

A.F.R.

Neutral Citation No. - 2024:AHC:157321

Court No. - 86

Case :- CRIMINAL APPEAL No. - 1790 of 2024

Appellant :- Mubashir Ali

Respondent :- State of U.P. and Another

Counsel for Appellant :- Srijan Pandey

Counsel for Respondent :- G.A., Noor Muhammad, Yogesh Kumar Srivastava

Hon'ble Nalin Kumar Srivastava, J.

1. The present criminal appeal under Section 341 CrPC has been preferred by the appellant **Mubashir Ali** against the order dated 24.1.2024 passed by the Additional Principal Judge, Family Court No.2, Kanpur Nagar in Misc. Case No. 1192 of 2020 under Section 340 CrPC whereby the application under Section 340 CrPC moved by the appellant has been rejected.

2. Heard learned counsel for the appellant, learned counsel for the respondent no.2 and the learned AGA and perused the entire record.

3. It is submitted by the learned counsel for the appellant that a Case No. 545 of 2019 under Section 125 CrPC was preferred by the respondent no.2 - Smt. Muniba Faridi, wife of the appellant alongwith supporting affidavit which is pending before the Court of Additional Principal Judge, Family Court No.2, Kanpur Nagar. The appellant moved an application under Section 340 CrPC which was registered as Case No. 1192 of 2022 wherein an application no.3 alongwith affidavit no.4 was moved by the appellant / husband alleging that the aforesaid case under Section 125 CrPC has been filed by Smt. Muniba Faridi / respondent no.2 on the basis of wrong

and false averments. Smt. Muniba Faridi has made a deliberate concealment of facts by mentioning that she alongwith her son is totally dependent upon her parents and brother and it has also been concealed that she is gainfully employed as a teacher in Seth Anandram Jaipuriya School, Kanpur Nagar and when the said facts were disclosed by the appellant / husband Mubashir Ali in his counter affidavit, only then respondent no.2 - Smt. Muniba Faridi by way of filling rejoinder affidavit admitted her high educational status in paragraph nos. 24 and 25 of the same. It is also submitted that when the fact of extra marital relation of respondent no.2 - Smt. Muniba Faridi with one Nabil Khan @ Nazil Khan was brought on surface, it was denied in the rejoinder affidavit by his wife Smt. Muniba Faridi. Hence, an application under Section 340 CrPC was moved by the husband Mubashir Ali to take proper action against the wife Smt. Muniba Faridi for her deliberate concealment of material facts.

4. On the said application, objection was invited by the Court and respondent no.2 - Smt. Muniba Faridi / wife by filing her objection explained the alleged facts and she admitted that she was working as teacher in Seth Anandram Jaipuriya School and was earning Rs. 22,000/- and further she denied for having any extra marital relation with Nabil Khan rather claimed him to be her cousin. She further explained that she never mentioned anywhere in her pleadings that she was unemployed.

5. The Court concerned proceeded to hear both the parties and found that no offence referred to in clause (b) of sub-section (1) of Section 195 CrPC was committed by the respondent no.2 - Smt. Muniba Faridi, as alleged in

the application under Section 340 CrPC and prima facie it was found that no forgery has been committed in or in relation to a proceeding in the Court or in respect of a document produced or given in evidence in a proceeding in the Court, which was custodia legis. The trial court recorded a finding that there is no need to apply the provisions of Section 340 CrPC and to make any enquiry in the instant matter. The trial court also referred the decisions in **Iqbal Marwah and another vs. Minakshi Marwah and another, 2005 (4) FTC 370** and **Sachchidanand Singh vs. State of Bihar, AIR 1998 SC 1121** and on the basis of the law promulgated in the aforesaid decisions it also opined that for the application of the provisions of Section 340 CrPC it is mandatory that the offence must be committed with reference to a document when it is kept in custody of a Court and since it is not so in this matter, the application under Section 340 CrPC deserves to be rejected. On the basis of the aforesaid findings, the application moved by the appellant was rejected by the Court concerned and it was further observed that the appellant / husband is free to take any other appropriate legal action against respondent no.2/ wife.

6. What promulgates Section 340 CrPC is reproduced as hereunder :

"340. Procedure in cases mentioned in Section 195.- (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 [or by such officer of the Court as the Court may authorise in writing in this behalf].

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

7. A perusal of clause (b) of sub-section (1) of Section 195 CrPC is equally relevant which is extracted below :

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence- (1) *No Court shall take cognizance-*

(a)(i).....

(ii)

(iii)

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence

is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (1) or sub-clause (1), except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate."

8. In order to proceed with an appeal under Section 341 CrPC, the Court has to be very cautious and careful and before passing the order the merits and genuineness of the allegations made in the application under Section 340 CrPC must be scrutinized in judicious manner and to make a search for deliberate perjury is the duty of the Court.

9. In the present matter, the allegations made in the application under Section 340 CrPC are multifarious. The appellant alleges that the wife / respondent no.2 made false and wrong statements deliberately concealing some major facts as deposed in her affidavit, firstly, she alongwith her son is totally dependent upon her own family members and secondly, she further concealed the fact of her employment as a teacher in a school and making some income from the same. The third one relates to her alleged extra marital relation with some Nabil Khan. These allegations take the Court to peruse the application moved by the wife / respondent no.2 under Section 125 CrPC, a copy of which has been appended with the instant appeal. From a perusal of the

same it appears that in paragraph 6 of the said application it has been clearly averred that the husband / opposite party therein himself managed a teaching job for his wife / respondent no.2 in this appeal in a school and she started teaching there. It is true that the name of the school, which according to the appellant, is 'Seth Anandram Jaipuriya School' has not been disclosed in the aforesaid paragraph 6 of the application under Section 125 CrPC, but however there is no concealment of fact regarding the teaching job of wife / respondent no.2.

10. It is further alleged that the factum of employment of the wife / respondent no.2 was disclosed by the present appellant himself in his objection and it was averred in paragraph 41 of the same that the wife / respondent no.2 had been engaged in teaching job in Kidzee school, D-Block, Defence Colony, Kanpur Nagar and even after the marriage she remained engaged in the said employment and is also getting about Rs. 20,000/- 22,000/- per month as salary and at present she is working as teacher in Jaipuriya School. It is further alleged that it is only after the disclosure of the aforesaid facts in the objection filed by the appellant / husband, some facts were admitted by the wife / respondent no.2 in her rejoinder affidavit which were concealed earlier.

11. In view of that, this Court also proceeded to peruse the contents of the rejoinder affidavit. In paragraph 25 of the said affidavit it has been admitted by the wife / respondent no.2 that she is engaged in a teaching job. In paragraph 14 of the application under Section 125 CrPC, it has been mentioned by the wife / applicant in the said proceeding that the applicant / wife alongwith her child

was ousted from her matrimonial house by her husband on 16.3.2019 and since then she is residing alongwith her parents and looking after her child as well. Further, it has been deposed that the opposite party / husband in the said proceeding is earning approximately Rupees Two Lakhs per month and enjoying a lavish life whereas the applicant / wife in the said proceeding and her son are passing through a helpless life. It is also alleged that for the sake of treatment of the applicant and her child a huge amount is spent which is borne by the parents of the applicant / wife therein who is dependent upon her parents in her parental house.

12. So far as the alleged extra marital relation of the respondent no.2 / wife with some Nabil Khan is concerned, she vehemently denying the same has claimed him to be her cousin. The appellant / husband is not able to show any cogent piece of evidence to prove the said allegation.

13. The crux of the pleading, which was made by the applicant / wife in her application under Section 125 CrPC, appears to be that though the wife / respondent no.2 is engaged in a teaching job but that is not sufficient for an easy livelihood of the wife and her child and that is why it was mentioned in the application under Section 125 CrPC that the applicant / wife alongwith her son is dependent upon her parents and in that way this Court finds no concealment of facts on the part of the wife / respondent no.2 in her application moved under Section 125 CrPC. It appears to be a case of mere inaccuracy in statement which cannot amount to perjury.

14. A perusal of the provisions of clause (b) of sub-section (1) of Section 195 CrPC also shows that no such offence, as enumerated therein, has been committed by the wife / respondent no.2. The trial court while passing the impugned order in the aforesaid facts and circumstances of the case found that to hold an enquiry into the matter was never expedient in the interest of justice. It is notable that the trial court found that no offence, as mentioned in clause (b) of sub-section (1) of Section 195 CrPC, appeared to have been committed in respect of the proceedings before the Court and the appellant himself failed to show before the Court that any offence has been committed by the wife / respondent no.2 in relation to the proceedings in the Court.

15. In the preceding paragraph of this judgment, it has been discussed that there was no concealment of fact on the part of the wife / respondent no.2 in the affidavit which was filed before the Court concerned and the affidavit as such did not contain any false averment and no forged affidavit was filed before the Court.

16. The scope and principles governing the provisions of Section 340 CrPC have been discussed in a catena of decisions viz. **Pritish vs. State of Maharashtra and others**, (2002) 1 SCC 253, **State (NCT of Delhi) vs. Pankaj Chaudhary**, (2019) 11 SCC 575, **Amarsang Nethaji vs. Hardik Harshadbhai Patel**, (2017) 1 SCC 113, **K. Rajagopala Rao vs. P. Radha Krishna Murthy**, 2002 SCC Online AP 75 and **Mohan Singh vs. Late Amar Singh through the LRS**, (1998) 6 SCC 686.

17. On a co-joint reading of the law laid down in the aforesaid cases, it emerges out that if an offence

mentioned in Section 195 CrPC appears to have been committed in relation to proceedings in a Court that Court has power under Section 340 CrPC to hold an enquiry and after enquiry (a) record a finding to that effect (b) make a complaint thereof in writing and (c) send it to Magistrate of First Class having jurisdiction. The word 'Court' used in provision is important and it is immaterial whether matter, with regard to which there is a complaint of commission of an offence mentioned under Section 195 (1)(b) CrPC was of civil nature or criminal nature. The word 'Court' as is well settled, indicates that there must be power to record evidence and to come to a judicial determination on evidence so recorded. When an offence in nature of offence found in Section 195(1)(b) CrPC is committed in the proceedings in a Court, the Court irrespective of nature of proceedings, is entitled to hold an enquiry under Section 340 CrPC. It is also directed that the fulfilment of two conditions, upon which a complaint can be filed against a person who has given a false affidavit or evidence before the Court must be shown, the first condition being that a person has given a false affidavit before the Court and, second, in the opinion of the Court, it is expedient in interest of justice to make an enquiry against such a person in relation to offence committed by him.

18. A perusal of the provisions incorporated under Section 340 CrPC reveals that the Court must be satisfied upon the existence of two pre-requisites to proceed with the provisions of Section 340 CrPC, firstly, the Court has to be satisfied that the accusation of a person has been made on the ground for filing false affidavit in a

proceeding before the Court, and secondly, in the opinion of the Court it is expedient in the interest of justice to make an enquiry against such a person in respect of the offence committed by him. In fact a deliberate falsehood on the part of the delinquent person in respect of the Court proceedings forms a reasonable foundation to proceed with the provisions contained under Section 340 CrPC, but as discussed above, there is nothing on record particularly in the pleadings of the wife / respondent no.2 which is connotative to the fact of committing deliberate falsehood in the matter.

19. It must be clarified at this stage that the aggrieved person must satisfy the Court that to adduce false evidence before the Court was intentional on the part of the delinquent person and in that way 'mens rea' of the party proceeded against is also a significant element to establish an action under Section 340 CrPC. If any fact is simply not clarified by way of filing the affidavit, it never means that there was a deliberate falsehood on the part of the delinquent person which certainly cannot be brought under the ambit of Section 340 CrPC.

20. From the perusal of the record it appears that since no offence under Section 195(1)(b) of CrPC was made out, there was no need to make any enquiry into this matter. It is to be clarified that if some facts are not explicitly clear or well responded in the pleadings of a party such matter does not automatically fall into the category of the cases wherein the Court should form an opinion to make an enquiry as envisaged in Section 340 CrPC. The Court may ask for better particulars from a party but the opinion to such effect that there was a

deliberate concealment of facts on the part of any party for which he is liable to be prosecuted is not in accordance with the scheme of Section 340 CrPC. The Hon'ble Apex Court in **Aarish Asgar Qureshi case** (supra) emphasised that a statement in such cases should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise.

21. It is to be noted that if in a judicial proceeding a contradictory or vague statement is made, this fact alone by itself is not justified for the prosecution for perjury and an inaccurate statement also does not fall into the category of perjury.

22. In view of the above discussions, I am of the opinion that the order dated 24.1.2024 passed by the Additional Principal Judge, Family Court No.2, Kanpur Nagar rejecting the application under Section 340 CrPC moved by the appellant does not suffer from any infirmity, illegality or perversity warranting interference by this Court and the same is liable to be affirmed and the appeal is liable to be dismissed.

23. Accordingly, the appeal is **dismissed** and the impugned order dated 24.1.2024 is affirmed.

Order Date :- 4.9.2024
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(Nalin Kumar Srivastava J.)