

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 26.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

Criminal Appeal No.60 of 2016

P.N.Peruvazhuthi

... Appellant/Petitioner/DH/
Plaintiff

Versus

K.Saravanan

... Respondent/Respondent/3rd JD/
3rd Defendant

Prayer: Criminal Appeal filed under Section 341 of the Code of Criminal Procedure, to call for the records in E.A.No.3 of 2014 in E.P.No.107 of 2012 in O.S.No.15 of 2005 on the file of the learned District Judge, Thiruvannamalai and set aside the dismissal dated 16.12.2015 in E.A.No.3 of 2014 and record a finding that the respondent has committed an offence of perjury punishable under Section 193 of IPC and forward a complaint to Magistrate with competent jurisdiction.

For Appellant : Mr.G.A.Thiyagarajan

For Respondent : Mr.G.Ahokapathy
for M/s.Pass Associates

J U D G M E N T

Heard both sides.

2. The facts necessary for the disposal of this appeal are as follows:

2.1. The appellant is the decree holder in O.S.No.15 of 2005. The respondent herein is the judgment debtor No.3. The appellant has taken steps to execute the decree passed in the said suit against the respondent. He has filed the Execution Petition in E.P.No.15 of 2008. He has filed E.A.No.3 of 2014 in E.P.No.107 of 2012 on the file of the learned District Judge, Thiruvannamalai under Section 340 of Cr.P.C. read with Section 157 C.P.C. alleging that the respondent herein committed an offence punishable under Section 193 I.P.C. in relation to the

said execution proceedings. He requested the District Court to make a complaint for the offence under Section 193 I.P.C. to the Magistrate having jurisdiction.

2.2. The learned District Judge, Thiruvannamalai, dismissed E.A.No.3 of 2014 holding that Section 340 of Cr.P.C. is not applicable to a civil proceeding. Aggrieved by the order, the present appeal has been preferred.

3. The learned counsel appearing for the appellant would submit that the Trial Court has erred in dismissing the petition as not maintainable. The learned counsel appearing for the respondent advanced his arguments in support of the impugned order.

4. Section 340 of Cr.P.C. reads as follows:
"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 in 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 for 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.

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

5. A close reading of Section 340 of Cr.P.C. would make it clear that a Civil Court has jurisdiction to make a complaint as regards any offence referred to in Section 195 (b) (i) of Cr.P.C. It is well settled that Section 340 of Cr.P.C. is applicable to all proceedings in all Courts. The term " Court" has been defined to mean "a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purpose of this section [Section 195 of Cr.P.C.]". Therefore, any Civil or Criminal Court can proceed under Section 340 of Cr.P.C.

6. In the case at hand, admittedly, execution proceedings are pending before the learned District Judge. In his petition under Section 340 of Cr.P.C., the appellant has alleged that the respondent has committed an offence under Section 193 I.P.C. It is an offence referred to in Section 195 (b) (i) of Cr.P.C. Therefore, there is no difficulty in coming to a conclusion that the learned District Judge has jurisdiction to entertain an application filed under Section 340(1) of Cr.P.C. and pass appropriate orders on merits. I hold that the impugned order of the learned District Judge, Thiruvannamalai, is liable to be set aside and accordingly, it is set aside.

7. The learned District Judge, Thiruvannamalai, has not considered the application on merits. In terms of Section 340 of Cr.P.C., the learned District Judge may hold such enquiry as may be necessary. However, he has to record his satisfaction that an offence referred to Section 195(b) (i) of Cr.P.C., as alleged by the appellant appears to have been committed in relation to the said execution proceedings pending on the file of his Court and that it is expedient in the interest of justice to make an enquiry into the offence. Therefore, I am inclined to remit the matter to the file of the learned District Judge, Thiruvannamalai. The learned District Judge, Thiruvannamalai is directed to readmit the application and proceed to decide it on merits in accordance with the provisions of Section 340 of Cr.P.C.

8. With the above observations, this Criminal Appeal is allowed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sri

To

- 1.The District Judge,
Thiruvannamalai
- 2.The Public Prosecutor,
High Court of Madras,
Chennai.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.G.A.Thiyagarajan, Advocate, S.R.No.53106
+1cc to M/s.Pass Associates, Advocate, S.R.No.53359

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KJ(CO)
CA(04/08/2017)



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