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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 26.07.2019

+ CRL.REV.P. 618/2017

YOGESH MALHOTRA

..... Petitioner

versus

SONIA MALHOTRA & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.

For the Respondent : Mr. Abhay Kumar and Ms. Jyoti Sinha, Advs. for R-1.
Mr. Hirein Sharma, Addl. PP for the State with SI Yogesh Tanwar, P.S.Kalkaji.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

26.07.2019

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 02.05.2017 whereby the appeal of the petitioner under Section 341 of the Criminal Procedure Code (Cr.P.C. for short) impugning order dated 11.03.2013 has been dismissed.

2. The petitioner had filed an application under Section 340 Cr.P.C contending that he was facing a kalandra under Section

107/150 Cr.P.C. and contradictory statements had been made by the complainant/respondent herein.

3. The parties are neighbours.

4. A kalandra under Section 107/150 Cr.P.C. was filed on the complaint of the respondent, that petitioner had *inter alia* quarrelled with her.

5. The petitioner filed an application under Section 340 Cr.P.C contending that there were several discrepancies in the statement of the respondent based on which the kalandra was issued and that the statement given by her was false.

6. The Trial Court on perusal of the record noticed that though there were certain contradictions in the cross examination of the complainant/respondent but noted that the same could be due to passage of time and that the complainant was a lady.

7. The Trial Court, on perusal of the kalandra, material on record, status report with regard to breach of peace and the arguments put forth by the parties, further held that since more than 11 months had passed in the proceedings and no untoward incident had come to light and there was no further PCR call or complaint filed by the complainant against the petitioner, no further proceedings were called for.

8. The Appellate Court has held that proceedings under Section

340 Cr.P.C are to be initiated only if the Court is of the view that it is expedient in the interest of justice that an enquiry should be made into any offence as mentioned in clause (b) of sub section (1) of Section 195 of the Code.

9. The Appellate Court on perusal of the file including the Trial Court record held that the learned Special Executive Magistrate had rightly passed the order mentioning that though there were certain contradictions but the main issue of dispute was the quarrel that had taken place on the day of the incident. The Appellate Court held that the provisions of Section 340 of the Code were not attracted merely on the contradictions in the contents of the kalandra and the statement recorded during the testimony or the contradictions that had surfaced during cross examination which could be on account of passage of time.

10. The Appellate Court was of the view that it was not expedient in the interest of justice that an enquiry should be held as required under Section 340 Cr.P.C.

11. On perusal of the record as well as on hearing the submission of the petitioner, who appears in person, it appears that petitioner is referring to incidental suffering that the petitioner had suffered on account of the complaint and is relying upon alleged contradictions in the version of the complainant as recorded in the kalandra and her testimony before the Court.

12. It is for the concerned Court to ascertain as to whether it is expedient in the interest of justice to proceed further under Section 340 Cr.P.C or not. Both the Trial Court as well as the Appellate Court have held that it is not expedient in the interest of justice to proceed further under Section 340 Cr.P.C.

13. The basic object behind the Revisional Power under section 401 Cr.P.C. is to empower the High Court with powers of an appellant court so as to prevent failure of justice, in cases where the code does not provide for appeal. Revisional power is to be exercised only in exceptional cases where there has been a miscarriage of justice.

14. While exercising the powers of revision, which are discretionary, the court should always bear in mind the limitation that in the grab of exercising its power of revision; it cannot in effect exercise the powers of appeal.

15. In view of the categorical observations of the Trial Court as well as the Appellate Court that it is not expedient in the interest of justice to conduct an enquiry under Section 340 Cr.P.C, I am not inclined to exercise the Revisional Powers in the facts and circumstances of the present case and to direct an enquiry, when both the trial court and appellate court have held that it is not expedient and in the interest of justice to conduct such an enquiry.

16. It may also be observed that the kalandra which was initiated at the complaint of the respondent has since been closed as the Trial

Court found that for over a period of 11 months there was no complaint made by the parties against each other. The petitioner who is present in person also admits that after the said incident, there is no other incident reported from either side. He, however, submits that he has initiated proceedings against the respondent for defamation for filing a false kalandra, which are pending.

17. In view of the facts and circumstances as noticed above, I am of the view that no interference is called for in the orders of the Appellate as well as the Trial Court that it is not expedient in the interest of justice that an enquiry should be made in terms of section 340 Cr.P.C.

18. The petition is accordingly dismissed.

JULY 26, 2019
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SANJEEV SACHDEVA, J