

CRM-M-22886-2018

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

CRM-M-22886-2018 (O&M)

Date of decision: 29.01.2020

Surinder Kaur

.... Petitioner

Versus

Jaswinder Singh

.... Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Manish Saini, Advocate
for the petitioner.

Mr. Anshul Gupta, Advocate
for the respondent.

Manjari Nehru Kaul, J.(Oral)

Instant petition has been filed under Section 482 Cr.PC for quashing the impugned order dated 20.03.2018 passed by Addl. Sessions Judge, Panipat in CRM-M-23/2018 (CNR No.HRPP010015752018) titled as "Surinder Kaur vs Jaswinder Singh instituted on 20.03.2018 filed under Section 340 Cr.PC.

Respondent herein had filed a petition under Section 13 of Hindu Marriage Act, 1955 titled as *Jaswinder Singh vs. Surinder Kaur* and levelled certain allegations against the petitioner-wife. In order to corroborate his version, three witnesses namely PW-2 Ravinder Khurana, PW-3 Harjit Singh and PW-4 Rajinder Bhargar stepped into the witness box and allegedly made false statement and supported the version given by the respondent-husband. Subsequently, petitioner-wife sought information under the Right to Information Act, 2005 (for short 'RTI') from the office of Superintendent of Police, Hisar, which was placed on record of the case as Ex.R-15 to Ex.R-17. The RTI information received by the petitioner revealed that contradictory and false statements had been made by the aforementioned witnesses including the respondent-husband. It was in this

CRM-M-22886-2018

background that the petitioner moved an application under Section 340 Cr.PC, pursuant to which Addl. Sessions Judge, Panipat passed the following order:

*“Present: Sh. Sanjay Sharma, Advocate for the applicant.
Application under Section 340 Cr.PC presented today. It
be checked and registered. Notice of the same be issued to the
respondents for 17.04.2018 on filing of copies etc.”*

Learned counsel for the petitioner contends that the learned Addl. Sessions Judge, Panipat was required to conduct an inquiry on the basis of record before it and then to decide whether or not any perjury had been committed. However, Addl. Sessions Judge committed an illegality by issuing notice to the prospective accused against the settled law that notice was not required to be issued to the opposite side. In support of his contentions, learned counsel for the petitioner has placed reliance on the judgement of Hon’ble Supreme Court in ***Pritish vs. State of Maharashtra & ors., AIR 2002 SC 326*** and ***Gujarat Pipavav Port Ltd. Vs. Sharda Steel Corporation (Gujarat) 2013 (7) RCR (Crl.) 749.***

I have heard learned counsel for the parties and gone through the impugned order and other material on record.

It is incumbent upon the Court entertaining a petition under Section 340 Cr.PC to record a finding as per the provisions of Section 340(1) Cr.PC subsequent to any such preliminary inquiry, which may be deemed necessary by the Court. As per the scheme of the provisions contained in Section 340(1) Cr.PC, there is no requirement for summoning the prospective accused before recording any finding under Section 340(1) Cr.PC.

I have no hesitation in allowing the instant petition keeping in view the fact that a similar situation has been deliberated upon by the Hon’ble Supreme Court in *Pritish’s case(supra)* wherein it was held that the scheme delineated above would show that there is no statutory requirement to afford an opportunity of

CRM-M-22886-2018

hearing to a person against whom a complaint under Section 340 Cr.PC has been moved.

Section 341 Cr.PC confers power on the party on whose application the Court has decided or not decided to make a complaint, as well as the party against whom it has decided to make such complaint, to file an appeal from the order of the said Court. Hence, the mere fact that such an appeal has been provided, would not be a premise to conclude that the Court is under a legal obligation to afford an opportunity to the prospective accused to be heard prior to moving forward with the complaint.

In view of the above settled law, Addl. Sessions Judge, Panipat was not required to issue notice of the application to the prospective accused and afford them an opportunity of being heard.

In the circumstances, the impugned order dated 20.03.2018 is set aside and the present petition stands allowed. The Court below is directed to proceed as per the provisions of Section 340 Cr.PC.

29.01.2020
sonia

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/non-speaking?
Whether reportable?

Yes/No
Yes/No