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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 13/2015**

Decided on 29th April, 2015

VIPUL ROHILLA

..... Appellant

Through: Mr. M.S. Rohilla, Adv. with appellant
in person.

versus

MEENAKSHI

..... Respondent

Through: Ms. Manika Tripathy Pandey and Mr.
Ashutosh Kaushik, Advs. along with
respondent in person.

AND

CRL.A. 14/2015

VIPUL ROHILLA

..... Appellant

Through: Mr. M.S. Rohilla, Adv. with appellant
in person.

versus

MEENAKSHI

..... Respondent

Through: Respondent in person.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

A.K. PATHAK, J. (ORAL)

1. Appellant is husband of respondent. Their marriage was solemnised on 14th February, 2000. It appears that relations between them became sour resulting in various litigations filed by them against each other. Respondent

has lodged an FIR under Sections 498-A/406 IPC wherein trial is pending. Respondent had also filed a petition under Section 125 Cr.P.C. seeking maintenance from the appellant as also a petition under Section 18 of the Hindu Adoption and Maintenance Act, 1956 which have already been disposed of.

2. Respondent claims that on the day of marriage itself, one FDR for ₹51,000/- was made in the joint name of respondent and appellant but after withdrawing the amount from the joint account which respondent was maintaining with her mother. It is this FDR which is bone of contention between the parties and has given rise to the present proceedings.

3. Respondent filed two affidavits in the proceedings under Section 125 Cr.P.C. and under Section 18 of the Hindu Adoption and Maintenance Act, 1956. She stated in the said affidavits that her in-laws had taken jewellery, cash and FDR for ₹51,000/- in their custody and refused to return the same to her. These affidavits were filed in the month of the March, 2003.

4. In the said proceedings, appellant filed applications under Section 340 of Code of Criminal Procedure, 1973 alleging therein that above statement made by the respondent in her affidavits was false to her knowledge and

amounted to perjury. Appellant alleged that respondent had obtained a duplicate FDR and encashed the same in the month of February, 2003; whereas in the affidavits filed in the month of March, it was alleged that FDR was taken by her in-laws. Applications have been dismissed by the trial court vide the order impugned in these appeals.

5. Trial court has concluded that conduct of the appellant itself was not above board which reflected that he had filed the applications in order to harass the respondent. Trial Court has noted that conduct of appellant indicated that he was nursing a grudge against the respondent. The provision of Section 340 Cr.P.C. could not have been invoked to settle personal scores. Trial court has also noted that appellant had not made payment of arrears as mandated in HMA 58/2010 decided on 12th September, 2011, inasmuch as, a sum of ₹6,69,000/- was due and payable by him towards the maintenance upto 31st October, 2014. It was observed that a defaulter could not have prosecuted his complaint under Section 340 Cr.P.C. It has been further noted that appellant was guilty of violating the orders of the High Court which also goes against him. Appellant had already lodged an FIR under Sections 420/467/471/120-B IPC on 30th February, 2008 regarding encashment of FDR. Trial court has put on record that RFA

No. 54/2012 was dismissed by a learned Single Judge of this Court on 29th July, 2013 on the ground that appellant was taking the proceedings of court unseriously and was making mockery of court orders. He had voluntarily made a statement to make payment of maintenance @ ₹2000/- per month instead of ₹5000/- per month as fixed by Additional District Judge in the proceedings under Section 18 of the Hindu Adoption and Maintenance Act, 1956. However, appellant did not abide by his this statement, resulting in dismissal of appeal.

6. By placing reliance on Santokh Singh vs. Izhar Hussain AIR 1973 SC 2190, trial court has held that court orders prosecution in the larger interest of justice and not to gratify feelings of personal revenge or vindictiveness. Purpose of Section 340 Cr.P.C. is not to serve the ends of a private party. Discretion has to be exercised in larger interest of administration of justice.

7. I do not find any illegality in the view taken by the trial court. It is evident that appellant is nursing a grudge against the respondent on account of marital discord and he is hell bent to harass the respondent. He is not paying maintenance to the respondent despite orders passed by the court. Instead is dragging her in one or the other litigation. He is only interested in multiplicity of proceedings. He has already lodged an FIR against the

respondent regarding encashment of FDR. Still he insists that a complaint be filed by the court against the respondent for perjury. That apart even no case of perjury is, prima facie, disclosed. In the affidavits respondent has talked about taking the jewellery, cash and FDR after the marriage, which has nothing to do with its encashment in the year 2003. Original FDR was not encashed. It is the duplicate FDR which respondent obtained in the year 2003, that was encashed. Thus, it cannot be said that she made a wrong statement about taking of FDR by her in-laws. Mere non disclosure of encashment of FDR may not amount to perjury.

8. A learned Single Judge of this court in Jagjit Kaur vs. Harjeet Singh (Lt.Col.) & Anr., 82(1999) DLT 552 has held thus:-

Once it is held that the motivation behind the application under section 340 of the Code was to gratify his feelings of revenge, then automatically a finding on the issue of expediency must be recorded against the respondent No.1. It is also salutary to note that judicial process should not be allowed to be used as an instrument of oppression and needless harassment. At the stage of invoking the provision of Section 340 of the Code, the Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before directing prosecution for perjury lest it would be an instrument in the hands of a

person as vendetta to harass his opponents. Vindication of majesty of justice and maintenance of law and order and social stability in the society are the prime objects of criminal justice but it should not be the means to wreak personal vengeance.

9. In Jaswinder Singh vs. Smt.Paramjit Kaur,

MANU/PH/0330/1985, it was held thus:-

".....It is a settled principle of law that courts never become tools at the hands of the parties to satisfy private vendetta or to take up cudgels on behalf of one party and punish the other. The primary object to take proceedings under Section 340 of the Code of Criminal Procedure, in instituting a complaint for giving false evidence, is to curb the evil of perjury and to keep the flow of proceedings in courts unsullied and pure. It is only in a rare case, when the Court comes to the conclusion that if the complaint is filed conviction is more or less a certainty, that it chooses to become a complainant. In such like contentious issues, when the wife can again indulge in proving that the husband was wrong and she was right, it is not expedient for this Court to enter into the fact and become a complainant at the behest of the husband-petitioner. Thus, I am of the considered view that it is not expedient to pursue the matter any further at the instance of the parties."

10. In Punjab Tractors Ltd. vs. International Tractors Ltd. & Ors.,

167(2010) DLT 490, a learned Single Judge of this court has held

thus:-

It cannot also be lost sight of that in criminal prosecution there is waste of public funds and time of courts. For this reason also in every case of perjury the court would not mechanically take cognizance or direct prosecution. Prosecution should be ordered only when it is considered expedient and in the interest of justice to punish the delinquent. Every incorrect or false statement does not make it incumbent on the court to order prosecution.

11. For the foregoing reasons, I do not find any perversity or illegality in the impugned order and the appeals are dismissed with cost of ₹25,000/- (Rupees Twenty Five Thousand Only) each to be paid to the respondent by the appellant. Trial court, where the execution proceedings are pending, shall recover the cost and move it over to the respondent

A.K. PATHAK, J.

APRIL 29, 2015

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