



2025:AHC:164692

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 11573 of 2024

Smt Nirmala Devi

.....Appellant(s)

Versus

State Of U.P. And 3 Others

.....Respondent(s)

Counsel for Appellant(s) : Ajai Kumar Srivastava, Amit Kumar Satsangi

Counsel for Respondent(s) : G.A., Santosh Kukmar Tiwari

Court No. - 68

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

1. Heard Sri Chetan Prakash, Advocate, holding brief of Sri Ajai Kumar Srivastava, learned counsel for the appellant, Sri Pawan Kumar Dubey, Advocate, holding brief of Sri Santosh Kumar Tiwari, learned counsel for respondent nos.2, 3 and 4 and Sri D.P.S. Chauhan, learned AGA for the State.

2. The appellant-applicant has preferred the present criminal appeal against the judgment and order dated 10.10.2024 passed by the Learned Principal Judge Family Court, Prayagraj/Allahabad, in Misc. Case No. 414 of 2024, Police Station Kydganj, District Prayagraj, whereby the application filed by the appellant under Section 340 Cr.P.C. (corresponding to Section 379 BNSS) read with Section 191, 193, 199 and 209 Cr.P.C. has been rejected.

3. Shorn of unnecessary facts, the prosecution's case is that the appellant has filed an application u/s 125 Cr.P.C. before the Principal Judge, Family Court, Prayagraj, for maintenance against opposite party no.2. During that proceeding, respondent no.2 had filed an affidavit regarding his income and liability as required in the case of **Rajnish Vs. Neha & Another** reported in **(2021) 2 SCC 324**. Appellant filed an application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) for conducting a preliminary enquiry to file a

complaint against the respondent nos.2, 3 and 4 on the ground that respondent no.2 had filed incorrect and false evidence through his affidavit and respondent nos.3 and 4 also supported that false evidence. The Principal Judge, Family Court, rejected that application vide judgement and order dated 10.10.2024, against which the present appeal has been filed.

4. A preliminary objection was raised by learned AGA as well as learned counsel for the private respondents that against the order passed by the Family Court, there is specific provision of filing an appeal u/s 19 of the Family Courts Act, 1984 (in short 'the Act, 1984') which would prevail under Section 341 Cr.P.C. (corresponding to Section 380 BNSS). Therefore, the present appeal is not maintainable as the appellant can file an appeal against the impugned judgment of the Family Court u/s 19 of the Act, 1984.

5. In reply to the above preliminary objection, learned counsel for the appellant has submitted that there is a specific provision under Section-341 Cr.P.C. (corresponding to Section 380 BNSS) for filing appeal against the rejection of the application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), therefore, merely because the Family Court has passed the order, appeal cannot be said to be not maintainable because Section 19 of the Act, 1984 also provides provision for filing appeal against the order passed by the Family Court.

6. The crux of the matter is whether an appeal against the order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) passed by the Family Court, should be filed under u/s 19 of the Act, 1984 or u/s 341 Cr.P.C. (corresponding to Section 380 BNSS). To resolve this, it's pertinent to quote Section 19 of the Act, 1984, which is as follows:

"19. Appeal.—(1) *Save as provided in sub-section (2) and notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908) or in the Code of Criminal Procedure, 1973 (2 of 1974) or in any other law, an appeal shall lie from every judgment or order, not*

being an interlocutory order, of a Family Court to the High Court both on facts and on law.

(2) No appeal shall lie from a decree or order passed by the Family Court with the consent of the parties [or from an order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974):

Provided that nothing in this sub-section shall apply to any appeal pending before a High Court or any order passed under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) before the commencement of the Family Courts (Amendment) Act, 1991 (59 of 1991).]

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of the judgment or order of a Family Court.

(4) The High Court may, of its own motion or otherwise, call for and examine the record of any proceeding in which the Family Court situate within its jurisdiction passed an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) for the purpose of satisfying itself as to the correctness, legality or propriety of the order, not being an interlocutory order, and as to the regularity of such proceeding.

(5) Except as aforesaid, no appeal or revision shall lie to any court from any judgment, order or decree of a Family Court.

(6) An appeal preferred under sub-section (1) shall be heard by a Bench consisting of two or more Judges."

7. From the perusal of Section 19 of the Act, 1984, it is clear that it provides, notwithstanding anything contained in Cr.P.C. except the exception given in Sub-section (2) of Section 19, the appeal against any order except the order of an interlocutory nature u/s 19 of the Act, 1984. Section 19(2) of the Act, 1984 provides that an appeal u/s 19 of the Act, 1984 would not lie if the Family court passes the order under Chapter IX of Cr.P.C. Chapter IX of Cr.P.C. provides the provision for maintenance u/s 125 Cr.P.C. as well as execution thereof. It is not in dispute that initially an application was filed by the appellant u/s 125 Cr.P.C., which comes under Chapter IX of Cr.P.C. But the impugned order, which was passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), does not come under Chapter IX of the Cr.P.C. For ready reference, Section 340 Cr.P.C. (corresponding to Section 379 BNSS) is being quoted as under:

"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 interest 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 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.] [Substituted by Act 2 of 2006, Section 6, for Cl. (b) (w.e.f. 16-4-2006). Prior to its substitution, Cl (b) read as under : - [(b) in by other case, by the presiding officer of the Court].]

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

8. The Section 340 Cr.P.C. (corresponding to Section 379 BNSS) shows that it relates to conducting a preliminary enquiry before filing a complaint for giving false affidavit before a court in a judicial proceeding. Section 341 Cr.P.C. (corresponding to Section 380 BNSS) provides an appeal against the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS). Section 341 Cr.P.C. (corresponding to Section 380 BNSS) is being quoted as under:

"341. Appeal

(1) Any person on whose application any Court other than a High Court has refused to make a complaint under Sub-Section (1) or Sub-Section (2) of section 340, or against whom such a complaint has been made by such

Court, may appeal to the Court to which such former Court is subordinate within the meaning of Sub-Section (4) of section 95, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision."

9. From the above-quoted Section 341 Cr.P.C. (corresponding to Section 380 BNSS), it is also clear that if an order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is passed by a court (whether civil, criminal or revenue), then the appeal would lie before the Court which ordinarily hears the appeal against the order of that Court. Therefore, if an order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is passed by a civil Court, revenue court or criminal Court, the appeal would lie on the respective side to the appellate Court, even though the provision for conducting an enquiry and filing a complaint for giving false evidence has been provided in Cr.P.C. This Court has also considered this issue in the case of **Smt. Sufia Vs. State of U.P. And 3 Others (Application u/s 528 BNSS No.33290 of 2025)**, decided on 03.09.2025, wherein the Court observed that if the Consolidation Officer has passed an order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), then the appeal would lie before the Settlement Officer Consolidation in view of Section 11 of the Uttar Pradesh Consolidation Holdings Act, 1953. Paragraph no.9 of **Sufia's case (supra)** is being quoted as under:

"9. In view of the above analysis, this court is of the opinion that application u/s 340 Cr.P.C. (corresponding Section 379 BNSS) is maintainable and Consolidation Officer or other consolidation authorities would be, well within their jurisdiction to conduct preliminary enquiry regarding the offence u/s 195(1)(b) Cr.P.C. relating to giving or producing false document or evidence before it and after enquiry if the consolidation authorities are of the opinion that prima facie offence referred to in clause (b) of sub-section (1) of section 195 Cr.P.C. is made out then it will record its finding to that effect and make such complaint in writing and send it to the Magistrate of first class having jurisdiction thereof."

10. The Apex Court in the case of **State of A.P. Vs. V. Sarma Rao & Others** reported in **(2007) 2 SCC 159** observed that an appeal

against the order passed in Section 340 Cr.P.C. (corresponding to Section 379 BNSS) would lie to the appellate forum created by the Special Act under which proceeding, application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) has been filed and further observed that the Land Acquisition Act is Special Act which provides for the forums, both original and appellate. Paragraph nos.16 and 17 of **V. Sarma Rao (supra)** are being quoted as under:

"16. In our opinion, it would not be. The Court of the Subordinate Judge may be subordinate to District Judge for administrative purpose. He may be a court subordinate to it under the Code of Civil Procedure. But in relation to a proceeding under the Land Acquisition Act, it would not be. We have noticed that in terms of Section 53 of the Land Acquisition Act, the procedures laid down under the Civil Procedure Code would apply but the same is subject to the exceptions specified therein viz. save insofar as they may be inconsistent with anything contained therein. The Land Acquisition Act is a special statute. It provides for the forums, both original and appellate. Section 2(4) of the Code of Civil Procedure, 1908 defines "district" to mean the local limits of the jurisdiction of a Principal Civil Court of original jurisdiction, also known as District Court. It also includes local limits of the ordinary original civil jurisdiction of a High Court. Section 3 thereof provides hierarchy of the courts in the following terms:

"3. Subordination of courts.—For the purposes of this Code, the District Court is subordinate to the High Court, and every civil court of a grade inferior to that of a District Court and every Court of Small Causes is subordinate to the High Court and District Court."

17. What is of significance is that the subordination of courts as specified therein is only for the purpose of the said Code and not for the purpose of a special Act, although the provisions thereof may be applicable to a case arising thereunder. Section 96 of the Code provides that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorised to hear appeals from the decisions of such court. The court entitled to hear the appeals from a decree passed by a trial court, therefore, must be authorised therefor. It is one thing to say that an appeal, depending upon the valuation, would lie before different forums, but if under the provisions of a special statute an appeal shall lie only before the High Court and to no other, the District Court would not be a court where an appeal would ordinarily lie from a judgment of the Land Acquisition Judge. The Land Acquisition Act being self-contained code; in relation to the matters falling within the purview of the Land Acquisition Act, the civil courts would have no jurisdiction."

11. Similarly, Section 19 of the Act, 1984 also provides that the appeal against the order passed by the Family Court would lie before the High Court and the same shall be heard by a Division

Bench or a Bench having the strength of more than two Judges. Therefore, Section 19 of the Act, 1984 provides not only the right and procedure but also the forum for filing an appeal against the order of the Family Court. Section 341 Cr.P.C. (corresponding to Section 380 BNSS) only provides the right to file an appeal against the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) by any court. Therefore, there is no conflict between Section 341 Cr.P.C. (corresponding to Section 380 BNSS) and Section 19 of the Act, 1984, except the fact that Section 19 of the Act, 1984, also provides the forum for filing an appeal against the orders passed by the Family Court, including the order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS). Section 19 of the Act, 1984, contains a non-obstante clause; therefore, it will prevail over Section 341 Cr.P.C. (corresponding to Section 380 BNSS) so far as the forum and limitation are concerned. Apart from this, the Act, 1984 is a Special Act and Cr.P.C. is a General Act, therefore, the provision of the Act, 1984 will prevail over the provision of Cr.P.C.

12. However, Section 19 of the Act, 1984 provides that no appeal lies against the interlocutory order. Therefore, the question arises whether the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is an interlocutory or a final order. This issue is no longer res integra, as the Apex Court has decided this issue in the case of **Shah Babulal Khimji vs. Jayaben**, reported in **AIR 1981 SC 1786** and held that an order which decides the issue finally will not be interlocutory but a final order. In Section 340 Cr.P.C. (corresponding to Section 379 BNSS), the Court finally decided the issue of whether a *prima facie* case is made out for filing a complaint for perjury or not. Therefore, the order passed u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is not the interlocutory but a final order.

13. A coordinate Bench of this Court has also considered this issue in **Jitendra Kumar Lakhmani Vs. State of U.P. & Another** in **Criminal Appeal No.3030 of 2024** vide order dated **25.09.2024** regarding maintainability of appeal against the order passed by the

Family Court u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) and observed that if the order u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) has been passed by the Family Court then appeal would lie u/s 19 of the Act, 1984 not u/s 341 Cr.P.C. (corresponding to Section 380 BNSS). Paragraph no.13 of the above judgment is being quoted as under :

"13. Considering the aforesaid, it is thus apparent that in case the appellant herein is aggrieved by an order by which his application under Section 340 of the Code has been rejected consequently the only remedy available to him is to challenge the said order by filing of an appeal under Section 19(1) of the Act, 1984 and the appeal fled under the provisions of the Code or BNSS would not be maintainable keeping in view the non-obstante clause as per sub-section (1) of Section 19 of the Act, 1984 and the Act, 1994 being a Special Act."

14. As per Section 10 of the Act, 1984, proceedings before the Family Court shall be as per the Civil Procedure Code except for the order passed under Chapter IX of the Cr.P.C. (Section 125 to 128) and as per Section 18 of the Act, 1984, the decree or order of Family Court shall be executed as decree or order of civil Court. Sections 10 and 18 of the Act, 1984 are being quoted as under:

***"10. Procedure generally.—**(1) Subject to the other provisions of this Act and the rules, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) and of any other law for the time being in force shall apply to the suits and proceedings [other than the proceedings under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)] before a Family Court and for the purposes of the said provisions of the Code, a Family Court shall be deemed to be a civil court and shall have all the powers of such court.*

(2) Subject to the other provisions of this Act and the rules, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) or the rules made thereunder, shall apply to the proceedings under Chapter IX of that Code before a Family Court.

(3) Nothing in sub-section (1) or sub-section (2) shall prevent a Family Court from laying down its own procedure with a view to arrive at a settlement in respect of the subject-matter of the suit or proceedings or at the truth of the facts alleged by the one party and denied by the other.

***18. Execution of decrees and orders.—**(1) A decree or an order [other than an order under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974)], passed by a Family Court shall have the same force and effect as a decree or order of a civil court and shall be executed in the same manner as is prescribed by the Code of Civil Procedure, 1908 (5 of 1908) for the execution of decrees and orders.*

(2) An order passed by a Family Court under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974) shall be executed in the manner prescribed for the execution of such order by that Code.

(3) A decree or order may be executed either by the Family Court which passed it or by the other Family Court or ordinary civil court to which it is sent for execution."

15. Therefore, in view of Sections 10 and 18 of the Act, 1984, procedure before the High Court in a Family Court Appeal would be as per the Civil Procedure Code.

16. The Apex Court in the case of **M.S. Sheriff Vs. State of Madras** reported in **(1954) 1 SCC 524** observed that while considering the application u/s 340 Cr.P.C. (corresponding to Section 379 BNSS), the Court is required to consider whether "it is expedient in the interest of justice" that an enquiry should be made and a complaint is to be filed.

17. Therefore, from the above discussion, it is clear that proceeding u/s 340 Cr.P.C. (corresponding to Section 379 BNSS) is neither criminal nor civil but can be termed as quasi-criminal.

18. It is clear from the above analysis that an appeal arising from an order issued under Section 340 Cr.P.C. (corresponding to Section 379 BNSS) by the Family Court should be filed in accordance with Section 19 of the Act of 1984, specifically before the Division Bench of the High Court. Section 19 clearly does not preclude the appeal procedures outlined in Section 341 Cr.P.C. (corresponding to Section 380 BNSS) instead, it establishes a definitive forum and procedural framework for such appeals, directing them to the Division Bench of the High Court.

19. Furthermore, it is critical to recognize that an appeal against an order issued under Section 340 Cr.P.C. by the Family Court is not appropriate in a criminal court setting. Instead, it must be duly submitted under Section 19 of the Act of 1984 to the Division Bench of the High Court, following the procedural guidelines and limitations prescribed therein. This

clarification serves to eliminate any ambiguity regarding the proper channel for pursuing such appeals.

20. In view of the above, the present appeal is not maintainable before this Court.

21. Accordingly, the present appeal is **rejected** with liberty to the appellant to file an appeal u/s 19 of the Act, 1984, before the appropriate Bench.

September 16, 2025
S.C.

(Arun Kumar Singh Deshwal,J.)