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

% Judgment delivered on: 24/11/2025

+ **CS(COMM) 914/2023**

KONINKLIJKE PHILIPS N. V. & ORS.Plaintiffs

versus

KARMA MINDTECH & ORS.Defendants

Advocates who appeared in this case

For the Plaintiffs : Mr. Peeyoosh Kalra, Mr. C.A. Brijesh and Ms. Simranjat Kaur, Advocates.

For the Defendants : Mr. Kunal Khanna, Mr. Madhav Anand, Mr. Krtin Bhasin, Mr. Yashveer Singh and Mr. Udit Sharma, Advocates for D2.
Mr. Neeraj Gupta, Mr. Akshay Agarwal and Mr. Ranjeet Kumar Singh, Advocates for D3.

CORAM:
HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

TEJAS KARIA, J

CRL.M.A. 21803/2025

FACTUAL BACKGROUND:

1. The Plaintiffs have filed the present Suit for permanent injunction against infringement of copyright, trade mark, trade secret, rendition of



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accounts, damages and delivery up, *inter alia*, to restrain the Defendants from procuring, importing, exporting, selling, refurbishing, assembling, offering for sale, advertising, marketing and / or in any manner using, directly or indirectly, pirated / tampered version of the ‘IntelliSpace Portal’ software / literary work of the Plaintiffs (“**ISP**”) amounting to copyright infringement and from unauthorizedly accessing the Plaintiffs’ confidential information, trade secrets etc.

2. *Vide* order dated 20.12.2023, this Court granted *ex-parte ad-interim* injunction restraining the Defendants and all others acting for and on their behalf from using, offering for sale or making available the ISP or the connected applications from being run on any hardware or electronic / medical / diagnostic devices, to any person till the next date of hearing.

3. The Plaintiffs thereafter filed an application bearing I.A. 9743/2024 under Order XI Rule 1 and 12 of the Code of Civil Procedure, 1908 (“**CPC**”) as amended by the Commercial Courts Act, 2015 read with Sections 30 and 151 of CPC (“**I.A. 9743/2024**”) seeking discovery of the Defendants’ documents and discovery by interrogatories as follows:

- “a. Disclosure of the exact date or timeframe when the Defendants initiated the piracy / sale of Philips ISP software.*
- b. Disclosure of each individual or entity to whom the Defendants sold or distributed Philips ISP software, including transaction dates and specific applications / software details.*
- c. Disclosure of the geographical reach of the Defendants’ clientele, specifying whether the pirated software was sold solely within India or also to international customers. If sold internationally, the identification of specific countries or regions as well as customers to which the software was distributed.*
- d. Disclosure of the selling price for each transaction involving Philips ISP software or provision of a detailed price list.*



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- e. *Disclosure of the exact amount of money received and / or profit generated by the Defendants from the illegal sale of Philips ISP software, specifying the currency and timeframe.*
 - f. *Disclosure of a comprehensive description of the confidential information Mr. Karan Patel had access to during his employment with Philips.*
 - g. *Disclosure of the methods employed by the Defendants to circumvent the technological measures implemented by Philips to protect their ISP software.*
 - h. *Disclosure of all tools, devices, or software that have been used to gain unauthorized access to Philips' equipment, including but not limited to, any fake IST certificates, key generators, or other bypass Mechanisms.*
 - i. *Disclosure of origin of each of the tools revealed in the above para, including contact details of any individuals or entities to whom the Defendants sold, traded, or otherwise provided each bypass tool, as well as the individuals or entities involved in the creation or dissemination of these tools.*
 - j. *Disclosure of names and relevant contact information, of every individual or entity involved in the unauthorized sale / distribution of pirated Philips ISP software.*
 - k. *Disclosure of the nature and extent of involvement of each individual or entity mentioned in the previous interrogatory, specifying their role in the piracy.*
 - l. *Production of the CDs recovered during the Local Commission at Defendant No. 1's warehouse and disclosure of a complete and accurate listing of all the content, files and folders contained on the CDs. For each file identified here, disclosure of the purpose, origin, and any connection to the unauthorized sale / distribution of pirated Philips ISP software."*
4. This Court *vide* order dated 16.12.2024, allowed I.A. 9743/2024 and directed the Defendants to answer the interrogatories listed from 'a.' to 'k.' by way of an affidavit.



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5. Defendant No. 2 thereafter on 08.02.2025, filed his affidavit in Reply to I.A. 9743/2024 (“**Affidavit**”) against which the Plaintiffs have filed the present Application under Section 379 read with Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“**BNSS**”) for offences under Sections 227, 229, 236, 237, and 246 of the Bharatiya Nyaya Sanhita, 2023 (“**BNS**”) seeking initiation of criminal proceedings against Defendant No. 2.

SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

6. The learned Counsel for the Plaintiffs made the following submissions:

6.1. The Plaintiffs are engaged in the business of developing and selling a range of software. One such software, i.e., ISP offers advance visualization and analysis tools, and follow-up tools for medical imaging purposes. The Plaintiffs have invested substantially on research, development and technological innovation for different versions of ISP. A version of ISP, ISP 10, is also protected by copyright registration in China. The Plaintiffs have developed proprietary information, documentation, and software for servicing their medical imaging systems, referred to as the Plaintiffs’ Customer Service Intellectual Property (“**CSIP**”).

6.2. The Plaintiffs have expended substantial efforts to protect the confidentiality, value of the CSIP, and the integrity and functionality of the ISP. Pursuant to such substantial efforts the Plaintiffs’ employees and authorized customer representatives must execute confidentiality agreements in exchange for advanced training and enhanced access to the Plaintiffs’ servicing information and software tools.



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- 6.3. The Plaintiffs by spending considerable time and money have also developed and implemented technological measures to control access to the CSIP materials. One such technological measure is the Plaintiffs’ Integrated Security Tool (“**IST**”), which is a digital rights management solution for preventing unauthorized access to the CSIP. The IST provides mechanisms to manage user entitlements through certificate generation, distribution, and entitlement verification.
- 6.4. The Defendants have circumvented the technological measures such as the IST and the license option files used by the Plaintiffs to protect the ISP and CSIP, with the intention of infringing the Plaintiffs’ rights therein. The Defendants have knowingly and dishonestly accessed and altered the ISP without any authorization or permission from the Plaintiffs. The circumvention of the IST and the license option files grants the Defendants access to the Plaintiffs’ confidential information and trade secret tools. The execution of any of the said trade secret tools shall lead to infringement of the Plaintiffs’ copyright in the ISP, in which the service tools are imbedded. The tampered ISP being sold by the Defendants can lead to adverse consequences to the health and safety of consumers and public at large, in addition to eroding the goodwill and reputation of the Plaintiffs.
- 6.5. The Defendants in collusion and connivance with each other are engaged in the business of procuring and importing old hardware such as CPU and monitors which are refurbished / assembled at the premises of the Defendants wherein pirated versions of ISP are



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being installed by the Defendants. The Defendants, thereafter, are selling such hardware and pirated versions of ISP to diagnostic and medical imaging centers wherein MRI, CT and other diagnostic machines are used. The Defendants are indefinitely extending the expiry period of the trial version of the ISP which after being tampered is available for an indefinite period.

- 6.6. Defendant No. 2 being an employee of Plaintiff No. 3, in the capacity of a Field Service Engineer had access to the Plaintiffs' confidential information and was under a contractual obligation to safeguard the Plaintiffs' confidential information and trade secret tools. However, Defendant No. 2 unauthorizedly accessed and modified the ISP, putting the Plaintiffs' confidential information and trade secret tools at risk.
- 6.7. The Plaintiffs through their representative have also lodged a First Information Report ("FIR") on 24.02.2022 bearing No. 11206020220285 against Defendant No. 2 under Sections 51, 63 and 64 of the Copyright Act, 1957. The FIR provides that a complaint was filed by the representative of the Plaintiffs on 23.02.2022 and thereafter police officials on the same day after meeting Defendant No. 2 at Bhagyoday Hospital, Kadi, District Mehsana, Gujarat seized incriminating material after a search at Defendant No. 2's Ahmedabad residence. Accordingly, a criminal case was instituted against Defendant No. 2 titled '*Government of Gujarat v Karan Hareshbhai Patel*' bearing CC 2532/2022 which is currently pending before Additional Senior Civil Judge and



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A.C.J.M., Kadi Taluka Court. The Plaintiffs thereafter have instituted the present Suit.

- 6.8. This Court *vide* order dated 20.12.2023 records that the software seized from Defendant No. 2 by police during the criminal raid was found to be a tampered trial version of ISP. The Plaintiffs' technical expert further confirmed that the software seized from Defendant No. 2 had an impossible validity of over 5,000 years (1,966,048 days) whereas genuine ISP has a validity of about a month. *Vide* order dated 20.12.2023 a Local Commissioner was also appointed to visit the Defendants' premises to seize the devices / computers containing infringing copies of the ISP including the connected applications or any other product materials / software packages bearing the name or designation 'INTELLISPACE'. Thereafter, the Plaintiffs filed I.A. 9743/2024. *Vide* order dated 02.05.2024, notice was issued in I.A. 9743/2024 and the Defendants were directed to file their reply within 30 days. However, no reply was filed by the Defendants to I.A. 9743/2024.
- 6.9. This Court *vide* order dated 16.12.2024 allowed I.A. 9743/2024 and the Defendants were directed to answer the interrogatories given in Paragraph No. 11 'a.' to 'k.' of I.A. 9743/2024 by way of an affidavit within a period of four weeks thereafter. The period of four weeks as granted *vide* order dated 16.12.2024 expired on 13.01.2025. Defendant No. 2 filed the Affidavit on 08.02.2025. In the Affidavit, Defendant No. 2 provided vague denials to every interrogatory and has summarily denied all allegations, including engaging in the sale of ISP, having access to confidential



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information and circumventing technological measures. The denials as tendered through the Affidavit are demonstrably false and directly contradicts the pleadings / documents on record and amounts to wilful suppression of truth and fabrication of falsehood.

- 6.10. The key contradictions in the Affidavit are as follows:
- a. Defendant No. 2 in its Written Statement has stated that Defendant No. 2 had procured the pirated version of ISP from a Chinese individual, purportedly under the mistaken belief that it was genuine. The relevant paragraph of the Written Statement is reproduced below:

“18. The Defendant had first purchased the said software from a Chinese person for the consideration of \$1200 paid through PayPal, bonafidely believing the software to be genuine and not a pirated copy. The Defendant was trapped by the said Chinese person by selling the pirated software instead of the genuine one, which the Defendant came to know only after the complaint made by the Plaintiff.”

- b. The Report of the Local Commissioner dated 12.01.2024 (“**LC Report**”) states that Defendant No. 2 admitted to using infringing ISP since August 2021. The relevant paragraph of the LC Report is reproduced below:

“In terms of the para 39(iii) of the Order, the undersigned was also required to obtain the details since when the Defendant No. 2 commenced business and started using software applications, which were infringing the Plaintiff’s software. I inquired about the same and was informed by Defendant No. 2 / Karan that he commenced the said business in or around August 2021.”



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c. The Employment Agreement and accompanying undertaking expressly acknowledge having access to and being in possession of confidential and proprietary information pertaining to the Plaintiffs' products and processes. The IST credentials and entitlements confirm Defendant No. 2's access to the Plaintiffs' confidential information and trade secrets tools. The existence and correctness of the Employment Agreement and accompanying undertaking have been admitted by Defendant No. 2 before the Court.

6.11. Therefore, Defendant No. 2 is guilty of *suppressio veri* and *suggestio falsi*. Defendant No. 2 has intentionally and wilfully made false statements and concocted facts with the deliberate intent to mislead and prejudice this Court. The Affidavit is replete with false, evasive, and contradictory statements and is a gross abuse of the process of law. Defendant No. 2 has knowingly and deliberately filed a non-compliant Affidavit, making vague and false denials, with the intent to obstruct the course of justice. The Affidavit contains clear contradictions *vis-à-vis* its own Written Statement, the LC Report, and documents on record that have been admitted by Defendant No. 2 himself. The falsehoods and denials in the Affidavit thus constitute deliberate perjury and an attempt to undermine the authority and process of this Court. The courts all across India deal extremely strictly with parties who have made false statements in the court and had the effect of interfering and / or impeding with the administration of justice.



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- 6.12. Defendant No. 2, despite being legally bound to state the truth and make a true declaration as well as reveal all facts, has knowingly made statements in judicial proceedings before this Court which are false. Defendant No. 2 is liable under Sections 227, 229, 236, 237, and Section 246 of BNS for making false statements and concealing facts in the Affidavit, and is thus punishable thereunder.
- 6.13. Reliance was placed on *Court On Its Own Motion v Rajesh Girothiya and Others*, 2024 SCC OnLine Del 5529 to submit that the LC Report forms part of the Court record and what is recorded in the LC Report, especially when not disputed, shall be deemed to have been recorded / seen by this Court and that statements made under oath contrary to the LC Report obstruct the administration of justice, on *Tata Sia Airlines Limited v Pilot18 Aviation Book Store and Another*, 2019 SCC OnLine Del 9535 to submit that a statement made in the written statement, rendered false by a report of the local commissioner constitutes perjury, on *Whatman International Limited v P. Mehta and Others*, 2019 SCC OnLine Del 6856 to submit that the LC Report is liable to be read in evidence in the Suit as per the provisions of Order XXVI Rule 13 of CPC, on *Dr. Praveen R. v Dr. Arpitha*, 2021 SCC OnLine Kar 15703 to submit that the pendency of the main suit does not render a perjury complaint premature; once the record discloses a deliberate false statement under oath, a court may initiate perjury proceedings at the interlocutory stage, on *Gokaldas Paper Products v Lilliput Kidswear Ltd.*, 2023 SCC OnLine Del 2191, to



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submit that a false statement to the Court has to necessarily invite adverse action, and on *HS Bedi v National Highway Authority of India*, 2016 SCC OnLine Del 432 to submit that (i) the offence of perjury is complete the moment a false claim is filed in Court and that stage of proceedings do not matter, (ii) even a ‘false denial’ is enough to attract provisions of Section 209 of the Indian Penal Code, 1860 (“**IPC**”), (iii) that a person, whose case is based on falsehood, has no right to approach the court and that he can be summarily thrown out at any stage of the litigation, (iv) 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 of the Code of Criminal Procedure, 1972 (“**Cr.P.C.**”) and (v) a local commissioner is a representative of ‘court of justice’, and ‘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.

- 6.14. In *Nishi Gupta v Cattle Remedies* 2021 SCC OnLine Del 3032, this Court observed that the frivolous litigation and false claims have become a serious challenge before the judiciary, resulting in a heavy strain on the judicial system and that perjury and the filing of forged documents have become common practices, and that the reluctance of courts to order prosecution under Section 209 of IPC has encouraged litigants to make false averments. It was observed in *Nishi Gupta (supra)* that false claims compromise the sanctity of judicial institutions and strike at the rule of law, warning that leniency or inaction sends a wrong signal. It was further observed



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in *Nishi Gupta (supra)* that deterrent action is essential to uphold the majesty of law and maintain the efficacy of courts.

6.15. In *KG Marketing India v. Rashi Santosh Soni and Anr.* 2024 SCC OnLine Sel 4553, it was observed that:

“42. Forgery and fabrication are a serious matter. In none of the cases discussed above, the Court has condoned forgery and fabrication. Section 195 (1)(b)(ii) CrPC deals with commission of an offence in respect of a document produced or given in evidence in proceeding in any Court. However, Section 195(1)(b)(i) deals with offences alleged to have been committed, in relation to, a Court proceeding. In the background of the above law, the facts relating to the present case have to be considered. Under the Commercial Courts Act, 2015, every Plaintiff or party has to file an affidavit in support of the plaint and also give a statement of truth with the plaint and the documents...

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44. Both these facts read together shows that although the alleged fabrication of the newspaper might have been done earlier, the affidavit filed before the Court makes a categorical assertion that the document is true and there is no false statement or concealment of any document. The authenticity of these documents has been initially vouched for by the Deponent, Mr. Karan Kumar, who has now admitted that the documents are fabricated. Therefore, the offence has taken place once the suit was filed before this Court and the document was relied upon for obtaining relief.

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47. Under such circumstances, this Court is of the opinion that the offence of forgery/fabrication of newspapers having been admitted and the filing of false affidavit having taken place during the proceedings being pending before this Court, a case is made out for registration of a complaint under Section 340 CrPC. The worthy Registrar General to take action within four weeks in this regard and lodge a complaint with the concerned Judicial Magistrate within four



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weeks. Let the entire documents relating to the present two suits be transmitted to the concerned Judicial Magistrate by the worthy Registrar General for action to be taken in accordance with law.”

- 6.16. Therefore, the present case warrants the initiation of a preliminary inquiry, and upon such inquiry as this Court may deem fit and necessary, a finding to the effect that offence of perjury and other related offences under the relevant provisions of BNS stand committed before this Court by Defendant No. 2 and thereby a direction for lodging a complaint against Defendant No. 2 under Section 379 read with Section 215 of BNSS.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 2:

7. The learned Counsel for Defendant No. 2 made the following submissions:

- 7.1. *Vide* order dated 28.04.2025, this Court framed issues in the present Suit, relevant of which are reproduced below:

“ii. Whether the defendants’ use/sale of a pirated/tampered version of the plaintiffs’ ‘IntelliSpace Portal’ software amounts to copyright infringement of the plaintiffs’ software? OPP

iii. Whether the defendants’ use of the trade-marks “PHILIPS” and “INTELLISPACE” in relation to computer software/hardware/medical/diagnostic instruments constitutes infringement of the Plaintiffs’ registered trade-marks? OPP

iv. Whether defendant no.2, being an ex-employee of plaintiff no.3, has misused plaintiffs’ confidential information/trade secrets, and circumvented the technological measures implemented by plaintiffs to protect their ‘IntelliSpace Portal’ software and confidential information? OPP”

- 7.2. Despite framing of issues, the Plaintiffs have filed the present Application alleging perjury on the basis of alleged vague



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statements, bald denials and contradictions in the Affidavit on the basis of (a) Paragraph No. 18 of the Written Statement (b) The LC Report (c) The Employment Agreement filed by the Plaintiffs.

- 7.3. Defendant No. 2 has made no statement either in the Written Statement, the Affidavit, or the LC Report admitting sale of a pirated version of ISP by Defendant No. 2. The present Application also does not refer to any instance of any such admission.
- 7.4. Mere execution of the Employment Agreement does not establish the alleged access to the Plaintiffs' confidential information and trade secret tools. The present Application does not refer to any instance where Defendant No. 2 has admitted having access to the Plaintiffs' confidential information and trade secret tools, and that the Plaintiffs have not produced any unimpeachable evidence as document or a statement demonstrating that Defendant No. 2 actually received the Plaintiffs' confidential information and trade secret tools and made false statements in relation thereto. Further, since Issue No. iv. relating to misuse of the Plaintiffs' confidential information and trade secret tools is pending Trial, any finding at this stage as regards the veracity of the statement made by Defendant No. 2 pertaining to Defendant No. 2's access to the Plaintiffs' confidential information and trade secret tools would defeat the purpose of Trial.
- 7.5. Also, Defendant No. 2 has made no statement either in the Written Statement, the Affidavit, or the LC Report admitting any circumvention of technological measures implemented by the Plaintiffs to protect the ISP and the present Application also does



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not refer to any instance where Defendant No. 2 has admitted to having bypassed or tampered the ISP; moreover, Issue No. iv. relating to circumvention of technological measures implemented by the Plaintiffs to protect the ISP is pending Trial, and any finding at this stage as regards the truth or falsity of the statements made by Defendant No. 2 in the Affidavit pertaining to the alleged circumvention of technological measures implemented by the Plaintiffs to protect the ISP would defeat the purpose of Trial.

- 7.6. The Supreme Court in ***K.T.M.S. Mohd. v. Union of India***, (1992) 3 SCC 178 has held that mere contradiction in the statement of deponent cannot be termed as perjury and further observed that:

“the mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under Section 193 IPC but it must be established that the deponent has intentionally given a false statement in any stage of the ‘judicial proceeding’ or fabricated false evidence for the purpose of being used in any stage of the judicial proceeding”.

- 7.7. The Supreme Court in ***James Kunjwal v. State of Uttarakhand***, 2024 SCC OnLine SC 1943, has held that an offence of perjury sustains when (i) The court is of the *prima facie* opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s); (ii) Such proceedings should be initiated when doing the same is ‘*expedient in the interests of justice to punish the delinquent*’ and not merely because of inaccuracy in statements that may be innocent / immaterial; (iii) There should be ‘*deliberate falsehood on a matter of substance*’; (iv) The court should be satisfied that



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there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion; (v) The proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the court. It was also held in ***Chandrapal Singh v. Maharaj Singh***, (1982) 1 SCC 466 that mere fact that the response in evidence does not inspire confidence cannot be termed as perjury.

- 7.8. The LC Report records that the Local Commissioner did not find any infringing software at the premises of Defendant No. 2. The LC Report records statement of Defendant No. 2 pertaining to merely commencement of Defendant No. 2's business and not date from which infringing products are used. Even if Defendant No. 2 had made such a statement which would have been inconsistent with the statements made in the Affidavit, the same could not amount to perjury as the LC Report and interactions cannot be equated with deposition before Court and the statements made therein do not attract the rigour of perjury.
- 7.9. In ***Deepak Malhotra v. National Sports Club of India***, 2008 SCC OnLine Del 397 it was held that:

“...Thus, commissioners are appointed to ascertain market value of a property, to report as to accounts, state of the property and such like matters. However, the essential functions of the Court, which require adjudication cannot be gone into by the commissioner. Thus, in Ram Krishna v. Rattan Chand, AIR 1931 PC 136 it was held that the law does not authorize the Court to delegate to a commissioner a trial of any material issue which the Court itself has to try...”



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Further, in *M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service*, (2022) 14 SCC 345 it was held that:

“The commissioner so appointed does not strictly perform a 'judicial act which is binding' but only a 'ministerial act'. Nothing is left to the commissioner's discretion, and there is no occasion to use his judgment or permitting the commissioner to adjudicate and decide the issue involved; the commissioner's report is only an opinion or noting, as the case may be with the details and/or statement to the court the actual state of affairs. Such a report does not automatically form part of the court's opinion, as the court has the power to confirm, vary or set aside the report or in a given case issue a new commission.”

- 7.10. Invoking perjury jurisdiction at this juncture, particularly on the basis of alleged contradictions which may be clarified or explained during cross-examination, would lead to multiplicity of proceedings and disrupt the orderly conduct of the Trial. The maintainability of a perjury complaint necessarily depends on whether the alleged falsehood can be tested against unimpeachable evidence. In the present case, the statement made before the learned Local Commissioner relates only to Defendant No. 2's business activities and the sole document relied upon by the Plaintiffs to allege breach of confidentiality is the Employment Agreement. No conclusive or unimpeachable evidence has been placed on record to show that Defendant No. 2 either circumvented technological measures implemented by the Plaintiffs to protect the ISP or that Defendant No. 2 sold infringing copies of the ISP. The Supreme Court in *Aarish Asgar Qureshi v. Fareed Ahmed Qureshi*, (2019) 18 SCC 172 has held that:



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“there should be something deliberate- a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise... In the facts of the present case, it is clear that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence has not yet been led.”

7.11. This Court in ***Vishal Kapoor v. Sonal Kapoor***, 2014 SCC OnLine Del 4484 has also observed that:

“proceedings under Section 340 Cr.P.C. should not be resorted to when the criminal case is calculated to hamper fair trial of issues in the civil court before which the matter would probably go on for longer.”

This Court in ***Jindal Polyester Ltd. v. Rahul Jaura***, 2005 SCC OnLine Del 1088, and ***Kuldeep Kapoor v. Susanta Sengupta***, 2005 SCC OnLine Del 1322, has also held that application under Section 340 Cr.P.C. should ordinarily be considered only at the final stage and not during the pendency of the main proceedings.

7.12. In light of the above submissions, the present Application deserves to be dismissed.

ANALYSIS AND FINDINGS:

8. The question that arises for determination is whether the statements made by Defendant No. 2 in the Affidavit, constitute an offence of perjury thereby warranting criminal proceedings under Section 379 read with Section 215 of BNSS.

9. Before analysing the facts of the present case it is important to first set out the law governing initiation of criminal proceedings under Section 379 read with Section 215 of the BNSS for offences under Sections 227, 229, 236, 237, and 246 of BNS.



10. The Supreme in the case of **James Kunjwal** (*supra*) while observing that the statement in question made by the litigant therein in an counter affidavit that was deemed to be befitting the offence of perjury, was more in the nature of denial of the statements made in the affidavit of the complainant therein, held that:

“18. We are of the view that, in the present facts, a denial simpliciter cannot meet the threshold, as described in the judgments above, particularly when no malafide intention/deliberate attempt can be understood from the statement made by the appellant in the affidavit. As has already been observed, mere suspicion or inaccurate statements do not attract the offence under the Section. It cannot be disputed that the statements made in the affidavit were only to state his version of events and/or deny the version put forth by the complainant.”

(Emphasis supplied)

11. The Supreme Court in **Aarish Asgar Qureshi** (*supra*) referred to the observations made in **Chandrapal Singh v. Maharaj Singh** [**Chandrapal Singh v. Maharaj Singh**, (1982) 1 SCC 466 as under:

“8. Similarly in Chandrapal Singh v. Maharaj Singh [Chandrapal Singh v. Maharaj Singh, (1982) 1 SCC 466 : 1982 SCC (Cri) 249] , this court, in para 14, stated : (SCC pp. 473-74)

“14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any court of justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being



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attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199 IPC. To illustrate the point, Appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of Premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out, in courts averments made by one set of witnesses are accepted and the counter-averments are rejected. If in all such cases complaints under Section 199 IPC are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the court. The learned counsel for the respondents told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 CrPC.

(Emphasis supplied)

12. The Karnataka High Court in the case of **Rajesh K.N. v. K.R. Umesh**, 2023 SCC OnLine Kar 63 observed that the court before directing a



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complaint to be lodged for an offence of perjury, must form an opinion on being satisfied or come to the conclusion on such satisfaction that the person charged has intentionally given false evidence and such formation of opinion must be on consideration of materials duly placed. The Karnataka High Court in **Rajesh K.N.** (*supra*) further relied on the observations by the Calcutta High Court in the case of **Bibhuti Basu v. Corporation of Calcutta**, 1982 Cri LJ 909 wherein it was held that:

“27. If there is any doubt or any semblance such doubt in the mind of the Court, in respect of the bona fides of the defence of the person charged of the action, the Court, in my view, will not be justified in exercising the power to direct the lodging of a complaint Under Section 340 simply because such action has been filed. The purpose of making a complaint against a person, would be for intentionally giving false evidence or for intentionally fabricating such evidence and that too with the aim and object as mentioned hereinbefore, at any stage of the proceeding.”

(Emphasis supplied)

13. The observations of Division Bench of this Court in **Vishal Kapoor** (*supra*) are also very relevant to the present case:

“6. It is unfortunate that neither counsel drew attention to the law on the matter. One of us (Rajiv Sahai Endlaw, J.) had occasion in Punjab Tractors Ltd. v. International Tractors Ltd. 167 (2010) DLT 490 to deal with the said aspect and on a conspectus of the case law on the subject, held as under:-

18. In my opinion, an application under section 340 of the cr.pc ought to be normally considered at the time of final decision of the case only and not at the interim stage as the defendants/applicant have pressed in the present case. It is the settled legal position that the said provision cannot be resorted to, to satisfy a private grudge of the litigant. In fact the very genesis of this provision is to prevent complaints being filed of offences having being committed in relation to the court proceedings; it was felt that if such complaints are permitted to be filed, the same



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may be used to force the other party into giving up its claim/defence or to dissuade witnesses from appearing before the courts under threat of criminal prosecution. It was held as far back as in Rewashankar Moolchand v. Emperor AIR 1940 Nagpur 72 that proceedings under Section 340 Cr.PC should not be resorted to when the criminal case is calculated to hamper fair trial of issue in the civil court before which the matter would probably go on for longer. This court also in Jindal Polyster Ltd. v. Rahul Jaura 124 (2005) DLT 613 and in Kuldeep Kapoor v. Susanta Sengupta 126 (2006) DLT 149 has held that applications under section 340 of the Cr.pc should be dealt with at the final stage only and not at the interim stage. I also find a consistency of view in this regard in the other High Courts. The law is that a prosecution for perjury should not be ordered by the court before the close of the proceedings in the case in which false evidence is given. It is highly wrong for a court to take action under the said provision against a witness or a party for giving false evidence when trial is underway.

21. Formation of prima facie opinion that a person charged has intentionally given false evidence is a condition precedent for directing lodging of a complaint. The existence of mens rea or criminal intention behind act complained of will have to be looked into and considered before any action under section 340 of the cr.pc is recommended. Before setting the criminal law into motion, the court should exercise great care and caution and it must be satisfied that there is reasonable foundation for the charge in respect of which prosecution is directed. No prosecution ought to be ordered unless reasonable probability of conviction is found. Considering the nature of the documents and evidence in relation whereto offences are alleged to have been committed, I find the said ingredients to be lacking in the present case.”

(Emphasis supplied)

14. A three Judge Bench of the Supreme Court in the case of **N.S. Nandiesha Reddy v. Kavitha Mahesh**, (2021) 19 SCC 321 relied on law as



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settled in *K.T.M.S. Mohd. (supra)* and *Amarsang Nathaji v. Hardik Harshadbhai Patel*, (2017) 1 SCC 113 and further observed that:

“6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as “IPC”); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1)CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd. v. Union of India [K.T.M.S. Mohd. v. Union of India, (1992) 3 SCC 178 : 1992 SCC (Cri) 572]* .) The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.”

(Emphasis supplied)

15. The Plaintiffs have sought to characterise the statements made by Defendant No. 2 in the Affidavit as deliberate falsehoods, contending that they are in contradiction with (i) Paragraph No. 18 of Defendant No. 2’s Written Statement, (ii) Paragraph No. 12 of the LC Report, and (iii) Employment Agreements and accompanying undertaking forming part of Index IV of the Plaintiffs’ Documents. According to the Plaintiffs, these contradictions demonstrate that Defendant No. 2 has wilfully made false statements regarding Defendant No. 2’s access to the Plaintiffs’ confidential information and trade secret tools, the circumvention of the Plaintiffs’ technological protection measures implemented by the Plaintiffs to protect the ISP, and the use and sale of pirated versions of ISP and is accordingly liable for an offence of perjury.



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16. The Written Statement filed by Defendant No. 2 states that Defendant No. 2 had first purchased the ISP from a Chinese person for the consideration of \$1200 *bona fidely* believing the ISP to be genuine and not a pirated copy of any other software and that Defendant No. 2 was trapped by the said Chinese person by selling the pirated version of ISP instead of the genuine one, as agreed, which Defendant No. 2 came to know after the complaint made by the Plaintiffs. The Written Statement filed by Defendant No. 2 further states that Defendant No. 2 had informed the Plaintiffs and Police regarding the Chinese person who sold the ISP to Defendant No. 2 but the Plaintiffs instead of taking action against the real culprit and infringer filed the present Suit against the Defendants.

17. The law governing the initiation of criminal proceedings under Section 379 read with Section 215 of the BNSS, for offences under Sections 227, 229, 236, 237, and 246 of the BNS, provides that for a statement to constitute 'false evidence' under Section 227 BNS, the falsity must be clear, deliberate, and established through unimpeachable evidence. Mere inconsistencies in versions or bare denials do not meet this threshold. The Written Statement reflects Defendant No. 2's explanation that he had purchased the alleged pirated version of ISP under a *bona fide* belief of its genuineness, a contention the veracity of which can only be determined upon leading of evidence.

18. The Plaintiffs have further relied upon Paragraph No. 12 of the LC Report to contend that Defendant No. 2 admitted to having commenced the alleged infringing business in or around August 2021, the contention against which Defendant No. 2 has submitted that the statement of Defendant No. 2



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was *qua* commencement of business and not the date from which alleged infringing activities are allegedly carried out.

19. The LC Report cannot be read selectively, when the preceding Paragraph No. 11 is also considered, wherein the Local Commissioner upon inspection of the premises of Defendant No. 2 has recorded that no infringing material of the ISP was found on the devices inspected by the Local Commissioner on the date of the Local Commission. Thus the LC Report, taken as a whole, does not reveal any undisputed acknowledgment by Defendant No. 2 of having commenced the alleged infringing business from any date. This Court in *Rajesh Girothiya (supra)*, has held that the report of the local commissioner forms a part of the court record and what is recorded therein, especially when it has not been disputed, shall be deemed to have been recorded / seen by the court. In the present case, Defendant No. 2 is clearly disputing the statement as recorded by the learned Local Commissioner that Defendant No. 2 admitted to having commenced the alleged infringing business in or around August 2021.

20. The Plaintiffs' attempt to invoke the perjury jurisdiction against Defendant No. 2 on the basis of the Employment Agreement is misconceived. The mere presence of the Employment Agreement cannot, by itself, render the denial made by Defendant No. 2 as regards the allegation of having accessed confidential information a 'deliberate falsehood' within the meaning of Section 227 BNS. The Affidavit merely states that Defendant No. 2 had access to limited basic operational manuals and troubleshooting guidelines related to customer support tasks, and denies having access to or handled any proprietary or trade secret-level confidential information of the Plaintiffs. The law, as settled in *Aarish Asgar Qureshi (supra)*, provides



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that to initiate criminal proceedings for an offence of perjury a statement must be demonstrably false when tested against unimpeachable evidence and made with intent to mislead the Court. In absence of a material demonstrating that the said statement is false or made with intent to mislead the Court, the foundational requirement for invoking perjury jurisdiction is not met.

21. In the present case, the statements made by Defendant No. 2 in the Affidavit merely represent Defendant No. 2's version of facts in answer to the interrogatories raised by the Plaintiffs. The law strikes a balance between deterring dishonesty and protecting the right to defend oneself. A person may deny allegations in defence or provide a version of facts that is later disproved, but that does not by itself establish intent to mislead the court. A mere denial of the Plaintiffs' assertions in response to the interrogatories, without any unimpeachable evidence to the contrary or any indication of deliberate intent to mislead the Court for securing a favourable order, cannot by itself attract the rigours of perjury. To treat such denial as a deliberate falsehood would be to convert differences in factual narrations into a criminal proceeding, which is not permissible in law. The essence of the perjury jurisdiction lies in punishing deliberate falsehoods, and not mere differences in factual narrations.

22. As regards the case laws relied upon by the Plaintiffs namely *Tata Sia Airlines Limited* (*supra*), *Dr. Praveen R.* (*supra*), *Gokaldas Paper Products* (*supra*), *H.S. Bedi* (*supra*), *Nishi Gupta* (*supra*), and *KG Marketing India* (*supra*), while invoking the perjury jurisdiction, the Court had found a clear and deliberate falsehood or fabrication supported by unimpeachable evidence. However, in the present case, no such falsity has been



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demonstrated. Accordingly, the question of applying the ratio of the above authorities does not arise.

23. Before filing of the complaint under Section 379 read with Section 215 of the BNSS, the Court along with a clear and deliberate falsehood supported by an unimpeachable evidence has to record a finding to the effect that it is expedient in the interests of justice having regard to the effect or impact, such commission of offence has upon administration of justice.

24. The statements made by Defendant No. 2 in the Affidavit do not make it expedient in the interest of justice, nor constitute exceptional circumstances in which perjury jurisdiction may be invoked. Therefore, the requirements necessary to justify initiation of proceedings under Section 379 read with Section 215 of BNSS for offences under Sections 227, 229, 236, 237 and 246 of BNS are not fulfilled. The Application is, therefore, dismissed.

TEJAS KARIA, J

NOVEMBER 24, 2025

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