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

+ CO.APP. 16/2018

DEEPAK KHOSLA Appellant

Through : Appellant in person.

versus

NEMO Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **04.09.2018**

Mr. Deepak Khosla prefers this appeal contending that the inaction of the Ld. Single Judge in dealing with Crl.Misc.(Co.)No.2/2010, which had sought initiation of proceedings, under Section 340 of the Cr.P.C., requires consideration and that this court should exercise its power under Section 340(2) of the said Code.

In respect of his contention, Mr. Deepak Khosla relied upon the averments in pleadings, highlighting especially that the sample of two affidavits – dated 01.01.2008 and 24.02.2010 not only contradicted each other but made out in case of claimed perjury. It was urged that whereas the latter affidavit of 24.02.2010 spoke of an Extraordinary General Meeting (EGM) of the company, i.e. Montreaux Resorts Pvt. Ltd., held on 28.06.2006, which is alleged

to have recorded the election of directors, the other affidavit (01.01.2008) spoke of the AGM dated 30.09.2006, which supposes to have elected the same individual as director. It is submitted that in the course of proceedings, the explanations provided by the alleged contemnors were not only unconvincing but contumacious.

Mr. Deepak Khosla urged that this court has inherent power to initiate the proceedings by virtue of Section 340(2) of the Cr.P.C. and relied upon a previous ruling in *Deepak Khosla v. Anand Mohan Mishra*, 2010 SCC Online DEL 1981. He also relied upon Section 194(4) and stated that the Division Bench of this court, can exercise the power enumerated in Section 340(2) of the Code.

Section 340 of this Code, to the extent it is relevant, reads as follows :

“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.”*

Section 195, pertinently states as follows :

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or*
- (ii) of any abetment of, or attempt to commit, such offence, or*

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

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(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;
(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

In an earlier judgment, *Deepak Khosla v. Anand Mohan Mishra*, 2010 SCC OnLine DEL 1981, the Division Bench of this court, upon Mr. Khosla's approaching it, without first approaching the court in which the perjury is said to have been committed, stated as follows :

“13. After considering the respective arguments, we find ourselves in agreement with the submissions made by Mr. Arvind Nigam. The interpretation of sub- Section (2) of Section 340 of the Code given by the petitioner is wholly untenable and unacceptable. It is not in doubt and was even conceded that sub Section (1) of the Code referred to the “Court” before which the main proceedings are pending in relation to which any of the parties to the said proceedings have committed an offence referred to in Clause (b) of sub Section (1) of Section 195 of the Code. This provision enumerates procedure when an offence punishable, inter alia, under Section 193 to 196, 199, 200, 205 to 211 and 228 of the Code has been committed. This provision provides that Court shall not take cognizance of any such offence except on a complaint in writing of that Court or by such officer of the Court as that Court may authorize, in writing, in this behalf or some other court to which that Court is subordinate. Thus, such an offence of perjury is triable by the court

only if complaint in writing is made by that court before which any proceedings are pending and offence of perjury is committed therein. Sub Section (1) of Section 340 of the Code further casts an obligation on that Court to form an opinion that it is expedient in the interests of justice that an inquiry is to be made for an offence under Section 195 (1) (b) of the Code. In arriving at this opinion, it should appear to that Court that such an offence has been committed “in or in relation to a proceedings in that Court” or “in respect of a document produced or given in evidence in a proceedings in that Court”. For forming this opinion, that Court is required to conduct a preliminary inquiry and on that basis record a finding to that effect.

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18. If after the inquiry that Court forms an opinion that prima facie no such offence of perjury is made out, it can reject the application. That would not give rise to a situation contemplated in sub-Rule (2) of Section 340 of the Code. In that eventuality, the aggrieved party can file an appeal under Section 341 of the Code, subject to its admissibility. It is only when application is also not rejected and no decision taken thereon and complaint is also not made, that sub Section (2) would be attracted enabling the superior Court to take cognizance. We are, therefore, of the opinion that this petition is not maintainable as it is not open to the petitioner to approach the Division Bench straightway without resorting to remedy provided under sub Section (1) of Section 340 of the Code by filing application in the OMP 660/2009 in the first instance.”

Placing reliance on *Deepak Khosla v. Anand Mohan Mishra* (*supra*), Mr. Khosla contends that the Division Bench is a superior

court on account of the definition of in Section 195(4) of the Cr.P.C. That provision speaks of the two situations contemplated in Section 195(1)(b). Sub-clause (b) enumerates two categories: first category of cases, i.e. the offences which are triable by Magistrates and the second category of cases, which are triable by a Sessions Court. In the case of the former, the superior court would be the appellate court i.e. the District Judge; in the latter, it would be the High Court. The other instances visualized by the Parliament are carved out in the proviso, which refers to the subordination of one or the other courts. In the present case, what is urged is that since the appeal *per se* lies to a Division Bench, the inaction of the Ld. Single Judge in dealing with the merits of the application under Section 340, triggers a cause, so to say, for the exercise of jurisdiction under Section 340(2) of the Cr.P.C. We find that though there are some observations in *Anand Mohan Mishra's* case, there is neither an examination nor determination, as to how the orders, decrees and writs of the Ld. Single Judge of the High Court in terms of the Constitution are “*subordinate*” to a Division Bench which is merely an appellate court. The Constitution also uses the expression “*subordinate courts*” in the context of District Courts and other courts of similar jurisdiction over which the High Court possesses supervisory jurisdiction.

Having regard to the aforesaid observations and conclusions, we are of the opinion that the present case - though termed as an appeal, does not lie and is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 04, 2018/aj