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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM No. M-1525 of 2015 (O/M)
Date of decision : 25.2.2016

Simran Arora

..... Petitioner

Versus

Central Bureau of Investigation, Special Crime-II, New Delhi

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Vikram Chaudhri, Senior Advocate, with,
Mr. Harshit Sethi, Advocate, for the petitioner.

Mr. Sukhdeep S. Sandhu, Senior Standing Counsel,
for respondent-CBI, New Delhi.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not. Yes
3. Whether the judgment should be reported in the digest ? Yes

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KULDIP SINGH J. (ORAL)

Simran Arora (petitioner) has challenged the impugned order dated 29.7.2013 (Annexure-P-5), passed by the learned Special Judge, CBI, Punjab, Patiala, (wrongly mentioned as Additional Sessions Judge) and further order dated 29.8.2013 (Annexure-P-6), passed by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, treating the order of the learned Special Judge,

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CBI, Punjab, Patiala, as a complaint under Section 340 Cr.P.C. Also challenged are the subsequent orders dated 5.10.2013 (Annexure-P-8), passed by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, as well as order dated 19.12.2013 (Annexure-P-9), passed by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, committing the case to the Court of Sessions and order dated 3.9.2014 (Annexure-P-10), passed by the learned Special Judge, CBI, Punjab, Patiala, holding that the charges under Section 193 IPC only are made out and consequently, after framing of the said charge, the case was sent back to the Special Judicial Magistrate, CBI, Patiala.

I have heard the learned senior counsel for the petitioner, learned senior standing counsel for respondent-CBI, New Delhi, and have also carefully gone through the file.

The brief facts of the case are that the Central Bureau of Investigation filed the challan against one Sarabjit Singh alias Raju and 11 others under Sections 376 and 109 read with Section 376 IPC. The trial was conducted in the Court of the learned Special Judge, CBI, Punjab, Patiala. The case was decided, vide judgment dated 29.7.2013 (Annexure-P-4). It comes out that the present petitioner, who was one of the prosecutrix, turned hostile during trial. Therefore, in the judgment, liberty was given to the prosecution to file an application under Section 340 Cr.P.C. against the remaining

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two prosecutrix at appropriate time. It further comes out that an application dated 6.1.2007 was already filed by the CBI for initiating proceedings under Section 340 Cr.P.C. against Ms. Simran Arora (petitioner). The learned Special Judge, CBI, Punjab, Patiala, passed the impugned order dated 29.7.2013 (Annexure-P-5), which shows that the learned counsel for the CBI had tendered into evidence some documents and the statements of the witnesses. Apparently, for holding an inquiry under Section 340 Cr.P.C., the concluding part of the order dated 29.7.2013 (Annexure-P-5), passed by the learned Special Judge, CBI, Punjab, Patiala, is reproduced as under :-

“ In view of my findings in the main case and taking into consideration the statements recorded under Section 161 Cr.P.C. as well as under Section 164 Cr.P.C. of Simran Arora, this Court is of the considered view that prima facie, offence (not typed in the true copy of the petitioner) under Section 340 Cr.P.C. is made out against Simran Arora. However, as per the provisions of Section 340 Cr.P.C., as discussed above, the mater is referred to Special Judicial Magistrate, CBI, Punjab, Patiala, for further inquiry in this matter after affording reasonable opportunity to the prosecution as well as accused without being prejudiced by the preliminary inquiry made by this Court. Parties are directed to appear before Judicial Magistrate, CBI, Punjab, Patiala, for 31.8.2013. Ahlmad of the Court is directed to send the file to the concerned

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court well within time.”

In view of the said order, the matter was put up before the learned Special Judicial Magistrate, CBI, Punjab, Patiala, who vide impugned order dated 5.10.2013 (Annexure-P-8), treated the said order as a criminal complaint. Thereafter, vide subsequent order, it was held that offence under Section 195 IPC is made out. Therefore, vide order dated 19.12.2013 (Annexure-P-9), passed by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, the case was committed to the Court of Sessions. The learned Special Judge, CBI, Punjab, Patiala, who dealt with the matter, vide order dated 3.9.2014 (Annexure-P-10), held that offence under Section 193 IPC is made out and, therefore, committed the case back to the learned Special Judicial Magistrate, CBI, Punjab, Patiala.

In order to properly appreciate the matter, it is necessary to produce Section 340 Cr.P.C., which is under :-

“Section 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

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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.].

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

It goes to show that the proceedings could be initiated on the application in this behalf or by Courts on the ground that the

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Court is of the 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 IPC, which appears to have been committed in or in relation to a proceeding in the said Court. It is apparent that the Court had acted upon the application, which was pending before it and conducted the inquiry by taking some documents on file.

Now, further question would arise as to whether the learned Special Judge, CBI, Punjab, Patiala, was justified in ordering further preliminary inquiry by the learned Special Judicial Magistrate, CBI, Punjab, Patiala ? I am of the view that so far as order for further preliminary inquiry by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, is concerned, the same is wholly illegal. Infact, the inquiry under Section 340 Cr.P.C. was to be completed by the said Special Judge, CBI, Punjab, Patiala, himself and then a formal complaint was to be made to the concerned learned Judicial Magistrate, alongwith list of witnesses and list of documents and then, it was to be tried or dealt with by the learned Judicial Magistrate, as such. However, the learned Special Judicial Magistrate, CBI, Punjab, Patiala, took the order of the learned Special Judge, CBI, Punjab, Patiala, as a complaint and dealt with the same as such. Thereafter, the learned Special Judicial Magistrate, Punjab, Patiala, holding that the offence under Section

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195 IPC is triable by the Court of Sessions, committed the case to the court of the learned District and Sessions Judge, who remitted back the same, vide order dated 3.9.2014 (Annexure-P-10), holding that offence, triable by the learned Special Judicial Magistrate, CBI, is made out.

In these circumstances, I am of the view that the procedure laid down under Section 340 Cr.P.C. has not been properly followed in the present case.

Admittedly, in this case, the prosecutrix was one of the star witnesses of the prosecution and it turned hostile. Therefore, apparently, it was expedient and in the interests of justice that an inquiry should be held under Section 340 Cr.P.C. for the offence committed under Section 195(1)(b) IPC.

In view of the said facts, the order dated 29.7.2013 (Annexure-P-5), passed by the learned Special Judge, CBI, Punjab, Patiala, ordering further inquiry by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, and the subsequent orders dated 29.8.2013 (Annexure-P-6), 5.10.2013 (Annexure-P-8), 19.12.2013 (Annexure-P-9) and 3.9.2014 (Annexure-P-10), passed by the learned Special Judicial Magistrate, CBI, Punjab, Patiala, are hereby set aside. The case is remanded to the Court of the learned Special Judge, CBI, Punjab, Patiala, with a direction that if the Court is of the view that the inquiry under Section 340 Cr.P.C. is not complete, the

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Court shall itself hold further inquiry and if, after the inquiry, it is found that the complaint is required to be made, the learned Special Judge, CBI, Punjab, Patiala, shall himself make the complaint in accordance with the provisions of Code of Criminal Procedure, 1973 to the Court of Competent Jurisdiction alongwith list of witnesses and list of documents. The file be now put up before the learned Special Judge, CBI, Punjab, Patiala, on 16.3.2016, for further proceedings.

Disposed of.

(KULDIP SINGH)
JUDGE

25.2.2016
sjks