

**In The High Court for the States of Punjab and Haryana
At Chandigarh**

CRM-M-41654-2019 (O&M)
Date of Decision:- 27.9.2019

Parveen Kumar

... Petitioner

Versus

Anju and another

... Respondents

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Sachin Gupta Ladwa, Advocate, for the petitioner.

GURVINDER SINGH GILL, J.

1. The petitioner has approached this Court challenging order dated 10.9.2019, passed by learned Principal Judge, Family Court, Narnaul, wherein an application filed by the petitioner-husband under Section 340 Cr.PC. has been dismissed.
2. The petitioner's wife i.e. respondent No.1- Anju had filed an application under Section 125 Cr.P.C. against the petitioner seeking grant of maintenance. The petitioner moved an application under Section 340 Cr.P.C. read with Section 195 Cr.P.C. for initiating proceedings against the respondent-Anju for having perjured the Court. The petitioner alleged that respondent No.1 had made certain

mis-representations to the effect that upon an ultrasound conducted upon her, she was found to be carrying a male embryo, which was got aborted whereas in fact no such sex determination could have been possible when the pregnancy was barely 7 weeks and 6 days old. The Trial Court considered the application and dismissed the same vide impugned order dated 10.9.2019, whereby a cost of ₹10,000/- was also imposed upon the petitioner which was directed to be paid to his minor child.

3. Learned counsel for the petitioner has submitted that the Trial Court did not appreciate the matter in the correct perspective and that contentions of the respondent regarding determination of sex when the embryo was 7 weeks and 6 days old are patently false. The learned counsel has further submitted that in fact the Trial Court also fell in error in nominating Sh. R.S.Nain, Advocate as amicus curiae when in fact said Advocate had been representing the respondent-wife in proceedings under Section 125 Cr.P.C. and thus could not be said to be an independent Advocate.
4. I have considered rival submissions addressed before this Court. Before proceeding further, it is apposite to refer to the order vide which Sh. R.S.Nain, Senior Advocate was appointed as amicus curiae to assist the Court. Order dated 10.9.2019 is reproduced below for the sake of ready reference:

“Today case is fixed for production of remaining documents, if any, otherwise for arguments on question of initiating action under Section 340 Cr.P.C. However, before hearing arguments in this petition, it would be

appropriate to take assistance of senior counsel. Shri R.S.Nain, Advocate as Amicuscurie and so he is appointed Amicuscurie and will assist this Court while deciding application under Section 340 Cr.P.C. Applicant Praveen Kumar is ready to argue and Amicuscurie is also ready to assist this Court. Applicant Praveen Kumar has advanced lengthy arguments for initiating proceedings against his wife and her relatives under Section 125 Cr.P.C. Learned Amicuscurie has also assisted this Court by raising contention relating to petition under Section 125 Cr.P.C. filed by Anju etc. Let, file be now put up after lunch for pronouncement of order.”

5. A perusal of the aforesaid order shows that the Trial Court has suo motu sought the assistance of a senior counsel for the purpose of decision of the application under Section 340 Cr.P.C. The fact that the said counsel happens to be representing the wife in proceedings under Section 125 Cr.P.C. would not debar the Court from seeking inputs from a senior Advocate on questions of law. In any case, a perusal of the impugned order does not reflect any such fact which the said counsel may have misrepresented or had stated anything to prejudice the mind of the Court against the petitioner. The amicus had been appointed by the Court for its assistance and as such this Court does not find any infirmity in appointing Sh. R.S.Nain, Senior Advocate, as amicus curiae for the purpose of assistance to the Court in decision of the application under Section 340 Cr.P.C.
6. The facts allegedly misrepresented by respondent No.1, as per case of the petitioner, have been noticed by the Trial Court as follows:

“Firstly: he and his family members got sex determination test for knowing fetus in womb either female or male child

by astrologer etc. At the time of pregnancy of seven weeks some days;

Secondly: mentioning of wrong or false date of Jat election committee on 22.12.2015 instead of 22.11.2015;

Thirdly: date of turning out her from the matrimonial home in the month of September 2017, whereas, she was living in her parental home in that month.”

7. I have heard the learned counsel for the petitioner and having perused the impugned order and the other documents annexed with the petition.

8. Section 340 Cr.P.C. which deals with procedure in such matters reads 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.

9. 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 interests 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.

10. This Court in 2011(9) RCR (Criminal) 943 Sanjeev Soni Vs. State of Punjab, where a “runaway couple” had approached this Court seeking protection while claiming themselves to be of major and later the girl’s father had moved an application under Section 340 Cr.P.C. for prosecuting petitioners alleging that there was misrepresentation regarding age as his daughter was barely aged 16 ½ years, did not chose to initiate proceedings under Section 340 Cr.P.C., while relying upon an earlier decision of this Court 'Tarun v. Manoj Kumar' Criminal Misc. No.M-8928 of 2010 decided on 13th October, 2011) and while observing that every false statement will not call for prosecution of litigant.

11. This Court in 'Tarun v. Manoj Kumar' (*Supra*) held as under:

"The legislation in its wisdom has specifically laid a bar under Section 195 Cr.P.C. not to prosecute each and every litigant. The offence, if any, has been committed against the Court. It is a common knowledge that the litigants do make wrong statements in the Court proceedings. For each and every wrong statement, each

litigant cannot be prosecuted. The Court shall prosecute and punish such a litigant, when its conscience is pricked. However, the powers of the Court cannot be used for settlement of personal revenge or vengeance. To maintain majesty of law, it is necessary that in each and every complaint, the prosecution is not initiated and the Courts are not flooded with such kind of litigation”.

In view of the above, no directions are called for and the present petition is disposed of."

12. In an another case 1988(1) RCR (Criminal) 223 Vittappan vs. State, Kerala High Court held as follows:-

“Though the courts are expected to be zealous in putting down perjury to the extent possible, it is not every case of perjury that should form the subject of the enquiry contemplated in section 340. Expediency in the interest of justice should be the criterion. Otherwise there could be almost as many prosecutions as the number of witnesses examined because in the evidence of almost each and every witness an element of untruth could be found. 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. To start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material will defeat its very purpose. Some inaccuracy in the statement which may be innocent or immaterial may not justify a prosecution as expedient in the interest of justice. There must be *prima facie* case of deliberate falsehood on a matter of substance and the court must be satisfied that there is reasonable foundation for the charge.”

13. Hon'ble the Supreme Court in a case titled as Chajoo Ram Vs. Radhey Shyam AIR 1971 SC 1367, held as follows:-

“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.”

14. Upon examining the facts of the present case in light of ratio of above referred judgments, this Court is of the opinion that present case is not such where it is expedient to conduct proceedings under Section 340 Cr.P.C.
15. Finding no merit in the petition, the same is dismissed.

September 27, 2019

mohan

**(GURVINDER SINGH GILL)
JUDGE**

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No