

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

CRM-M-1949-2019

Date of Decision:-22.01.2019

Siemens Limited

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. R.S. Cheema, Senior Advocate with
Mr. Rajiv Bhatnagar, Arshdeep Singh Cheema, Advocates
for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner assails order dated 23.10.2018 passed by JMIC Gurugram, whereby an application filed by petitioner company seeking dismissal of complaint filed by respondent No. 2 Prabir Bhattacharyya under Section 340 Cr.P.C., has been dismissed.
2. A few facts necessary to notice before noticing the contentions put forth on behalf of the petitioner are that initially respondent No.2 Prabir Bhattacharyya had filed a criminal complaint in the Court of JMIC Gurugram, i.e. complaint No. 317 of 2013 in respect of offences under Sections 406 and 420 IPC. The allegations were broadly to the effect that respondent No. 2 had been working as Senior Manager with M/s Siemens Power Engineering(P) Limited (SPEL, for short) and that his salary comprised of 2 components i.e. the fixed part and the variable part. The variable part depended upon the performance of the employee. It is alleged

that although the salary structure had been revised by the company in 2009, as had also been conveyed to respondent no. 2 through e-mail but the benefit of revision of salary was not extended to respondent no.2 and that he was given the minimum of performance based salary of ₹ 85,000/- whereas he was entitled to receive the same to the tune of ₹ 1.965 lacs as per the revised salary structure. The said complaint was dismissed by JMIC, Gurgram vide order dated 7.1.2017 (Annexure P-11).

3. During the pendency of the aforesaid criminal complaint, respondent No. 2 moved an application under Section 340 Cr.P.C. seeking initiation of proceedings against the accused for allegedly having committed offences punishable under Sections 193, 196, 190, 181, 420 IPC etc. The accused arrayed therein were the Managing Director, other Directors and officials of M/s Siemens Limited. It is the following statement dated 24.10.2013 (Annexure P-6) made by Mr Rajeev S. Bhatnagar, Advocate of M/s Siemens Limited, during the course of criminal complaint, which was stated to be attracting offence under Section 193 IPC :-

“Statement of Shri Rajeev Bhatnagar, Advocate for Siemens limited.

- Stated that the summons under section 91 Cr.P.C. was received at address Plot 6A, Sec. 18, Maruti Ind. Area HUDA. It is submitted that the summons issued to Siemens Power Engg. Pvt. Ltd. Further the aforesaid company is no more in existence as it has amalgamated into Siemens Ltd. w.e.f. 1st Jan. 2013.

R.O.A.C.

Sd/-

Sd/- JMIC

24.10.2013 ”

4. The aforesaid statement came to be recorded when pursuant to an order dated 24.9.2013, SPEL had been directed to produce certain documents in the Court and the counsel instead of producing any document had got the aforesaid statement recorded. It is alleged by respondent No. 2 in his complaint under Section 340 Cr.P.C. that by way of making the aforesaid statement, an attempt had been made to conceal the fact that M/s Siemens Limited has become successor-in-interest of SPEL and had thus chosen not to produce the desired documents. It is further the case of respondent no.2 that on account of non-production of the aforesaid documents, he had suffered irreparable loss as vital evidence related to the case could not be obtained. It has been asserted therein that post the amalgamation of SPEL into M/s Siemens Ltd., said M/s Siemens Limited had stepped into shoes of SPEL and could not escape from its responsibility to produce documents on behalf of SPEL, pursuant to order dated 24.10.2013 and was liable under all circumstances.
5. It is not in dispute that SPEL stood amalgamated with M/s Siemens Limited. In such circumstances it will certainly be debatable as to whether the statement dated 24.10.2013 made by counsel, pertaining to non-existence of SPEL, which cannot be said to be absolutely false statement, can result in prosecution of his clients. The case of respondent No. 2 is that the advocate being fully aware of factum of amalgamation of the two companies should have forthrightly stated that it is now M/s Siemens Ltd. which is responsible in respect of liabilities of SPEL and by not having stated so he had chosen to mislead the Court by concealing material fact.

6. However, the precise question before this Court is not as regards merits of the case but as regards maintainability of the application under Section 340 Cr.P.C., moved by respondent no.2 before the trial Court. It needs to be mentioned here that the petitioner had approached this Court on an earlier occasion by way of filing CRM-M No. 1545 of 2018, seeking consolidation of several proceedings pending before different Courts at Gurugram, including the present application under Section 340 Cr.P.C. A co-ordinate Bench of this Court, while noticing that in fact 4 out of the 7 cases were pending before the same JMIC and that some of the transfer applications earlier filed already stood dismissed and also that the matters were at precognizance stage, dismissed the petition vide order dated 14.5.2018 (Annexure P-14), while granting liberty to the petitioner M/s Siemens Limited to question the maintainability of the complaints, in accordance with law. The relevant extracts from the said order reads as follows:

“12. The locus standi of the petitioner to seek transfer of the cases would be a debatable issue. Petitioner has already filed transfer applications which were dismissed. Petitioner himself has disclosed dismissal of the applications in para No.5 (f) and (g) of the petition. Since the cases are at precognizance stage, therefore, the conduct of respondent No.2 would be tested by the trial Court with reference to evidence. At this stage, it would be premature to comment upon the conduct of respondent No.2 and therefore, in the light of dismissal of transfer applications, the consolidation of cases before the same Court would not be in consonance with law. Perusal of the first list of cases would show that out of seven cases, four cases are already listed before the same Court.

13. Taking into consideration the facts and circumstances of the case, this Court is not inclined to hear arguments on merits, lest it may prejudice the case of either sides at the trial. At this stage, I deem it appropriate to dismiss the petition, however petitioner would be at liberty to question the maintainability of the complaints in accordance with law.”

7. Pursuant to dismissal of aforesaid petition by this Court, the petitioner moved an application dated 9.7.2018 (Annexure P-15) before the Court of JMIC, Gurugram for dismissal of the complaint under section 340 Cr.P.C. on the ground that the same lacks maintainability. The grounds set forth in the said application may briefly be enumerated as follows:

- (i) that the parent complaint (Criminal Complaint no.317 of 2013) filed by respondent No. 2 Prabir Bhattacharyya having already been dismissed and there being no adverse finding recorded by the trial court in respect of any false statement made by the accused, the complaint under Section 340 Cr.P.C. does not survive as it is only during continuance of the parent complaint that the application under Section 340 Cr.P.C. could have been entertained.
- (ii) that it is the statement of counsel which is sought to be made a basis for initiating proceedings under Section 340 Cr.PC and that since the said statement was recorded without oath, the petitioner or other accused could not be held liable in any manner.
- (iii) that since no opinion had been formed by the trial Court before initiating inquiry under Section 340 Cr.PC., the proceedings are violative of the procedure mandated by Section 340 Cr.PC.
- (iv) that the Court lacks jurisdiction since the parent complaint had been heard and decided by another JMIC.

8. The aforesaid application, having been dismissed by JMIC, Gurugram vide order dated 23.10.2018(Annexure P-1), the same has been impugned by filing the present petition.
9. I have heard the learned counsel for the petitioner. This Court is required to confine itself to the question of maintainability of application under Section 340 Cr.P.C., in view of specific order dated 14.5.2018 (Annexure P-14) passed by this Court on an earlier occasion and while also bearing in mind that the matter is still at the stage of pre-cognizance and none of the accused has been summoned so far. One of the issues raised on behalf of the petitioner is that the parent complaint filed by respondent under Sections 406 and 420 IPC, already having been dismissed, the proceedings under Section 340 Cr.P.C. would not be maintainable as it is only during continuance of parent complaint that the proceedings could have been initiated. While it is correct that the learned JMIC, till date, has not chosen to lodge any complaint and also that the parent complaint filed by respondent no.2 under Sections 406 and 420 IPC already stands dismissed, but respondent No. 2 had moved the application under Section 340 Cr.P.C. much before the dismissal of his parent complaint. While the parent complaint was dismissed on 7.1.2017, the application under section 340 Cr.P.C. was filed earlier on 4.4.2016. In these circumstances, the application having been filed earlier, the maintainability of the application under Section 340 Cr.P.C. cannot be called into question on the said ground.
10. Another attempt to assail maintainability is on the ground that the Magistrate had proceeded to entertain the application even without forming any opinion

whereas the language of Section 340 Cr.P.C. mandates formation of opinion before initiating proceedings of an enquiry under Section 340 Cr.P.C.

11. I considered aforesaid submission raised on behalf of the petitioner. It is apposite to refer to provisions of Section 340 Cr.P.C. which read 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 interest 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 for 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.

12. A perusal of the bare provisions of Section 340 Cr.P.C.would show:

- (i) that Section 340 Cr.P.C., prescribes that before the Court directs that a complaint be lodged in respect of offences mentioned in Section 195 Cr.P.C., it must record a finding to the effect that the person concerned has intentionally given false evidence.
- (ii) that the Court should also be satisfied that in the interest of justice, it is expedient that such person be prosecuted. In other words, if the Court forms an opinion, on the basis of the material available, that it is not expedient in the interests of justice to proceed to prosecute such person, the Court could dismiss the complaint and drop the proceedings even at the very outset.
- (iii) that the Court may chose to hold a preliminary inquiry to reach at aforesaid findings but it is not mandatory to hold preliminary inquiry in each and every case. The words “*if any*” existing after the words “*after such preliminary inquiry*”, leave no room to doubt this position. In a given case, where the falsehood is evident from the facts already before the Court, the Court may form an opinion even without holding preliminary inquiry.

13. Thus, it is the findings as regards *prima-facie* commission of offence of perjury and the expediency to prosecute for such offence which are the two essential requisites for proceeding to lodge a complaint in respect of such offence. As already noticed above, holding of a preliminary enquiry is not *sine-qua-non* for reaching at such a finding. The word opinion referred to in Section 340 Cr.PC can not be interpreted to mean that even before initiating any preliminary enquiry an order is required to be passed, in every case, by the Court concerned expressing that the offence appears to have been committed. Infact the stage of returning such *prima-facie* finding would

come after preliminary inquiry, wherever such preliminary inquiry is held. In cases, where the Court chooses to proceed *suo-motu* under provisions of Section 340 Cr.P.C., the Court would certainly record its reasons for proceeding *suo-motu* but in case where an application is filed before the Court, the Court can proceed to consider such application and it is not required that even to consider such application some order is required to be passed. The contention raised on behalf of the petitioner in this regard, being devoid of merits, cannot be accepted.

14. As regards the contention that it is basically the statement of counsel of the petitioner which is being formed the basis for initiating proceedings under Section 340 Cr.P.C. and that since the said statement is not even on oath, therefore, the petitioner and others cannot be proceeded against on the basis of the such statement, it is correct that it is the statement of counsel of the petitioner on the basis of which the application under Section 340 Cr.PC has been filed. However a client would be bound by the statement made by his counsel as per the undertaking generally given by the client in '*vakalatnama*', (Power of attorney). It is not the case of the petitioner that no such authorisation had been given to the counsel or that the petitioner and others had never authorised their counsel to make any such statement on their behalf. The very fact that the same very counsel has still been representing the petitioner whose presence is even recorded in impugned order dated 23.10.2018 goes to show that it is not the case of the petitioner that their lawyer was not authorised to make any statement on their behalf. The contention raised in this behalf, thus, cannot be accepted. However, it will certainly be open to the petitioner to raise an argument at appropriate

stage as to whether the contents of statement made by the counsel would actually inculcate the petitioner in any manner or as to whether the statement is factually incorrect or as to whether, in the given circumstances, it is expedient to proceed against the petitioner. As already mentioned above, this Court has to confine itself only to the question of maintainability and is not required to go into merits of the case at this stage.

15. The contention to the effect that the application under Section 340 Cr.P.C. is being dealt with by a different Magistrate and not by the one who dealt with the parent complaint and had dismissed it, does not hold good as there is no such mandate that the application under Section 340 Cr.P.C. has to be dealt with by the same very Magistrate/judicial Officer. It is the Court where the perjury had taken place which has to initiate the proceedings irrespective of the fact as to whether the Presiding Officer is the same or not.
16. The petition is sans merit and is dismissed. However, since the application under Section 340 Cr.P.C. has been pending since 4.4.2016, the Court of JMIC, where the same is pending is directed to take effective steps for its expeditious disposal.

(GURVINDER SINGH GILL)
JUDGE

22.01.2019
kamal

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No