

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

**CRM-M-20985-2017 (O&M)
Date of Decision: 14.2.2019**

Robin Verma and others

.....PETITIONER(s).

VERSUS

Anu Rattan

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Mohit Garg, Advocate
for the petitioners.

RAJ SHEKHAR ATTRI, J.

CRM-4773-2019

Allowed as prayed for documents Annexure P-5 and P-6 are
taken on record subject to all just exceptions.

CRM-M-20985-2017

This is a petition under Section 340 of the Code of Criminal
Procedure for prosecuting the respondent wife in view of the provisions
contained under Section 195 of the Code of Criminal Procedure.

It is the case of the petitioner that respondent-Smt.Anu
Rattan wife of Robin Verma filed an application for transfer of the trial in
case FIR No.273 dated 9.9.2013 from the Court of Chief Judicial
Magistrate, Sangrur to any other court of competent jurisdiction at
Barnala by filing CRM-M-35145-2015. It is alleged that she sought

transfer of the trial by stating that there is no other earning hand in the family of the respondent and respondent's father is an old age person who is maintaining the family with meagre amount and respondent-wife is living with her parents at their mercy at Barnala. According to the petitioner, this averment was factually incorrect because while appearing as PW2, she has stated that she was working as Lecturer in a college; that her mother is a teacher and her father owns land but to the mind of this Court, this averment cannot be taken as false.

It is further argued that she has specifically stated in the transfer petition that it is difficult for her to commute from Barnala to Sangrur to attend hearing of the case as her father is unable to accompany her. It is stated that she herself is a lecturer and commutes from Dhanola to Barnala to attend her school but only this fact is not sufficient to prosecute her. No presumption can be drawn solely on the ground that she is attending her school from Dhanola to Barnala.

There are two preconditions for initiating proceedings under Section 340 Cr. P.C. :

- “(i) materials produced before the court must make out a prima-facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 Cr.P.C. and
- (ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.”

Even though it is assumed that the statement given by the petitioner was incorrect yet this is not sufficient nor expedient in the interest of justice to conduct an inquiry under the provisions of Section 340 of the Code of Criminal Procedure.

Hon'ble Supreme Court in **State (Govt. of NCT of Delhi) v. Pankaj Chaudhary and others**; 2018 AIR (SC) 5412 has made the following observations : -

“40. Observing that the court has to be satisfied as to the prima facie case for a complaint for the purpose of inquiry into an offence under Section 195(1)(b) Cr.P.C., this Court in ***Amarsang Nathaji as himself and as karta and manager v. Hardik Harshadbhai Patel and Others (2017) 1 SCC 113*** held as under:-

"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See ***K.T.M.S.***

Mohd. and Another v. Union of India (1992) 3 SCC 178). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See ***Pritish v. State of Maharashtra and Others (2002) 1 SCC 253***)

8. In ***Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another (2005) 4 SCC 370***, a Constitution Bench of this Court has gone into the scope of Section 340 CrPC. Para 23 deals with the relevant consideration:

"23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1) (b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may

hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint."

The same principle was reiterated in *Chintamani Malviya v. High Court of Madhya Pradesh (2018) 6 SCC 151*.

41. It has been consistently held by this Court that prosecution for perjury be sanctioned by the courts only in those cases where perjury appears to be deliberate and that prosecution ought to be ordered where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement. In *Chajoo Ram v. Radhey Shyam and Another (1971) 1 SCC 774*, this Court held as under:-

"7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation...."

In view of the above, no case is made out to prosecute the respondent wife, as such, this petition being devoid of merit, is dismissed.

February 14, 2019
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>