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

L.P.A. No. 2161 of 2016 [O&M]
in CRM-M-20754 of 2012
Date of Decision : January 23, 2017

Vishal Mohindra

.... Appellant

Versus

Vanita

.... Respondent

**CORAM : HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

Present Mr. Vishal Mohindra,
Appellant-in-person.

SHEKHER DHAWAN, J.

Present Letters Patent Appeal is directed against the order dated 24.09.2016 passed by learned Single Judge of this Court whereby Criminal Misc. No. CRM-M-20754-2012 for initiation of proceedings under Section 340 Cr.P.C. read with Section 195(1)(b)(i) Cr.P.C. and under the Contempt of Courts Act against the respondent, was dismissed.

2. Facts relevant for the decision of present appeal are that matrimonial litigation of the appellant was going on with his wife and the respondent-wife had sought transfer of cases. As per the appellant, the affidavits filed by her were containing incorrect affirmation, which were

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false to her knowledge and as such, proceedings be initiated under Section 340 Cr.P.C. against her. Learned Single Judge negated that contention by passing the impugned order.

3. Appellant, who was appearing in person, contended that learned Single Judge has erroneously dismissed his petition, though there was sufficient material. As regards the maintainability of the present appeal, the appellant has contended that the same is maintainable before the Division Bench as per provisions of Clause 10 of the Letters Patent. In support of his contention, the appellant has placed reliance upon Full Bench judgment of Hon`ble Delhi High Court in **Weizmann Ltd. Vs. Shoes East Ltd. and others, 2013(4) R.C.R. [Criminal] 710.**

4. We have heard the appellant on the point of maintainability as well as on merits and have also gone through the above cited judgment. According to us, the present Letters Patent Appeal deserves dismissal for more than one reasons. Firstly, the same is not maintainable. The view taken by Hon`ble Full Bench in **Weizmann Ltd.'s case [supra]** is not applicable to the present set of facts because in the said matter, the appeal was arising out of an order passed by learned Single Judge in proceedings under the Arbitration Act and the appeal was preferred under Section 10 of the Delhi High Court Act, 1966 [for short, “the 1966 Act”] which provides a remedy by way of LPA against the judgment of a Single Judge to the Division Bench of that Court while exercising ordinary **civil jurisdiction** conferred by sub-section (2) of Section 5 on that Court. For ready reference,

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Section 10 of the 1966 Act is reproduced hereunder:-

“10. Powers of Judges.

(1). Where a single Judge of the High Court of Delhi exercises ordinary original civil jurisdiction conferred by sub- section (2) of section 5 on that Court, an appeal shall lie from the judgment of the single Judge to a Division Court of that High Court.

(2). Subject to the provisions of sub-section (1), the law in force immediately before the appointed day relating to the powers of the Chief Justice, single Judges and Division Courts of the High Court of Punjab and with respect to all matters ancillary to the exercise of those powers shall, with the necessary modifications, apply in relation to the High Court of Delhi.”

5. The issue regarding scope and purview of maintainability of L.P.A. in this Court was debated before Hon`ble Full Bench of this Court in **Balbir Kaur Vs. Bhim Singh**, 2005(2) RCR [Civil] 447 and **Parshotam Dass Vs. State of Haryana**, 2003 (4) RCR [Civil] 73, wherein a consistent view has been taken that when the legislature wanted to exclude the remedy of Letters Patent Appeal, they specifically did so. The words used in Section 100A of Code of Civil Procedure, 1908 [for short, CPC] are by way of abundant caution. By the Amendment Acts of 1976 and 2002 to CPC, a specific exclusion is provided as the legislature knew that in the absence of such words, a Letters Patent Appeal would not be barred and now by virtue of Section 100A CPC no LPA would be maintainable. A perusal of Section 100A CPC, as substituted by 1999 Act, would show that no letters patent appeal was to lie from the original or appellate decree or decree of a Single Judge where any writ, order or direction is issued under Article 226 or 227 of the Constitution. In other words, in 1999, the legislature in its wisdom preferred to save both types of pending letters patent appeal which were

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admitted before the enforcement of 1999 Act on the assumption that Section 100A CPC of 1999 Act substituting Section 100A CPC, never came into force.

6. More so, in the present case, the impugned order has been passed on a petition seeking initiation of proceedings under Section 340 Cr.P.C. Section 340 Cr.P.C. provides as under:-

“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 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 authorize in writing in this behalf.

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

7. Further Section 341 lays down the procedure of appeal. The same reads as under:-

“341. **Appeal.**

(1). Any person on whose application any Court other than a High Court has refused to make a complaint under sub- section (1) or sub-section (2) of section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2). An order under this section, and subject to any such order, an order under section 340, shall be final, and shall not be subject to revision.”

8. In the present case, learned Single Judge while appreciating the entire material and evidence available on the file formed the opinion not to take action considering that the dispute between the parties was arising out of matrimonial dispute and dismissed the petition. Letters Patent Appeal is a correctional remedy. An opinion of the kind referred to Section 340 Cr.P.C. is by the Court before which wrong affirmation allegedly has been made. Such an opinion has not been shown to be illegal or perverse to warrant any inference even if we were to accept the maintainability of LPA. We are, therefore, of the considered view that learned Single Judge has rightly formed the opinion not to proceed further or to institute a complaint or order an enquiry on the basis of available facts and there are no grounds

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to interfere in the said order.

9. In view of the above, the present LPA is dismissed being not maintainable and otherwise being devoid of any merit.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

January 23, 2017
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Whether speaking/reasoned	:	Yes
Whether Reportable	:	Yes