



IN THE HIGH COURT OF ORISSA AT CUTTACK

**I.A. Nos.882 & 905 of 2025
(CRLREV No.420 of 2025)**

Sonia Tripathy **Petitioner**
Mr. Milan Kanungo, Senior Advocate
along with Mr. A.K. Acharya, Advocate

-Versus-

State of Odisha **Opposite Party**
Ms. B. Dash, ASC
Mr. H. S. Mishra, Advocate

**CORAM:
JUSTICE R.K. PATTANAİK**

DATE OF HEARING:24.09.2025

DATE OF ORDER:13.01.2026

1. Both the IAs are disposed of by following common order.
2. I.A.No.905 of 2025: Instant petition under Sections 340 Cr.P.C. read with Section 379 BNSS is at the behest of the informant, namely, opposite party No.2 for a direction to initiate action against the petitioner in terms thereof for having committed the offences punishable under Sections 193, 195, 199 & 200 I.P.C. expedient in the interest of justice on the grounds stated for having pleaded false facts in the reply affidavit dated 30th July, 2025.
3. I.A.No.882 of 2025: Present petition is filed by opposite party No.2 directing the petitioner to produce the document and such order with regard to amalgamation of the partnership firm in question with the company, namely, Lumex Resources Pvt. Ltd. for the reason stated.



According to opposite party No.2, the action under Section 340 Cr.P.C. is necessary, since, the petitioner has filed a false affidavit in the proceeding before this Court for self and co-accused husband pending disposal with the plea that the details of the chargesheet have not been revealed, rather, it contains misleading averments and in so far as the case at hand is concerned, the same is evident from the list of the dates and events described by her. It is further pleaded that the accused husband is claimed to be the Director of Lumex Resources Pvt. Ltd., a fact, which is outrightly false, inasmuch as, he was never holding any such position in the company. The statement that the partnership firm managed by the petitioner and her husband had been amalgamated with the company is again a falsehood, for the reason that both the accused persons claimed such amalgamation by a Board Resolution to that effect, which was later ascertained to be incorrect and the partnership firm still exists independently as on date. It is alleged by opposite party No.2 that the averments in the revision petition are completely false with regard to the claim of the petitioner about the company having been formed. Referring to the facts pleaded further, it is stated by opposite party No.2 that there is misrepresentation of material facts, since no Official Liquidator was ever appointed and no such order of liquidation was passed since because the Resolution Professional was appointed by the NCLT, who during forensic audit had figured out that there has not been any business undertaken by the company and the amount was misappropriated through various other shell companies as there were nil assets and the company was dissolved without the process of liquidation. According to opposite party No.2, there has been misrepresentation of facts



by the petitioner and the co-accused with regard to the documents pertaining clientele base revealed to them and besides that, the investigation unearthed the fact that the documents showing the transactions to have been forged and fabricated and that apart, one of the shell companies was formed after the loan was availed from opposite party No.2. With such other facts pleaded, it is finally alleged by opposite party No.2 that the petitioner has misled the Court with an intention to defraud and interfere with the administration of justice and hence, she is liable to be prosecuted with a complaint filed against her having committed offenses punishable under Section(s) 191 and 192 I.P.C. especially having pleaded incorrect and false facts in the reply affidavit.

4. Heard Mr. Kanungo, learned Senior Advocate along with Mr. Acharya, learned counsel appearing for the petitioner and Mr. Mishra, learned counsel for opposite party No.2 besides Ms. Dash, learned ASC for the State.

5. Perused the reply affidavit filed by the petitioner and such other affidavits available in the record. Mr. Mishra, learned counsel for opposite party No.2 referring to the host of decisions would submit that action under Section 340 Cr.P.C. is absolutely necessary. Having considered the facts pleaded on record and rival contentions of the parties, the Court is to determine, whether any such action is necessary in terms of Section 340 Cr.P.C. accepting the plea of opposite party No.2 that the petitioner is prima facie guilty of interfering with the administration of justice having filed the affidavit and averments made therein for being false?



6. In course of hearing, both sides cited case laws in favour of and against the contentions advanced with the plea of the petitioner that no action under Section 340 Cr.P.C. is needed in the peculiar facts and circumstances of the case and that of opposite party No.2 in favour of a prosecution with a complaint filed against her alleging false evidence pleaded on oath.

7. Referring to the affidavits filed and the relevant documents produced in Court, Mr. Kanungo, learned Senior Advocate and Mr. Acharya, learned counsel for the petitioner submit that there has been no false evidence adduced by the petitioner since the revision is filed questioning the legality of the order declining her discharge and on the ground that the dispute is entirely civil in nature and the allegations in the FIR lodged by opposite party No.2 have been merely referred to while defending the charges levelled and therefore, it would not be just and proper to allege malafide or leading false evidence inviting an action under Section 340 Cr.P.C.

8. In Moti Lal Songara Vrs. Prem Prakash @ Pappu and another 2013 (9) SCC 199, the Apex Court considering concealment of facts observed that Court is not laboratory where children come to play and further concluded that anyone who takes recourse to method of suppression in a Court of law, is, in actuality, playing fraud with the Court and the maxim 'supressio veri, expressio falsi'-suppression of the truth is equivalent to the expression of falsehood gets attracted. In the above decision, it is also observed that law is well settled that a litigant, who attempts to pollute the stream of justice or touches the pure fountain of justice with tainted hands, is not entitled to



any relief, interim or final. Suppression of material facts from the court of law is actually playing fraud with the court.

9. This Court while dealing the case in I.A. No.656 of 2025 has taken judicial notice of the citations referred to by both the sides and therefore, is to reiterate the same. Whether repeating the allegations from FIR either as a defence or explanation with averments in reply affidavit amounts to leading false evidence? At the cost of repetition, it is stated that what has been revealed to opposite party No.2 and reproduced in the FIR with the allegation that she was misled, misrepresented and subjected to fraud have been referred to while pleading that the averments are in a way explanatory and a defence against criminal action and against the aforesaid backdrop, the Court is inclined to reply to the above question formulated. Any such defence with reference to the facts alleged in the FIR would be false evidence while questioning the correctness of the rejection order denying discharge and for an action under Section 340 Cr.P.C depends on the facts pleaded on record. It is well known that an FIR merely sets the criminal law into motion and it contains allegations that need to be investigated and proven in a court of law and reiterating such unproven allegations as a part of a defence strategy is typically experienced as presenting a version of events, not necessarily amounting to false evidence. The statements made in the FIR or repeated in an application challenging prosecution may have to be considered as contention of a case and not formal evidence in the strict sense until they are tested through a legal process and by way of a trial. The law provides significant leeway for a person to present his defence and the courts are generally hesitant to



initiate proceedings under Section 340 Cr.P.C. unless there is clear and convincing evidence of a deliberate intent to fabricate or present demonstrably false material to mislead the court. Such burden of proving an offence lies with the prosecution.

10. In fact, according to the Court, Section 340 Cr.P.C requires mens rea which deals with an action for perjury and contempt related to false evidence initiated when the Court believes that it is expedient in the interest of justice to prosecute a person for intentionally giving false evidence or fabricating false evidence during a judicial proceeding. Merely repeating an existing allegation in a legal challenge does not automatically lead to an action under Section 340 Cr.P.C. In summary, the act of repeating allegations from an FIR in a legal challenge is usually considered a procedural and strategic move in a defence, not an act of leading false evidence, however, it can be demonstrated that the defence is knowingly using false information with the intent to mislead the court relied upon the same and under such circumstances, powers under Section 340 Cr.P.C. could be invoked. Furthermore, in the humble view of the Court, an accused has a right to raise a defence and in the event, challenged the prosecution with an application under Section 482 Cr.P.C. and therein, if any affidavit is filed and the same is referable to the facts alleged in the FIR may be as a means of defence is not to be branded as false evidence In such a situation, the Court is to be cautious in initiating an action under Section 340 Cr.P.C.

11. On a reading of the citations referred to by Mr. Mishra, learned counsel for opposite party No.2, it would not be incorrect to conclude that reiterating allegations from an FIR as



a defence or explanation justifying the same to be not untrue while challenging a criminal prosecution does not automatically amount to leading false evidence inviting action under Section 340 Cr.P.C. It is not that every false or contradictory statement is sufficient to initiate perjury proceedings but a Court must be satisfied that it is expedient in the interest of justice to hold an enquiry and that apart, falsity must be related to a matter of substance affecting the administration of justice and before any such action, even a preliminary enquiry may be dispensed with, which is not mandatory and for that purpose, impact of false evidence on the administration of justice is to be weighed, not an injury to the individual. Besides the above, falsity must be deliberate and conscious and not merely an inaccurate statement or denial. Inconsistencies may be explained during trial or in a proceeding pending before the court and are not sufficient on their own to start proceeding under Section 340 Cr.P.C.

12. In James Kunjwal Vrs. State of Uttarakhand and another in SLP Criminal No.9783 of 2023 dated 13th August, 2024, the Apex Court observed that mere denial or inaccurate statements do not attract offence of perjury and referring to the judicial pronouncements culled out the following principles, such as, (i) the Court should be of prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against a person, who has allegedly made a false statement; (ii) such proceeding should be initiated when doing the same is expedient in the interest of justice to punish the delinquent and not merely because of inaccuracy statements that may be innocent or immaterial; (iii) there should be



deliberate falsehood on a matter of substance; (iv) the Court should be satisfied that there is reasonable foundation for the charge with distinct evidence and not mere suspension; and (v) the proceeding should be initiated in exceptional circumstances for instance when a party has perjured themselves to beneficial orders from the Court and finally observed that prosecution in such cases would be unjust if the above conditions are not satisfied.

13. In the case at hand, the information disseminated to opposite party No.2 alleged to be false and fraud to have been alleged against the petitioner to defend the action and to claim that the case for discharge is made out and referring to the same, it has been alleged that there is false information or affidavit filed hence an action under Section 340 Cr.P.C is necessary. The FIR is lodged against the petitioner and co-accused husband with whatever allegations made therein and according to the Court, such allegations are to be subjected to scrutiny during trial. Even though, there has been a chargesheet filed against the accused persons with a conclusion reached at that both of them have played fraud on opposite party No.2, denying which, discharge is claimed and it has been rejected by the learned court below, truthfulness or otherwise of the same are to be tested on the floor of the Court. The averments or contentions on record from the side of the petitioner as against the aforesaid background, in considered view of the Court, would not be a sufficient ground to initiate action under Section 340 Cr.P.C. A stand or defence in the lines of the plea of an accused alleged to be false by the informant even leading to the filing of a chargesheet by itself should not be considered



enough for an action of perjury. In a case of present nature, where the petitioner is still to face the trial and when on the one hand, certain events claimed to have happened and the same are alleged to be false according to opposite party No.2 and for that the FIR was lodged and with the closure of investigation, the chargesheet is filed is a matter to be threshed out during trial. The defence of the petitioner or probable defence during trial justifying the facts pleaded on record even based on the information of the FIR lodged by opposite party No.2 are the averments or contentions before the Court made demanding discharge and for that, action under Section 340 Cr.P.C. against the petitioner is not a workable option. Any such disclosure which ought to have been made as expected by opposite party No.2 is like demanding something which could possibly be prejudicial to the rights and interest of the petitioner. In fact, demanding the revelation from an accused necessarily to support the view point of the informant in anticipation that the disclosure would be consistent with the findings of the chargesheet is certainly to prejudice the former before commencement of trial. Only if false evidence has been adduced and it easily noticeable without enquiry, in such cases, action under Section 340 Cr.P.C. is inevitable.

14. In so far as I.A.No.882 of 2025 is concerned, the Court is not to call for any such document at this junction a decision upon which the fate of the criminal prosecution hangs on. The legality of any document is the subject matter of trial. The Court is not to enter upon a territory which remains within the domain of court in trial. All such plea based on the premise that the partnership firm has not merged with company



and hence, false has been perpetuated by the petition shall have to considered at the end of trial. Even the Court is not in favour accepting any information under the RTI Act for a decision on the alleged document and whether the petitioner made a false statement in that regard. It would be premature to indulge by having a decision which could ultimately affect the trial. So, the Court for above reasons is not in favour directing the production of any such document as has been by opposite party No.2 and accordingly, it is ordered.

15. In the result, the IAs stand dismissed.

16. In the circumstances, there is no order as to the costs.

(R.K. Pattanaik)
Judge

Rojina

Signature Not Verified

Digitally Signed
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Designation: Junior Stenographer
Reason: Authentication
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