

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Pronounced on: 21.11.2025

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CM(M) No.86/2023

M/S ACE ENTERPRISES

...PETITIONER(S)/APPELLANT(S)

Through: - Petitioner in person.

Vs.

SHRI JAGDEEP RANA

...RESPONDENT(S)

*Through: - Mr. D. C. Raina, Sr. Advocate (thr. VC) with
Mr. B. A. Dar, Advocate.*

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)

1) The petitioner, through the medium of present petition, has challenged order dated 14.03.2023, passed by learned Judge Small Causes, Srinagar (hereinafter referred to as "the trial court"), whereby application of the petitioner seeking initiation in proceedings against the respondent for having committed offences under Sections 192 and 193 of RPC has been rejected.

2) Before coming to the impugned order, it would be necessary to give a brief background of the facts leading to the filing of the present petition.

3) It seems that a civil suit titled M/S ACE Enterprises vs. Union of India and Others seeking declaration and injunction

came to be filed by the petitioner before the trial court on 13.04.2006. The defendants in the suit filed an application under Section 8 of the J&K Arbitration Act before the learned trial court invoking the arbitration clause. During the pendency of the said application, the respondent was appointed as Arbitrator and he proceeded to enter upon the reference. It seems that the petitioner filed an application before the learned trial court seeking stay of the arbitration proceedings on which an interim order came to be passed on 22.06.2011 and the proceedings before the respondent were stayed. On receipt of the said order, the respondent, in terms of order dated 24.06.2011, adjourned the proceedings *sine die*. However, the defendant before the trial court filed an application before the Arbitrator seeking recall of order dated 24.06.2011. The said application was allowed by the respondent Arbitrator on 16.09.2011 and order dated 24.06.2011 was recalled. This prompted the petitioner to file a contempt petition before the learned trial court. On 6th of November, 2013, the learned trial court dismissed the contempt petition filed by the Petitioner.

4) Aggrieved by order dated 6th of November, 2013, passed by the trial court, the petitioner invoked the jurisdiction of this Court by filing a writ petition bearing OWP No.377/2014. Vide order dated 16th of December, 2015, the writ petition was

allowed and the order of the trial court was set aside and a direction was issued to the said court to proceed in accordance with the law. In the meantime, the award came to be passed by the respondent Arbitrator, which was stayed by the High Court.

5) Against order dated 22nd of June, 2011, passed by the High Court, a Special Leave Petition came to be filed by defendant M/S Indian Oil Corporation and the respondent Arbitrator before the Supreme Court. The said Special Leave Petition came to be disposed of by the Supreme Court in terms of order dated 07.02.2018. The operative portion of the order is reproduced as under:

- (i) *The application filed by the respondent for initiating contempt shall be treated as an application for taking action under Order XXXIX Rule 2A of the Jammu and Kashmir Code of Civil Procedure. It shall be renumbered accordingly.*
- (ii) *The trial court shall first see whether there is any disobedience of the order of injunction and in case the court enters a finding of disobedience, the rest under Order XXXIX Rul 2A alone shall follow.*

6) The Supreme Court further observed as under:

The submission made by the appellants regarding separate contracts and pending application under Section 8 of the Jammu and Kashmir Arbitration Act etc. are open to the appellants to canvas before the trial court at the appropriate stage. It will also be open to the respondent to take all available contentions before the trial court. Being a matter pending since long,

we direct the trial court to take a decision accordingly on the application expeditiously and preferably within a period of three months from the date of receipt of a copy of this judgment.

7) After the disposal of Special Leave Petition by the Supreme Court, the petitioner filed an application before the learned trial court seeking initiation of proceedings against the respondent Arbitrator for having committed perjury. According to the petitioner, in the rejoinder filed by the respondent before the Supreme Court, he has stated certain facts falsely on oath with an intention to influence and induce the Supreme Court, thus tried to pollute the administration of justice. It has been contended that the respondent has filed a false rejoinder affidavit before the Supreme Court, and in accordance with the mandate of the judgment of the Supreme Court dated 07.02.2018, the petitioner is within his right to file the application for initiating proceedings under Sections 192 and 193 of RPC against the respondent. It has been contended that the respondent has filed a false affidavit stating that he did not file any rejoinder before the Supreme Court.

8) The learned trial court, after hearing the parties and after analyzing the material on record, came to the conclusion that no case for proceeding against the respondent is made out and, accordingly, the complaint filed by the petitioner was dismissed.

9) The petitioner has challenged the impugned order, primarily, on the grounds that the learned trial court has, despite noticing all the contentions of the petitioner, failed to appreciate the same. It has been contended that the respondent Arbitrator was impleaded as petitioner No. 2 before the Supreme Court, therefore, his contention that he has not filed any rejoinder affidavit before the Supreme Court is patently false. It has been contended that in the rejoinder affidavit, the respondent has made false assertions to his knowledge, and therefore, he is liable to be prosecuted for offence under Section 193 RPC.

10) I have heard the petitioner in person and I have heard Mr. D. C. Raina, learned Senior Counsel, appearing on behalf of the respondent Arbitrator. I have also gone through the record.

11) As already noted, the petitioner is seeking initiation of criminal proceedings against the respondent on the ground that he has fabricated false evidence and, thus, committed an offence as defined under Section 192 of RPC punishable under Section 193 of RPC.

12) Section 195 of the J&K Cr. P. C provides that no Court shall take cognizance of any offence punishable, *inter-alia*, under Section 193 of RPC when such offence is alleged to have been committed in or in relation to any proceeding in any court

except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf or of some other court to which that court is subordinate. Section 476 of J&K Cr. P. C provides the procedure in cases mentioned in Section 195 of J&K Cr. P. C. It reads as under:

476. Procedure in cases mentioned in section 195.-(1) *When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in section 195, Sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is nonbailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:*

Provided that, where the Court making the complaint is the High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

(2) such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred,

that an appeal is pending against the decision arrived at in the judicial proceedings out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.

13) A plain reading of sub-section (1) quoted above, would show that before making a complaint in respect of offences mentioned in section 195 Cr.P.C, which would include an offence under Section 193 RPC, the concerned court has to make a preliminary inquiry and record a finding that an offence referred to in Section 195(1) clause (b) or clause (c) appears to have been committed in relation to a proceeding in that court, meaning thereby that an inquiry in this regard has to be made by the court in relation to whose proceedings an offence of perjury has been committed, whereafter the said court has to frame an opinion that such an offence has been committed. It is only thereafter that the said court or an officer authorized by the said court can make a complaint before the jurisdictional magistrate.

14) In the present case, the petitioner claims that the respondent Arbitrator had filed a false rejoinder before the Supreme Court in the Special Leave Petition filed by Indian Oil Corporation before the said Court. Thus, if any false affidavit has been filed by the respondent in relation to proceedings before the Supreme Court, it is only that Court which can, after holding a preliminary inquiry in terms of Section 476 of the

J&K Cr.P.C., which is in *pari-materia* with Section 340 of the Cr. P.C., frame an opinion as to whether an offence of perjury has been committed by the respondent, whereafter the Supreme Court, through its authorized officer, can make a complaint to the jurisdictional Magistrate.

15) In the present case, the petitioner seeks initiation of proceedings for perjury against the respondent from the trial court. Before the said court, even as per the case of the petitioner, the respondent has not filed any false pleading.

16) The petitioner has submitted that the Supreme Court vide order dated 07.02.2018 had given liberty to him to urge all other contentions and issues before the trial court and it is because of this, he had approached the trial court by way of a complaint against the respondent. In this regard, a perusal of the order passed by the Supreme Court on 07.02.2018 does show that the petitioner has been given liberty to raise all other contentious issues before the trial court, but it nowhere provides that the petitioner has been given liberty to raise even the issue with regard to initiation of proceedings for perjury, in respect of the proceedings that have been conducted before the Supreme Court.

17) In any case, even on merits, the petitioner does not have a case. It is the contention of the petitioner that the respondent

had filed a false rejoinder affidavit before the Supreme Court. He has placed on record a copy of the rejoinder that has been filed to his counter-affidavit before the Supreme Court. A bare perusal of the rejoinder affidavit would reveal that the same has been signed by Ms. Sonia Sanjwani, Law Officer of Indian Oil Corporation. The rejoinder affidavit has not been signed by the respondent who was an Arbitrator and not a contesting party either before the trial court or before the Supreme Court. Therefore, even if any false assertion has been made in the proceedings before the Supreme Court, the same has not been made by the respondent. Thus, the learned trial court has rightly declined to initiate proceedings on the basis of the application of the petitioner against the respondent.

18) For the foregoing reasons, I do not find any merit in the petition. The same is dismissed accordingly.

**(SANJAY DHAR)
JUDGE**

Srinagar

21.11.2025

“Bhat Altaj”

*Whether the **ORDER** is speaking: **Yes***

*Whether the **ORDER** is reportable: **Yes/No***