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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 418/2016

ANITA

..... Appellant

Through: Mr.G.D.Chopra and Mr.S.N.Tripathi,
Advocates.

versus

RAJESH KUMAR SINHA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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02.05.2016

Crl.M.A. No.7035/2016

1. For the reasons stated in the application, 22 days' delay in filing the appeal is condoned.
2. Application stands disposed of.

Crl.A. No.418/2016

1. This appeal has been preferred by the appellant impugning the order dated 04.01.2016 passed by learned ADJ in Civil Suit No.216/2009 whereby the application under Section 340 Cr.P.C. filed by her for initiating action against PW-5 Rajesh Kumar Sinha has been dismissed.
2. Mr.G.D.Chopra, Advocate for the appellant has submitted that there was ample material on record to show contradictory statements made by PW-5 Rajesh Kumar Sinha. Hence the learned Trial Court was not justified in dismissing the application under Section 340 Cr.P.C.

3. Learned counsel for the appellant has also placed on record the certified copy of the order dated 04.04.2016 passed in RFA No.193/2016 which has also been preferred impugning the judgment dated 04.01.2016 passed in Civil Suit No.216/2009. The order on the application under Section 340 Cr.P.C. is part and parcel of the said order, operation of which has been stayed by this Court in RFA No.193/2016.

4. A defamatory suit bearing CS No.216/2009 was filed by the appellant Anita against other three teachers of the same School for claiming compensation/damages of ₹ 6 lacs. The learned ADJ decided all the four issues framed in the said suit and thereafter dealt with the application under Section 340 Cr.P.C. and passed the following order:-

‘Application u/s 340 Cr.P.C. of the plaintiff :- PW-5 Sh.Rajesh Kumar Sinha teacher of the school in the capacity of an eye witness of the incident in question dated 28-1-2009 was examined by the Court of MM in a criminal complaint case instituted by the plaintiff where he had supported her case. He filed his affidavit of evidence Ex.PW5/A in the present case supporting the case of the plaintiff but during cross examination, he totally changed his stand and gone against the averments made in his affidavit. Plaintiff moved an application under Section 340 Cr.P.C. for initiating the perjury proceedings against PW-5. Notice of this application was given to PW-5 who once appeared in the Court but thereafter neither appeared again nor filed any reply of the same. In his affidavit of evidence, PW-5 stated that he had seen all the three defendants giving beatings to the plaintiff. However, in cross examination, this witness totally changed the stand and put entire blame upon the plaintiff for beating defendant no.1 and 2 as well as abusing them. According to this witness when defendant no.3 came later on at the, plaintiff also beaten her.

However, since PW-5 has specifically stated that his affidavit was already typed when he reached along with plaintiff, Sh.C.B.Tomar and husband of the plaintiff, then the

possibility that he had signed his affidavit at the instance of these persons and the same was not prepared as per his instructions cannot be ruled out. Plaintiff did not choose to re-examine this witness to get clarification from him by declaring him hostile to find out why he was diverting from the facts alleged in his affidavit. The statement of PW-5 has to be reconciled as a whole and if his affidavit is considered in the light of entire cross examination, then it is clear that he is telling the truth and affidavit was not his own product. Even if for sake of arguments, the entire evidence of Pw-5 is ignored from this case, then also there are number of discrepancies and loopholes in the case of the plaintiff, that she is bound to lose her case. The manner of incident is changed at number of facts and points by the plaintiff that her story regarding incident becomes highly doubtful and unbelievable. I am also of the view in the interest of justice that it is not a fit case that action of perjury should be taken against PW-5. Hence, application of the plaintiff under Section 340 Cr.P.C. is hereby dismissed.'

5. The appellant has put herself in a situation where on the one hand, operation of the judgment dated 04.01.2016 (which also includes dismissal order on the application under Section 340 Cr.P.C.), has been stayed in RFA No.193/2016 by this Court and on the other hand, in respect of the dismissal of the application under Section 340 Cr.P.C., appeal under Section 341 Cr.P.C. has been preferred separately and pray for its disposal.

6. While dismissing the application under Section 340 Cr.P.C., learned ADJ has taken into consideration the fact that PW-5 Rajesh Kumar Sinha – another teacher of the same school, who was examined as an eye witness, stated that he was asked to sign the affidavit which was already prepared by the plaintiff. The learned ADJ was of the opinion that the witness was truthful hence did not consider it expedient in the interest of justice to initiate proceedings against him for perjury.

7. In **Chajoo Ram, vs. Radhy Shyam & Anr.** 1971 (1) SCC 774 it was held as under :

'7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge.'

8. The keynote of Section 340 Cr.P.C. is that if the Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made in that case the proceedings can be initiated. Thus, the proceedings under Section 340 Cr.P.C. cannot be resorted to for the purpose of vindicating personal vendetta. Here in the instant case, the appellant, who was plaintiff in Civil Suit No.216/2009, examined PW-5 Rajesh Kumar Sinha as an eye witness. Due to the answers given by PW-5 in his cross examination, the plaintiff filed the application for initiating action against him for committing perjury.

9. The answers given by the witness i.e. PW-5 in his cross examination in itself does not make out a case for initiating proceedings against him for committing perjury.

10. Learned ADJ has rightly considered it to be not expedient in the

interest of justice to initiate action under Section 340 Cr.P.C.

11. The appeal is dismissed.

PRATIBHA RANI, J.

MAY 02, 2016

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