

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 16.06.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

A.Nos.1156 to 1160 of 2015

in

E.P.No.48 of 1997

in

C.S.No.43 of 1962

As per A.No.1156 of 2015

1.S.V.R.Saroja
2.S.V.R.Ramprasad
3.S.V.R.Vijaya
4.S.V.R.Renukadevi ... Applicants

Vs

S.V.Matha Prasad ... Respondent

Application No.1156 of 2015 has been filed by the applicants under Judge's summons under Order XIV Rule 8 of O.S.Rules r/w Section 151 of CPC, praying to condone the delay of 54 days in preferring appeal against the order dated 17.09.2014 passed in Application No.4969 of 2014 in E.P.No.48 of 1997, passed by the learned Master.

Application No.1157 of 2015 has been filed by the applicants under Judge's summons under Order XIV Rule 12 of O.S.Rules r/w Section 151 of CPC, praying to permit them to file appeal against the order dated 17.09.2014 passed in Application No.4969 of 2014 in E.P.No.48 of 1997 by the learned Master.

Application No.1158 of 2015 has been filed by the applicants under Judge's summons under Order XIV Rule 12 of O.S.Rules r/w Section 151 of CPC, praying to dispense with the production of the certified copy of the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997, passed by the learned Master.

Application No.1159 of 2015 has been filed by the applicants under Judge's summons under Order XIV Rule 8 of O.S.Rules r/w Section 151 of CPC, praying to stay the operation of the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997, passed by the learned Master.

Application No.1160 of 2015 has been filed by the applicants under Judge's summons under Order XIV Rule 12 of O.S.Rules r/w Section 151 of CPC, praying to permit them to raise additional grounds in the appeal filed against the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997, on the file of the learned Master.

For Applicants :Mr.R.Natarajn for M/s.S.Hemalatha

For Respondent :Mr.S.Hemanand for Mr.M.Kamalakannan

COMMON ORDER

As per the order of the Hon'ble The Chief Justice, this matter was posted before this Court for hearing under the caption 'Specially Ordered Case'.

2.Application No.1156 of 2015 has been filed by the applicants praying to condone the delay of 54 days in preferring appeal against the order dated 17.09.2014 passed in Application No.4969 of 2014 in E.P.No.48 of 1997, whereby the learned Master directed the Registry to forward a criminal complaint against the applicants herein, who have been arrayed as R21 to R24 in the said application, for the alleged offences punishable under Section 466 r/w 120 IPC.

3.Application No.1157 of 2015 has been filed by the applicants praying to permit them to file appeal against the order dated 17.09.2014 passed in Application No.4969 of 2014 in E.P.No.48 of 1997 by the learned Master.

4.Application No.1158 of 2015 has been filed by the applicants praying to dispense with the production of the certified copy of the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997, passed by the learned Master.

5.Application No.1159 of 2015 has been filed by the applicants praying to stay the operation of the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997, passed by the learned Master of this Court.

6.Application No.1160 of 2015 has been filed by the applicants praying to permit them to raise additional grounds in the appeal filed against the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997, on the file of the learned Master.

7.The respondent herein viz., S.V.Mathaprasad had filed the Application No.4969 of 2014 under Section 340 r/w 195(b) (ii) & (iii) of Cr.P.C. It is alleged by the respondent in the said petition that the applicants herein, with the connivance of a lady clerk of this Court by name Mrs.T.R.Indira, have interpolated the Execution Petition No.48 of 1997, by inserting their names as co-decree holders 2 to 5 and when the same came to his knowledge, he made a complaint to the Registrar on 06.03.2006 and also filed a Contempt Petition No.54 of 2006 in SLP.No.7447 of 2003, which was pending before the Hon'ble Supreme Court. While dismissing the said contempt petition, the Hon'ble Supreme Court gave liberty the respondent herein to move before the Hon'ble The Chief Justice of this Court. Pursuant to the order of the Hon'ble Supreme Court, the petitioner has also given a complaint to the then Chief Justice of this Court on 25.09.2006; following the same, enquiry was ordered with regard to the tampering of records. Thereafter, the Register-Vigilance conducted an enquiry and by his report

dated 31.01.2007, he held that the complaint of tampering stood proved. In the meantime, the respondent herein, who is the 2nd plaintiff in C.S.No.43 of 1962, has filed the said Application No.4969 of 2014 before the learned Master under Section 340 r/w 195(b)(ii) & (iii) of Cr.P.C., seeking to initiate criminal action against the applicants herein for the alleged offence punishable under Section 120(B) r/w Section 466 IPC and Section 13(1)(d)(i)& (iii) of Prevention of Corruption Act, 1988. In the said application, the impugned order dated 17.09.2014 has been passed by the learned Master, whereby the learned Master has directed the Registry to forward a criminal complaint against the applicants herein, to the competent Jurisdictional Magistrate for the alleged offence punishable under Section 466 r/w 120(b) IPC. Pursuant to the said order of the learned Master, the Deputy Registrar (OS) of this Court has forwarded the complaint and the same was numbered as C.C.No.3303 of 2014 on the file of the VII Metropolitan Magistrate Court, Chennai. Aggrieved over the same, the present applications have been filed by the applicants for the reliefs as stated supra.

8.It is the case of the applicants herein that by merely accepting the contention of the respondent herein, the learned Master has passed the impugned order dated 17.09.2014 without conducting any enquiry. After the impugned order was passed, the applicants herein filed a copy application under Diary

No.29337 of 2014 on 19.09.2014, along with the affidavit, seeking to furnish certified copies of the affidavit and Master summon petition in A.No.4969 of 2014. But, the Registry of this Court had returned the said copy application on 07.10.2014, stating that the applicants herein are not entitled to the certified copy of the order dated 17.09.2014 passed by the learned Master. After taking return, the applicants represented the copy application by quoting the relevant provisions under O.S. Rules, enabling for obtaining certified copies by the third party as well. Thereafter, the said application was not further processed by the Registry; on enquiry, the applicants came to know that the said copy application was tagged with the case bundle in E.P.No.48 of 1997 in the Court of Master. Thereafter, the applicants were disabled to obtain the certified copy of the order passed in A.No.4969 of 2014 in E.P.No.48 of 1997. Thereafter, the applicants presented the appeal against the order dated 17.09.2014 passed in A.No.4969 of 2014, without enclosing the certified copy of the impugned order dated 17.09.2014. In that process, there was a delay of 54 days in preferring the appeal. Hence, the applicants filed an application under Diary No.40981 of 2014 seeking to condone the delay of 54 days in preferring the appeal against the order dated 17.09.2014 in Application No.4969 of 2014 in E.P.No.48 of 1997 passed by the learned Master; but, the said application under Diary No.40981

of 2014 was not numbered by the Registry; however, it was posted under the caption "For Maintainability" before this court. This Court had taken up the said application in Diary No.40981 of 2014, along with the other applications in A.Nos.6809 to 6811 of 2014 etc., on 16.02.2015, and passed a detailed common order and directed the Office to number the said application. Moreover, while passing the order dated 16.02.2015, this Court had also called for the Vigilance Report and perused the Vigilance Report and found that there was no finding as against the applicants herein, either in the vigilance enquiry and in other proceedings, to the effect that the applicants herein are responsible for the tampering and amending the cause title in the EP. Further, the said Vigilance Report revealed that the interpolation was committed by one Mrs.T.R.Indra, a staff of this Court. Hence, this Court allowed the earlier applications filed by the applicants and directed the learned Master to implead the applicants herein as co-petitioners in the Execution Petition. Further, the learned Master was also directed to delete the names, which were entered in the Execution Petition by way of interpolation committed by the staff of this Court and also directed the Registry to number the application under Diary No.40981 of 2014, which was filed to condone the delay of 54 days in filing the appeal against the order dated 17.09.2014 in A.No.4969 of 2014. Thereafter, all these applications, which

are connected to the order dated 17.09.2014 in A.No.4969 of 2014, have been numbered and posted before this Court.

9. Since in all these applications revolve upon the order dated 17.09.2014 in A.No.4969 of 2014 passed by the learned Master, this Court has to deal with only the following questions_

1) Whether the delay of 54 days in filing the appeal is liable to be condoned?

2) Whether the application to dispense with the certified copy of the order dated 17.09.2014 in A.No.4969 of 2014 passed by the learned Master, is maintainable?

3) Whether the applicants herein are entitled to raise additional grounds?

4) Whether the impugned order passed by the learned Master under Section 340 in A.No.4969 of 2014 is legally sustainable or not?

10. Before dealing with the validity of the order dated 17.09.2014 passed by the learned Master under Section 340 of Cr.P.C, it would be appropriate to decide the first three questions mentioned above.

11. It is the main objection of the learned counsel for the respondent that no sufficient cause has been shown to condone the delay and that the appeal could not be filed, without the copy of the impugned order. But, a perusal of the affidavit, I find that in the affidavit, it has been specifically averred by the applicants that they have filed a copy application under Diary No.29337 of 2014 on 19.09.2014, seeking to furnish a certified copy of the order dated 17.09.2014 in A.No.4969 of 2014; but, that application was not numbered by the Registry stating that the applicants are not entitled to the certified copy of the order dated 17.09.2014. It is useful to extract the text of Order 14 Rule 12 of O.S. Rules, for better appreciation of the claims of the applicants_

"Any person affected by any order or decision of the Master (except on a question of Court fees) or of the Registrar, in respect of all matters judicially dealt with in the exercise of the powers delegated to him by the Hon'ble Chief Justice from time to time, may appeal therefrom to a Judge. Such appeal shall be by Judge's summons filed within eight clear days of the date of order or decision or within such further time as the Judge may allow and shall briefly set out the grounds of the appeal. Except with the special leave of the Court no fresh affidavit or document or evidence will be allowed to be filed or adduced.

It shall not be necessary to file a copy of the order or decision appealed against and

the time for obtaining any such copy shall not be excluded in computing the said period of eight days.

Unless the Court shall otherwise order, the filing of an appeal shall not operate as a stay of the order or decision appealed against.

From a reading of the above provision of law, it is clear that at the time of filing the appeal, it is not necessary to file a copy of the order or decision against which appeal is preferred. In the instant case, though the applicants had filed a copy application, it is the Registry who refused to issue copy of the order and returned the copy application. As such, there was a delay of 54 days in filing the appeal, under Rule 12 Order 14 of O.S.Rules. Therefore, absolutely I do not find any infirmity in allowing the application to dispense with the certified copy of the impugned order. Further, I am of the opinion that the delay in filing the appeal has been explained with sufficient cause. **Therefore, the connected applications in A.Nos.1156, 1157 & 1158 of 2015 deserve to be allowed and accordingly, the same are allowed as prayed for.**

12.As regards the raising of additional grounds, it is the case of the applicants that they did not know the actual contents in the order dated 17.09.2014 in A.No.4969 of 2014 passed by the learned Master, as the copy of the same was not

furnished to them. Only in the course of enquiry by this Court in the earlier Application Nos.6809 to 6811 of 2014 etc., the respondent herein had filed a copy of the order dated 17.09.2014 in A.No.4969 of 2014 passed by the learned Master, in the typed set of papers dated 08.12.2014 before this Court. After knowing the text of the order dated 17.09.2014 passed in Application No.4969 of 2014, by the learned Master, from the typed set of papers submitted by the respondent herein, dated 08.12.2014, the applicants herein have filed the Application No.1160 of 2015 seeking permission to raise additional grounds in the appeal preferred by the applicants against the order dated 17.09.2014. Under such circumstances, I find that the applicants have given sufficient reason in the affidavit to raise additional grounds. Hence, I am of the opinion that as sufficient reasons have been shown, the application in A.No.1160 of 2015 for raising additional grounds, also deserves to be allowed and accordingly, the same is allowed as prayed for.

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13. With regard to the Question No.4 i.e., whether the order dated 17.09.2014 passed by the learned Master is legally sustainable or not, it is the main submission made by the learned counsel for the applicants that the learned Master has no power/authority to take action against the applicants herein

under Section 340 of Cr.P.C. In this regard, the learned counsel for the applicants has also invited the attention of this Court to Order 14 Rules 8, 10 & 12 of O.S.Rules and submitted that the jurisdiction and powers to be exercisable by the learned Master in regard to the subjects have been enumerated under Order 14 Rule 10 of O.S. Rules. Other than the subjects enumerated under Order 14 Rule 10 of O.S.Rules, the Hon'ble Judge alone has got jurisdiction/power to deal with and pass orders in accordance with law, as evident from Order 14 Rule 8 of O.S.Rules. The subject matter's jurisdiction for initiating action under Section 340 of Cr.P.C. does not fall under the category of subjects specified under Order 14 Rule 10 of O.S. Rules. Thus, the jurisdiction for the application to be preferred by the party for the proceedings to be initiated under Section 340 of Cr.P.C. would fall under the ambit of Order 14 Rule 8 of O.S. Rules, with Judge's summons before the learned Judge of this Court. But, in the instant case, the learned Master, who has no authority to deal with the application under Section 340 of Cr.P.C., has passed the impugned order dated 17.09.2014. Moreover, under Section 340 of Cr.P.C., no preliminary enquiry was conducted by the learned Master and merely by accepting the contentions in the affidavit filed by the respondent, the learned Master has passed the impugned order. In this regard, the learned counsel for the applicants has also relied upon the judgment reported in **100 LW**

738 (Harikrishna Jhavar Vs. Ram Narayan Bhattad) in support of his contention that under Order 14 Rule 8 of O.S.Rules, the application for sanction to prosecute will have to be filed by a Judge's summons and not by a Master's summons. Thus, the learned counsel for the applicants submitted that the impugned order passed by the learned Master in the application filed under Section 340 r/w 195(b) of Cr.P.C., is without jurisdiction and it is in nullity.

14. The learned counsel for the applicants would also submit that the Court has to satisfy two requirements of law, before granting sanction for prosecution under Section 340 of Cr.P.C. The first being that the Court has to hold a preliminary enquiry in regard to allegation; and secondly, it has to record its satisfaction for ordering prosecution. It is not mandatory and compulsory for the Court to order prosecution under Section 340, even if it is satisfied that the allegation are *prima facie* true. In the instant case, no preliminary enquiry was conducted and that the respondent was not even examined as a witness. In this regard, the learned counsel for the applicants relied upon the Judgment reported in **(2005) 4 SCC 370 (Iqbal Singh Marwah Vs. Meenakshi Marwah)**.

For the same proposition, the learned counsel for the applicants has also relied upon the judgment reported in **2000 (1) SCC 278 (M.S.Ahlawat Vs. State of Haryana)**, wherein it has

been held by the Hon'ble Supreme Court as follows_

"5. Chapter XI of IPC deals with false evidence and offences against public justice and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (Cr.P.C.) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a Court, private prosecutions are barred absolutely and only the Court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 Cr.P.C. are mandatory and no Court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that Section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

6. Section 340 Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 Cr.P.C. While under Section 195 Cr.P.C, it is open to the Court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr.P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195

Cr.P.C. are mandatory and no Court can take cognizance of offences referred to therein. It is in respect of such offences the Court has jurisdiction to proceed under Section 340 Cr.P.C. and a complaint outside the provisions of Section 340 Cr.P.C. cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.

7. This Court in *Chajoo Ram v, Radhey Shyam & Anr.*, AIR (1971) SC 1367, stated that where the offence relates to a Court under Section 195 Cr.P.C. sanction of the court should be obtained first and such sanction should be granted only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely and to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very end. It is made clear that there is no inherent power to make a complaint apart from the provisions of Section 195 Cr.P.C."

Thus, the learned counsel for the applicants submitted that the impugned order passed by the learned Master is liable to be set aside.

15. Per contra, it is the counter submission of the learned counsel for the respondent that in the decision reported in **100 LW 738** (cited supra), which was relied on by the learned counsel for the applicants, it has been held that for one thing, the Master Court is also a Court within the meaning of

the Rules of High Court on the Original Side. According to the learned counsel for the respondent, therefore, it is clearly implied that since Execution Petition is dealt with by the learned Master, application under Section 340 of Cr.P.C., can also be filed before the learned Master. Further, learned Master Court is a delegatee of the High Court and the Master's order is not appealable or revisable. The order of the learned Master under Section 340 of Cr.P.C cannot be questioned under Order 14 Rule 12 of O.S.Rules before the learned Single Judge of this Court, since power of this Court is only to review; and there can be no review in the criminal matter.

16. But, by way of reply, the learned counsel for the applicants submitted that it is incorrect to state that the power of this Court is only to review and no appeal will lie as against the order passed by the learned Master under Section 340 of Cr.P.C. In this regard, the learned counsel for the applicants has also relied upon the judgment reported in **(2005) 1 CTC 304 (Iridium India Telecom Ltd., Vs. Motorola Inco.,)** and submitted that Original Side Rules framed by the Chartered High Court in exercise of Clause 37 of the Letters Patent is the special law, which would prevail over the general law, being Civil Procedural Code. Therefore, the appellate jurisdiction conferred upon this Court under Order 14 Rule 12 of O.S.Rules to exercise judicial review against any orders passed by the

learned Master is very well maintainable in the case on hand.

17. Keeping in view the submissions made on either side, I have carefully perused the materials available on record.

18. At the out set, it would be appropriate to extract Order 14 Rule 10 of the O.S. Rules, which reads as follows_

"10. All applications of the description or relating to the matters hereunder mentioned shall be made to the Master_

(i) Admission and rejection of complaints and applications for excusing delay in representation of pleadings beyond one month.

(ii) Applications for leave to sign and verify any pleadings or any other proceedings in suit or matter.

(iii) Applications for revocation of the appointment of an advocate and for change of advocates.

(iv) Applications for an order appointing a guardian-ad-item of an infant or a person of unsound mind or for insertion of the name of the legal representative of a deceased party and for amendment of the record accordingly.

(v) Applications by strangers to a suit for leave to inspect the records and for obtaining copies of the records.

(vi) Applications for inspection of documents received on sub-poena or summons or letter of request or for obtained copies thereof.

(vii) Application for production of records

or documents or accounts filed in such record before any other court or officer of such courts.

(viii) Applications for the issue of a proceeding to another Court for the production of the record of such Court or of notice or summons to a public officer for production of a public record or register.

(ix) Applications for an order directing the Registrar of Assurances to transmit a will or codicil to the High Court.

(x) Applications for the issue of a citation to any person to bring into Court any testamentary document or paper.

(xi) Applications for enlargement or abridgment of time under Order I, Rule 7 of these rules, and generally all applications for extension of time under the Code, or under these rules, except with regard to time fixed by the Court in decrees for decretal orders.

(xii) Applications for adding or striking out parties in suits or other matters and for leave to amend a pleading or to strike out any matter therein.

(xiii) Applications for orders for production of prisoners and others under the Prisoners Act, 1900.

(xiv) Applications under Order I, Rule 8 of the Code, for leave to sue and defend on behalf of or for the benefit of all in the same interest.

(xv) Applications for orders concerning substituted service of summons or notices.

(xvi) Applications for leave to appear after

eight days by a third party under the third party procedure.

(xvii) Applications for directions in respect of matters referred to in Order VI, Rule 8(1) to (5) and (8) of these rules.

(xviii) Applications relating to the conduct of suit previous to the hearing unless the suit is in one of the lists of causes for the day.

(xix) Applications for further and better statement of particulars under Order VI, Rule 5 of the Code.

(xx) Applications for decrees under Order VII of the Rules, in default of the defendant obtaining leave to defend or of his defence in pursuance thereof.

(xxi) Applications for summary suits filed under Order VII of these rules being treated as ordinary suits.

(xxii) Applications for transfer of suits from the list of default cases to the General List of Causes or Monthly List of Causes. Applications for transfer of suits from the list of contested suits to any other list.

(xxiii) Applications for leave to file further written statements.

(xxiv) Applications for discovery and inspection.

(xxv) Applications for delivery of interrogatories and determining whether interrogatories are properly answered.

(xxvi) Applications for examination of witnesses *de bene esse*.

(xxvii) Applications, except in cases coming

under Order VIII of these rules or Order XXXII of the Code for an order permitting the withdrawal of dismissal of a suit, appeal, application or matter, by consent or where the other side has not answered, or for passing a decree by consent.

(xxviii) Applications for the return of exhibits, both documentary and non-documentary including applications under Order XIII, Rule 9 of the Code.

(xxix) Applications for or relating to an order for transmission or for the execution of a decree or order for arrest, attachment, sale or otherwise, with power to issue notice under Order XXI, Rules 16, 22 or 37 of the Code, or where notice is otherwise necessary or considered advisable (except matters dealt with by the Registrar under the powers delegated to him by the Chief Justice).

(xxx) Applications for precept under Section 46 of the Code.

(xxxi) Applications for the withdrawal of attachment or for return of a warrant.

(xxxii) Applications for confirming a sale in execution of, or under a decree held by the official Referee, Commissioner or by the Sheriff.

(xxxiii) Applications for the examination of a judgment - debtor as to his property under Order XXI, Rule 41 of the Code.

(xxxiv) Applications under Section 52 of the Code.

(xxxv) Applications under Order XXI, Rule 50, Sub-rule (2) of the Code where the liability is not disputed.

(xxxvi) Applications for possession under Order XXI, Rules 95 and 96 of the Code.

(xxxvii) Applications in execution for appointment of a receiver or for the issue of an injunction.

(xxxviii) Uncontested applications for recording satisfaction or adjustment of a decree.

(xxxix) Applications for concurrent and simultaneous execution of decree.

(xl) Applications for payment out of moneys paid in execution of decrees or orders of Court or for delivery of effects and securities into or out of Court.

(xli) Applications for rateable distribution under Section 73 of the Code.

(xlii) Applications arising from the death, marriage or insolvency of parties to suits or petitions or from the assignment, creation or devolution of any interest, estate or title *pendente lite*.

(xliii) Applications to set aside abatement of suits.

(xliv) Applications for commissions to examine witnesses under Order XXVI, Rules 1 to 8 of the Code.

(xlv) Applications under Order XXX, Rule 2 of the Code, for disclosure of partners names.

(xlvi) Applications for leave to institute or defend any proceedings as indigent person and for investigation of pauperism.

(xlvii) Applications by Receivers and others relating to the ordinary management of property.

(xlviii) Uncontested applications in respect

of proceedings for probate or letters of administration.

(xlix) Uncontested applications for amendment of decrees, and orders, settling and approving deed of assignment in case of sale under the Guardian and Wards Act, applications by persons interested in the property of minors for inspection and taking copies of statements of accounts by the guardian.

(1) All applications relating merely to procedure under the Indian Companies Act, 1913, the Guardian and Wards Act, 1890; Indian Lunacy Act, 1912; the Indian Successions Act, 1925; the Court-Fees and Suits Valuation Act, 1955; the Indian Trusts Act, 1882; the Arbitration Act, 1940; the Powers of Attorney Act, 1882; the Bankers Books Evidence Act, 1891; and generally in the matter of any Act unless otherwise provided for in the Act itself or by rules thereunder or by these rules."

The learned Master is empowered to deal with only the applications regarding the matters mentioned under Order 14 Rule 10 of O.S.Rules. Other than the subjects enumerated under Order 14 Rule 10 of O.S. Rules, the Judge alone has got jurisdiction/power to pass orders, as evident from Order 14 Rule 8 of O.S.Rules, which is extracted hereunder_

Order 14 Rule 8 of O.S.Rules:- Application to be filed before Judge.

All applications other than those mentioned in Rule 10 infra shall be disposed of by a Judge. Provided that a Judge may refer any matter brought before him under this rule to a Division Bench.

In the case on hand, the jurisdiction of the subject matter for initiating action under Section 340 of Cr.P.C., does not fall under the category of subjects specified under Order 14 Rule 10 of O.S.Rules. Therefore, any application preferred by a party for the proceedings to be initiated under Section 340 of Cr.P.C. would fall under the ambit of Order 14 Rule 8 of O.S.Rules, with the judge's summons before the learned Single Judge of this Court. In this regard, a reference could be placed in the judgement reported in **100 LW 738 (Harikrishna Jhavar Vs. Ram Narayan Bhattad)**, wherein it has been held by a Division Bench of this Court as follows—

"13. It was then contended that if at all perjury or false evidence was before the Master and, therefore, the application should have been filed before him and not before the learned Single Judge. We are unable to agree with this contention. For one thing, the Master's Court is also a Court within the meaning of the Rules of the High Court on the Original Side. Secondly, under the Original Side Rules, Order 14 Rule 8, the application for sanction to prosecute will have to be filed by a Judge's summons and not by a

Master's summons and in these circumstances, the application filed before the learned Judge was also in order.

14. It was then vaguely contended by the learned counsel that no prejudice could be said to have been caused to the respondent and that it could not be said, therefore, that it is expedient in the interests of justice that a complaint should be preferred. We are unable to agree with this contention of the learned counsel. It is not merely a question of prejudice to the respondent but it is a case of a litigant, as stated by the learned Judge, trying to take the court for a ride making false averments in the affidavit. We are also unable to say that it does not prejudice the respondent. "

A reading of the dictum laid down in the above said judgment would clearly show that the learned Master is not empowered to deal with the application under Section 340 of Cr.P.C. Therefore, the impugned order dated 17.09.2014 passed by learned Master in A.No.4969 of 2014 with Master Summons under Section 340 of Cr.P.C r/w Section 195(b)(ii) & (iii) of Cr.P.C with regard to amendment and tampering that had taken place in Execution Petition No.48 of 1997, for offences under Section 120(b) r/w 466 IPC, suffers from want of jurisdiction, nullity, non-est in the eyes of law and contrary to the principles and procedure specified under Section 340 of Cr.P.C, besides

suffers from a complete and total non-application of mind and palpable misreading of the case papers in E.P.No.48 of 1997, whereby resulting in full of factual errors on the case of the records. The learned Master is not empowered to travel beyond the scope of delegated authority under Order 14 Rule 10 of O.S. Rules and that the Master's authority is confined to only subjects enumerated under Order 14 Rule 10 of O.S.Rules and all other subject matters, which are not listed out under Order 14 Rule 10 of O.S.Rules would fall under the Order 14 Rule 8 of O.S.Rules, which have got to be dealt with only by the learned Judge.

19.Further, as contended by the learned counsel for the applicants, the Court has to satisfy two requirements of law before granting sanction for prosecution under Section 340 of Cr.P.C. The first being that the Court has to hold a preliminary enquiry in regard to the allegation. Secondly, it has to record its satisfaction for ordering prosecution. It is not mandatory and compulsory for the Court to order prosecution under Section 340 of Cr.P.C, even if it is satisfied that the allegations are *prima facie* true. In the instant case, no preliminary enquiry was conducted and that the respondent was not even examined as a witness. Thus, giving go-by to all the relevant Rules and Regulations, the learned Master has passed the impugned order. In this regard, a

reference could be placed in the judgment reported in **(2005) 4 SCC 370 (Iqbal Singh Marwah Vs. Meenakshi Marwah)** wherein it has been held by the Hon'ble Supreme Court as follows_

"23. 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. The broad view of clause (b)(ii), as canvassed by learned counsel for the

appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded."

In that case, no enquiry was conducted by the learned Master before passing the order.

20. Further, from a perusal of the impugned order passed by the learned Master, I find that in the impugned order, the learned Master has rendered a finding to the effect that the applicants herein, in connivance with a clerk of this Court, have interpolated the execution petition by inserting their names as co-decree holders 2 to 5. The relevant portion in the impugned order dated 17.09.2014, at para 4, is as follows_

"4.....Till the order passed for re-conveyance of the deed, the respondents 21 to 24 not appeared to participate in the execution proceedings. But, all of a sudden when with the connivance of the lady clerk by name Indira, they have interpolated the execution petition and inserted their names as co-decree holders 2 to 5."

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While directing prosecution under Section 340 of Cr.P.C. to the Magistrate Court to try the offence, the learned Master ought not to have rendered a finding on merits on the allegations. What was required is, only a preliminary enquiry under Section

340 of Cr.P.C. But, in the instant case, the learned Master has recorded a definite finding holding the guilty of the allegations, leaving nothing to the Magistrate Court to hold Trial, except to exercise the task of sentencing the applicants. In this regard, a reference could be placed in the judgment reported **1954 SCR 1144 = AIR 1954 SC 397 (M.S.Sheriff Vs. State of Madras)**, wherein a Constitutional Bench of the Hon'ble Supreme Court has observed as follows_

"13.The High Court has scrutinised the evidence minutely and has disclosed ample material on which a judicial mind could reasonably reach the conclusion that there is matter here which requires investigation in a criminal court and that it is expedient in the interests of justice to have it enquired into. We have not examined the evidence for ourselves and we express no opinion on the merits of the respective cases but after a careful reading of the judgment of the High Court and the report of the District Judge, we can find no reason for interfering with the High Court's discretion on that score. We do not intend to say more than this about the merits as we are anxious not to prejudge or prejudice the case of either side. The learned Judges of the High Court have also very -rightly observed in their order under section 476 that they were not expressing any opinion on the guilt or innocence of the appellants."

A reading of the dictum laid down in the said judgement would show that the Court which is dealing with the application under Section 340 of Cr.P.C. should not express any opinion on the guilty of the accused. In the instant case, as contended by the learned counsel for the applicants, the learned Master has rendered a finding as against the applicants to the effect that the applicants are guilty of the offence punishable under Sections 466 IPC r/w 120(B) IPC. If such a finding is given while forwarding a complaint to the concerned Judicial Magistrate, there is every likelihood of causing prejudice to the defence that the applicants intend to take before the trial Court. Therefore, the impugned order passed by the learned Master is not legally sustainable, not only on the ground that he had travelled beyond the scope of Order 14 Rule 12 of OS Rules, but also on the ground that he has also rendered a finding as against the applicants holding that they are guilty of the offence punishable under Sections 466 IPC r/w 120(B) IPC.

21. But, it is yet another submission of the learned counsel for the respondent that since the Master is a delegatee of this Court and the Master's order is not appealable or revisable, the order of the learned Master under Section 340 of Cr.P.C cannot be questioned under Order 14 Rule 12 of O.S. Rules before the learned Single Judge of this Court; that

though the power of this Court is only to review, there can not be any review in the criminal matter. But, in my considered opinion, this submission of the learned counsel for the respondent is not legally sustainable. The appellate jurisdiction conferred upon this Court under Order 14 Rule 12 of O.S.Rules to exercise judicial review against any orders passed by the learned Master is very well maintainable. As per Order 14 Rule 12 of OS Rules, any person affected by any order or decision of the Master in respect of the matters judicially dealt with in the exercise of the powers delegated to him by the Hon'ble Chief Justice, may file an appeal by Judge's summons within eight clear days from the date of order of decision. The Original Side Rules have been framed for regulating the suits and other legal proceedings in exercise of Clause 37 of Letters Patent. Therefore, the Original Side Rules enjoy a special privilege carrying the status as the special rules which shall have precedence over the other laws including Civil Procedure Code and in the event of any conflict/inconsistency experienced as between OS Rule and CPC, the provisions of Original Side Rules would alone prevail and the provisions of CPC would yield. In this regard, a reference could be placed in the judgment reported in **(2005) 1 CTC 304 (Iridium India Telecom Ltd., Vs. Motorola Inco.,)**, wherein it has been held by the Hon'ble Supreme Court as follows_

"19.The Legislature recognized the special role assigned to the Chartered High Courts and exempted them from the application of several provisions of the Code in the exercise of their ordinary or extra-ordinary civil jurisdiction for the simple reason that those jurisdictions were governed by the procedure prescribed by the rules made in exercise of the powers of the Chartered High Courts under Clause 37 of the Letters Patent. Interestingly, Section 652 of this Act itself empowered the High Courts to make rules ", suggesting that consistency with the Code was a *sine qua non* only when making rules for the subordinate Courts."

Therefore, as stated supra, when the appellate jurisdiction conferred upon this Court under Order 14 Rule 12 of O.S.Rules to exercise judicial review against any orders passed by the learned Master is very well maintainable, the submission of the learned counsel for the respondent that since the Master is a delegatee of this Court and the Master's order is not appealable or revisable, the order of the learned Master under Section 340 of Cr.P.C cannot be questioned under Order 14 Rule 12 of O.S.Rules before the learned Single Judge of this Court, is not legally sustainable.

For the foregoing reasons, all the above applications deserve to be allowed. Accordingly, they are allowed and the

impugned order dated 17.09.2014 passed by the learned Master is set aside. The Deputy Registrar (OS) of this Court, who is the complainant in C.C.No.3303 of 2014 pending against the applicants herein on the file of the VII Metropolitan Magistrate Court, Chennai, is directed to withdraw the said complaint.

sd/.R.P.S.J.

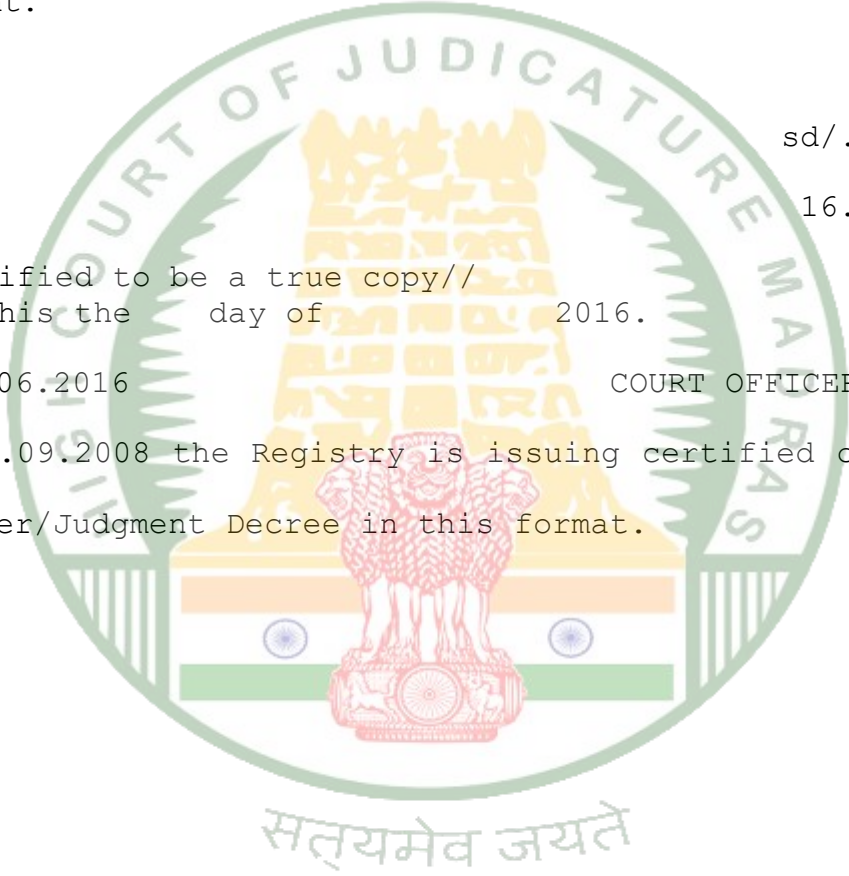
16.06.2016

//Certified to be a true copy//
Dated this the day of 2016.

S.s/27.06.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.



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