

"A.F.R."

Court No. - 29

Case :- CRIMINAL APPEAL No. - 3040 of 2023

Appellant :- Kalimulla

Respondent :- Smt. Mehroz Jafri And Another

Counsel for Appellant :- Pal Singh Yadav, Ashish Kumar Singh, Prathama Singh

Counsel for Respondent :- G.A.

Hon'ble Mrs. Renu Agarwal, J.

1. Heard learned counsel for the appellant, learned counsel for opposite party no.1, learned AGA for the State and perused the material brought on record.

2. Present criminal appeal under section 341 Cr.P.C. has been preferred on behalf of the appellant against the judgment and order dated 24.08.2023 passed by Additional Principal Judge Family Court, Court No.5, Lucknow, in Criminal Misc. Case No.126-C of 2015, under section 340/344 Cr.P.C.(Kalimulla Vs. Smt. Mehroz Jafri), by which learned court below without considering the fact and material evidence filed by the appellant, rejected the application of appellant under section 340/344 Cr.P.C. in illegal and arbitrary manner.

3. Learned counsel for the appellant submits that trial court failed to appreciate the fact that respondent no.1 is doing job in multinational company and getting handsome salary and able to maintain herself and concealed the fact on the stage of evidence that she is income tax payee. The court below also failed to consider the prima-facie evidence adduced by the appellant and passed the impugned order, which is illegal & irregular and is liable to be set-aside.

4. Sri Krishna Kumar Singh, Advocate, has filed his power on behalf of the opposite party no.1 alongwith the application for dismissal of appeal supported by an affidavit. It is submitted that deponent is the father of opposite party no.1 and is authorized by opposite party no.1 through registered power of attorney dated 03.07.2018 to do pairvi on her behalf. The aforesaid application is moved by the appellant in the case being Criminal Case No.30-C of 2011, under section 125 Cr.P.C. instituted by opposite party no.1 in Family Court, Lucknow, which was finally decided by the Family Court on 02.09.2023. The appellant challenged the aforesaid order dated 02.09.2023 before this Hon'ble High Court in Criminal Revision No.1004 of 2023 (Kalim Ulla Vs. Additional Principal Judge, Family Court, Lucknow). The Hon'ble High Court dismissed the revision vide order dated 19.09.2023, which is annexed as annexure no.1 to the application.

5. The allegation made by the appellant in his application under section 340/344 Cr.P.C. has been considered by this Hon'ble High Court vide order dated 19.09.2023, which has attained finality. The learned Principal Judge, Family Court has also considered the same contention in the order dated 24.08.2023. The order passed under section 344 Cr.P.C. is not appealable and appeal can be filed only against the order passed under section 340 Cr.P.C., therefore, the present appeal against the order dated 24.08.2023 is not maintainable. It is further submitted that Hon'ble Apex Court in various cases held that section 195(1)(b)(ii) Cr.P.C. could be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it had been produced or given in evidence in a proceeding in any court. Appellant wants to rely upon those documents (Income Tax Record), which were not produced before the court concerned during trial. The

allegation made by the appellant in application under section 340/344 Cr.P.C. have been considered several times from 2015 to till date. Case No.924 of 2008 was decided on 22.01.2011 considering the reply of the appellant. Further on the basis of same allegation appellant filed a criminal case being Complaint Case No.5692 of 2015 in the court of Judicial Magistrate-I, Bhopal in which same allegation was made by him and documents were sought to be produced by means of application under section 91 Cr.P.C. which was rejected by the court concerned. In the court of Family Court, Lucknow appellant has made the aforesaid allegation through his application under section 340/344 CR.P.C. in Misc. Case No.131-C of 2012, under section 127 Cr.P.C., which was also rejected by the court concerned by order dated 24.08.2023. It is further submitted that Criminal Case No.30-C of 2011, under section 125(3) Cr.P.C. has been finally decided by the Family Court, Lucknow vide order dated 02.09.2023, much before filing of the present appeal, but despite of that the appellant did not mention a word about the final order dated 02.09.2023. Appellant challenged the order dated 02.09.2023 by way of Criminal Revision No.1004 of 2023 (Kalimmulla Vs. Additional Principal Judge, Family Court, Lucknow), which has been dismissed by this Hon'ble High Court by order dated 19.09.2023 on merit. Appellant having complete knowledge of the pendency of SLP(Civil) No.4635 of 2023 and despite the full knowledge deliberately did not disclose this fact before this Hon'ble High Court. In order to harass and torture the opposite party no.1 and her parents the appellant has filed 37 cases including the present appeal till dated against the opposite party no.1. It is therefore prayed by learned counsel for opposite party no.1 that present appeal is liable to be dismissed.

6. I have heard the rival submissions of learned counsel for the parties and perused the record.

7. It is revealed from the perusal of impugned judgment that the application under section Kha-3 alongwith affidavit C-4 was filed under section 340/344 Cr.P.C. on the ground that complainant was married with appellant on 05.01.2008 in Scientific Convention Centre, Lucknow free of dowry on the basis of advertisement published in Times of India in English Edition. Rs.5,62,000/-were given to opposite party before marriage and Rs.11,00,786/- were settled as an amount of Mehar alongwith jewellery and house hold goods etc. Opposite party returned to his maternal home and filed a Suit No.924 of 2008, under section 125 Cr.P.C. on the basis of false allegation. Opposite party obtained an ex-parte order of maintenance on the basis of false evidence. By way of application moved under 340/344 Cr.P.C. appellant prayed before the trial court for inquiry on the ground that opposite party was income tax payee at that time and without disclosing her status and giving the false evidence in the court she obtained the above mentioned order of maintenance, therefore, she committed the offence under sections 191, 192 and 193 IPC and she is liable to be prosecuted.

8. Per contra, learned counsel for the opposite party no.1 submitted that marriage of couple has been dissolved 8 years ago. The opposite party no.1(wife) has solemnized her marriage elsewhere after desolation of marriage and the appellant wants to destroy the matrimonial life of opposite party no.1 by filing false and fabricated cases against her, as it is evident from the list filed alongwith the applicant that 37 cases have been filed against the opposite party no.1 and her family members by the appellant. Appellant paid as maintenance only Rs.50,000/-

against Rs.5,60,000/- due to her, and still Rs.3,45,500/- are due as a maintenance amount against the appellant. Out of 37 cases, 18 cases have been decided, 13 cases have been dismissed, 9 cases are still pending in various the courts at Lucknow and one case is pending at Bhopal.

9. Learned trial court inquired on the application moved by the appellant under section 340/344 Cr.P.C. and found that no offence made out during the trial before the court concerned, therefore, the provisions of section 195 Cr.P.C. are not attracted. It is also found that from the inquiry there is no evidence to the fact that any document is prepared by forgery and produced before the court to obtain the order in her favour. Hence, the learned trial court found that from inquiry it found that no prima-facie case on the basis of evidence moved by appellant with application under section 340/344 is made out.

10. It is undisputed fact that marriage was solemnized between the parties in the year 2008 and appellant claims that during the pendency of case under section 125 Cr.P.C the fact was concealed that opposite party was income tax payee and was able to maintain herself.

11. **Section 340 Cr.P.C.** is quoted herein below:-

"(1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused

before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

(4) In this section, "Court" has the same meaning as in section 195."

12. Section 344 Cr.P.C. is quoted herein below:-

"(1) If at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the

case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision."

13. **Section 195 IPC** is quoted herein below:-

"195. Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.—Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which 1[by the law for the time being in force in 2[India]] is not capital, but punishable with 3[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished. Illustration A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is 3[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to 3[imprisonment for life] or imprisonment, with or without fine."

14. From the language of section 195 IPC it is clear that *"whoever gives or fabricates false evidence"* the phrase means that *"who actively produced any fabricated and false evidence in court"*

15. In the case in hand there is no contention that opposite party has fabricated any false evidence or prepared any forged documents and produced the same in the court. The mere contention of learned counsel for the appellant is that opposite party withheld income tax paper from producing in the court during the disposal of application for maintenance under section 125 Cr.P.C..

16. The proceedings under section 125 Cr.P.C. are quasi-civil in nature and the appellant has also the opportunity to produce those papers during his evidence, but he did not dare to file those documents during his evidence in the court. The case was decided ex-parte by the court. Hence at this stage appellant cannot be allowed to take plea that opposite party no.1 withhold the income tax papers. There is no contention that any document is fabricated and used during trial.

17. Second ingredient for attracting the provisions of section 340/344 Cr.P.C. is that *"intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by the law for the time being in force in India is not capital, but punishable with imprisonment for life or imprisonment for a term of seven years or upwards."*

18. It is clearly evident that withholding of document of income tax return during the proceeding of maintenance application the complainant cannot procure conviction or punishment of appellant for 7 years or beyond.

19. Hence the second ingredient for attracting the provisions of section 340/344 Cr.P.C. is also not fulfilled. Thus in the impugned case it is not contended that any forged or fabricated document is prepared and produced before the trial court to procure the conviction and sentence against the appellant, hence the provisions of section 340 is not attracted.

20. So far as section 344 Cr.P.C. is concerned, the order passed under section 344 Cr.P.C. is not appealable, hence the appeal against the order passed under section 344 Cr.P.C. is not maintainable.

21. In *Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another*, (2005) 4 SCC 370; 2005 SCC(CrL.) 1101 and 2005 SCC OnLine SC 531, Hon'ble Apex Court held that *"The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice."*

22. It is also held by Hon'ble Supreme Court in the case of *Iqbal Singh Marwah and Another Vs. Meenakshi Marwah and Another*(Supra), that *"In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may*

deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."

23. From the above mentioned case law it is clear that proceeding under section 340 Cr.P.C. can be initiated only if the forged document is produced in the court during the trial to procure the conviction and punishment of the opposite party, is the offence of such a nature, as to affect the administration of justice. The legislative intent is that the offence committed should be of such type which directly affect the administration of justice. If any offence committed with respect to any document at the time prior to its production or after the delivery of judgment by the court, cannot strictly speaking said an act to be an offence affecting the administration of justice. The opening phrase of section 340 Cr.P.C. reads by words "Court is of the opinion that it is expedient in the interest of justice". This goes to show that even if the prima-facie case is made out, even then the court is not bound to take any action against the erring party. It is to be mention by the court that it is in the interest of justice to initiate the proceedings against the erring party under section 340 Cr.P.C. and the expediency will normally be judged by the court and not by the person effected by such forgery.

24. Thus, from the above mentioned discussions it is clear that no false or fabricated evidence was produced or prepared or used by the opposite party no.1 to procure the conviction and sentence nor it is pleaded that it will affect the administration of justice or it is expedient in the interest of justice to initiate the proceedings against the opposite party no.1. Per contra, it is clear from the record that appellant has filed 37 cases against the opposite party no.1 and her family members, who is already living in marriage relationship with another person after the dissolution of marriage with the present appellant and it is the attempt by the appellant to throw the stone in the peaceful life of opposite party no.1, such attempt should nabbed and curbed. So that vexatious litigation for harassment of counter part in the matrimonial relationship may be discouraged. Hence the appeal has no force and is liable to be dismissed.

25. Accordingly, the present appeal is dismissed with the cost of Rs.50,000/-, which shall be deposited, within 15 days from today by the appellant in the legal cell of this Court.

(Renu Agarwal,J.)

Order Date :- 2.11.2023
VKG