

\$~19

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

+ CRL.A. 292/2016

ANURAG MITTAL Appellant

Through Appellant in person

versus

T N MISHRA Respondent

Through Respondent in person along with his
wife/Ms. Rita Mishra

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **24.10.2017**

Crl.M.A. 4923/2016 (delay of 98 days in re-filing)

For the reasons stated in the application, the delay of 98 days in re-filing the appeal is condoned.

The application stands disposed of.

CRL.A. 292/2016

Anurag Mittal/appellant has challenged the order dated 05.09.2015 passed by the Special Judge, P.C. Act, CBI-III, Rohini Courts in an application under Section 340 of Cr.P.C. whereby the prayer made on behalf of the appellant for initiating prosecution against the respondent under Section 340 of the Cr.P.C. has been rejected and the appellant has been saddled with a cost of Rs.20,000/- to be paid to the State.

Brief narration of facts would be necessary to dispose of the present appeal.

The appellant had filed a complaint against Mr. T.N. Mishra and his wife Ms. Rita Mishra, who are the parents of the wife of the appellant. In the aforesaid complaint, it was alleged that he was married to the daughter of the respondent on 06.12.2011 in an Arya Samaj Temple and the marriage was the second marriage for him as well as for his wife also. It was alleged by the appellant that the respondent/parents of his wife always insisted for payment of money and created interference in the matrimonial life of the appellant. The complaint is full of details of day-to-day happenings in the life of the appellant. It may not be necessary for this court to record the details of the allegations made in the complaint. However, the only fact which would be necessary to be recorded is that the appellant had filed an application before the Trial Court for summoning of witnesses and documents under Section 91 of Cr.P.C. read with Section 311 of the Cr.P.C. The Trial Court vide order dated 06.04.2015, allowed the application of the appellant and directed the production of the case documents mentioned in the application and summoning of witnesses except Royal Embassy of Saudi Arabia located at Paschimi Marg, New Delhi.

Against the aforesaid order of the Trial Court, the respondent approached the revisional court vide Crl. Rev. Petition No.27/2015. The revisional court vide order dated 17.07.2015, on taking into account that the witnesses/documents mentioned in the application preferred by the appellant herein did not find mention in the complaint, set aside the order of the Trial Court and directed that a fresh application be filed by the appellant, which would be heard by the Trial Court after giving sufficient opportunity to the respondent to contest the same in accordance with law and thereafter to pass a speaking order.

In the meantime, the documents which were required by the appellant had already been furnished to him. As a result, the appellant did not file any application before the Trial Court pursuant to the direction given by the revisional court referred to above.

However, the appellant filed an application under Section 340 of the Cr.P.C. alleging that the revision petition filed by the respondents contained erroneous/wrong statements, which on face of it could be demonstrated to be false and it was prayed that the petitioners be prosecuted for committing perjury with court and a complaint be lodged at the instance of the court under Section 340 Cr.P.C.

The statements which have been made by the respondents in the revision petition are statements in the nature the respondents not having received certain documents.

The appellant herein has tried to demonstrate that such statements were patently false inasmuch as the documents were in the knowledge of the respondents and they were served the aforesaid documents. Be that as it may, such statements made in the revision petition were not the basis for passing of the order by the revisional court. What the revisional court did was to remand the matter to the Trial Court for giving a fresh hearing to respondent. No occasion thereafter arose for giving any hearing to the respondent as the appellant had already been provided with the documents which he intended to be summoned or produced by the orders of the court. As such, the revisional order was not acted upon fully.

After having gone through the petition of revision filed by the respondents, the revisional order and the present order impugned, this court is of the view that no case for initiating complaint against the respondents

under Section 340 of the Cr.P.C. can at all be said to have made out.

The order dated 15.09.2015, cannot be faulted with.

However, taking into account the fact that there have been slew of litigation between the appellant and the respondent, this court is of the view that saddling the appellant with cost of Rs.20,000/- would be rather harsh.

For the aforesaid reason, the direction of the court below requiring the appellant to pay a cost of Rs.20,000/- to the State is hereby set aside.

The appeal is however dismissed.

It is made clear that this order of dismissal of appeal would not be construed prejudicially against the appellant in any proceeding whatsoever and the other proceedings, needless to say, would be decided on its merits without being influenced by the fact that the attempt of the appellant to have a proceeding initiated against the respondent has failed.

ASHUTOSH KUMAR, J

OCTOBER 24, 2017

ns