

CRM-M-22393-2011

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

CRM-M-22393-2011 (O & M)

Date of Decision: 27.01.2020

Raj Pal Aggarwal and others

... Petitioners

Versus

Vinod Gupta and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Kul Bhushan Sharma, Advocate,
Mr. Abhishek Sharma, Advocate and
Mr. Deepender Singh, Advocate,
for the petitioners.

Mr. Ashok Aggarwal, Advocate,
for respondent No.1.

Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARNARESH SINGH GILL, J.

CRM-2048-2015

Allowed as prayed for. Annexure P-9 is taken on record,
subject to all just exceptions.

CRM-M-22393-2011

The present petition has been filed under Section 482 Cr.P.C.
for quashing of order dated 23.05.2011 (Annexure P-1) passed by the
learned Additional Sessions Judge, Faridabad, whereby appeals preferred by
the petitioners under Section 341 Cr.P.C. had been dismissed, and for
quashing of the order dated 25.02.2010 (Annexure P-4) passed by the
learned Additional Chief Judicial Magistrate, Faridabad whereby a

complaint was ordered to be filed for the commission of offence under

CRM-M-22393-2011

Section 211 IPC against the petitioners, and for quashing of the said complaint (Annexure P-6).

In the present case, Satish Chand Amar had initially got registered FIR No.97 dated 18.03.2005, under Sections 420, 467, 468, 471 and 120-B IPC, at Police Station Old Faridabad, Faridabad, against Vinod Gupta, Dharamvir, Naresh Chaudhary, Vimal Gupta and Madhu Gupta.

Madhu Gupta had filed CRM-28891-M-2005 before this Court for quashing of FIR No.97 dated 18.03.2005 and vide order dated 24.05.2006 (Annexure P-7), the said FIR and all consequential proceedings arising therefrom were quashed.

Thereafter, respondent No.1-Vinod Gupta filed an application dated 04.07.2006 (Annexure P-5) under Section 340 Cr.P.C. for initiating proceedings under Section 211 IPC against the petitioners and Satish Chand Amar, who had got registered FIR No.97 dated 18.03.2005. The concerned Magistrate had conducted preliminary enquiry and vide order dated 25.02.2010 (Annexure P-4), it was directed that a complaint be filed against the petitioners and Satish Chand Amar for the commission of offence under Section 211 IPC, before the Chief Judicial Magistrate, Faridabad.

Aggrieved of the order dated 25.02.2010, the petitioners and Satish Chand Amar had filed appeals, which were dismissed vide impugned order dated 23.05.2011 (Annexure P-1).

I have heard the learned counsel for the petitioners, the learned counsel for respondent No.1, the learned State counsel and with their able assistance have also gone through the record.

Learned counsel for the petitioners has argued that the

CRM-M-22393-2011

application dated 04.07.2006 (Annexure P-5) filed by respondent No.1- Vinod Gupta, under Section 340 Cr.P.C., in the Court of the learned Magistrate, was not maintainable as the same was filed without there being any cause of action. The learned Magistrate had straightway opted to proceed with the application without applying his judicial mind. In such like cases, it is mandatory being expedient and in the interest of justice that an enquiry should be made into any offence referred to under clause (b) of sub-section (1) of Section 195 Cr.P.C. However as per the order dated 5.7.2006 (Annexure P-8), no such finding had been recorded. Moreover while passing the order dated 25.02.2010 (Annexure P-4), the Magistrate had failed to take into consideration that there was no allegation against petitioner No.3-Suresh Chand Amar regarding his role nor anything had been found against him during the course of preliminary enquiry and merely on the statement under Section 161 Cr.P.C., one cannot be prosecuted under Section 211 IPC as application did not disclose any offence having been committed. It has further been argued that the controversy hinges around the ownership of a property and the civil court, while dealing with the suit for declaration and mandatory injunction, had decreed the same vide judgment and decree dated 26.04.2014 (Annexure P-9) and Moti Lal Gupta was held to be owner and not Harish Chander and the appeal preferred against the judgment and decree dated 26.04.2014 had been dismissed by the District Judge on 30.09.2016. In support of his contention, the learned counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme Court in *Iqbal Singh Marwah and Anr. Meenakshi Marwah & Anr.* 2005(2) R.C.R. (Criminal) 178, wherein it was held as under:-

CRM-M-22393-2011

“18. In view of the language used in [Section 340 Cr.P.C.](#) 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 interest 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\(i\)\(b\)](#). 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 broad view of clause (b)(ii), as canvassed by learned counsel for the

CRM-M-22393-2011

appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.”

Still further, reliance has also been placed upon the judgment of the Hon'ble Supreme Court in ***Prithish Vs. State of Maharashtra*** 2002(1) R.C.R. (Criminal) 92. In the said case, it has been held as under:

“16. Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In M.S. Sheriff and anr. vs. State of Madras and ors. (AIR 1954 SC 397) a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.”

Learned counsel for the petitioners also relied upon the judgment of the Hon'ble Apex Court in ***B.K.Gupta vs. Damodar H. Bajaj and others*** 2010 (3) R.C.R. (Criminal) 886. In the said case, it has been held as under:

“3. From the above, it follows that there are two conditions, on fulfillment of which a complaint can be filed

CRM-M-22393-2011

against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath and has also used evidence known to be false and fabricated. On perusal of the record we do not find any material on record to show that there was any application of mind by the court that it was expedient in the interest of justice to make an inquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No. 1442/1983 and the judgment does not show that the court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an inquiry into the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated.”

Learned counsel for the petitioners has also relied upon the judgment of this

Court in **Hazara Singh vs. Rattan Singh** 1998(4) R.C.R. (Criminal) 518,

CRM-M-22393-2011

wherein it has been held as under:-

“8. There is another way of looking at the matter. Learned Judicial Magistrate did not record any finding that lodging of the complaint was expedient in the interest of justice. Section 340 of the Code reveals that this a fundamental requirement before a complaint under Section 340 of the Code is lodged. This question had been considered by Delhi High Court in the case of K.K.Khanna and another Vs. M/s Expo Enterprises India, New Delhi and others, 1984 (2) RCR (Crl.) 360: 1984 Criminal Law Journal 1723. In paragraph 6 of the judgment, it was held as under:-

“Thus, in the impugned order the learned Addl. District Judge has failed to record that the lodging of the complaint against the appellants would be expedient in the interest of justice and that he was quite certain about the conviction of the appellants therein. The absence of this plaint finding vitiates the impugned order.”

9. As already pointed out, in the present case no finding has been recorded that it is expedient in the interest of justice that inquiry should be made into the offence referred to above.”

The learned counsel for the petitioners also relied upon **Santokh Singh Vs. Izhar Hussain and another** AIR 1973 Supreme Court 2190(1).

In the said case, it has been held as under:

“10.We do not think that the offences contemplated by ss. 193/195, I.P.C. on the one hand and S. 211, I.P.C. on the other were intended by the legislature, in this context, to overlap so

CRM-M-22393-2011

as to make it optional whether to proceed under one or the other.”

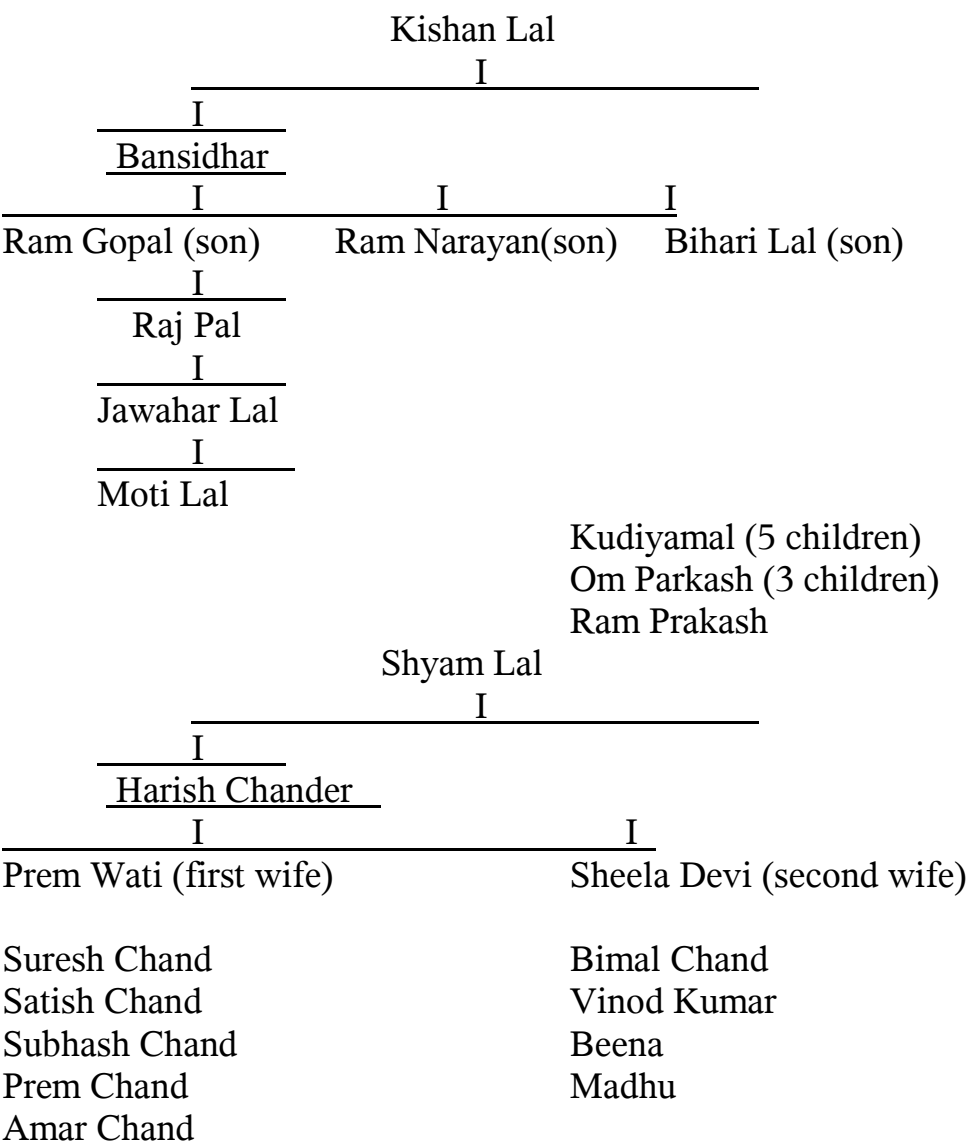
On the other hand, learned counsel for respondent No.1 and learned State counsel argued that the Judicial Magistrate had rightly summoned the petitioners as no inquiry was mandatory prior to formation of opinion. Rather, there is no statutory requirement to afford an opportunity of hearing to the persons against whom proceedings are being initiated under Section 340 Cr.P.C., the Court is not deciding the guilt or innocence in the proceedings under Section 340 Cr.P.C., and the order dated 25.02.2010 (Annexure P-4) is well-reasoned and sustainable in the eyes of law. It is not disputed that both the parties are related to each other and in this case, enquiry had been conducted. The learned counsel have not disputed that the civil suit stood decreed and the appeal was dismissed on 30.09.2016. In support of their contentions, they relied upon the judgment of this Court in ***Tej Pal Vs. Amar Singh*** 1991(3) R.C.R. (Criminal) 255. In the said case, it has been held as under:

“9. In the present case, the charge was levelled by the petitioner before the Police and the FIR was got registered by making allegation against Amar Singh respondent, having cut, velled and removed the Kikkar trees from the Gram Panchayat land. This was clearly with the intention of getting a charge instituted against, the respondent in a Court of law and the Police having acted on that report, did file a report under Section 173 of the Cr.P.C. against the respondent. This charge was ultimately held to be false and meant for harassment of

CRM-M-22393-2011

the respondent. Thus, an offence under Section 211 IPC was committed in relation to proceedings in a Court and Section, 195 Cr.P.C. is attracted and prosecution can be launched only by the Court, before which the charge was levelled. There is no force in the contention of the learned counsel that the falsity of the charge having been examined by the High Court in the criminal miscellaneous, it was only the High Court which was competent to file a complaint.”

For reaching to the final conclusion, the family tree of Kishan Lal, ancestor of the petitioners and respondent No.1 is necessary to understand the controversy and the same is being reproduced as under:



CRM-M-22393-2011

After hearing the learned counsel for the parties and going through the documents on record, I am of the considered opinion that it was expedient in the interest of justice that before preceding further with the application under Section 340 Cr.PC., an enquiry should have been made into any offence referred to under Section 195 Cr.P.C. However, from the perusal of the order dated 05.07.2006 (Annexure P-8), it is found that no such finding had been recorded.

Thus, the application dated 04.07.2006 (Annexure P-5) under Section 340 Cr.P.C. for initiating action against the present petitioners and one Satish Chand Amar and subsequent proceedings arising thereto are liable to be set aside.

In the present case, the application (Annexure P-5) under Section 340 Cr.P.C. for initiating the proceedings against the petitioners was filed on 04.07.2006 and on the said application, the order dated 05.07.2006 (Annexure P-8) was passed by the learned Additional Chief Judicial Magistrate, Faridabad. In an application moved under Section 340 Cr.P.C., a finding is to be recorded that it is expedient in the interest of justice that an inquiry should be conducted. However, no such enquiry was ever conducted. In the absence of the application of mind with regard to expediency of filing the complaint, the impugned orders are liable to be set aside. Even the civil court, in the suit for declaration and mandatory injunction, recorded a finding that Moti Lal is the owner of the property and not Harish Chander as per the family tree.

The language of Section 340 Cr.P.C. provides that the Court is not bound to make a complaint regarding commission of an offence referred

CRM-M-22393-2011

to in relation to Section 195(1)(b) as the Section is conditioned by the words “court is of opinion that it is expedient in the interest of justice”. This shows that such a course will be adopted in the interest of justice and the court must be satisfied that such an enquiry is required being expedient and in the interest of justice.

In view of the above, the present petition is allowed. The impugned orders dated 23.05.2011 (Annexure P-1) passed by the learned Additional Sessions Judge, Faridabad, and dated 25.02.2010 (Annexure P-4) passed by the learned Additional Chief Judicial Magistrate, Faridabad, and the application dated 04.07.2006 (Annexure P-5) under Section 340 Cr.P.C. for initiating action against the present petitioners and one Satish Chand Amar and all subsequent proceeding arising thereto are set aside/quashed qua the petitioners. Resultantly, the complaint (Annexure P-6) filed by the learned Additional Chief Judicial Magistrate, Faridabad, also stands quashed qua the petitioners.

27.01.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Note:	Whether speaking/reasoned	:	Yes/No
	Whether reportable	:	Yes/No