

CRM-M-8168 of 2020

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

CRM-M-8168 of 2020
Date of Decision: 25.02.2020

Amit Kumar Narang

...Petitioner

Versus

Karan Atree

....Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present:- Mr. Johan Kumar, Advocate,
for the petitioner.

RAMENDRA JAIN, J. (ORAL)

Accused through this petition has assailed order dated 15.02.2020 (Annexure P-6) of the trial Court, whereby his application under Section 340 read with Section 195(1)(b) Cr.P.C. against the respondent-complainant was dismissed.

Briefly, after closure of evidence in affirmative by respondent-complainant in his complaint under Section 138 of the Negotiable Instruments Act (in short 'the Act'), petitioner in his defence examined DW1 Shri Sanjiv Kumar, Office Superintendent of Income Tax Department, who on the basis of his official record, testified about income tax returns of the respondent-complainant.

Immediately thereafter, petitioner-accused moved application to prosecute respondent under Section 340 Cr.P.C. on the ground that in his cross-examination respondent-complainant specifically admitted that he had

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shown entire transactions between them in the income tax returns, but DW1 Sanjiv Kumar from the Income Tax Department testified otherwise that no transaction in between him and the petitioner was shown in the income tax returns by the respondent-complainant. Trial Court after hearing both the sides, dismissed the said application vide order dated 15.02.2020.

Learned counsel for the petitioner *inter alia* contends that trial Court was not empowered to grant opportunity to the respondent-complainant to file reply, before holding inquiry in violation of settled law by the Apex Court and Bombay High Court. It was required to initiate inquiry against respondent-complainant, without issuance of any show-cause notice to him and decide application under Section 340 Cr.P.C., before proceeding further with the complaint of the respondent under Section 138 of the Act. In support of his contentions, learned counsel placed reliance on ***Prithish v. State of Maharashtra***, 2002(1) R.C.R. (Criminal) 92 (S.C.) and ***Union of India v. Mr. Haresh V. Milani and another*** (Civil Application No.2939 of 2017 in Writ Petition No.14039 of 2017) decided on 26.04.2018 (Bombay).

Having given thoughtful consideration to the above submissions, this Court finds the instant petition completely devoid of any merit and a clever device of the petitioner to prolong decision in the complaint against him filed by respondent-complainant under Section 138 of the Act.

According to learned counsel for the petitioner, five complaints, involving amount of ₹98.00 lakh, filed by respondent-complainant are pending against different persons, including the petitioner.

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In ***Haresh's*** case (supra) relied upon by learned counsel for the petitioner, Bombay High Court has not laid down any proposition of law, rather has dealt with peculiar facts and circumstances of the given case. Therefore, the same is not worth reliance.

However, this Court does not have any dispute with the observation of the Hon'ble Supreme Court in ***Pritish (supra)*** that it may be mandatory to adjudicate application under Section 340 Cr.P.C. before proceeding further with the main case, but would like to add here that it is bounden duty of the Court to find out at the initial stage as to whether application under Section 340 Cr.P.C. is *prima facie* maintainable. In case, Court finds some substance in the application under Section 340 Cr.P.C., then only, it has to proceed further with the inquiry and not otherwise. It would be travesty of justice to adopt straitjacket formula of conducting inquiry in every application under Section 340 Cr.P.C. by staying proceedings in the main case. As, in such like circumstances, no litigation would come to an end. In other words, the Courts would not be able to take the litigation to its logical end inasmuch as every dishonest litigants always try to prolong the litigation by hook or crook, adopting all clever tactics. Thus, application under Section 340 Cr.P.C. would be used as a tool by dishonest litigants in every criminal case.

More so, in the above referred authority, word 'may' has been used by their Lordships, which spells out as to discretion of the Court.

I have gone through impugned order. Same is perfectly legal. No alleged perjury has been committed by respondent-complainant.

Petitioner cannot be permitted to delay the decision of the case by filing

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application under Section 340 Cr.P.C. and instant petition.

Facts and circumstances of the authority of Hon'ble Supreme Court relied upon by learned counsel for the petitioner are otherwise different from the facts of the present case. Therefore, no benefit of the same can be given to the petitioner.

Dismissed.

February 25, 2020
R.S.

(RAMENDRA JAIN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No