

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

CRM-M-15854-2016(O&M)

Date of decision:-7.8.2018

Gautam Verma

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Parvinder Singh, Advocate
for the petitioner.

Ms.Samina Dhir, DAG, Punjab.

Mr.Sunil K. Nehra, Advocate
for respondent No.2.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. for quashing of complaint No.40 dated 4.9.2014 under Sections 196, 199, 200 IPC in view of the fact that the complaint is arising out of matrimonial proceedings, which have been finally compromised in this Court vide order dated 2.9.2015 in FAO No.M-36-2015, besides seeking quashing of order dated 23.7.2014 passed by Judicial Magistrate Ist Class, Mohali on an application under Section 340 read with Section 195 Cr.P.C. along with summoning order, has been filed by petitioner Gautam Verma.

Inter alia in the petition, it is contended that respondent No.2 - Anju Verma had moved an application under Section 340 Cr.P.C. against the petitioner for prosecuting him for allegedly submitting a false affidavit in the Court; that the proceedings arose out of a matrimonial discord between petitioner and respondent No.2 that has resulted in their marriage being dissolved by a decree of divorce. As a result of compromise, the continuation of proceedings in the complaint would not serve any purpose, more so when the petitioner and respondent No.2 are Government employees and have settled their dispute amicably. That learned Judicial Magistrate Ist Class, Mohali had allowed an application under Section 340 Cr.P.C. without affording an opportunity of hearing to petitioner vide order dated 23.7.2014; that no detailed inquiry as envisaged under Section 340 Cr.P.C. and Section 195 Cr.P.C. was conducted by the Magistrate himself and no opportunity of hearing was given to the petitioner before passing the order.

The petitioner is finding faults with the procedure adopted while filing the complaint further contending that the petitioner has been wrongly summoned in the said complaint. Therefore, the present petition be allowed.

Notice of the petition was issued to respondents, who put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record and I find that the petition is absolutely devoid of merit. Even though the spouses have entered into a compromise and got their marriage dissolved by a decree of divorce, but that does not mean that any criminal act committed by the petitioner earlier, though in

connection with the matrimonial proceedings has come to an end. Respondent No.2 – Anju Verma had filed an application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. before Judicial Magistrate, Mohali contending that application titled as 'Anju Verma Versus Gautam Verma' under Section 125 Cr.P.C. was pending before that Court where her husband, the respondent had filed an application for setting aside ex parte order dated 29.1.2013 contending therein that he had not received any summons from the Court and he came to know regarding the application and ex parte order dated 29.1.2013, on 12.7.2013 when his counsel had informed him. The respondent had filed an affidavit also in support of contents of the petition. In fact the respondent had appeared in the Court through his counsel on 1.5.2013, which was a transfer petition seeking transfer of cases in which the application for setting aside ex parte order had been filed, in that way the respondent was having full knowledge of the application under Section 125 Cr.P.C. prior to 1.5.2013 since details thereof are mentioned in CRM-M-9073-2013. The applicant requested that necessary inquiry be conducted and action may be taken against the respondent.

During her evidence the applicant appeared as PW1 and placed on file several documents. After hearing counsel for the applicant and going through the file, learned Judicial Magistrate Ist Class, Mohali came to the conclusion that it is expedient in the interest of justice that a detailed inquiry be conducted against accused – respondent Gautam Verma for tendering false and a wrong affidavit against provisions of law. A separate complaint against him be filed before Illaqa Magistrate. The order passed in that respect is dated 23.7.2014. A complaint in that

regard was filed by Judicial Magistrate Ist Class, Mohali.

Now the question arises whether such complaint needs to be quashed, the answer has to be in negative. Section 196 IPC deals with using evidence known to be false. Section 199 IPC is with regard to false statement made in declaration, which is by law receivable as evidence, whereas Section 200 IPC is with regard to offence of using as true such declaration knowing it to be false. All these offences are against public justice covered by Chapter XI of the Indian Penal Code. Section 340 Cr.P.C. deals with procedure in cases mentioned in section 195. For ready reference Section 340 Cr.P.C., which deals with procedure in cases mentioned in section 195 is reproduced 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.

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

Section 341 Cr.P.C. provides that 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.

Thus the remedy of petitioner was in the form of filing appeal under Section 341 Cr.P.C. but instead of availing such remedy, he has rushed to the High Court by filing petition under Section 482 Cr.P.C. Section 482 Cr.P.C. is certainly not a panacea for all the ills when a detailed procedure is provided for redressal of grievances of a litigant under criminal law, then recourse to that remedy provided

should ordinarily be taken first.

In this case, I do not see any reason to exercise jurisdiction under Section 482 Cr.P.C. so as to quash the complaint filed by Judicial Magistrate Ist Class, Mohali, summoning order passed therein and other ancillary proceedings simply for the reason that petitioner has compromised the matter with respondent No.2. That compromise has nothing to do with the offence said to have been committed by the present petitioner against public justice by furnishing a false affidavit.

Learned counsel for the petitioner has referred to *Amarsang Nathaji as Himself and as Karta and Manager Versus Hardik Harshadbhai Patel and others, 2017(1) R.C.R.(Criminal)92, Monica Phalswal Versus Ramesh Kumar and others, 2017(1) R.C.R.(Criminal)599, Shiv Raman Gaur Versus Madan Mohan Kanda, 1990(3) R.C.R.(Criminal)461, Ram Niwas Sharma Versus State of Haryana, 2003(3) R.C.R.(Criminal)166 and B.K.Gupta Versus Damodar H.Bajaj and others, 2010(3) RCR(Criminal)886.* But in view of the detailed discussion above, those authorities do not come to the rescue of the petitioner in any manner.

The petition being without merit stands dismissed accordingly.

7.8.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No