

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Criminal Appeal No.541 of 2012**

- Pushpal Swarnkar S/o Santram Swarnkar, through father and Power of attorney Santram Swarnkar, R/o Near Panchsheel Academy Mukut Nagar Padmanabhpur, Durg Tahand Distt. Durg (C.G. )

**---- Appellant****Versus**

1. Nikita Swarnkar D/o Rajkumar Swarnkar, R/o House No 40 A/7 Nehru Nagar West Bhilai, Tah. And Distt. Durg (CG)
2. Alok Swarnkar S/o Rajkumar Swarnkar, R/o House No 40 A/7 Nehru Nagar West Bhilai, Tah. And Distt. Durg (CG)

**---- Respondents**

-----

For the appellant : Shri Vivek Shrivastava, Advocate

For the respondents : Shri Vivek Tripathi, Advocate

-----

**Hon'ble Shri Justice Ram Prasanna Sharma****Judgment On Board****19.3.2019.**

1. The appeal under Section 341 of the Code of Criminal Procedure, 1973 is directed against order dated 17.01.2012 passed by Second Additional Principal Judge, Family Court Durg in FAM No.47/2012 wherein the said Court dismissed the application filed by the appellant under Section 340 read with Section 195 IPC for proceeding against respondent No.1.

2. As per the version of the appellant, marriage between the appellant and respondents No.1 was solemnized on 29.4.2007. On 12.11.2008, respondent No.1 filed application under Section 125 CrPC before the said Court in which she filed an affidavit stating that she is dependent on her parents while in fact she was

working in Tourism and Hotel Management Institute affiliated with Pt. Ravishankar University, Raipur. Therefore, an application was moved by the appellant before the trial Court for initiation of the proceedings under Section 340 read with Section 195 of CrPC, but the trial Court dismissed the same.

3. Learned counsel for the appellant submits that giving false affidavit on oath before the judicial authority squarely covers under Section 340 read with Section 195 CrPC but the trial Court did not evaluate this aspect of the matter, therefore, order of the trial Court be set aside and the trial Court may be directed to initiate action against the respondent under the Sections as mentioned above.

4. On the other hand, learned counsel for the respondents submits that the finding arrived at by the trial Court is based on proper marshaling of evidence and the same is not liable to be interfered with invoking the jurisdiction of the appeal.

5. One affidavit was filed by respondent No.1 in support of her application dated 27.3.2010 in which she has stated that she is depended on her parents. It is not mentioned in the said affidavit that she is not working with any institution. The document cited by the appellant regarding working of respondent No.1 in the said institution goes to show that respondent No.1 was appointed for limited period on contract basis in the said institution. From the document, it appears that she joined on 03.8.2009 but it is not clear up to what date she worked in the said institution, what amount was paid to her for working in the said institution. Again she further joined in the said institution on 30.8.2010, but it is not

clear up to what date she worked in the said institution and how much amount was paid to her for working in the said institution. When nothing is mentioned in her affidavit regarding working in the said institution, the trial Court opined that her service was not regular and therefore, it cannot be concluded that she made any false statement in the said affidavit.

6. For fastening criminal liability, there should be strict proof against the person concerned, but that is not the case here. When respondent No.1 did not make any statement regarding her working, the trial Court is right in holding that it is not a case where any proceedings should be initiated against the respondent in the interest of justice. Finding of the trial Court is based on relevant materials placed before the said Court and the same is not based on extraneous and irrelevant materials. Therefore, this Court has not reason to substitute a contrary finding.

7. Accordingly, the appeal has no substance and the same is hereby dismissed.

**Sd/-**

**(Ram Prasanna Sharma)**  
**JUDGE**