases where the whole claim made by the defendant is false. The accused brought a suit against a person to recover Rs. 88-11-0 alleging that the whole of the amount was due from the defendant. The defendant produced a receipt for a sum of Rs. 71-3-3, and this amount was proved to have been paid to the accused. The accused was thereupon prosecuted and convicted under this section. It was contended on his behalf that because a part of the accused's claim was held to be well-founded and due and owing, he could not be convicted under this section. It was held that the***

conviction was right. Straight J., said: … "if that view were adopted, a man having a just claim against another for Rs. 5, may make claim for Rs. 1,000, the Rs. 995 being absolutely false, and he may escape punishment under this section." [emphasis added in italics and bold italics]

92. In the examples provided by the Indian Law Commissioners and Bulaki Ram, the claims, as made, were prima facie without any factual foundation. The plaintiff in Bulaki Ram apparently did not question the veracity of the receipt for Rs 71-3-3 and therefore did not have any factual or legal basis for claiming for Rs 88-11 in its entirety. In short, there was not even a colourable claim for the amount claimed as allegedly due. There was a claim, if at all, only for a very small fraction of what was alleged to be due. Similarly, in the first example provided by the Indian Law Commissioners, the receipt produced was not doubted. In their second example, A did not even attempt, at trial, a defence despite his positive averment that he owed Z nothing. In both examples, there were no facts whatsoever to support the plaintiff's (or defendant's) claim. In my view, it was on this very narrow and facile basis that these claims were considered by both Straight J and the Indian Law Commissioners to be false. Pertinently, in none of these cases or illustrations was there any complex interplay of issues of fact and law. They simply involved either unambiguous repeat claims or unarguably sham defences. It ought to be also pointed out that all the Indian cases involving s 209 drawn to our attention appear to be instances where the courts initiated proceedings (against the litigants who had made false claims) only after all the pertinent facts had been established at the conclusion of trial proceedings.

93. I would further observe that the Judges below were content to rely on Bulaki Ram (as excerpted (see[89]–[90] above)) to suggest that the test for falsity was applied by considering the pleading on its face (see BMS (No 1) at [234]–[236] and BMS (No 2) at [52]). However, I do not think that Bulaki Ram stands for the proposition that the litmus test of falsity is to be assessed solely by reference to the pleadings alone, or that every statement of claim which does not, on its

face, contain all the material facts is a false claim. Neither does Bulaki Ram stand for the proposition that every exaggerated or overstated claim is false. On the contrary Bulaki Ram suggests that the wider factual context has to be taken into account as its primary consideration was whether, on the facts of the case, the petitioner there had a claim for Rs 88-11 in light of the receipt. But in assessing whether s 209 of the PC is contravened, it is plainly not enough to merely scrutinise the pleadings of a party.

94. ***It is vital to appreciate that whether the litigant's "claim" or cause of action, properly understood, is false is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the court does not merely inspect how a litigant's pleadings have been drafted or the case has been presented. The real issue is whether, all said and done, the litigant's action has a proper foundation which entitles him to seek judicial relief****. Indeed, a similar approach was taken by Costello J in relation to false statements under s 193 of the Indian Penal Code in Rash Behary Ray and others v Emperor AIR 1930 Cal 639, and I see no reason why the same ought not apply in relation to s 209 of the PC. When examining the origins of s 209 of the PC, it is also most pertinent that, in the Draft Provision,* ***the Indian Law Commissioners used the term "no just ground" [emphasis added] in characterising a false claim (see [54] above). It must, therefore, follow that the substance of a party's claim is crucial. The critical question, accordingly, is whether there are any grounds, whether in law or in fact, to make a claim even if they are not revealed in the pleadings itself. I do not think that s 209 of the PC was ever intended to operate as a trap for solicitors or litigants who may inadequately or incorrectly plead their case****.*

95. I should also mention that ***a distinction must be drawn between claims that may be regarded as being legally hopeless and claims that are false. For example, one may characterise a claim that is based entirely on love and affection as consideration as being hopeless in the light of the current state of contract law, but one certainly cannot say that such a***

claim is false because only the courts can determine what constitutes good and valuable consideration (or, more fundamentally, whether consideration is necessary under contract law). This category of claims, like many types of claims involving elements of illegality, often involve closely intertwined, and often inseparable, issues of fact and law. Given this almost indivisible interrelationship between fact and law, such matters raise many thorny legal issues. A court should be slow to label these problematic cases as false even if they are ultimately found to be hopeless. *There are already a number of effective sanctions that a court can visit upon litigants and/or counsel who present hopeless claims in court (see [55] above).*

96. As for the requirement that the primary offender and the abettor each knew that the claim was false (see [111]below), this is, in my view, always a question of fact and degree. It may be said that the definition of "false" above may render clients and their solicitors, who may mistakenly add (or omit) a digit to the amount claimed in the statement of claim and/or reply, at risk of offending s 209 inadvertently. I think that such concerns are overstated, as these clients and solicitors would not, in such circumstances, have the requisite knowledge that the claim made was false."

9.10. ***The meaning of "Court of Justice"***

The Singapore Supreme Court interpreted the term "Court of Justice" as under:

"104. *Section 20 of the PC provides a definition of "court of justice" in the following terms:*

> *The words "court of justice" denote a judge who is empowered by law to act judicially alone, or a body of judges which is empowered by law to act judicially as a body, when such judge or body of judges is acting judicially.*

105. The term "judge" is defined in s 19 of the PC as follows:

> *The word "judge" denotes not only every person*

> *who is officially designated as a judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons is empowered by law to give such a judgment.*

*106. At first glance, the definition of "court of justice" suggests that a "court of justice" is the person(s) who meet(s) the definition of "judge" in s 19 of the PC, rather than the judicial institution called a "court". **Ratanlal & Dhirajlal's Law of Crimes** also suggests (at p 63) that the term "does not mean … the place or building where justice is administered, but the Judge or Judges who conduct judicial proceedings in the due administration of justice". This implies, therefore, that until the first day of trial (or the hearing of an interlocutory application, if any) before a judge, it cannot be said that the plaintiff makes a claim "before a court of justice".*

107. This, however, is a strained construction that defers the point at which an offence under s 209 of the PC may be committed, when the decisive moment is really the close of pleadings (in the context of actions commenced by writ (see [76]–[83] above)). Adopting such a construction would be contrary to the intent and purport of s 209 of the PC, which, as can be seen from Note G (at [51] above), envisioned a "court of justice" as an institution rather than as a person or body of persons.

108. Further, the term "court of justice", as it is used in the PC, does not consistently refer to a judge or body of judges. It is also used to refer to the court as an institution. For instance, s 51 of the PC provides:

> *The word "oath" includes a solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant, or to be used for the purpose of proof, whether in a court of*

justice or not. [Emphasis added]

*Here, **it is clear that "court of justice" cannot literally refer to a "judge" or "body of judges", but must mean, instead, the court as a legal or judicial institution**. In addition, Illustration (b) to s 76 of the PC provides:*

> *A, an officer of a court of justice, being ordered by that court to arrest Y, and, after due enquiry, believing Z to be Y, arrest Z. A has committed no offence. [italics in original; emphasis added in bold italics]*

Whereas a bailiff or sheriff would clearly be "an officer of a court of justice" within the meaning of Illustration (b) to s 76, such an individual would not normally be regarded as an officer of a "judge" or "body of judges".

*109. **As such, on a true construction of s 209 of the PC, the term "court of justice" must mean more than simply a judge or body of judges acting judicially: it must mean, not so much the physical edifice of the courthouse building, but the entire legal institution or body where disputes are adjudicated**. On the facts of this case, the "court of justice" in question would refer to the Subordinate Courts, where the SOC was initially filed." (Emphasis supplied)*

xxx xxx xxx

9.11. ***Duties of the counsels***

The Court discussed the duties of the counsels as under:-

"The Duty not to mislead and the duty of verification

113. It is trite that a solicitor, being an officer of the court, owes a paramount duty to the court, which overrides his duties to the client (see Pt IV of the Legal Profession (Professional Conduct) Rules (Cap 161, R 1, 2010 Rev Ed) ("the Professional Conduct Rules"); see also Public Trustee and another v By Products Traders Pte Ltd and others [2005] 3 SLR(R) 449 at [35], Rondel v Worsley [1969] 1 AC 191 at 227, Saif Ali and another v Sydney Mitchell & Co (a firm) and others [1980] AC 198 at 219, and Arthur J S Hall & Co (a firm) v Simons [2002] 1 AC 615 at 680). This paramountcy is

justified by reason of "the court" being the embodiment of the public interest in the administration of justice. No instructions from a client, tactical considerations or sympathy for a client's interests can ever take precedence over this duty.

114. A crucial aspect of this multi-faceted responsibility is the duty not to mislead the court, also known as the duty of candour (see, in particular, rr 56, 59(a) and 60(f) of the Professional Conduct Rules, as well as Principle 21.01 of The Guide to the Professional Conduct of Solicitors (Nicola Taylor gen ed) (The Law Society, 8th Ed, 1999) ("The Guide")). Indeed, this duty is a touchstone of our adversarial system which is based upon the faithful discharge by an advocate and solicitor of this duty to the court. The duty applies when performing any act in the course of practice. Litigants and/or their solicitors must neither deceive nor knowingly or recklessly mislead the court. Untrue facts cannot be knowingly stated, true facts cannot be misleadingly presented, material facts cannot be concealed and a client or witness must not be allowed to mislead the court. Unquestionably, the tension between the duty to the court and to the client can only be reconciled by the solicitor maintaining his poise by dint of steering a cautious middle course. As Lord Templeman perceptively noted in an article titled "The Advocate and the Judge" (1999) 2 Legal Ethics 11 (at 11):

> *"The litigant aims to obtain a favourable result. The advocate aims to persuade the judge to reach a result favourable to his client by fair means. The advocate, not the litigant, must decide which means are fair in the light of the advocate's training and experience in the law."*

Simultaneously, a solicitor must have his eye on his client's success as well as live up to his non-derogable responsibilities to ensure the administration of justice. I should explain that I have briefly touched on all these wide-ranging duties and solemn responsibilities so as to illustrate the point that it is sometimes no easy task, especially in problematic cases, for a solicitor to balance competing and sometimes conflicting considerations in the faithful discharge of a client's instructions.

115. The duty of candour has both a prescriptive and a proscriptive dimension in civil proceedings. On the one hand, the solicitor must, for example, ensure that all discoverable documents are produced and he must disclose to the court even adverse legal authorities; on the other hand, he must refrain from misleading the court as to the law or the facts. He has a duty to place before the court his client's version of facts but must not massage or tamper with the facts or invent a defence. The solicitor cannot knowingly place a false story before the court. So long as he is not misleading the court, he is not otherwise constrained from presenting his client's case, and is in fact afforded considerable latitude in how he chooses to do so. As Denning LJ explained in Tombling v Universal Bulb Company, Limited [1951] 2 Times LR 289 (at 297):

> "*The duty of counsel to his client in a civil case … is to make every honest endeavour to succeed. He must not, of course, knowingly mislead the Court, either on the facts or on the law, but, short of that, he may put such matters in evidence or omit such others as in his discretion he thinks will be most to the advantage of his client. … The reason is because he is not the judge of the credibility of the witnesses or of the validity of the arguments. He is only the advocate employed by the client to speak for him and present his case, and he must do it to the best of his ability, without making himself the judge of its correctness, but only of its honesty."*
>
> [emphasis added]

116. The solicitor's duty, in this respect, is to present his client's case in the most favourable light and not prejudge the outcome. Ultimately, it is for the court to decide that outcome. In the famous exchange between the irrepressible James Boswell and that personification of common sense Samuel Johnson (as quoted in John V Barry, "The Ethics of Advocacy" (1941) 15 ALJ 166), Boswell reportedly asked (at 169): "But what do you think of supporting a cause which you know to be bad?" Dr Johnson replied:

> *"Sir, you do not know it to be good or bad till the Judge determines it. ... It is his business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client and then hear the Judge's opinion."*

Notably, Dr Johnson also penetratingly pointed out (at 169) that a solicitor has no charter to mislead and elaborated on why he should not act as an appraiser of his client's veracity:

> "*[A] lawyer has no business with the justice or injustice of the cause which he undertakes .... [It] is to be decided by the judge. ... A lawyer is not to tell what he knows to be a lie; he is not to produce what he knows to be a false deed; but he is not to usurp the province of ... the judge and determine what shall be the effect of the evidence,—what shall be the result of legal argument. As it rarely happens that a man is fit to plead his own cause, lawyers are a class of the community, who, by study and experience, have acquired the art and power of arranging evidence, and of applying to the points at issue what the law has settled. A lawyer is to do for his client all that his client might fairly do for himself, if he could. If, by a superiority of attention, he has the advantage of his adversary, it is an advantage to which he is entitled. There must always be some advantage, on one side or other; and it is better that advantage should be had by talents than by chance. If lawyers were to undertake no causes till they were sure they were just, a man might be precluded altogether from a trial of his claim, though, were it judicially examined, it might be found a very just claim.*"

117. The solicitor is also entitled to use all available legal procedures to the best advantage of the client but cannot manipulate or misuse the machinery by, for example, employing delaying tactics or engaging in a battle of attrition. In advancing his client's cause, the employment of legal tactics or strategies by a solicitor in order to pin an opposing party or to extract concessions is not improper if carried out in accordance with the intent and purport of the Rules of Court. Truth in

pleadings is, however, an extremely difficult area to police and circumscribe with bright lines. For instance, a litigant and his solicitor ought not to put the opposing side to proof of a fact that is known by them to exist. Such a denial, particularly if done for an ulterior purpose, is certainly ethically improper but ought not to be a crime. However, if one was to take the determinations of the lower courts to their logical end (as this denial is also a false pleading by their capacious definition), large swathes of pleadings would end up being criminalised.

118. The broad issue raised in this case is whether the duty of candour to the court requires the solicitor concerned to verify the truthfulness or factual accuracy of his client's instructions and if so the extent of this duty. This point was addressed in Wee Soon Kim Anthony v Law Society of Singapore [2002] 1 SLR(R) 954 ("Anthony Wee (No 2)"), where this court explained (at [23]):

> *"There is no general duty on the part of a solicitor that he must verify the instructions of his client. This was laid down in Wee Soon Kim Anthony v Law Society of Singapore [1988] 1 SLR(R) 455 and Tang Liang Hong v Lee Kuan Yew [[1997] 3 SLR(R) 576]. It would be different if there were compelling reasons or circumstances which required the solicitor to verify what the client had instructed."* [emphasis added]

More than a decade earlier, Chan Sek Keong JC, in another decision, Wee Soon Kim Anthony v Law Society of Singapore [1988] 1 SLR(R) 455 ("Anthony Wee (No 1)"), involving the same litigant solicitor, unequivocally declared with his customary acuity and clarity (at [21]):

> *"It is not for an advocate and solicitor, whether in his capacity as counsel or as solicitor, to believe or disbelieve his client's instructions, unless he has himself has personal knowledge of the matter or unless his client's statements are inherently incredible or logically impossible. His duty to his client does not go beyond advising him of the folly of making incredible or illogical statements. [emphasis added]*

Of course, a solicitor cannot simply take whatever the client states at face value. The solicitor has a duty to the client to assess the instructions holistically and explain to the client what may support or contradict the claim. He has to ensure that his client understands the duty to be truthful and the consequences of being found to be untruthful.

119. This is also the current position in England. The Guide confirms (see Principle 21.21, paras 4–5) that there is, in general, no duty upon a solicitor to enquire in every case whether his client is telling the truth, and the mere fact that a client makes inconsistent statements to his solicitor is no reason for the solicitor to verify those statements; it is only where it is clear that the client is attempting to put forward false evidence to the court that the solicitor should do so, or cease to act. Evidently, therefore, the duty to verify arises only in the presence of compelling reasons or circumstances, and is not triggered simply because the client gives conflicting instructions. Where, however, the client's instructions are consistent and unwavering, the answer must surely be that there is no peculiar requirement to take extraordinary steps to assess the veracity of the client's story. I observed in BMS (No 3) at [75] that:

> *"Solicitors frequently find themselves in a position where they are confronted with opposing versions of events, but should be allowed to act on their client's instructions even in the face of conflicting evidence, unless the instructions received fly in the face of incontrovertible evidence or documents. As Lord Halsbury sagely observed more than a hundred years ago, "Very little experience of courts of justice would convince any one that improbable stories are very often true notwithstanding their improbability." (see Showell Rogers, "The Ethics of Advocacy" (1889) 15 LQR 259 at 265). The solicitor should not create or act as a pre-trial sieve that a client's instructions must pass through as he or she is not a fact-finder."*
>
> *[emphasis added]*

9.12. *Choo Han Teck*, J. (in his dissenting judgment) held that a

claim can be made at any time before any Court, including an appellate court, and it can be made orally. The dissenting judgment held that the appellant had made a false claim before the Court. The relevant portion of the dissenting judgment is as under: -

> "*149. The central question concerns the point when an offence under s 209 of the PC is committed. The actus reus of the offence under this section, is committed when the accused "makes before a court of justice any claim".* ***The mens rea of the crime consists of the knowledge of the falsity of the claim and the intention thereby to injure another by the making of that claim. I am of the view that "whoever makes a claim he knows to be false" should not be interpreted to mean "whoever makes a claim at the close of pleadings or after a reply has been filed". That implies that a false claim cannot be made before or after the close of pleadings or after a reply, or that it cannot be made in other forms of original action, or before this court, or that a claim cannot be false if it were made orally. There is nothing in s 209 to suggest that Parliament had intended such a narrow scope for this offence. The mischief to be averted by s 209 is the making of a false claim, however made, before any court of justice****. When a person does an act he must know at the point he performed that act whether he would be committing an offence or not. Whether a person's conduct amounts to a criminal act cannot be contingent upon a subsequent event even if that event was a procedural step in the civil process. In this case, the claim was made when BMS filed the statement of claim in court. The claim was not made in his reply, and neither can his reply exonerate his crime…. An act (conduct) such as that contemplated in s 209 is deemed criminal when it is completed with the requisite mens rea.* ***The provision in s 209 is simple, straightforward and clear. A claim is any prayer a litigant (not necessarily a plaintiff) makes before a court in expectation of a***

ruling in his favour and thus sanctioning his claim. A defendant can also make a claim, and so can third parties*. The reply is thus a false clue to a puzzle that does not exist.*

150. I also feel obliged to differ from the majority's view that the plaintiff has a strategic right to "reserve facts to be included in the reply". This is not a civil matter and I shall not dwell on the nature and function of pleadings except to express my view that it is the time-honoured rule of pleading that a plaintiff has to plead all material facts in his statement of claim and not reserve parts for later. ***Lawyers ought to be encouraged to be forthright and open and not operate on the sly. The reply is meant only to address fresh issues raised in the defence which requires a rebuttal. In any event, nothing in the reply generally, or in this case, would have any bearing on a claim which was false in a statement of claim; the falsehood cannot be sanctified afterwards. A lawyer must surely know that fraud can still be perpetuated even if all the steps in civil procedure have been complied with. It is those kinds of cases,ie, cases in which a litigant uses the court as a means of cheating another, that s 209 seeks to prevent. Such schemes are more likely to fail when the procedures are not complied with. To hold that the crime manifests only after the reply has been filed serves only to test the ingenuity of the criminal mind****.*

151. In the majority view, the reply is significant in the operation of s 209 because it provides the plaintiff the opportunity of changing his mind and thus claiming immunity on the criminal law principle of locus poenitentiae. I do not agree with the application of locus poenitentiae in this way. That principle allows a criminal mind to recant at the last moment before the crime is committed. A man may buy poison with the criminal intent to kill his wife, lace her soup with it, but change his mind as he approaches her with the poisoned dish and pours it out of the window. ***Applying that principle***

here, BMS had ample opportunity to change his mind during any of his consultations with his clients, and even after the draft statement of claim had been settled, or even in the morning as the clerk was about to file the claim. But once the claim is made before the court, the act is done. He can withdraw it, but that only goes to mitigation, the false claim having already been made.

152. The main reason the majority of this court in BMS (No 3) allowed parties an extension of time to file applications for questions to be determined by this court was the concern that this case might pave the way for widespread prosecution of lawyers. I am of the view that this arose from the misapprehension that the longstanding acceptance that lawyers are not obliged to verify the claims of their clients might be withdrawn and thus impose an unbearable onus on the lawyers. This is a misapprehension because s 209 does not impose any greater obligation on a lawyer than what they now have. There is an important difference between verifying the truth of a client's claim or instructions and filing a claim for the client knowing that the claim was false. I do not think that the Law Society of Singapore or any of its members wishes to protect a lawyer who knowingly files a claim that was false, and with the dishonest intent to injure (in the words of s 209) anyone. The protection is meant for those who might be so injured. That is the purpose of s 209.

153. ***Thus, a claim in a court of justice should be understood as any demand or assertion of right made before any court and requiring the sanction of that court. When an accused stands trial for an s 209 offence, all that the trial judge in that trial (and not the court in the civil claim) needs to do is to determine whether the claim was true or false and whether it was made with a dishonest intention to injure another. These are matters of fact and have nothing to do with law. It would be remarkable if a trial judge does not know how to distinguish between what is true and what***

is false. *Whether he made the right decision in the end is a finding of fact, that is to say that even though a judge may know what is true and what is false, he might still erroneously conclude that the issue in question was true when in truth it was false. This court is not concerned in this instance with whether or not this was the case here, and the High Court below had found that there were no such errors.* ***The court trying the accused in an s 209 offence need not have to depend on the progress or the outcome of the civil claim in which the alleged false claim was made***. *Whether it was a case of "defective pleading" as the majority thought so, or a case of making a false claim is precisely the fact that the trial judge has to find. The trial judge did so in this case.*

154. For the reasons above, I am of the view that no one – either in the trial at first instance or the High Court on appeal – misapprehended the law. The trial judge was required to determine whether the claim filed by BMS on behalf of his client for $490,000 was a false claim and whether both BMS and his client, knowing that the claim was false, dishonestly intended to cause a wrongful loss to the defendant there or a wrongful gain to BMS's client. If the trial judge had erred in finding that the claim was a false claim made with dishonest intention, it was an error of fact. It seems to me that the trial judge had taken all the evidence into consideration and his findings were upheld by the High Court on appeal. I therefore, respectfully, dissent from the majority view."

(Emphasis supplied)

United States of America

9.13. Rule 11 of the *Federal Rules of Civil Procedure* provides that by presenting pleadings, written motion or other papers before the Court, an attorney or unrepresented party certifies that it is not being presented for any improper purpose; the claims and defences are

warranted by law; factual contentions have evidentially support and denial of factual contentions are warranted on the evidence. **The object of Rule 11 to deter frivolous claims, to curb abuse of the process of Court and to require the litigants to refrain from conduct that frustrates just, speedy and inexpensive determination of the claims**. Rule 11(c) empowers the Court to put sanctions against the attorney/litigant for harassment, frivolous arguments or lack of factual investigation. Rule 11 of the *Federal Rules of Civil Procedure* is reproduced hereunder:

> *"**Rule 11 of Federal Rules of Civil Procedure***
>
> *(a) Signature. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.*
>
> *(b) Representations To The Court. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:*
>
> *(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;*
>
> *(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;*
>
> *(3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support*

after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

(c) Sanctions.

(1) In General. If, after notice and a reasonable opportunity to respond, the court determines that Rule 11(b) has been violated, the court may impose an appropriate sanction on any attorney, law firm, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) Motion for Sanctions. A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates Rule 11(b). The motion must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets. If warranted, the court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) On the Court's Initiative. On its own, the court may order an attorney, law firm, or party to show cause why conduct specifically described in the order has not violated Rule 11(b).

(4) Nature of a Sanction. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(5) Limitations on Monetary Sanctions. The court must not impose a monetary sanction:

(A) against a represented party for violating Rule 11(b)(2); or

(B) on its own, unless it issued the show-cause order under Rule 11(c)(3) before voluntary dismissal or settlement of

the claims made by or against the party that is, or whose attorneys are, to be sanctioned.
(6) Requirements for an Order. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.
(d) Inapplicability to Discovery. This rule does not apply to disclosures and discovery requests, responses, objections, and motions under Rules 26 through 37."

9.14. Rule 11 of the *Federal Rules of Civil Procedure* is proposed to be amended by imposing mandatory sanctions on attorneys, law firms, or parties who file frivolous "claims, defences, and other legal contentions". The word *'may'* in Rule 11 is proposed to be substituted by *'shall'* to impose mandatory sanctions instead of allowing a safe harbour to the attorneys to correct their pleadings, claims or contentions within a 21-day period without fear of sanctions. *Lawsuit Abuse Reduction Act, 2015*, passed in the House of Representatives on September 17, 2015, has been sent to the Senate and thereafter, referred to the Judicial Committee.

10. ***Case law on false claim and defences***

10.1. In ***T. Arivandandam v. T.V. Satyapal and Anr.*** (1977) 4 SCC 467, the Supreme Court held that frivolous and manifestly vexatious litigation should be shot down at the very threshold. Relevant portion of the said judgment is as under:

".....The learned Munsif must remember that if on a meaningful- not formal- reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of

action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. ***The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them*****.....***"*

(Emphasis supplied)

10.2. In ***S.P. Chengalvaraya Naida (dead) by LRs v. Jagannath***, AIR 1994 SC 853, the respondent instituted a suit for partition of an immovable property without disclosing that he had already relinquished all his rights in respect of the subject property by executing a registered release deed. The appellant obtained a preliminary decree. At the stage of hearing of the application for final decree, the appellant became aware of the release deed and challenged the preliminary decree on the ground of having been obtained by the respondent by playing fraud on the Court. The Trial Court accepted the appellant's contention and dismissed the respondent's application for final decree. The High Court reversed the findings of the Trial Court against which the appellant approached the Supreme Court. The Supreme Court allowed the appeal and held that the respondent had played fraud upon the Court by withholding the release deed executed by him. The Supreme Court held that a person, who's case is based on falsehood, has no right to approach the Court and he can be thrown out at any stage of the litigation. Relevant portion of the judgment is reproduced hereunder:

"7. ***...The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.***

8. ... Non-production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

(Emphasis supplied)

10.3. In **Swaran Singh v. State of Punjab, (2000) 5 SCC 668,** the Supreme Court held that perjury has become a way of life in Courts. The Supreme Court held as under:

"36. …… Perjury has also become a way of life in the law courts. A trial Judge knows that the witness is telling a lie and is going back on his previous statement, yet he does not wish to punish him or even file a complaint against him. He is required to sign the complaint himself which deters him from filing the complaint.....*"*

(Emphasis supplied)

10.4. In ***Dalip Singh v. State of U.P.,*** (2010) 2 SCC 114, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are 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 over shadowed 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 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."***
>
> *(Emphasis supplied)*

10.5. In ***Ramrameshwari Devi v. Nirmala Devi*** (2011) 8 SCC 249, the Supreme Court held that in appropriate cases the Courts may consider ordering prosecution, otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The Supreme

Court observed as under:-

> *"**43.** .....unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation.* ***It is a matter of common experience that Court's otherwise scarce and valuable time is consumed or more appropriately, wasted in a large number of uncalled for cases****.*
>
> *xxx xxx xxx*
>
> ***47. We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs.***
>
> *xxx xxx xxx*
>
> ***52C. ...In appropriate cases the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.****"*
>
> *(Emphasis supplied)*

10.6. In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria,*** (2012) 5 SCC 370, the Supreme Court observed that false claims and defences are serious problems. The Supreme Court held as under: -

> **"*False claims and false defences***
>
> *81. False claims and defences are really serious problems with*

real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.

10.7. In ***Kishore Samrite v. State of Uttar Pradesh***, (2013) 2 SCC 398, the Supreme Court held as under:

"32. The cases of abuse of process of court and such allied matters have been arising before the courts consistently. This Court has had many occasions where it dealt with the cases of this kind and it has clearly stated the principles that would govern the obligations of a litigant while approaching the court for redressal of any grievance and the consequences of abuse of process of court. We may recapitulate and state some of the principles. It is difficult to state such principles exhaustively and with such accuracy that would uniformly apply to a variety of cases. These are:

32.1. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts and came to the courts with "unclean hands". Courts have held that such litigants are neither entitled to be heard on the merits of the case nor are entitled to any relief*.*

32.2. The people, who approach the court for relief on an ex parte statement, are under a contract with the court that they would state the whole case fully and fairly to the court and where the litigant has broken such faith, the discretion of the court cannot be exercised in favour of such a litigant.

32.3. The obligation to approach the court with clean hands is an absolute obligation and has repeatedly been reiterated by this Court.

32.4. Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of

falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have overshadowed the old ethos of litigative values for small gains.

32.5. 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.

32.6. The court must ensure that its process is not abused and in order to prevent abuse of process of court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the court would be duty-bound to impose heavy costs.

32.7. Wherever a public interest is invoked, the court must examine the petition carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

32.8. The court, especially the Supreme Court, has to maintain the strictest vigilance over the abuse of process of court and ordinarily meddlesome bystanders should not be granted "visa". Many societal pollutants create new problems of unredressed grievances and the court should endure to take cases where the justice of the lis well justifies it.....

xxx xxx xxx

36. The party not approaching the court with clean hands would be liable to be non-suited and such party, who has also succeeded in polluting the stream of justice by making patently false statements, cannot claim relief, especially under Article 136 of the Constitution. While approaching the court, a litigant must state correct facts and come with clean hands. Where such statement of facts is based on some information, the source of such information must also be disclosed. ***Totally misconceived petition amounts to an abuse of process of court and such a litigant is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose amounts to an abuse of process of court****. A litigant is bound to make "full and true disclosure of facts".....*

37. The person seeking equity must do equity. It is not just the clean hands, but also clean mind, clean heart and clean objective that are the equi-fundamentals of judicious litigation. The legal maxim jure naturae aequum est neminem cum alterius detrimento et injuria fieri locupletiorem, which means that it is a law of nature that one should not be enriched by the loss or injury to another, is the percept for courts. Wide jurisdiction of the court should not become a source of abuse of process of law by the disgruntled litigant. Careful exercise is also necessary to ensure that the litigation is genuine, not motivated by extraneous considerations and imposes an obligation upon the litigant to disclose the true facts and approach the court with clean hands.

38. No litigant can play "hide and seek" with the courts or adopt "pick and choose". True facts ought to be disclosed as the court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the court is duty-bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of court.....

39. Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions*....."*

(Emphasis supplied)

10.8. In ***Subrata Roy Sahara* v. *Union of India*** (supra), the Supreme Court observed as under:

"188. The number of similar litigants, as the parties in this group of cases, is on the increase. They derive their strength from abuse of the legal process. Counsel are available, if the

litigant is willing to pay their fee. Their percentage is slightly higher at the lower levels of the judicial hierarchy, and almost non-existent at the level of the Supreme Court. One wonders what is it that a Judge should be made of, to deal with such litigants who have nothing to lose. What is the level of merit, grit and composure required to stand up to the pressures of today's litigants? What is it that is needed to bear the affront, scorn and ridicule hurled at officers presiding over courts? Surely one would need superhumans to handle the emerging pressures on the judicial system. The resultant duress is gruelling. One would hope for support for officers presiding over courts from the legal fraternity, as also, from the superior judiciary up to the highest level. Then and only then, will it be possible to maintain equilibrium essential to deal with complicated disputations which arise for determination all the time irrespective of the level and the stature of the court concerned. And also, to deal with such litigants.

xxx xxx xxx

193. This abuse of the judicial process is not limited to any particular class of litigants. The State and its agencies litigate endlessly upto the highest Court, just because of the lack of responsibility, to take decisions. So much so, that we have started to entertain the impression, that all administrative and executive decision making, are being left to Courts, just for that reason. In private litigation as well, the concerned litigant would continue to approach the higher Court, despite the fact that he had lost in every Court hitherto before. The effort is not to discourage a litigant, in whose perception, his cause is fair and legitimate. The effort is only to introduce consequences, if the litigant's perception was incorrect, and if his cause is found to be, not fair and legitimate, he must pay for the same. In the present setting of the adjudicatory process, a litigant, no matter how irresponsible he is, suffers no consequences. Every litigant, therefore likes to take a chance, even when counsel's advice is otherwise."

10.9. In ***Satyender Singh v. Gulab Singh,*** 2012 (129) DRJ 128, the Division Bench of this Court following ***Dalip Singh v. State of U.P.***

(supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts' time for a wrong cause. The observations of this Court are as under:-

> "*2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries.* ***In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.*** *Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left."*
>
> *(Emphasis supplied)*

10.10. In ***Padmawati v. Harijan Sewak Sangh***, 154 (2008) DLT 411, the learned Single Judge of this Court noted as under:

> *"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial*

system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

xxx xxx xxx

9. Before parting with this case, I consider it necessary to pen down that ***one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh****. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."*

10.11. In ***A. Hiriyanna Gowda v. State of Karnataka***, 1998 Cri.L.J. 4756, the Karnataka High Court held it essential to take action in respect of false claims in the interest of purity of working of the Courts. The High Court further held that the disastrous result of the leniency/indulgence has sent wrong signals to the litigants. Relevant

portion of the said judgment is reproduced hereunder:

> *"1. The present application is filed under Section 340, Cr. P.C. and undoubtedly involves a power that the Courts have been seldom exercising. It has unfortunately become the order of the day, for false statements to be made in the course of judicial proceedings even on oath and attempts made to substantiate these false statements through affidavits or fabricated documents. It is very sad when this happens because the real backbone of the working of the judicial system is based on the element of trust and confidence and the purpose of obtaining a statement on oath from the parties or written pleadings in order to arrive at a correct decision after evaluating the respective positions. In all matters of fact therefore, it is not only a question of ethics, but an inflexible requirement of law that every statement made must be true to the extent that it must be verified and correct to the knowledge of the person making it. When a client instructs his learned Advocate to draft the pleadings, the basic responsibility lies on the clients because the Advocate being an Officer of the Court acts entirely on the instructions given to him, though the lawyer will not be immune from even a prosecution. If the situation is uncertain it is for his client to inform his learned Advocate and consequently if false statements are made in the pleadings the responsibility will devolve wholly and completely on the party on whose behalf those statements are made.*
>
> *2. It has unfortunately become common place for the pleadings to be taken very lightly and for nothing but false and incorrect statements to be made in the course of judicial proceedings, for fabricated documents to be produced and even in cases where this comes to the light of the Court the party seems to get away because the Courts do not take necessary counter-action.*
>
> ***3. The disastrous result of such leniency or indulgence is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result. To my mind, therefore, the fact that the petitioner has pressed in this application requires to be commended because***

it is a matter of propriety and it is very necessary at least in a few glaring cases that an example be made of persons who are indulging in such malpractices which undermine the very administration of justice dispensation system and the working of the Courts. This will at least have a deterrent effect on others.

6. It is true that the power that is now being exercised is seldom exercised, but I am firmly of the view that in the interest of the purity of the working the Courts that it is absolutely essential to take such corrective action whenever an instance of the present type arises.*"*

(Emphasis supplied)

Duty of Court to discover truth. Truth should be the guiding star in the entire judicial process.

11. In ***Ved Parkash Kharbanda v. Vimal Bindal,*** 198 (2013) DLT 555, this Court considered a catena of judgments in which the Supreme Court held that the truth is the foundation of justice and should be the guiding star in the entire judicial process. This Court also discussed the meaning of truth and how to discover truth. Relevant portion of the said judgment is reproduced hereunder:

"11.Truth should be the Guiding Star in the Entire Judicial Process

11.1 Truth is the foundation of justice. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People would have faith in Courts when truth alone triumphs. The justice based on truth would establish peace in the society.

11.2 Krishna Iyer J*. in* ***Jasraj Inder Singh v. Hemraj Multanchand,*** *(1977) 2 SCC 155 described truth and justice as under:*

*"8. ...****Truth, like song, is whole, and half-truth can be noise! Justice is truth, is beauty and the strategy of***

healing injustice is discovery of the whole truth and harmonising human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness. *This divagation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearings."*

11.3 In ***Union Carbide Corporation v. Union of India****, (1989) 3 SCC 38, the Supreme Court described justice and truth to mean the same. The observations of the Supreme Court are as under:*

"30. ...when one speaks of justice and truth, these words mean the same thing to all men whose judgment is uncommitted. Of Truth and Justice, Anatole France said :

"Truth passes within herself a penetrating force unknown alike to error and falsehood. I say truth and you must understand my meaning. For the beautiful words ***Truth and Justice*** *need not be defined in order to be understood in their true sense.* ***They bear within them a shining beauty and a heavenly light.*** *I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial...."*

11.4 In ***Mohanlal Shamji Soni v. Union of India,*** *1991 Supp (1) SCC 271, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice.*

11.5 In ***Chandra Shashi v. Anil Kumar Verma,*** *(1995) 1 SCC 421, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation 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 truth alone triumphs in Courts.***

11.6 In ***A.S. Narayana Deekshitulu v. State of A.P.,*** *(1996) 9 SCC 548, the Supreme Court observed that from the ancient times, the constitutional system depends on the foundation of truth. The Supreme Court referred to Upanishads, Valmiki Ramayana and Rig Veda.*

11.7 In ***Mohan Singh v. State of M.P.,*** *(1999) 2 SCC 428 the Supreme Court held that* ***effort should be made to find the truth; this is the very object for which Courts are created.*** *To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt.* ***So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should get scot free. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be concretised. It would depend on the evidence of each case including the manner of deposition and his demeans, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.***

11.8 In ***Zahira Habibullah Sheikh v. State of Gujarat,*** *(2006) 3 SCC 374, the Supreme Court observed that right from the inception of the judicial system it has been accepted that* ***discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.***

11.9 In ***Himanshu Singh Sabharwal v. State of Madhya Pradesh,*** *(2008) 3 SCC 602, the Supreme Court held that the trial should be a search for the truth and not a bout over technicalities. The Supreme Court's observation are as under:*

> *"5. ... 31. In 1846, in a judgment which Lord Chancellor Selborne would later describe as 'one of the ablest judgments of one of the ablest judges who ever sat in this Court', Vice-Chancellor Knight Bruce said [Pearse v. Pearse, (1846) 1 De G&Sm. 12 : 16 LJ Ch 153 : 63 ER 950 : 18 Digest (Repl.) 91, 748] : (De G&Sm. pp. 28-29):*
>
> > *"31. The discovery and vindication and establishment of truth are main purposes certainly of the existence of courts of justice; still, for the obtaining of these objects, which, however valuable and important, cannot be usefully pursued without moderation, cannot be either usefully or creditably pursued unfairly or gained by unfair means, not every channel is or ought to be open to them. The practical inefficacy of torture is not, I suppose, the most weighty objection to that mode of examination,...* ***Truth, like all other good things, may be loved unwisely—may be pursued too keenly—may cost too much.***
> >
> > *xxx xxx xxx*
> >
> > *35. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice—often referred to as the duty to vindicate and uphold the 'majesty of the law'.*
> >
> > *xxx xxx xxx*
> >
> > *38.* ***Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty.****"*
>
> (Emphasis Supplied)

11.10 In ***Ritesh Tewari v. State of U.P.,*** *(2010) 10 SCC 677, the Supreme Court reproduced often quoted quotation:* ***'Every trial is voyage of discovery in which truth is the quest'***

11.11 In ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria,*** *(2012) 5 SCC 370, the Supreme Court again highlighted the significance of truth and observed that* ***the truth should be the guiding star in the entire legal process and it is the duty of the Judge to discover truth to do complete justice.*** *The Supreme Court stressed that* ***Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth****. The Supreme Court observed as under:*

> *"32. In this unfortunate litigation, the Court's serious endeavour has to be to find out where in fact the truth lies.*
>
> *33.* ***The truth should be the guiding star in the entire judicial process.Truth alone has to be the foundation of justice. The entire judicial system has been created only to discern and find out the real truth. Judges at all levels have to seriously engage themselves in the journey of discovering the truth****. That is their mandate, obligation and bounden duty. Justice system will acquire credibility only when people will be convinced that justice is based on the foundation of the truth.*
>
> *xxx xxx xxx*
>
> *35. What people expect is that the Court should discharge its obligation to find out where in fact the truth lies. Right from inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying the existence of the courts of justice.*
>
> *xxx xxx xxx*
>
> *39. ...A judge in the Indian System has to be regarded as failing to exercise its jurisdiction and thereby discharging its judicial duty, if in the guise of remaining neutral, he opts to remain passive to the proceedings before him. He has to always keep in mind that "every trial is a voyage of*

discovery in which truth is the quest". I order to bring on record the relevant fact, he has to play an active role; no doubt within the bounds of the statutorily defined procedural law.

41. World over, modern procedural Codes are increasingly relying on full disclosure by the parties. Managerial powers of the Judge are being deployed to ensure that the scope of the factual controversy is minimised.

xxx xxx xxx

42. In civil cases, adherence to Section 30 CPC would also help in ascertaining the truth. It seems that this provision which ought to be frequently used is rarely pressed in service by our judicial officers and judges....."

xxx xxx xxx

52. ***Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.****"*

(Emphasis supplied)

11.12 In ***A. Shanmugam v. Ariya Kshatriya****, (2012) 6 SCC 430, the Supreme Court held that* ***the entire journey of a judge is to discern the truth from the pleadings, documents and arguments of the parties. Truth is the basis of justice delivery system****. The Supreme Court laid down the following principles:*

"43. On the facts of the present case, following principles emerge:

43.1. ***It is the bounden duty of the Court to uphold the truth and do justice.***

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to

discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrong doer in the temple of justice. ***Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice.***

43.5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."

(Emphasis supplied)

11.13 In ***Ramesh Harijan v. State of Uttar Pradesh,*** *(2012) 5 SCC 777, the Supreme Court emphasized that it is the duty of the Court to unravel the truth under all circumstances.*

11.14 In ***Bhimanna v. State of Karnataka,*** *(2012) 9 SCC 650, the Supreme Court again stressed that the Court must endeavour to find the truth. The observations of the Supreme Court are as under:*

"28. The court must endeavour to find the truth. There would be "failure of justice" not only by unjust conviction but also by acquittal of the guilty, as a result of unjust failure to produce requisite evidence. Of course, the rights of the accused have to be kept in mind and safeguarded but they should not be overemphasised to the extent of forgetting that the victims also have rights."

11.15 In the recent pronouncement in ***Kishore Samrite v. State of U.P.,*** *(2013) 2 SCC 398, the Supreme Court observed that truth should become the ideal to inspire the Courts to pursue. This can be achieved by statutorily mandating the Courts to become active seekers of truth. The observations of Supreme Court are as under:*

"34. It has been consistently stated by this Court that the entire journey of a Judge is to discern the truth from the pleadings, documents and arguments of the parties, as truth is the basis of the Justice Delivery System.

35. With the passage of time, it has been realised that people used to feel proud to tell the truth in the Courts, irrespective of the consequences but that practice no longer proves true, in all cases. The Court does not sit simply as an umpire in a contest between two parties and declare at the end of the combat as to who has won and who has lost but it has a legal duty of its own, independent of parties, to take active role in the proceedings and reach at the truth, which is the foundation of administration of justice. ***Therefore, the truth should become the ideal to inspire the courts to pursue.*** *This can be achieved by statutorily mandating the Courts to become active seekers of truth. To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs."* *(Emphasis supplied)*

12.4 Indian Evidence Act does not define 'truth'. It defines what facts are relevant and admissible; and how to prove them. The proviso to Section 165 provides that the judgment must be based on duly proved relevant facts. Section 3, 114 and 165 of the Indian Evidence Act lay down the important principles to aid the Court in its quest for duly proved relevant fact..."

Aid of Section 165 of the Indian Evidence Act in discovery of truth

12. In ***Ved Parkash Kharbanda v. Vimal Bindal*** (supra), this Court also examined the scope of Section 165 of the Indian Evidence Act, 1872 to discover the truth to do complete justice between the parties. This Court also discussed the importance of Trial Courts in the dispensation of justice. Relevant portion of the said judgment is reproduce hereunder:

> *"15.* ***Section 165 of the Indian Evidence Act, 1872***
>
> *15.1 Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.*
>
> *15.2 Section 165 of the Indian Evidence Act, 1872 reads as under:*
>
> ***"Section 165. Judge's power to put questions or order production.-***
>
> *The Judge may, in order to discover or obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:*
>
> *Provided that the judgment must be based upon facts declared*

by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149 ; nor shall he dispense with primary evidence of any document, except in the cases herein before excepted."

15.3 The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

15.4 The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or willfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15.5 The framers of the Act, in the Report of the ***Select Committee*** *published on 31st March, 1871 along with the Bill settled by them, observed:*

"In many cases, the Judge has to get at the truth, or as near to it as he can by the aid of collateral inquiries, which may incidentally tend to something relevant; and it is most unlikely that he should ever wish to push an inquiry needlessly, or to go into matters not really connected with it. We have accordingly thought it right to arm Judges with a general power to ask any questions upon any facts, of any witnesses, at any stage of the proceedings, irrespectively of the rules of evidence binding on

the parties and their agents, and we have inserted in the Bill a distinct declaration that it is the duty of the Judge, especially in criminal cases, not merely to listen to the evidence put before him but to inquire to the utmost into the truth of the matter."

15.6 ***Cunningham, Secretary to the Council of the Governor – General*** *for making Laws and Regulations at the time of the passing of the Indian Evidence Act stated:*

"It is highly important that the Judge should be armed with full power enabling him to get at the facts. He may, accordingly, subject to conditions to be immediately noticed, ask any question he pleases, in any form, at any stage of the proceedings, about any matter relevant or irrelevant, and he may order the production of any document or thing. No objection can be taken to any such question or order, nor are the parties entitled, without Court's permission to cross-examine on the answers given."

15.7 The relevant judgments relating to Section 165 of the Indian Evidence Act, 1872 are as under:-

15.7.1 The Supreme Court in ***Ram Chander v. State of Haryana****, (1981) 3 SCC 191 observed that under Section 165, the Court has ample power and discretion to control the trial effectively.* ***While conducting trial, the Court is not required to sit as a silent spectator or umpire but to take active part within the boundaries of law by putting questions to witnesses in order to elicit the truth*** *and to protect the weak and the innocent. It is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant".*

15.7.2 In ***Ritesh Tewari v. State of Uttar Pradesh****, (2010) 10 SCC 677, the Supreme Court held that* ***every trial is a voyage of discovery in which truth is the quest****. The power under Section 165 is to be exercised with the object of subserving the cause of justice and public interest, and for getting the evidence in aid of a just decision and to uphold the truth.* ***It is an extraordinary power conferred upon the Court to elicit the truth and to act in the interest of justice****. The*

purpose being to secure justice by full discovery of truth and an accurate knowledge of facts, the Court can put questions to the parties, except those which fall within exceptions contained in the said provision itself.

15.7.3 In ***Zahira Habibulla H. Sheikh v. State of Gujarat****, (2004) 4 SCC 158, the Supreme Court held that* ***Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure confer vast and wide powers on Presiding Officers of Court to elicit all necessary materials by playing an active role in the evidence collecting process. The Judge can control the proceedings effectively so that ultimate objective i.e. truth is arrived at.*** *The power of the Court under Section 165 of the Evidence Act is in a way complementary to its power under Section 311 of the Code. The Section consists of two parts i.e. (i) giving a discretion to the Court to examine the witness at any stage and (ii) the mandatory portion which compels the Courts to examine a witness if his evidence appears to be essential to the just decision of the Court. The second part of the section does not allow any discretion but obligates and binds the Court to take necessary steps if the fresh evidence to be obtained is essential to the just decision of the case, essential to an active and alert mind and not to one which is bent to abandon or abdicate. Object of the Section is to enable the Court to arrive at the truth irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a just and proper disposal of the case. Though justice is depicted to be blind-folded, as popularly said, it is only a veil not to see who the party before it is while pronouncing judgment on the cause brought before it by enforcing law and administering justice and not to ignore or turn the mind/attention of the Court away from the truth of the cause or lis before it, in disregard of its duty to prevent miscarriage of justice. Doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by manipulative red herrings.*

15.7.4 In ***State of Rajasthan v. Ani****, (1997) 6 SCC162, the Supreme Court held that* ***Section 165 of the Indian Evidence Act confers vast and unrestricted powers on the***

Court to elicit truth. *Reticence may be good in many circumstances, but a Judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved.* ***A Judge is expected to actively participate in the trial to elicit necessary materials from witnesses in the appropriate context which he feels necessary for reaching the correct conclusion****.*

15.7.5 In ***Mohanlal Shamji Soni v. Union of India****, 1991 Supp. (1) SCC 271, referring to Section 165 of the Indian Evidence Act and Section 311 of the Code of Criminal Procedure, the Supreme Court stated that the said two sections are complementary to each other and between them, they confer jurisdiction on the Judge to act in aid of justice. It is a well-accepted and settled principle that a Court must discharge its statutory functions – whether discretionary or obligatory – according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done.*

15.7.6 In ***Jamatraj Kewalji Govani v. State of Maharashtra****, AIR 1968 SC 178, the Supreme Court held that Section 165 of the Indian Evidence Act and Section 540 of the Code of Criminal Procedure, 1898 confer jurisdiction on the Judge to act in aid of justice. In criminal jurisdiction, statutory law confers a power in absolute terms to be exercised at any stage of the trial to summon a witness or examine one present in Court or to recall a witness already examined, and makes this the duty and obligation of the Court provided the just decision of the case demands it.*

15.7.7 In ***Sessions Judge Nellore Referring Officer v. Intha Ramana Reddy****, 1972 CriLJ 1485, the Andhra Pradesh High Court held that* ***every trial is a voyage of discovery in which truth is the quest. It is the duty of a presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice.*** *For that purpose he is expressly invested by Section 165 of the Evidence Act with*

the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may ask any question he pleases, in any form at any time, of any witness, or of the parties about any fact, relevant or irrelevant.

16. ***Importance of Trial Courts***

The Law Commission of India headed by ***H.R. Khanna, J.*** *in its* ***Seventy Seventh Report*** *relating to the '****Delays and Arrears in Trial Courts'*** *dealt with the importance of Trial Courts in the justice delivery system. The relevant portion of the said Report is reproduced as under:*

-"If an evaluation were made of the importance of the role of the different functionaries who play their part in the administration of justice, the top position would necessarily have to be assigned to the Trial Court Judge. He is ***the key-man in our judicial system, the most important and influential participant in the dispensation of justice. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses****. The image of the judiciary for the common man is projected by the Trial Court Judges and this, in turn depends upon their intellectual, moral and personal qualities."*

- Personality of Trial Court Judges

"Errors committed by the Trial Judge who is not of the right caliber can sometimes be so crucial that they change the entire course of the trial and thus result in irreparable miscarriage of justice. Apart from that, a rectification of the error by the appellate Court which must necessarily be after lapse of a long time, can hardly compensate for the mischief which resulted from the error committed by the Trial Judge."

-The 'Upper Court' Myth

"The notion about the provisional nature of the Trial Court decisions being subject to correction in appeal, or what has been called the "upper-Court myth" ignores the realities of the situation. ***In spite of the right of appeal, there are many cases in which appeals are not filed.*** *This apart, the appellate*

Courts having only the written record before them are normally reluctant to interfere with the appraisement of evidence of witnesses by the ***Trial Judges who have had the advantage of looking at the demeanour of the witnesses.*** *The appellate Court, it has been said, operates in the partial vacuum of the printed record. A stenographic transcript fails to reproduce tones of voice and hesitations of speech that often make a sentence mean the reverse of what the mere words signify. The best and most accurate record of oral testimony is like a dehydrated peach; it has neither the substance nor the flavor of the peach before it was dried."*

13. *Dr. Arun Mohan* in his book *Justice, Courts and Delays*, has discussed the consequences of litigants raising false claims and observed that unless these shortcomings in our procedural laws are identified and a solution found, Court procedures will continue to be misused making it impossible for the system to render speedy justice. The relevant portion of the said book is reproduced hereunder:

"Misuse of Procedure

2. While knowingly false plaints are fewer in number than knowingly false defences, they are very much there. False defences are taken up in, if one may say, 80 per cent or so of the cases and are basically of three types:

1. unnecessary technical and hyper technical issues;

2. denials or 'putting the plaintiff to prove' facts, which are within the knowledge of the defendant; or

3. positive defences, which are based on false facts or forged/fabricated documents.

xxx xxx xxx

8. Assume a suit for recovery of Rs.10,000 is filed by A against B on the ground that the money loaned has not been returned. If the payment had been in cash, the factum would have been denied. If it is by a cheque and the truth is plain that the money has not been returned, yet the Written Statement can raise pleas such as:

1. The amount was returned in cash;

2. The money was in fact 'shagun'/gift given at the time of the marriage anniversary/birthday of B;

3. It was repayment of an earlier cash loan given by B to A;

4. A is a money lender with no licence to practice; the suit is barred; or

5. The money was expense money and professional charges paid to B for introducing A to the powers that be at the State capital.

There may even be either a plain denial or similar stories/explanation for any written document that may have been executed.

9. Another illustration is of trespass, which in metropolitan towns, particularly with the value of real estate being what it is, is common. As an instance, B forcibly trespasses into A's house and when A files a suit in the civil court for recovery of possession & mesne profits against B, the Written Statement by B reads:

1. It is my house which was so bequeathed to me by the deceased father of A;

2. I am a tenant protected by the Rent Control legislation; A is not in the habit of issuing rent receipts;

3. I am a licensee and have carried out works of permanent character with the consent of A. My licence is, therefore, irrevocable; or

4. I am holding under an agreement to sell.

He may even file forged & fabricated documents to support the defence.

xxx xxx xxx

11. Suits for ejectment of a tenant make another illustration. B's lease for A's house expires by efflux of time. B does not vacate and when A sues for ejectment, B takes defences such as:

1. The lease was/is a perpetual lease;

2. The purported notice to quit (for a month to month tenancy) was never served and, in any case, was defective inasmuch as the tenancy month was different from that mentioned in the Notice to Quit;

3. 'B' is neither an owner nor the landlord of the leased property and has, thereore, no locus standi to institute the suit; or

4. As the advance rent for the next five years was paid in cash, there can be no termination of tenancy or a suit for ejectment.

The result is ten years' delay, at the end of which B tells A to give up the claim for mesne profits and take possession or else litigate for another ten.

xxx xxx xxx

17. Coming next to Wills, a person may have died leaving a registered Will, yet when Probate is sought, all kinds of please are raised. A false (later) Will may be propounded to obstruct & delay the claim. If the bulk or a larger share of the property is in occupation of one person, and the others are either not getting the usufruct or are (by reason of their own placement) desperate for the value of their share, that person delays and obstructs. There is plain abuse of procedure with continued deprivation and resultant injustice. Records of the pending litigation will show that decades pass by. Is continued indecisiveness not a denial of the right of partition? Is it not giving undue advantage to those who are occupying the property more than their own share/entitlement?

xxx xxx xxx

24. There are also instances of many a civil suit being filed with the plaintiff knowing himself that the claim is false and that the purpose of the suit is only to extort some money and other material benefit from the defendant. Thus, it is not only false and ingenious defences as have been pointed out above, but there are also plaintiffs who by exercising a bit of ingenuity coupled with falsehood, file one or more suits or institute other proceedings. The litigation then not only saps the other party of his energy & expense but also causes a load on his mind which ruins him in more ways than one. Seeing the continuing loss, the adversary (defendant) has little option but to 'settle' by conceding to an illegal demand. The process of law comes to be used as a weapon for extortion.

25. One may examine how much truth ultimately prevails in our judicial system. All sorts of false claims/defences are put forward and when the person (in the right) is in the witness box, he is cross-examined not with a view to elicit the truth but to intimidate or at least bring on record errors on which the ultimate judgment can be based. Can an average person be really expected to withstand such an onslaught? After all, it is not a test of skills for a post-graduate degree. A simple error or fault and the result can be the loss of his house. ***And, all this can take place because there is no pinning down to responsibility of the one making a claim/defence that, ultimately, is found to be without merit or even false****.*

xxx xxx xxx

29. If a conversation between a defendant served with summons of a suit for possession and his lawyer were to be eavesdropped upon, the listener would hardly be in for any surprise. A lawyer may advise him that he has no defence, yet the defendant would ask:

For how many years can you drag it? How much will it cost me in terms of Rupees per month/year? What will be the ultimate result?

The lawyer may give honest answers, whereupon the defendant calculates: If that be so, then it is profitable for me to litigate. Further, if you can drag it longer, may be I can give you even better terms. I now leave it to your skills at delaying.

Such conversation speaks for itself. At other times, if may be that the defendant is receiving advice on how profitable it will for him to raise a false defence and not 'settle' for a reasonable time to vacate. He may even be receiving 'advice' on the tactics to be deployed to achieve delays. Whichever way one may look at it, it is adding both to the number of cases and the size of the controversy in each and consequently, to court delays.

30. If a survey was to be carried out as to how many plaintiffs in suits for possession gave up claims for mesne profits or paid moneys on the side in order to compromise and recover possession of the property-and did so only because the

judicial system was failing to render justice in proper time - the results would be startling. Similarly, a survey of the 'settlements' done by giving up a claim (of any type) or acceding to a false claim because of harassment caused or doing so under the fear of the mafia, would reveal no different results.

31. Unfortunately, such instances remain a matter of hearsay and do not find their way sot the statistics books so as to attract attention of the press, the lawmakers and the judiciary. However, the fact remains that anybody who has been involved with the judicial system as a lawyer or as a litigant or even a person otherwise concerned, would know where the ground realities lie.

xxx xxx xxx

34. All this discussion about misuse of procedure in this chapter as also in the later chapters points to one and one factor only. It is that unless these shortcomings in our procedural laws are identified and a solution found, court procedures will continue to be misused making it impossible for the system - irrespective of the size to which we may enhance/augment its capacity – to render speedy justice and justice for the citizens will remain a far cry."

(Emphasis supplied)

15. ***Summary of Principles***

15.1. Section 209 of the Indian Penal Code makes dishonestly making a false claim in a Court as an offence punishable with imprisonment upto two years and fine.

15.2. The essential ingredients of an offence under Section 209 are: (i)The accused made a claim; (ii)The claim was made in a Court of Justice; (iii) The claim was false, either wholly or in part; (iv)That the accused knew that the claim was false; and (v)The claim was made fraudulently, dishonestly, or with intent to injure or to annoy any person.

15.3. A litigant makes a '*claim*' before a Court of Justice for the purpose of Section 209 when he seeks certain relief or remedies from the Court and a '*claim*' for relief necessarily impasses the ground for obtaining that relief. The offence is complete the moment a false

claim is filed in Court.

15.4. The word "*claim*" in Section 209 of the IPC cannot be read as being confined to the prayer clause. It means the "*claim*" to the existence or non-existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and its application to facts as established. To clarify, the word "*claim*" would mean both not only a claim in the affirmative to the existence of fact(s) as, to illustrate, may be made in a plaint, writ petition, or an application; but equally also by denying an averred fact while responding (to the plaint/petition, etc.) in a written statement, counter affidavit, a reply, etc. Doing so is making a "*claim*" to the non-existence of the averred fact. A false "*denial*", except when the person responding is not aware, would constitute making a "*claim*" in Court under Section 209 IPC.

15.5. The word '*claim*' for the purposes of Section 209 of the Penal Code would also include the defence adopted by a defendant in the suit. The reason for criminalising false claims and defences is that the plaintiff as well as the defendant can abuse the process of law by deliberate falsehoods, thereby perverting the course of justice and undermining the authority of the law.

15.6. The words *"with intent to injure or annoy any person"* in Section 209 means that the object of injury may be to defraud a third party, which is clear from the Explanation to Clause 196 in the Draft Code namely: *"It is not necessary that the party to whom the offender intends to cause wrongful loss or annoyance should be the party against whom the suit was instituted."*

15.7. Section 209 uses the words '*Court of Justice*' as distinguished from a "*Court of Justice having jurisdiction*." It is therefore immaterial whether the Court in which the false claim was instituted had jurisdiction to try the suit or not.

15.8. The prosecution has to prove that the accused made a false claim. A mere proof that the accused failed to prove his claim in the civil suit or that Court did not rely upon his evidence on account of discrepancies or improbabilities is not sufficient.

15.9. This section is not limited to cases where the whole claim made by the defendant is false. It applies even where a part of the claim is false. In ***Queen-Empress v. Bulaki Ram*** (supra), the accused brought

a suit against a person to recover Rs. 88-11-0 alleging that the whole of the amount was due from the defendant. The defendant produced a receipt for a sum of Rs. 71-3-3, and this amount was proved to have been paid to the accused. The accused was thereupon prosecuted and convicted under this section. It was contended on his behalf that because a part of the accused's claim was held to be well-founded and due and owing, he could not be convicted under this section. It was held that the conviction was right. ***Straight J***., said: … *"if that view were adopted, a man having a just claim against another for Rs. 5, may make claim for Rs. 1,000, the Rs. 995 being absolutely false, and he may escape punishment under this section."* The law never intended anything so absurd. These provisions were made by those who framed this most admirable Code, with full knowledge that this was a class of offences very common in this country.

15.10. The Law Commission gave the following illuminating examples of what they regarded to be "*false*" claims (*Indian Law Commission's Report at p 98*):

> *"A lends Z money. Z repays it. A brings an action against Z for the money, and affirms in his declaration that he lent the money, and has never been repaid. On the trial A's receipt is produced. It is not doubted, A himself cannot deny, that he asserted a falsehood in his declaration. Ought A to enjoy impunity? Again: Z brings an action against A for a debt which is really due. A's plea is a positive averment that he owes Z nothing. The case comes to trial; and it is proved by overwhelming evidence that the debt is a just debt. A does not even attempt a defence. Ought A in this case to enjoy impunity? If, in either of the cases which we have stated, A were to suborn witnesses to support the lie which he has put on the pleadings, every one of these witnesses, as well as A himself, would be liable to severe punishment. But false evidence in the vast majority of cases springs out of false pleading, and would be almost entirely banished from the Courts if false pleading could be prevented."*

15.11. In both examples, it is obvious that the claims made by A were entirely without factual foundation. In the first example, there was no factual basis for A to claim for the money, as it had already been repaid. In the second example, there was absolutely no factual basis

raised by A to support his positive averment that he owed Z nothing. It is clear from these examples cited by the Law Commission that the mischief that the drafters intended to address under Section 209 of the Indian Penal Code was that of making claims without factual foundation.

15.12. Whether the litigant's '*claim*' is false, is not considered merely from whatever he pleads (or omits to plead): that would be to elevate form over substance. To make out the offence, the Court does not merely inspect how a litigant's pleadings have been drafted or the case has been presented. *The real issue to be considered is whether, all said and done, the litigant's action has a proper foundation which entitles him to seek judicial relief.*

15.13. The Law Commission used the term "*no just ground*" in characterising a false claim, meaning thereby that the substance of a party's claim is crucial. The critical question, accordingly, is whether there are any grounds, whether in law or in fact, to make a claim even if they are not revealed in the pleadings itself.

15.14. There is distinction between claims that may be regarded as being legally hopeless and claims that are false. For example, one may characterise a claim that is based entirely on love and affection as consideration as being hopeless in the light of the current state of contract law, but one certainly cannot say that such a claim is false because only the Courts can determine what constitutes good and valuable consideration (or, more fundamentally, whether consideration is necessary under contract law). This category of claims, like many types of claims involving elements of illegality, often involve closely intertwined, and often inseparable, issues of fact and law. A Court should be slow to label these problematic cases as false even if they are ultimately found to be hopeless.

15.15. Section 209 was enacted to preserve the sanctity of the *Court of Justice* and to safeguard the due administration of law by deterring the deliberate making of false claims. Section 209 was intended to deter the abuse of Court process by all litigants who make false claims fraudulently, dishonestly, or with intent to injure or annoy.

15.16. False claims delay justice and compromise the sanctity of a Court of justice as an incorruptible administrator of truth and a bastion of rectitude.

15.17. False claims cause direct injury to honest litigants. But this injury appears to us to be only part, and perhaps not the greatest part, of the evil engendered by the practice. If there be any place where truth ought to be held in peculiar honor, from which falsehood ought to be driven with peculiar severity, in which exaggerations, which elsewhere would be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is *Court of Justice*.

15.18. The Law Commission considered punishing false claims as indispensably necessary to the expeditious and satisfactory administration of justice. The Law Commission, in this report, observed that the litigants come before the Court, tell premeditated and circumstantial lies before the Court for the purpose of preventing or postponing the settlement of just demand, and that by so doing, they incur no punishment whatever. Public opinion is vitiated by this vicious state of the things. Men who, in any other circumstances, would shrink from falsehood, have no scruple about setting up false pleas against just demands. There is one place, and only one, where deliberate untruths, told with the intent to injure, are not considered as discreditable and that place is *Court of Justice*. Thus, the authority of the Courts operate to lower the standard of morality, and to diminish the esteem in which veracity is held and the very place which ought to be kept sacred from misrepresentations such as would elsewhere be venial, becomes the only place where it is considered as idle scrupulosity to shrink from deliberate falsehood.

15.19. The Law Commission further observed that false claims will be more common if it is unpunished than if it is punished appears as certain as that rape, theft, embezzlement, would, if unpunished, be more common than they now are. There will be no more difficulty in trying charge of false pleading than in trying charge of false evidence. The fact that statement has been made in pleading will generally be more clearly proved than the fact that statement has been made in evidence.

15.20. Section 209 was not intended to operate as a trap for lawyers or litigants who may inadequately or incorrectly plead their case. However, a lawyer having actual knowledge about the falsity of a client's claim (or after he subsequently acquires that knowledge), is

not supposed to proceed to make that claim in Court and thereby, allow the client to gain something that he is not legally entitled to, or causes the adversary to lose something which he is legally entitled to. A lawyer should decline to accept instructions and/or doubt his client's instructions if they plainly appear to be without foundation (eg, lacking in logical and/or legal coherence). However, a lawyer is not obliged to verify his client's instructions with other sources unless there is compelling evidence to indicate that it is dubious. The fact that the opposing parties (or parties allied to them) dispute the veracity of his client's instructions is not a reason for a lawyer to disbelieve or refuse to act on those instructions, and a lawyer should not be faulted if there are no reasonable means of objectively assessing the veracity of those instructions.

15.21. Filing of false claims 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 claims.

15.22. The Courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands. More often than not, process of the Court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the Court-process a convenient lever to retain the illegal gains indefinitely. A person, who's case is based on falsehood, has no right to approach the Court. He can be summarily thrown out at any stage of the litigation.

15.23. The disastrous result of leniency or indulgence in invoking Section 209 is that it sends out wrong signals. It creates almost a licence for litigants and their lawyers to indulge in such serious malpractices because of the confidence that no action will result.

15.24. Unless lawlessness which is all pervasive in the society is not put an end with an iron hand, the very existence of a civilized society is at peril if the people of this nature are not shown their place. Further if the litigants making false claims are allowed to go scot free, every law breaker would violate the law with immunity. Hence, deterrent action is required to uphold the majesty of law. The Court would be

failing in its duties, if false claims are not dealt with in a manner proper and effective for maintenance of majesty of Courts as otherwise the Courts would lose its efficacy to the litigant public.

15.25. Truth is foundation of Justice. Dispensation of justice, based on truth, is an essential and inevitable feature in the justice delivery system. Justice is truth in action.

15.26. It is the duty of the Judge to discover truth to do complete justice. The entire judicial system has been created only to discern and find out the real truth.

15.27. The Justice based on truth would establish peace in the society. For the common man truth and justice are synonymous. So when truth fails, justice fails. People would have faith in Courts when truth alone triumphs.

15.28. Every trial is a voyage of discovery in which truth is the quest. Truth should be reigning objective of every trial. The Judge has to play an active role to discover the truth and he should explore all avenues open to him in order to discover the truth.

15.29. The object of a trial is, first to ascertain truth by the light of reason, and then, do justice upon the basis of the truth and the Judge is not only justified but required to elicit a fact, wherever the interest of truth and justice would suffer, if he did not.

15.30. Section 165 of the Indian Evidence Act, 1872 invests the Judge with plenary powers to put any question to any witness or party; in any form, at any time, about any fact relevant or irrelevant. Section 165 is intended to arm the Judge with the most extensive power possible for the purpose of getting at the truth. The effect of this Section is that in order to get to the bottom of the matter before it, the Court will be able to look at and inquire into every fact and thus possibly acquire valuable indicative evidence which may lead to other evidence strictly relevant and admissible. The Court is not, however, permitted to found its judgment on any but relevant statements.

15.31. The Judge contemplated by Section 165 is not a mere umpire at a wit-combat between the lawyers for the parties whose only duty is to enforce the rules of the game and declare at the end of the combat who has won and who has lost. He is expected, and indeed it is his duty, to explore all avenues open to him in order to discover the truth

and to that end, question witnesses on points which the lawyers for the parties have either overlooked or left obscure or wilfully avoided. A Judge, who at the trial merely sits and records evidence without caring so to conduct the examination of the witnesses that every point is brought out, is not fulfilling his duty.

15.32. The Trial Judge is the key-man in the judicial system and he is in a unique position to strongly impact the quality of a trial to affect system's capacity to produce and assimilate truth. The Trial Judge should explore all avenues open to him in order to discover the truth. Trial Judge has the advantage of looking at the demeanour of the witnesses. In spite of the right of appeal, there are many cases in which appeals are not filed. It is mostly with the Trial Judge rather than with the appellate Judge that the members of the general public come in contact, whether as parties or as witnesses.

16. ***Conclusions***

16.1 Section 209 of the Indian Penal Code, is a salutary provision enacted to preserve the sanctity of the Courts and to safeguard the administration of law by deterring the litigants from making the false claims. However, this provision has been seldom invoked by the Courts. The disastrous result of not invoking Section 209 is that the litigants indulge in false claims because of the confidence that no action will be taken.

16.2 Making a false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it has been be treated as an offence.

16.3 False evidence in the vast majority of cases springs out of false pleading, and would entirely banish from the Courts if false pleading could be prevented.

16.4 Unless the judicial system protects itself from such wrongdoing

by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens.

16.5 The justice delivery system has to be pure and should be such that the persons who are approaching the Courts must be afraid of making false claims.

16.6 To enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like false claims 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.

16.7 Whenever a false claim is made before a Court, it would be appropriate, in the first instance, to issue a show cause notice to the litigant to show cause as to why a complaint be not made under Section 340 Cr.P.C. for having made a false claim under Section 209 of the Indian Penal Code and a reasonable opportunity be afforded to the litigant to reply to the same. The Court may record the evidence, if considered it necessary.

16.8 If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to

investigate and file a report along with such other evidence that they are able to gather.

16.9 Before making a complaint under Section 340 Cr.P.C., the Court shall consider whether it is expedient in the interest of justice to make a complaint.

16.10 Once it prima facie appears that an offence under Section 209 IPC has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section 340 Cr.P.C.

17. This Court hopes that the Courts below shall invoke Section 209 of the Indian Penal Code in appropriate cases to prevent the abuse of process of law, secure the ends of justice, keep the path of justice clear of obstructions and give effect to the principles laid down by the Supreme Court in ***T. Arivandandam v. T.V. Satyapal*** (supra)***, S.P. Chengalvaraya Naida v. Jagannath*** (supra)***, Dalip Singh v. State of U.P.***(supra)***, Ramrameshwari Devi v. Nirmala Devi*** (supra)***, Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*** (supra)**,** ***Kishore Samrite v. State of Uttar Pradesh*** (supra) and ***Subrata Roy Sahara*** **v.** ***Union of India*** (supra)**.**

18. This Court appreciates the assistance rendered by Mr. Sidharth Luthra, learned amicus curiae and Mr. Suhail Dutt, learned senior counsel for the appellant.

19. Copy of this judgment be sent to the District and Sessions Judges for being circulated to the Courts below.

20. Copy of this judgment be also sent to Delhi Judicial Academy. The Delhi Judicial Academy shall sensitize the judges with respect to the scope of Section 209 of the Indian Penal Code.

J.R. MIDHA, J.

JANUARY 22, 2016
dk/rsk/aj