

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Misc. No. M-14865 of 2015(O&M)
Date of decision : 17.01.2017.**

Bimla Devi

... Petitioner

versus

State of Haryana

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by: Mr. Arvind Singh, Advocate
for the petitioner.**

Mr. Vikas Chopra, DAG Haryana.

ANITA CHAUDHRY, J.

The petitioner has questioned the legality and propriety of order dated 03.03.2015 vide which the Addl. Sessions Judge, Karnal forwarded her to the Court of Chief Judicial Magistrate to face trial for committing perjury.

Before dealing with the submissions made on behalf of the petitioner, it would be relevant to refer to the facts first.

On the basis of complaint made by the petitioner, FIR No. 717 dated 30.07.2014 was registered against one Krishan Lal under Sections 342, 366, 376, 506 and 509 IPC at Police Station City, Karnal. She was produced before the Magistrate and her statement under Section 164 Cr.P.C. was recorded on 31.07.2014 wherein also she accused Krishan Lal of confining and raping her. During trial, she appeared in the Court as PW3 on 22.10.2014 and turned hostile. She claimed that nothing was done to her by Krishan Lal and she made statement under Section 164 Cr.P.C. under police

pressure.

The trial Court acquitted Krishan Lal on 13.11.2014 and issued notice to the petitioner for perjury. The petitioner responded to the notice on 03.03.2015 and claimed that she and her three minor children were criminally intimidated by Mastana, Krishan Lal and Gaje Singh and she was forced to resile from her earlier statement.

The Addl. Sessions Judge, Karnal vide impugned order dated 03.03.2015 forwarded the petitioner to the Chief Judicial Magistrate, Karnal to face trial for perjury.

Dis-satisfied with the same, the petitioner has filed the instant petition seeking quashing of the order dated 03.03.2015.

In the reply filed by the State, the factual aspect of the matter was admitted and it was claimed that the petitioner intentionally and deliberately contradicted her statement and showed hostility towards prosecution to favour the accused. The petitioner failed to mention the name or rank of the police officer under whose pressure she had made statement under Section 164 Cr.P.C.

I have heard learned counsel for the parties and have perused the paper-book carefully.

The main thrust of learned counsel for the petitioner was that she was forced to resile from her previous statement and she had not intentionally made deposition in favour of the accused. The Court below has erred in forwarding the petitioner to face trial for perjury. According to him, only by making contradictory statements on two different stages in a judicial proceedings, does not attract the offence of perjury under Section 193 Cr.P.C. and it has to be established that such deposition was made

intentionally. He had referred to **K.T.M.S. Mohd. & Anr. Vs. Union of India, 1992(2) RCR(Crl.) 398.**

He had further urged that the Court below had concluded that the petitioner had given statement to the Magistrate under Section 164 Cr.P.C. implicating the accused and resiled therefrom when she stepped into the witness-box. He had urged that in her statement in the Court she had categorically deposed that she made statement under Section 164 Cr.P.C. under police pressure. He had referred to **Madan Lal & Anr. Vs. State of Punjab 2013(1) RCR(Crl.) 17** to contend that statement under Section 164 Cr.P.C. is not a substantive piece of evidence.

The next limb of argument of learned counsel for the petitioner was that no enquiry as contemplated under Section 340 Cr.P.C. was initiated by the Addl. Sessions Judge and no proper opportunity of hearing was afforded to the petitioner before she was condemned and the proceedings were liable to be quashed. He had referred to **B.K. Uppal Vs. State of Punjab 2015(1) RCR(Crl.) 338.**

Section 340 deals with offences committed in or in relation to a proceeding in the court, or in respect of a document produced or given in evidence in a proceeding in the court and enables the court to make a complaint in respect of such offences if that court is of the view that it is expedient in the interest of justice that an inquiry should be made into an offence. Clause (b) of Section 195(1) Cr.P.C. authorises such court to examine prima facie as it thinks necessary and then make a complaint thereof in writing after having recorded a finding to that effect as contemplated under Section 340 (1) Cr.P.C. In such a case, the question remains as to whether a prima facie case is made out which, if unrebutted,

may have a reasonable likelihood to establish the specified offences and whether it is also expedient in the interest of justice to take any action. Thus, before lodging a complaint, the condition precedent for the court to be satisfied are that material so produced before the court makes out a prima facie case for a complaint and that it is expedient in the interest of justice to have prosecution under Section 193 IPC.

In the case of **Ashok Kumar Aggarwal Vs. Union of India & Ors., 2013(15) SCC 439** the Hon'ble Apex Court while dealing with the procedure envisaged for proceeding for the offence of perjury and summed up as under:-

“10. In view of the above, law on the issue can be summarised that in order to initiate prosecution for perjury, the court must prima facie reach a conclusion after holding preliminary inquiry that there has been a deliberate and conscious effort to misguide the court and interfere in the administration of justice. More so, it has to be seen whether such a prosecution is necessary in the interest of justice.”

In the case of **Prem Sagar Manocha Vs. State (NCT of Delhi) 2016(1) RCR(Crl.) 823**, it has been held as follows:-

“12. Section 340 of CrPC, prior to amendment in 1973, was Section 479-A in the 1898 Code and it was mandatory under the pre-amended provision to record a finding after the preliminary inquiry regarding the commission of offence; whereas in the 1973 Code, the expression ‘shall’ has been substituted by ‘may’ meaning thereby that under 1973 Code, it is not mandatory that the court should record a finding. What is now required is only recording the finding of the preliminary inquiry which is meant only to form an opinion of the court,

and that too, opinion on an offence ‘which appears to have been committed’, as to whether the same should be duly inquired into. We are unable to appreciate the submission made by the learned Senior Counsel that the impugned order is liable to be quashed on the only ground that there is no finding recorded by the court on the commission of the offence. Reliance placed on Har Gobind v. State of Haryana is of no assistance to the appellant since it was a case falling on the interpretation of the pre-amended provision of the CrPC. A three-Judge Bench of this Court in Pritish v. State of Maharashtra has even gone to the extent of holding that the proceedings under Section 340 of CrPC can be successfully invoked even without a preliminary inquiry since the whole purpose of the inquiry is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”

In the case of **Pritish Vs. State of Maharashtra 2002(1) RCR**

(Crl.) 92, the Hon'ble Apex Court held as under:-

“Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so,

then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

Inquiry is defined in Section 2(g) of the Code as every inquiry, other than a trial, conducted under this Code by a magistrate or court. It refers to the pre trial inquiry, and in the present context it means the inquiry to be conducted by the magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the magistrate of first class concerned. As the offences involved are all falling within the purview of warrant case [as defined in Sec.2 (x)] of the Code the magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

The Court further held that:-

“Be it noted that the court at the stage envisaged in Section

340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In M.S. Sheriff and anr. vs. State of Madras and ors. (AIR 1954 SC 397) a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.”

Adverting to the facts of present case, in reply to the notice for perjury, the petitioner took the stand that she and her three children were put under the fear of death and constrained with the circumstances she had to resile from her previous statement. The Addl. Sessions Judge came to the conclusion that one of her statement given in the Court is incorrect and it would be expedient in the interest of justice to issue notice to the petitioner for perjury. Her reply was sought, which the petitioner had filed. After prima facie satisfying, an opinion was formed by the Addl. Sessions Judge to forward the petitioner for trial under Section 193 IPC to elicit the truth.

The facts in B.K. Uppal's case are not applicable to the present case. Even otherwise, in that case the complaint under Section 340 Cr.P.C. was filed against the investigating officer for fabricating and producing false evidence in the Court without affording him the opportunity of hearing, which is not the situation in the case in hand. It is not that she was

not afforded any opportunity of hearing. She was given due opportunity to file reply which she filed. She was heard and thereafter order was passed.

The petitioner cannot derive any help from KTMS Mohd. and Madan Lal's case as she still have to prove before the trial Court under what circumstances she was forced to make the statement and whether such deposition was against her wishes.

There are no grounds for quashing. The petition is dismissed. Whatever has been said hereinabove is without prejudice to the case on merits. The petitioner will be at liberty to raise all the pleas before the appropriate forum and at the appropriate stage.

January 17,2017

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**(ANITA CHAUDHRY)
JUDGE**

Whether speaking/ reasoned

Yes/ No

Whether reportable

Yes/ No