

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.382 OF 2019

Pintu Darji	]	... Applicant
Versus		
Mansi Pintu Darji		
& Anr.	]	... Respondents

Mr.Faisal F. Shaikh for applicant.

Mr.Vinod Chate, APP for State.

CORAM : N.J. JAMADAR, J.
DATE : 6th DECEMBER, 2019.

P. C. :-

1. Heard the learned counsel for the applicant and the learned APP for State.
2. The challenge in this revision is to the order dated 18th July 2019 passed by the learned Sessions Judge, Greater Mumbai in Criminal Appeal No.755 of 2018, whereby the appeal preferred by the applicant came to be dismissed and the order dated 31st October 2018 passed by the learned Metropolitan Magistrate, 18th Court, Girgaum in C.C. No.10/Misc./2018 came to be confirmed.
3. The genesis of the application made by the applicant before the learned Metropolitan Magistrate was in a proceeding initiated by the

respondent No.1, who is the wife of the applicant, under the Protection of Women from Domestic Violence Act, 2005 ('The Act, 2005'). In the said proceeding, the applicant preferred the above numbered application with the allegations that the proceedings were initiated by the respondent No.1 on the basis of false assertions, averments and affirmations on oath. The applicant, thus, sought initiation of proceedings under section 340 of the Code of Criminal Procedure for the offences punishable under sections. 192, 193, 196, 197, 198, 199 and 200 of the Indian Penal Code, 1860 ('Penal Code').

4. The learned Magistrate was persuaded to reject the application holding, *inter-alia*, that the false allegations, allegedly made by the respondent No.1-wife in the proceedings, bearing D.V. Case No. 14/Misc./2017, at that stage, when the evidence was yet to be recorded, did not furnish an adequate ground for initiating the proceeding under section 340 of the Code. The question as to whether the proceeding under the Act, 2005 is rested on false averments and assertions is essentially a matter of trial. As regards the affidavit, dated 27th February 2017, which was stated to contain the false affirmation, the learned Additional Sessions Judge has observed in

clear and explicit terms that the said affidavit was not affirmed by the respondent No.1-wife and it does not bear her signature.

5. The learned Sessions Judge has concurred with the finding of the learned Magistrate that the applicant has the opportunity to demonstrate that the averments in the application for reliefs under the Act, 2005 preferred by the respondent No.1-wife are not correct and thus, the respondent No.1-wife is not entitled to any relief under the Act, 2005.

6. In the backdrop of the aforesaid facts, the application for initiating the proceedings under section 340 of the Code appeared to be wholly misconceived. The truthfulness or otherwise of the allegations made by the respondent No.1-wife in the proceeding before the learned Magistrate is yet to be adjudicated. The reasons ascribed by the learned Magistrate as well as the learned Sessions Judge in rejecting the prayer of the applicant for initiating the proceeding under section 340 of the Code appear to be justifiable. It is trite that while resorting to the provisions contained in section 340 of the Code, the Court has to record a finding that it is expedient in the interest of justice to direct the lodging of the complaint. The facts of the instant

case singularly lack the element of expediency in the interest of justice. Hence, in exercise of the revisional jurisdiction, which is discretionary and limited in nature, no interference is warranted in the impugned order.

7. Hence, the revision application stands dismissed.

(N.J. JAMADAR, J.)