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IN THE HIGH COURT OF DELHI AT NEW DELHI

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TR.P.(C.) 21/2017 & CMs No. 22723/2018 & 22724/2018

SAROJ

..... Petitioner

Through None

versus

SARWAN KUMAR & ANR

..... Respondent

Through Mr. Anil Nag, Adv. for the applicant in
Crl.Ms No.22723/2018 & 22724/2018

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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10.08.2018

Crl.M. No. 22724/2018

Exemption allowed subject to all just exceptions.

The application is disposed of.

Crl.M. No. 22723/2018

This application has been filed for initiation of proceedings under Section 340 Cr.P.C., 1973 in the Transfer Petition which has been dismissed vide order dated 28.4.2017.

Vide this application the applicant seeks initiation of proceedings under Section 340 Cr.P.C., 1973 read with Section 482 Cr.P.C. for taking cognizance of making a false claim, suppression of facts and other offences against public justice in terms of Section

195 Cr.P.C. submitting to the effect that the petitioner of the Transfer Petition against whom the present application seeking initiation of proceedings under Section 340 Cr.P.C. has been filed, vide the Transfer Petition had arrayed the applicant herein the respondent No.1 and Ms. Ritu Kapila as the respondent No.2 vide which petition, the petitioner thereof Ms. Saroj sought the transfer of proceedings in CS No.108/16 pending before the learned ADJ at Dwarka Courts in the said suit titled Ritu Kapila vs. Saroj Jain from the said Court to any other district court at Delhi with assertions which were false. It has been submitted on behalf of the applicant that despite the factum that the applicant herein was not arrayed as a party to the said CS No.108/16 pending before the Court of the ADJ, Dwarka Courts i.e. in CS No.108/16 of which transfer was sought vide this Transfer Petition, the petitioner of the Transfer Petition had nevertheless arrayed the applicant herein Shri Sharven Kumar Mohan as respondent No.1.

It has been submitted on behalf of the applicant herein that despite the order dated 21.2.2017 in the CS No.108/16 passed by the ADJ, (SW), Pilot Court, Dwarka Courts having declined the application filed by Ms. Saroj Jain, the petitioner of the Transfer Petition seeking to array Shri Sharven Kumar Mohan that is the present applicant as a defendant in the array of parties being misconceived, with observations also to the effect that the impleadment of the applicant herein Shri Sharven Kumar Mohan as defendant to CS No.108/16 would alter the nature of the suit and

would introduce a new cause of action and despite the said order having been upheld vide order dated 15.3.2017 in CM(M) No.293/2017 of this Court whereby the petition under Article 227 of the Constitution of India filed by the petitioner of the present Transfer Petition, was dismissed, the petitioner of the Transfer Petition did not make any such submissions before this Court and proceedings continued even on 2.3.2017 and 28.4.2017 in the Transfer Petition which was ultimately dismissed on 28.4.2017.

It has been submitted on behalf of the applicant that in terms of Section 340 Cr.P.C. read with Section 195(1)(b)(i) Cr.P.C. thereof as the offence punishable under Section 209 of the Indian Penal Code, 1860 would fall within the ambit of Section 195(1)(b)(i), sanction for initiation of proceedings under Section 340 Cr.P.C., 1973 be granted by this Court and notice of the application filed by the applicant herein be issued to the petitioner of the Transfer Petition her to show cause in relation thereto.

Section 209 Indian Penal Code, 1860 which is sought to be brought into play reads to the effect:

“209. Dishonestly making false claim in Court.— Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.”

It has been submitted on behalf of the applicant that inasmuch as the petitioner of the Transfer Petition on the date 2.3.2017 was aware of the dismissal of her application under Order I Rule 10 Code of the Civil Procedure seeking to array Shri Sharven Kumar Mohan as defendant to CS No.108/16 filed by Ms. Ritu Kapila before the learned ADJ, Dwarka, the petitioner of the Transfer Petition having not made such an assertion and submissions on 2.3.2018 and having proceeded with her prayer in the transfer petition even on 28.4.2017 despite the dismissal of her CM(M) No.293/2017 on 15.3.2017 which upheld the order dated 21.2.2017 in CS NO.108/16 of the Trial Court, for such false claims having been made by the petitioner of the Transfer Petition, proceedings be initiated thus in terms of Section 340 Cr.P.C. against her.

It has been further submitted on behalf of the applicant herein that the petitioner of the said Transfer Petition had on the basis of persistence of such false claim, done so with intent to injure and annoy the present applicant fraudulently and dishonestly.

It is essential to observe that though undoubtedly on the date of institution of the Transfer Petition which has since been dismissed vide order dated 28.4.2017, the applicant herein was not arrayed as a party to CS No.108/16 pending before the ADJ, Dwarka Courts, the application of the petitioner seeking to array the present applicant as a party to the said suit was nevertheless pending. The said application under Order I Rule 10 Code of Civil Procedure, 1908 was declined on 21.2.2017 by the learned Trial Court, which order was upheld vide

order dated 15.3.2017 of this Court. Undoubtedly, the petitioner of the Transfer Petition could have brought it to the notice of the Court and ought to have brought to the notice of the Court in relation to the said aspect of dismissal of her prayer of arraying the applicant herein as a party to the said CS No.108/16.

The other submission made on behalf of the applicant herein is to the effect that the averments in para 2 of the Transfer Petition declined vide order dated 28.4.2017 make serious allegations against the applicant and seek in a manner to make the applicant a party to the proceedings in CS No.108/16, the suit pending before ADJ, Dwarka Courts and that the petitioner of the Transfer Petition had on the said premise sought transfer of the proceedings from the Court at Dwarka and reference was also made on behalf of the applicant on assertions that had been made by the petitioner of the Transfer Petition in CM(M) No.293/2017 which are detailed in para 2 of the proceedings of the order dated 15.3.2017 of this Court which read to the effect:

“2. The petitioner moved an application under Order I Rule 10 CPC. In the application it is urged that Shri Sharwan Kumar is a practising lawyer and he had been engaged for the purpose of filing a claim petition against the employer of her deceased husband. The petitioner has also lodged a case under section 376 IPC against the said Shri Sharwan Kumar. It is urged that in good faith and reposing confidence in the said Shri Sharwan Kumar and due to intimacy developed with him on an assurance of marriage the petitioner had paid a sum of Rs.2 lacs to the said person for purchasing a plot. However, instead of purchasing the

said plot in the name of the petitioner, he has fraudulently and mischievously purchased a plot in his own name. It is urged that a suit has been filed by the petitioner for declaration and permanent injunction against Shri Sharwan Kumar which is pending. The petitioner also seeks to place reliance on a compromise allegedly executed between Shri Sharwan Kumar and the petitioner. In view of these facts and circumstances it is prayed that the said Shri Sharwan Kumar is a necessary and proper party.”

As observed herein above on the date of institution of the Transfer Petition on 16.12.2016, the application of the petitioner of the Transfer Petition seeking to array the present applicant as a party to the CS No.108/16 was pending consideration before the Trial Court, though undoubtedly the applicant had not been arrayed on record as a party.

Furthermore, it is essential to observe that Section 340 Cr.P.C. expressly stipulates to the effect:

“ 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.

In terms of sub-section (1) thereof on an application made to the Court if the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred to clause (b) of sub-section (1) of section 195 Cr.P.C. which appears to have been committed in or in relation to a proceedings in that Court or as the case may be, in respect of a document produced or given in evidence in evidence in a proceeding in that Court, such Court may after such preliminary inquiry, if any, as it thinks necessary initiate

the proceedings in relation to Section 340 Cr.P.C. which falls within Chapter XXVI of the Cr.P.C. 1973 which relates to the provisions as to the offences that affect the administration of justice.

It is essential to observe that the proceedings in CM(M) No.293/2017 disposed of on 15.3.2017 as reflected through para 2 thereof reproduced herein above bring forth an apparent gross acrimony between the petitioner herein and the petitioner of the Transfer Petition that was dismissed on 28.4.2017 and the applicant herein was already aware of the same.

Taking the totality of the circumstances into account, the Court is of the considered view that it would not be expedient to add to the acrimony between the parties or to initiate any further proceedings under Section 340 Cr.P.C. against the petitioner of the Transfer petition, taking into account, as already observed hereinabove that on the date of institution of the said application of the petitioner seeking to array on record the applicant herein as a party was pending before the trial court. The application is, thus, declined, as it is not expedient in the interest of justice to grant the prayer made vide the application.

ANU MALHOTRA, J

AUGUST 10, 2018/aj