

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

(1) Crl. Misc. M 16500 of 2017 (O&M)
Date of decision: 26.2.2018

Lovina Bhatia

...Petitioner

Versus

Vijay Bhandari and another

...Respondents

(2) Crl. Misc. M 16611 of 2017 (O&M)

Lovina Bhatia

...Petitioner

Versus

Rahul Bhandari

...Respondent

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mr. K.S. Khehar, Advocate,
for the petitioner.

Mr. V.K. Jindal, Senior Advocate with
Ms. Janya Sirohi, Advocate,
for the respondents.

JAISHREE THAKUR, J.

1. This order shall dispose of the above titled two petitions, as they arise out of the same set of facts and involve similar question of law. These petitions have been filed under Section 482 read with Section 340 of the Code of Criminal Procedure (for short '**the Code**') for lodging criminal complaint against the respondents for making false statements in their pleadings in Criminal Misc. M 29675 of 2016 and Crl. Misc. M 33121 of 2016 respectively.

A few facts need to be noticed. On FIR No. 46 dated 9.8.2016

under Sections 406, 498-A and 120-B being registered at Women Police Station, District Panchkula, against the respondents—Vijay Kumar Bhandari, his wife Saroj Bhandari (parents-in-law) and son Rahul Bhandari (husband), they preferred Criminal Misc. M 29675 of 2016 and Crl. Misc. M 33121 of 2016 respectively, for grant of anticipatory bail. In para 11 of the Crl. Misc. M 29675 of 2017, the respondents (parents-in-law) stated as under:-

“11. That the relations between the son of the petitioners and the complainant had soured when son of the petitioners through internet came to know that the complainant remained in jail for 3 months in the year 2009 in case of murder of one Kunal Singh (South Indian movie actor) in FIR No. 36/2009 at Oshiwaraa, under Section 302 IPC. The said fact was not disclosed to the petitioners before marriage. When the son of the petitioners enquired about the same from the complainant she initially tried to evade it, but the news items regarding the said incident were available all over the internet. Copy of the new cuttings regarding the said incident is attached as Annexure P/7 (colly). The petitioners and their son were shocked to know about the incident and it was highly difficult for them to assimilate the fact that their daughter-in-law had been involved in such an incident. It is also pertinent to mention here that as per the version of the complainant she was acquitted in the said FIR.”

3. Similar averments were made by respondent—Rahul Bhandari,

in para 12 of the Criminal Misc. M 33121 of 2016, which reads as under:-

“12. That the relations between the petitioner and the complainant had soured when the petitioner through internet came to know that the complainant remained in jail for 3 months in the year 2009 in case of murder of one Kunal Singh (South Indian movie actor) in FIR No. 36/2009 at Oshiwaraa, under Section 302 IPC. The said fact was not disclosed to the petitioner before marriage. When the son of the petitioner enquired about the same from the complainant she initially tried to evade it, but the news items regarding the said incident were available all over the internet. Copy of the new cuttings regarding the said incident is attached as Annexure P/9 (colly). The petitioners and his parents were shocked to know about the incident and it was highly difficult for them to assimilate the fact that their daughter-in-law had been involved in such an incident. It is also pertinent to mention here that as per the version of the complainant she was acquitted in the said FIR.”

4. It is contended that the above said averments are absolutely false since the respondents were made aware about the proceedings that had been initiated against the petitioner herein and the fact that the petitioner has remained in jail for 3 months in the year 2009 in case relating to murder of one Kunal Singh (South Indian movie actor) in FIR No. 36/2009 at Oshiwaraa, under Section 302 IPC. It is argued that WhatsApp chat between the petitioner and Rahul Bhandari (Annexure P/4), which took place in the month of November 2014, that is three months prior to their

marriage, would reflect that Rahul Bhandari had the knowledge of the pendency of the criminal case. On 20.11.2014, the petitioner informed Rahul Bhandari that she is “*sending Supreme Court judgment on limitation for filing appeal.*” On 22.11.2014, she further informed “*Yes in this they have clearly mentioned that they will not challenge or go to Supreme Court.*” On the same day, the petitioner informed Rahul Bhandari that “*I have been discharged from this case*”. In reply thereto, Rahul Bhandari wrote “*Yea*”.

5. In this regard, learned counsel for the petitioner submits that having knowledge of the pendency of the criminal proceedings, the respondents have purged themselves by filing a wrong affidavit in support of the averments made in the above said petitions for grant of anticipatory bail.

6. I have heard learned counsel for the parties.

7. No reply has been filed despite notice of motion being issued issued on 25.7.2017.

8. Section 340 of the Code of Criminal Procedure is re-produced here 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 authorise in writing in this behalf.]*

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

9. The provision of Section 340 of the Code of Criminal Procedure provides for a complaint being filed before a concerned Metropolitan Magistrate in case any of the offences as stated in the said section are found to have been committed. The offences which are mentioned in Section 340 of the Code are those offences contained in

Section 195 (1) (b) of the Code. A reference to Section 195 (1) (b) of the Code shows that it includes the offences of perjury, giving false affidavits etc. and which are punishable under Sections 193, 199, 200 and 209 of the Indian Penal Code, 1860. In view of the fact that the averments made in these petitions have gone unrebutted, as no reply has been filed, prima facie a case is made out for a complaint to be registered by a Magistrate for acting under Section 340 of the Code of Criminal Procedure against the respondents.

10. For the reasons stated above, these petitions are allowed. The concerned Magistrate is directed to register a complaint for initiating proceedings under Section 340 of the Code of Criminal Procedure against the respondents.

26.2.2018

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(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No