

Neutral Citation No. - 2024:AHC-LKO:70312-DB

Court No. - 10

Case :- FIRST APPEAL DEFECTIVE No. - 126 of 2024

Appellant :- Jitendra Kumar Lakhmani

Respondent :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another

Counsel for Appellant :- In Person

Hon'ble Vivek Chaudhary,J.

Hon'ble Om Prakash Shukla,J.

(C.M. Application No. IA/1/24 : Application for condonation of delay)

- (1)** This is an application seeking condonation of delay in filing the appeal.
- (2)** Heard the appellant-in-person.
- (3)** The cause shown for the delay in filing the appeal is sufficient.
- (4)** The application is **allowed** and the delay in filing the appeal is condoned.

(Order on Memo of Appeal)

- (5)** This appeal under Section 19 (1) of the Family Courts Act, 1984 has been filed by the appellant/husband, challenging the judgment and order dated 24.07.2024 passed by the Additional Principal Judge, Family Court-4, Lucknow, whereby Miscellaneous Case No. 322 of 2024 filed by the husband/appellant under Section 340 of the Code of Criminal Procedure, 1973 in Matrimonial Case No. 1664 of 2017 filed by wife/respondent no.2 under Section 125 Cr.P.C., has been dismissed.
- (6)** Apparently, the respondent no.2/wife has filed application, bearing No. 1664 of 2017, under Section 125 Cr.P.C. seeking

maintenance against the appellant/wife, in which interim maintenance was granted to the respondent no.2/wife. However, in this proceeding, the appellant/husband has filed an application, bearing No. 322 of 2024, under Section 340 Cr.P.C. for instituting criminal case against his wife/respondent no.2, alleging that income shown by the respondent no.2/wife in the proceeding under Section 125 Cr.P.C. is wrong and fabricated. The learned Family Court, after appraising the evidence on record, has returned a finding that the allegations regarding the respondent's income and liabilities, based on her affidavit, have not been substantiated with any concrete document that would demonstrate that the statements made by the respondent in her affidavit are false or misleading, hence the mere absence of documents does not *prima facie* create grounds for criminal action. In this backdrop, the learned Family Court has dismissed the application filed by the husband/appellant under Section 340 Cr.P.C. vide order dated 24.07.2024, which is challenged in the present appeal by the husband/appellant.

- (7) The contention of the appellant is that his wife/respondent no.2 has desperately made false allegations in the application filed by her under Section 125 of the Cr.P.C. The documents of income produced by respondent no.2 are absolutely false and concocted as the income shown by her in the said proceedings are varying from time to time. Thus, the averments made in the application under Section 125 of the Cr.P.C contain false

allegation which per se is abuse of the process of law and the respondent no.2 has approached the trial court with uncleaned hand. It is submitted that by filing the application under Section 340 of the Cr.P.C, the appellant invites trial Court's attention alleging that an offence under Sections 44, 191, 193, 199, 200, 209 and 211 of the IPC was committed by the respondent no.2. The trial court in this proceeding ought to have considered the applications under Section 340 of the IPC filed by the appellant by making preliminary inquiry, regarding its finding to that effect and then making a complaint thereof in writing and sending it to a competent court having jurisdiction to try an offence under Section 193 of the IPC but the trial Court, without considering the aforesaid aspect of the matter, dismissed the application of the appellant.

- (8) The Constitution Bench of the Hon'ble Supreme Court of India in the case of **Iqbal Singh Marwah vs. Meenakshi Marwah** : (2005) 4 SCC 370 has observed :-

"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.”

(emphasis supplied)

- (9) Having regard to the aforesaid proposition of law and going through the record available before this Court in the present appeal, what this Court find that basis for filing application under Section 340 Cr.P.C. by the appellant is that respondent’s incorrect income and liabilities based on her affidavit. This ground of challenge was scrutinized by the Family Court and while considering it, the learned Family Court has returned a finding that though respondent no.2/wife has mentioned varying income at different places in her affidavits and statements, however, she herself has clarified that the rent which she receives from joint property would fluctuates, on account of which affects her overall income. The Family Court has also returned a finding that the respondent herself has stated that she receives financial support from her brother and mother, therefore, the fact that her expenses exceed her income cannot, by itself, constitute the creation of a criminal offence. Moreso, multiple civil and criminal proceedings are ongoing between the parties, in which the respondent has been appearing through

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different counsels. In this backdrop, the learned Family Court came to the conclusion that the application filed by the respondent, Bharti Lakhmani, under Section 125 Cr.P.C. may be based on false and incorrect facts, however, truthfulness of it can only be determined after evidence from both parties and at this stage, it cannot be concluded that the plea of the respondent in her application under Section 125 Cr.P.C. are false or fabricated.

(10) Considering the facts and circumstances of the case, we are in full agreement with the view expressed by the learned Family Court and there is no illegality or perversity in the findings recorded by the learned Family Court while dismissing the case filed by the appellant under Section 340 Cr.P.C.

(11) The present appeal is, accordingly, **dismissed**.

(Om Prakash Shukla, J.) (Vivek Chaudhary, J.)

Order Date :- 18.10.2024

Ajit