

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APPP] No.1727 of 2018
in
Criminal Application [APL] No.602 of 2018

Madangopal Banarasilal Jalan & others

VS.

Partha s/o Sarathy Sarkar

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

*Shri Piyush Shukla, Advocate for the Original Applicants/Accused.
Shri Nilesh C. Ojha i/b Shri G.L. Agrawal and Shri Hitesh Khandwani,
Advocates for Respondent.*

CORAM : S.B. SHUKRE, J.
DATE : 12th OCTOBER, 2018.

Heard Shri G.L. Agrawal, learned Counsel for the applicant-complainant. He places his reliance upon the case of *Pritish vs. State of Maharashtra & others – AIR 2002 SC 236*, in which it is held that at the stage of passing of an order directing the preliminary inquiry or even accepting the application filed under Section 340 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the accused does not have any say in the matter. There can be no dispute about the principle of law. The principle would have to be borne in mind while dealing with this application.

02] The learned Counsel for the applicant-complainant also relies upon the view taken by the

learned Single Judge in the case of Fareed Ahmed Qureshi vs. The State of Maharashtra & another - 2018 SCC Online Bom 960, wherein it has been held by the learned Single Judge that when the allegation made by the accused that one lady is having an extramarital affair with another man has been found to be patently false by the Investigating Officer and such finding is also placed on record of a judicial proceeding and still the accused continues to repeat the allegation, offences punishable under Sections 193, 196, 199, 200 and 209 of the Indian Penal Code are *prima facie* made out and, accordingly, the learned Single Judge took cognizance of the complaint directing the Registrar (Judicial) to file an appropriate complaint against the accused.

03] This can be so, if the facts are found to be constituting such offences, but otherwise not. When the facts available on record unmistakably point out that the accused has continued to make defamatory and false statements, even after those statements made previously by him have been found to be false, the Court has no option but to take cognizance of the complaint made by the aggrieved person and the Court

shall be within its right to direct the Registrar (Judicial) to file an appropriate complaint. But, the question here is whether such facts have been established or not at least for the present.

04] The learned Counsel for the applicant-complainant submits that the facts similar to the facts of the case of Fareed Ahmed Qureshi are already established by the applicant-complainant and, therefore, this is a fit case for taking cognizance of the complaint filed under Section 340 of Cr.P.C. However, I am unable to agree with the submission.

05] The main plank of the allegations made in this complaint is that the original applicants or the accused persons in their written statement filed in civil suit being S.C.S. No.69/2012 preferred against them by the applicant-complainant made an averment that the applicant-complainant was terminated from service because of his unacceptable conduct exhibited by his sexual harassment of one female employee, whose name was withheld by the accused in the interest of the female employee and this allegation was false. This allegation was basically made in the written

statement filed in the civil suit by the original applicants-accused. Thereafter, the applicant-complainant filed an application under Section 340 of the Cr.P.C. before the Civil Court and in the said suit, it is informed by the learned Counsel for the applicant-complainant as well as for the original applicants-accused that this application is subjudice. According to the learned Counsel for applicant-complainant, the allegation, which was initially made in the civil suit, has now been repeated in the criminal application and this would constitute a fresh cause of action. I do not think to be so. The reason being that there is no adjudication by any authority so far that the allegation is false unlike the case of Fareed Ahmed Qureshi (*supra*) and for this reason, I am of the view that no assistance could be sought by the applicant-complainant from the case of Fareed Ahmed Qureshi at this stage.

06] The applicant-complainant, in my considered opinion, would have to await for decision of the Civil Court of his application under Section 340 Cr.P.C. and thereafter he can always decide appropriately about the further course of action. The application is, therefore, premature and at this stage it cannot be considered.

07] The application stands disposed of with liberty to the applicant-complainant to file a fresh application at appropriate time, if any.

Criminal Application [APL] No.602/2018:

Final hearing of the application is expedited.

Stand over after two weeks.

JUDGE

**sandesh*