

Affidavits & Oath Commissioners

*(Prepared for the legal training at the IJTR of
the Deputy Registrars of the Allahabad High Court)*

S.S. Upadhyay

*Former District & Sessions Judge/
Former Addl. Director (Training)
Institute of Judicial Training & Research, UP, Lucknow.
Member, Governing Body,
Chandigarh Judicial Academy, Chandigarh.
Former Legal Advisor to Governor
Raj Bhawan, Uttar Pradesh, Lucknow
Mobile : 9453048988
E-mail : ssupadhyay28@gmail.com*

1. **Law relating to Oaths, Oath Commissioners and Affidavits etc.** : The laws governing the oaths or affirmation, oath commissioners, notaries and affidavits etc. are as under :
 - (i) Allahabad High Court Rules, 1952
 - (ii) Oaths Act, 1969
 - (iii) Notaries Act, 1952
 - (iv) Code of Civil Procedure, 1908
 - (v) Code of Criminal Procedure, 1973
 - (vi) Administrative instructions etc.

2. **Law relating to affidavits & Oath Commissioners as provided in Chapter IV of the Allahabad High Court Rules, 1952** : The law in relation to affidavits and the role of oath commissioners in relation to affidavits have been provided under chapter IV of the Allahabad High Court Rules, 1952. The said rules are being reproduced here as under :

Rules 1: Appointment of Oath Commissioners : The Chief Justice may from time to time appoint such persons as he may consider fit to be Oath Commissioners specifying the period or periods for which they have been so appointed.

Rule 2: Fees : Such fees shall be paid for the verification of affidavits before Oath Commissioners as may be prescribed from time to time by order of the Chief Justice.

Rule 3: Register : Oath Commissioners shall maintain a register or registers which shall contain the following particulars with respect to each affidavit sworn before them, namely :-

- (a) serial number
- (b) date and time of making affidavit
- (c) particulars of the case to which affidavit relates
- (d) full particulars of person making the affidavit
- (e) particular of the person identifying him
- (f) fee paid
- (g) name of Oath Commissioner before whom affidavit is sworn and
- (h) signature of Oath Commissioner and remarks, if any.

Rule 4 : Affidavit to bear serial number etc. : Each affidavit shall have recorded on it the number and the year of the register in which it is entered and the serial number and the date of the entry. It shall also have the coupon, as supplied by the Court, affixed to it by the Oath Commissioner :

Provided that the affidavit verified by the Oath Commissioners of others States (by an Officer of Jail in the State of Uttar Pradesh), (by the Superintendent-cum-Accountant of the Office of Official Liquidator High Court, Allahabad) (and by the Police Sub-Inspector (M) in the office of the Inspector General of Police at Lucknow) on whom powers of Oath Commissioner have been conferred can be presented before the Court without such coupons.

Rule 5: Duty of Oath Commissioner : An Oath Commissioner shall not allow an affidavit to be sworn before him unless it complies with the provisions of this chapter.

Rule 6 : Distribution of fees : The fees paid shall be distributed among Oath Commissioners in such manner as the Chief Justice may from time to time direct.

Rule 7: Removal of Oath Commissioner : The Chief Justice may in his discretion remove an Oath Commissioner from his office.

Rule 8 : Affidavits filed or presented in Court : The provisions of Rules 5, 6 and 11 of Chapter IX shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the general heading :

"In the High Court of Judicature at Allahabad."

The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.

The affidavit shall contain no statement which is in the nature of an expression of opinion or arguments.

Rule 9 as amended w.e.f. 28.02.2012: Full particulars of persons and places to be given :-(1).An affidavit shall fully describe the person swearing it with such particulars as will ensure is clear identification such as his full name, his age, the name of his father, his religious persuasion, his rank or degree in life, his profession, calling, occupation or trade and his true place of residence. Any person or place referred to in an affidavit shall be fully described in such manner as to enable his or its identity to be clearly fixed. In addition to the full description of the person swearing the affidavit, the deponent will annex his/her passport size photograph along with the proof of his identity such as, driving licence, ration card kisan bahi, identity card issued by Election Commission of India, passbook of any nationalized bank, passport, arms licence, PAN card issued by the Income Tax Department, identity card issued by the Bar Council or other organization or authority of which the person identifying belongs; or any other

documentary identity proof recognized by the Election Commission of India for casting vote in the Parliamentary or Assembly elections.

(2). The affidavit filed on behalf of the petitioner(s)/appellant(s)/applicant(s)/revisionist(s)/shall mention the relationship, association or connection of the deponent with the person on whose behalf the same has been filed.

Rule 10: Persons who may make affidavits : Except as otherwise provided by law or by these rules or by order of the Court, an affidavit may be sworn by any person having knowledge of the facts deposed to therein.

Two or more persons may join in an affidavit, each depositing separately to such facts as are within his knowledge.

Rule 11: Form of affidavit : When the deponent speaks to any facts within his own knowledge, he must do so directly and positively, using the word "I affirm" or "I make oath and say" or words to that effect.

Rule 12 : Facts to be within the deponent's knowledge or source to be stated : Except on interlocutory applications, an affidavit shall be confined to such facts as the deponent is able of his own knowledge to prove.

On an interlocutory application when a particular fact is not within the deponent's own knowledge, but is based on his belief or information received from others which he believes to be true, the deponent shall use the expression "I am informed and verily believe such information to be true", or words to that effect and shall sufficiently describe for the purpose of identification, the person or persons from whom his information was received.

When any fact is stated on the basis of information derived from a document, full particulars of the document shall be stated and the deponent shall verify that he believes such information to be true.

Rule 13 as amended w.e.f. 28.02.2012: Identification of deponent : Every person swearing an affidavit shall, if not personally known to the person before whom the affidavit is, sworn, be identified before that person whom the affidavit is sworn, be identified before that person by someone known to him; and in such case the person before whom the affidavit is made shall state as the foot of the affidavit, the name, address and description of the person by whom such identification was made.

Such identification may be made by a person--

- (a) personally acquainted with the person to be identified; or
- (b) who is reasonably satisfied as to his identity:

Provided that if the person so identifying is an Advocate enrolled with the Bar Council of U.P. or with any other Bar Council, he shall give his enrollment number and address of his chamber/office/residence; in case of registered clerk of the Advocate, he shall give the registration number, name and address of the Advocate with which he is working.

Provided that in the latter case, the person so identifying shall sign at the foot of the affidavit a declaration in the following form, after there has been affixed to such declaration in his presence the thumb impression of the person so identified, namely--

Form of declaration

I. (name, description and address) declare that I am satisfied on the grounds stated below that the person making this affidavit and alleging himself to be A B is that person:

(Here state the grounds)

(1) Form of Oath or affirmation u/s 6 of the oaths Act, 1969 : The following forms of oaths and affirmations are prescribed under Section 6 of the Oaths Act, 1969, namely :

- (1) **Form of the oath or affirmation to be administered to the witness :** "I do swear in the name of God/solemnly affirm that what I shall state shall be truth, the whole truth and nothing but the truth."
- (2) **Form of the oath or affirmation to be administered to the interpreter :** "I do swear in the name of God/solemnly affirm that I will well and truly interpret and explain all questions put to and evidence given by witnesses and translate correctly and accurately all documents given to me for translation."

Rule 14 : Affidavit by *Pardanashin* Women : No affidavit purporting to have been sworn by a woman who did not appear unveiled in the presence of the person before whom the affidavit was made, shall be used unless she was identified in the manner specified in Rule 13, and the affidavit is accompanied by a separate affidavit by the person identifying her made at the time of identification setting forth the circumstances in which she was personally known to him or he was satisfied that she was such person as she alleged herself to be in her affidavit.

Rule 15 : Contents to be explained to deponent : The person before whom an affidavit is sworn shall ask the deponent if he has read the affidavit and understands the contents thereof. If the deponent states that he has not read it or appears not to understand the contents or does not know the language thereof he shall read and explain it or cause another person to read and explain it to such person in his presence. Until he is satisfied that the deponent fully understands its contents he shall not allow the affidavit to be sworn.

Rule 16 : Impounding of affidavit : When it appears to the Oath Commissioner that the deponent cannot be made or will not understand the contents of the

affidavit, he shall impound it and forward it to the Registrar for such action as he may consider necessary.

When an affidavit is impounded under this rule, the person impounding the same shall certify thereon the date on which and the circumstances in which it was impounded.

Rule 17: Oath or affirmation by deponent : The person administering an oath or affirmation to the person making an affidavit, shall follow the provisions of the Indian Oaths Act, 1873.

Note 1: The Indian Oaths Act, 1873 has been repealed by Section 9 of the Oaths Act, 1969

*Note 2 : In the case reported in **K.M. Singh Vs. Association of Indian Universities, AIR 1992 SC 1356**, it has been held by the Hon'ble Supreme Court that the provisions of the Oaths Act, 1873 are applied in some cases even after the Oaths Act, 1969 came into existence. Thus, the repeal of the Oaths Act, 1873 is without any effect.*

The following forms are prescribed, namely---

Oath : I swear that this my declaration is true; that it conceals nothing; and that no part of it is false. So help me God.

Affirmation : I solemnly affirm that this my declaration is true; that it conceals nothing; and that no part of it is false.

Rule 18: Correction in affidavit : All interlineations, alterations or erasures in an affidavit shall be initialed by the person swearing it and the person before whom it is sworn. Such interlineations, alterations or erasures shall be made in such manner as not to obliterate or render it impossible or difficult to read the original matter. In case, such matter has been obliterated so as to make it impossible or difficult to read it, it shall be re-

written on the margin and initialed by the person before whom the affidavit is sworn.

No interlineations, alteration or erasure shall be made in an affidavit after it has been sworn.

Rule 19: Certificate of verification : The person before whom an affidavit is sworn shall certify at the foot of the affidavit the fact of the swearing of the affidavit before him, the manner in which he has complied with Rule 15 and the date and hour of the swearing of the affidavit and shall mark, initial and date any exhibits referred to therein.

Rule 20: Affidavit containing numerous corrections may not be accepted : The Court or the Registrar may refuse to receive an affidavit in which interlineations, alterations or erasures appear to be so numerous as to make it expedient that the affidavit should be re-written.

Rule 21: Interpretation : In this chapter, 'affidavit' includes a petition or other document required to be sworn and 'sworn' shall include 'affirmed'.

2(A). **Affidavit to accompany certain applications(Rule 12 of Chapter IX of the Allahabad High Court Rules, 1952)** : Following applications shall be accompanied by an affidavit :

- (i) an application for review made on the ground of the discovery of new and important matter or evidence or any other sufficient reason;
- (ii) an application for stay of execution or proceedings;
- (iii) an application for the vacating of an order for stay;
- (iv) an application for security, including an application under Rule 6 or 10, Order XLI of the Code;
- (v) an application for attachment before judgment or injunction or any other application under Order XXXVIII or XXXIX of the Code.
- (vi) an application for the appointment or discharge of a receiver;

- (vii) an application for the re-admission or restoration of an appeal or application dismissed for default of appearance or for want of prosecution or for the setting aside of an ex-parte decree;
- (viii) an application for substitution of parties including an application under Rule (1) or 4(1) of Order XXII of the Code or for a note to be made on the record that the legal representative of a deceased party is already on the record or that a party has died without leaving any legal representative;
- (ix) an application for the appointment or removal of a guardian ad litem or next friend;
- (x) an application under Rules 12,13,14 or 15 of Order XXXII of the Code;
- (xi) an application for transfer of a case including an application under Section 22 of the Code:

(Provided that it shall be obligatory to annex to the application for transfer of a case a copy of the order passed by the District Judge, if any:)

- (xii) an application praying that a person be punished for contempt of Court;
 - (xiii) an application by way of complaint against a legal practitioner;
 - (xiv) an application under Section 5 of the Limitation Act, 1963;
 - (xv) an application for the setting aside of an abatement;
 - (xvi) any application which is required by these Rules or by any other law be supported by an affidavit; and
 - (xvii) any other application in support of which the Court may be quire an affidavit to be filed.
- (2) The Court or the Registrar may call for an affidavit in any other matter coming up before it or him.

3. Affidavits sworn before notaries can also be filed before the High Court : The provisions contained in Chapter IV of the Allahabad High Court Rules, 1952 do not exclude either expressly or by necessary

implication the presentation of such affidavits sworn before the notaries in proceedings before High Court which are to be disposed of on the basis of affidavits. Therefore, it cannot be held that only those affidavits which are sworn before the Oath Commissioners appointed by the Chief Justice of the High Court can be presented and accepted in proceedings before the High Court. Thus, taking pedantic and technical view in the matter would virtually cause great hardship to the public at large and defeat the very purpose of Notaries Act, 1952. See : **Sajjan Kumar Vs. C.L. Verma & Others, 2006 (1) ALJ 73 (All...DB)**

4. **An application in election petition to be accompanied by an affidavit** : Rule 11 of Chapter XV-A of the Allahabad High Court Rules, 1952 provides that an application shall ordinarily be accompanied by an affidavit. Subject to the proviso to sub-section (1) of Section 83 of the Act, the provisions of Chapter IV as to affidavits shall apply to proceedings under this Chapter.
5. **An application u/s 256 of the Income Tax Act, 1961 and other Acts including revisions under the Sales Tax Act to be accompanied by an affidavit** : Rule 3 of Chapter XXVII of the Allahabad High Court Rules, 1952 provides that an application u/s 256 of the Income Tax Act, 1961 and other Acts including revisions under the Sales Tax Act shall, where the circumstances so require, be accompanied by an affidavit.
6. **Caveat filed in a case involving grant of probate or letter of administration to be accompanied by an affidavit** : Rule 36 of Chapter XXX of the Allahabad High Court Rules, 1952 provides that where a caveat is entered after an application has been made for a grant of probate or letters of administration with or without the will annexed, an objection supported by affidavit shall be filed within fourteen days of the caveat

being lodged. Such objection shall state the right and interest of the caveator and the ground of objection to the application.

Note : *Except for the case mentioned above, a caveat is not required to be accompanied by an affidavit as provided by Rule 5 of Chapter XXII of the Allahabad High Court Rules, 1952.*

7(A). Ex-parte judgments & evidence on affidavit (Order 19, rule 1-A CPC)

: In view of the amended provisions of Order 19, rule 1-A CPC w.e.f. 10.2.1981, evidence on affidavit can be received by court where the case has proceeded ex-parte. In such cases the court may permit the plaintiff to adduce his evidence on affidavit. See---

- (i) **Ayaaubkhan Vs. State of Maharashtra, AIR 2013 SC 58**
- (ii) **Smt. Rajeshwari Devi vs. Ram Chandra Gupta, 1997 (2) ARC 516 (All)**

7(B). Uncontroverted affidavit & it's evidentiary value :

If the averments contained in an affidavit are not controverted by counter affidavit, the facts contained in that affidavit can be accepted as correct and true. In such cases presumption in terms of illustration (g) of Section 114, Evidence Act can be drawn in favour of the party/deponent whose affidavit has gone uncontroverted. See---

- (i) **Managing Committee Shiksha Parishad, Nagawa Ballia vs. Asstt. Registrar, Firms, Chits & Societies, Azamgarh, 2005 (2) AWC 1951 (All)**
- (ii) **State of Gujarat vs. S. Tripathy, AIR 1987 SC 479**

8(A). Defective affidavits filed under Order 19, rule 1 CPC & rectification thereof :

If there is some slight defect or irregularity in filing of affidavit, party concerned should be given an opportunity to rectify the same. What needs to be seen in such matters is whether there is substantial compliance with the requirements regarding the rules relating to affidavits and their verification and even if there is some breach or omission, whether it can be

fatal to the case of the party. The plea of defects in affidavits cannot be allowed to be raised after inordinate delay. See---

- (i) **Associated Journals Ltd. Vs. Mysore Paper Mills Ltd., (2006) 6 SCC 197**
- (ii) **Malhotra Steel Syndicate vs. Punjab Chemi-Plants Ltd., 1993 Supp. (3) SCC 565**

8(B). Permission to replace defective affidavit due to improper verification or swearing in :

Improper verification of affidavit is not fatal. If the court finds that the affidavit is not properly sworn or verified in accordance with the procedure prescribed under the rules of the court, the court may direct the person swearing the affidavit to replace the same by filing a proper affidavit but such defect in the affidavit cannot be said to be fatal in any manner. See--- **Dr. Umesh Kumari vs. State of U.P., 1999 (17) LCD 463 (All—L.B.)**

8(C). Court may permit examination-in-chief of deponent of an affidavit in civil suits :

Under Order 18, rule 4(1) CPC the parties to a civil suit are required to file their affidavits in support of their pleadings in the form of their examination-in-chief. In appropriate cases court may permit examination-in-chief to be recorded in court. There is no question of inadmissible documents being read into evidence merely on account of such documents being given exhibit numbers in the affidavit filed by way of the examination-in-chief. See--- **Salem Advocates' Bar Association vs. Union of India, (2005) 6 SCC 344 (Three-Judge Bench)**

9(A). Affidavits not “evidence” u/s 3 of the Evidence Act :

Affidavits have got no evidentiary value as the affidavits are not included in the definition of “evidence” in Section 3 of the Evidence Act and can be used as evidence only if for sufficient reasons court passes an order like the one under Order 19, rule 1 & 2 of the CPC. See---

- (i) **Ayaubkhan Vs. State of Maharashtra, AIR 2013 SC 58**

(ii) **Smt. Sudha Devi Vs. M.P. Narayanan & others, AIR 1988 SC 1381.**

9(B). Affidavit of Government Scientific Expert can be treated as evidence

u/s 293 CrPc : If the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under sub-section (1) of Section 294 CrPC it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implied the admission of the correctness of its contents. Such a document may be read in evidence under sub-section (3) of Section 294 CrPC. Neither the signature nor the correctness of its contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct. The phrase 'read in evidence' means read as substantive evidence, which is the evidence adduced to prove a fact in issue as opposed to the evidence used to discredit a witness or to corroborate his testimony. It may be mentioned that the phrase 'used in evidence' has been used in sub-section (1) of Section 293, CrPC with respect to the reports of the Government scientific experts mentioned in sub-section (4) of Section 293, CrPC and the phrase 'read in evidence' has been used in sub-section (1) of Section 296, CrPC with respect to the affidavits of persons whose evidence is of a formal character. The phrases 'used in evidence' and 'read in evidence', have the same meaning, namely, read as substantive evidence. See : **Saddiq & others Vs. State of UP, 1981 CrLJ 379 (All--Full Bench)**

9(C). Affidavit of witnesses & their evidentiary value?: In the case of a living person, evidence in judicial proceedings must be tendered by calling the witness. Testimony of such witness cannot be substituted by an affidavit

unless the law permits so as u/s 295 and Section 407(3) CrPC or the court expressly allows it. See : **Munir Ahmad & others Vs. State of Rajasthan, AIR 1989 SC 705.**

- 9(D). Getting affidavit of witnesses in advance deprecated by the Supreme Court :** Practice of getting affidavits of witnesses in advance has been deprecated by the Hon'ble Supreme Court and has been treated as an attempt aimed at dissuading witnesses from speaking the truth before the court. The Hon'ble Supreme Court has directed that such interference in criminal justice should not be encouraged and should be viewed seriously. See---- **Rachapalli Abbulu & others Vs. State of AP, AIR 2002 SC 1805.**
- 9(E). Oath to child witness :** Proviso to Section 4(1) of the Oaths Act, 1969 reads as under---- “Provided that where the witness is a child under twelve years of age and the Court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.”
- 9(F). Omission to administer oath (Section 7 of the Oaths Act, 1969) :** “No omissions to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.”

9(G). Child witness when not understanding the meaning of oath : It has been laid down by the Hon'ble Supreme Court that there is no legal bar against relying on the testimony of a child witness to whom oath could not be administered due to his or her incapacity to understand the meaning of oath. See--- **Paras Ram Vs. State of H.P., 2001(1) JIC 282 (SC).**

10(A).Affidavits sworn in foreign countries when can be accepted in Indian courts? Section 14 of the Notaries Act, 1952 provides that if the central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognised for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognized within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

10(B).Rulings on acceptance of foreign affidavits in Indian courts: The acceptability of an affidavit sworn before the Notary Public in USA in connection with an application for winding up before the Court was considered by the High Court in the case of Re: K.K. Ray(Pvt.)Ltd. While considering the acceptability of such an affidavit in connection with the winding up proceedings before the Court, the Court also considered the acceptability of an affidavit affirmed before the Notary Public in England and Ireland in the said decision wherein it was held in view of Section 82 of the Indian Evidence Act such an affidavit affirmed before the Notary Public in England or Ireland is admissible before the High Court. Rule 16 of Chapter 15 of the Original Side Rules of High Court also provides that affidavit sworn in England before any Judge, local Court, Magistrate or Notary Public or any official empowered to administer oath bearing their

respective seals, if any, will be accepted as sufficient in High Court. Considering the international recognition of the notary in the modern world of commerce, industry and dealings between different nations and countries, High Court in the aforesaid decision in *Re: K.K. Ray (Pvt.) Ltd.* accepted the affidavit sworn before the Notary Public in USA even in the absence of any notification regarding such reciprocal recognition of the Acts done by the foreign notaries in our country as per Section 14 of the Notaries Act, 1952. Directions were given to the Ministry of Home Affairs, Government of India, for taking necessary steps for issuing such notifications and for making relevant rules under Section 15 of the Notaries Act, 1952 in this regard. See :

- (i). **Re: K.K. Ray (Pvt.) Ltd., AIR 1967 Calcutta 636**
- (ii). **Alan Kaye Vs. Recovery Officer, AIR 2007 Calcutta 158**

10(C).Who can appoint Notaries? As per Section 3 of the Notaries Act, 1952, the Central Government for the whole or any part of India, and any State Government for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed.

11(A).Who else other than oath commissioners can administer oath on affidavits: Besides oath commissioners, the oath on affidavits can also be administered by following authorities u/s 139 of the CPC:

- (a) any Court or Magistrate, or;
 - (aa) any notary appointed under the Notaries Act, 1952 or;
 - (b) any person appointed in this behalf by a High Court or by a District Court or
 - (c) Any person appointed in this behalf by such other court as the State Government may, by general or special order, empower in this behalf.
- Kindly also see : **M. Veerabhadra Rao Vs. Tek Chand, AIR 1985 SC 28.**

11(B). A Notary appointed under Notaries Act, 1952 can also administer oath on affidavits : From bare reading of the provisions of Section 139 CPC, it is clear that besides the persons appointed as oath commissioners by the High Court or District Courts, any notary appointed under Notaries Act, 1952 can also administer an oath on affidavit. See : **Kashi Nath Srivastava Vs. Mrs. G.S. Tiwari, 1982 ALJ 642**

11(C).High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India not bound by the CPC : Explanation added to Section 141 CPC provides that the expression "proceedings" includes proceedings under order IX CPC but does not include any proceeding under Article 226 of the Constitution.

12(A).Swearing in false affidavit amounts to offence u/s 191 IPC and punishable u/s 193 IPC : As per Section 191 IPC, a deponent of an affidavit is bound to state only true facts in his affidavit and if he states or declares in his affidavit any such facts which are false, he can be prosecuted and punished u/s 193 IPC with imprisonment which may extend upto 7 years and also with fine. See :

(i) **Ranjit Singh Vs. State, AIR 1959 SC 843**

(ii) **Baban Singh Vs. Jagdish Singh, AIR 1967 SC 68**

12(B).Legal remedy when a forged affidavit or an affidavit by imposter is filed in court: If a document was forged, fabricated or interpolated outside the judicial proceedings of the court and was later on produced in the court in relation to some judicial proceedings pending in the court, it has been repeatedly ruled by the Hon'ble Supreme Court that in such cases where the act of forgery etc was committed before the document was produced in the court, provisions of Sections 195/340 CrPC would not be attracted. It would be strange thinking that any offence involving forgery of a

document if committed outside the premises of the court and long before its production in the court could also be treated as one affecting the administration of justice merely because that document later reached the court records. Provisions of Section 195/340 CrPC are attracted only when the offences like 192, 193, 463, 464, 465, 467, 469, 471 IPC etc. are committed with respect to a document after it is produced in the Court. See :

- (i) **Iqbal Singh Marwah Vs. Meenakshi Marwah, 2005 (51) ACC 910(SC)(Five-Judge Bench)**
 - (ii) **K. Vengadachalam Vs. K.C. Palanisamy, (2005) 7 SCC 352**
 - (iii) **Schidanand Singh Vs. State of Bihar, 1998 (36) ACC 466(SC)(Three-Judge Bench)**
- 12(C).Penalty for falsely representing to be a notary etc (Section 12 of the Notaries Act, 1952)** : If a person falsely represents that he is a notary or practises as a notary or does any notarial act in contravention of Section 9 of the Notaries Act, 1952, he shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both. As per Section 13 of the said Act, only a Presidency Magistrate or a Magistrate of the first class shall have powers to try an offence punishable under the said Act.

- 12(D).Strictures against Sessions Judge for misunderstanding the provisions of Sections 195/340 CrPC**--- Where a Sessions Judge in UP had recorded findings in the judgment in a sessions trial that the informant had lodged false FIR against the accused and, contrary to the provisions u/s 195/340/344 CrPC, directed the SSP in his judgment for registration of FIR against the informant u/s 182 of the IPC, the Hon'ble Allahabad High Court quashed the directions of the Sessions Judge as being illegal and without jurisdiction and directed the Registrar General of the High Court to send a copy of the judgment of the High Court to the Sessions Judge concerned for his guidance in future. See : **Lekhraj Vs. State of UP, 2008 (61) ACC 831 (All).**

Deputy Registrars Training at the IJTRI, UP, Lucknow

(On 30.08.2013)

Sub. : Affidavits & Oath Commissioners....law relating to oath & affidavits

1. Provisions in the Allahabad High Court Rules, 1952
2. Notaries Act, 1952
3. Order 19 CPC
4. Role, powers & functions of Deputy Registrars dealing with the affidavits.
5. Internal/administrative instructions of the High Court regarding duties of Deputy Registrars in relation to affidavits.
6. Internal/administrative instructions of the High Court regarding duties of Oath Commissioners in relation to affidavits.
7. Important judicial pronouncements of the Allahabad High Court and the Supreme Court on the subject.
8. Discussing the subject with some enlightened Deputy Registrar and Oath Commissioner.
9. Identifying problematic area/points often faced by the Deputy Registrars and the Oath Commissioners in relation to affidavits and the solutions therefor.
10. Points... the Deputy Registrars and the Oath Commissioners would like to be addressed.
