

Court No. - 82

Case :- CRIMINAL APPEAL No. - 48 of 2017

Appellant :- Smt. Shilpy Sharma

Respondent :- Raghubir Giri

Counsel for Appellant :- In Person

Counsel for Respondent :- Shams Uz Zaman

Hon'ble Nalin Kumar Srivastava,J.

1. The present criminal appeal under Section 341 CrPC has been preferred by the appellant **Smt. Shilpy Sharma** against the order dated 5.11.2016 passed by the Principal Judge, Family Court, Varanasi in Misc. Case No. Nil of 2016 under Section 340 CrPC whereby the application under Section 340 CrPC moved by the appellant has been rejected as not maintainable.

2. Heard the appellant (in person) as well as the learned AGA and perused the entire record. None is present for the respondent even in the revised call.

3. It is submitted by the appellant, who is present before the Court in person, that the impugned order is erroneous and against the expressed provisions of law, as provided under Section 195 CrPC. The learned Family Court failed to consider the legal aspect of the matter. It is further submitted that matrimonial litigations are pending between the appellant and her husband Rahul Sharma and in one case No. 61 of 2008 Rahul Sharma as PW-1 submitted his evidence by way of an affidavit dated 18.1.2014 before the Court of Principal Judge, Family Court, Varanasi and in paragraph 13 of the said affidavit it was mentioned that the son of the deponent was residing as tenant in the

house of Raghuvir Giri since 1.1.2007 to October, 2008. The present appellant has reason to believe that the rent receipt dated 18.11.2008, which was submitted by Rahul Sharma, was a forged document and it was a declaration given by Raghuvir Giri who claimed himself to be the exclusive owner of House No. D-3/97 Surendra Colony, Part-1, Jharonda Burari, Delhi and further he declared that Rahul Sharma son of R.K. Sharma was living on the first floor of the aforesaid house as tenant on rent @ Rs. 800/- per month since 9.1.2007 and had been paying rent to him regularly and subsequently he vacated the tenanted house in the month of October, 2008. It is further submitted that the appellant in Maintenance Case No. 316 of 2014 under Section 125 CrPC averred in her application (paragraph 2) that the present appellant alongwith her husband had been residing together in her matrimonial house Flat No. A-808, Jivan Apartment, Sector-6, Vasundhara, Ghaziabad, U.P. Rahul Sharma, husband of appellant, in his rejoinder affidavit submitted before this Hon'ble Court in First Appeal No. 278 of 2014 (paragraph 20) deposed the same fact. In view of the aforesaid facts, it is explicitly clear that respondent Raghuvir Giri delivered a false declaration / rent receipt in favour of Rahul Sharma to use it as evidence in the Court as a proof of the aforesaid address as his own residential address. It is further submitted that the respondent in this way committed an offence of making false statement by declaring himself to be the owner of the house aforesaid and preparing a fabricated and forged document and delivering it to Rahul Sharma to use it as

evidence in the Court and several other offences of the like nature. It is also submitted that the aforesaid facts were clearly mentioned in the application of the appellant before the Family Court under Section 340 CrPC and her request to the Court for passing order to make a preliminary enquiry into the matter invoking its power under Section 340 CrPC was rejected by way of passing the impugned order which is totally illegal, perverse and not sustainable under law.

4. As mentioned above, none is present for the respondent to counter the submissions made by the appellant but that does not mean that an order in favour of the appellant be passed only on account of non-opposition of the respondent rather it will be pertinent to examine the matter on the touchstone of the principles of law laid down by Hon'ble Apex Court with regard to the appreciation of evidence and approach to be adopted while dealing with an appeal against acquittal.

5. The Hon'ble Apex Court had an opportunity to examine the matter in **State (NCT of Delhi) vs. Pankaj Chaudhary, (2019) 11 SCC 575**, wherein it was held that Court's discretion to initiate proceedings under Section 195 CrPC should be exercised with care and caution. Court must record finding regarding expediency in interest of justice to make an enquiry. Perjury must appear to be deliberate and mere inaccuracy in statement does not amount to perjury.

6. Also in **Amarsang Nathaji vs. Hardik Harshadbhai Pate, (2017) 1 SCC 113** it was held by the Hon'ble

Supreme Court that mere fact that a contradictory statement was made in judicial proceeding is not by itself sufficient to justify prosecution for perjury. It must be established that such act was committed intentionally.

7. Further, in **Aarish Asgar Qureshi vs. Fareed Ahmad Qureshi, (2019) 18 SCC 172**, the Hon'ble Apex Court held that a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise.

8. In the light of the submissions made by the appellant in person and the legal pronouncements quoted earlier, I have carefully gone through the evidence available on record, analysis and appreciation thereof and conclusion arrived at by the learned Family Court in the impugned order dated 5.11.2016.

9. 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 183 [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."

10. 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."

11. 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.

12 . The scope and principles governing the scope and legal area 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.

13. 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, the 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.

14. Thus, the legal parameters with reference to Section 340 CrPC declare 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 embodied under Section 340 CrPC.

15. The provisions promulgated under Section 340 CrPC, which have been referred here-in-above, mandate that for the application of the provisions of Section 340 CrPC, the offence must be committed with reference to a document when it is kept into the custody of a Court in relation to a proceeding in that Court or in respect of a document produced or given in evidence in a proceeding in that Court and in the aforesaid circumstances, an enquiry may be made into any offence referred to in clause (b) of sub-section (i) of Section 195 CrPC.

16. So far as the matter in hand is concerned, admittedly the rent receipt was issued by the

respondent in favour of Rahul Sahrma, husband of the present appellant. It is nowhere mentioned in the memo of appeal or in the application and affidavit moved by the appellant before the trial court under Section 340 CrPC that the said receipt was issued by the respondent in order to produce it in any Court proceeding. There is nothing on record to show that the respondent had, in any manner, instructed the husband of the appellant Rahul Sharma to produce it in evidence in any Court. It is also explicit from the perusal of the record that the respondent himself never misused the aforesaid rent receipt as evidence in a proceeding of the Court. In the opinion of this Court if the rent receipt, may be containing some wrong facts, was not produced by the respondent himself before any Court, the trial court was never under obligation to proceed to make an enquiry as referred to under Section 340 CrPC. If any person prepares a false and fabricated document but himself does not produce it before the Court, there is no need to hold an enquiry under Section 340 CrPC against such person. In fact the delinquent person may be that, who produces or gives false and fabricated document in evidence in the proceedings of the Court subject to the facts and circumstances of a particular matter.

17. The learned Family Court deeply appreciated the legal parameters to proceed with the matter and came to the right conclusion that since the present respondent did not produce the rent receipt in evidence in a proceeding in any Court, there was no justification to proceed with the matter under Section 340 CrPC

against him and it was rightly concluded that the said application was not maintainable and on these grounds declining to proceed with the matter, the Family Judge passed the rejection order which, in view of this Court, is a legal order.

18. In view of the above discussions, I am of the opinion that the order dated 5.11.2016 passed by the Principal Judge, Family Court, Varanasi 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.

19. Accordingly, the appeal is **dismissed** and the impugned order dated 5.11.2016 is affirmed.

Order date : 21.11.2024

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