

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

RESERVED ON : 1st FEBRUARY, 2013

DECIDED ON : 30th MAY, 2013

+ CRL.A.961/2008

HARNAM SINGH Appellant

Through : Appellant in person.

versus

M.P.SINGH SAINI & ANR. Respondents

Through : Respondent No.1 in person.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. Harnam Singh (hereinafter referred as appellant) has preferred the present appeal under Section 341 of the Code of Criminal Procedure, 1973 challenging correctness of the order dated 14.08.2008 of learned Additional District Judge in Civil Suit No.CS/154/2004 '*Mohinder Pal Singh and anr. Vs. Harnam Singh*', by which application moved by him under Section 340 Cr.P.C. was dismissed.

2. The respondents- Mohinder Pal Singh Sahni and Narinder Pal Kaur Sahni had filed civil suit No.49/1997 for Mandatory Injunction and Damages through attorney Mohinder Pal Singh Anand against the appellant in this Court. The appellant filed written statement. Replication

bearing their signatures was filed by the respondents. The appellant filed application under Section 340 Cr.P.C. (IA No.8597/2000) alleging that Narinder Pal Kaur's signatures on the replication were forged. Subsequently, he moved another application being (IA No.2982/2002) for expeditious disposal of his earlier IA No.8597/2000. During the proceedings, respondent No.2 Narinder Pal Kaur Sahni was asked to file affidavit indicating whether or not, she had put her signatures on the replication. She filed an affidavit indicating that the replication contained her signatures. Vide order dated 17.12.2002, this Court disposed of both the applications IA Nos.8597/2000 and 2982/2002 taking into consideration the affidavit filed by the Narinder Pal Kaur Sahni. It was further observed that the said affidavit was taken on record subject to cross-examination by the present appellant.

3. Due to change in the pecuniary jurisdiction of this Court, the suit in question was transferred to Tis Hazari Courts. Respondent No.2- Narender Pal Kaur did not appear as a witness and the Trial Court closed the respondents' evidence. The appellant moved an application under Section 340 Cr.P.C. to initiate an enquiry against the respondents and to send relevant documents on which respondent No.2's signatures were forged for comparison to CFSL. After hearing the parties, the Trial Court,

by the impugned order dismissed the application. Being aggrieved, the appellant has preferred the appeal.

4. I have heard the appellant- Harnam Singh and respondent- Mohinder Pal Singh, and have examined the record. Appellant's contention is that replication does not bear Narinder Pal Kaur Sahni's signatures and a false statement was made before the Court. Her signatures did not match with her genuine signatures on the General Power of Attorney (GPA) dated 20.08.1997. He relied upon the opinion of the handwriting experts who was of the view that signatures of Narinder Pal Kaur Sahni on replication were forged. He urged that since the respondent No.2 did not appear in the witness-box in compliance of the order of this Court, he was deprived of the opportunity to cross-examine her regarding her signatures on the replication. He pointed out that application under Section 340 Cr.P.C. was disposed of by this Court with the condition that respondent No.2 would appear in the witness-box and he (the appellant) would have an opportunity to subject her to cross-examination.

5. Application (IA No.8597/2000) was moved with the prayer that original GPA containing Narinder Pal Kaur Sahni's signatures and replication be sent to CFSL for comparison for its opinion and action be

taken under Section 340 Cr.P.C. for making false statement on oath. Apparently, this Court did not accede to it and obtained respondent No.2's affidavit to confirm whether the replication was signed by her. The required affidavit was filed and taken on record. In the said affidavit cum undertaking, respondent No.2 categorically stated on oath that replication was signed by her. Vide order dated 17.12.2002, this Court disposed of the applications (IA Nos.8597/2000 and 2982/2002). The appellant did not object to the course adopted by this Court for disposal of his applications. Of course, the said affidavit was taken on record subject to cross-examination by the present appellant during Trial. It appears that the respondents' evidence was closed by the Trial Court due to failure of respondent No.2 to appear and the case was listed for recording evidence of the defendant (the present appellant). Since Narinder Pal Kaur Sahni did not examine herself as a witness in the suit, the appellant moved 340 Cr.P.C. application afresh to initiate proceedings for false statement regarding her signatures on the replication. Learned Trial Court did not find favour with the appellant and by the impugned judgment, dismissed it.

6. In my considered view, the appellant had no occasion to move afresh application under Section 340 Cr.P.C. to claim relief which

was denied to him earlier by this Court while deposing of his applications (IA Nos.8597/2000 and 2982/2002). There was no mandate to respondent No.2 to appear in the witness-box. Respondent No.1, co-plaintiff, appeared in the witness box. The appellant was at liberty to cross-examine him regarding his wife's signatures on the replication. All the plaintiffs are not bound to examine themselves. The Trial Court will be within its jurisdiction to draw inference for non-appearance of respondent No.2 on merits of the suit. The Trial Court closed the respondents' evidence and adjourned the case for recording evidence of the appellant. The Trial Court did not find it expedient to initiate any enquiry under Section 340 Cr.P.C. for the details reasons given in the impugned order. In '*Santokh Singh vs. Izhar Hussain*', AIR 1973 SC 2190, the Supreme Court held :

"Expedient means that it is not every incorrect or false statement that makes it incumbent on the Court to order prosecution. It is only in glaring cases of deliberate falsehood where the Court should direct prosecution. The Court should remember that a) too frequent prosecution for such offences tend to defeat its very object; b) prosecution should be resorted to only in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party."

7. It is significant to note that Narinder Pal Kaur Sahni has since expired and this fact finds mention in the order dated 04.12.2006 in CrI.M.C.2444-45/2005.

8. I find no illegality or irregularity in the order.

9. In the light of above discussion, appeal filed by the appellant lacks merits and is dismissed. Trial Court record (if any) be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 30, 2013

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