

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2080 OF 2022

Fabius Anthony Rebello Through
POA Vinod Natrajan

...Petitioner

Versus

1. Zinoria Fabius Rebello
2. The State of Maharashtra

...Respondents

....

Mr. Shreeram Shirsat a/w Mr. Amandeep Singh Sra a/w Mr. Madhur Salkar a/w Mr. Shekhar Mane a/w Mr. Anna Oommeen a/w Ms. Nishi Singhvi, Advocate for the Petitioner.

Mr. Anthony Marques a/w Ms. Aileen Marques, Advocate for Respondent No.1.

Mr. Arfan Sait, A.P.P. for the Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.
DATE : 12th SEPTEMBER, 2022

PER COURT:

1. The Petitioner has invoked the writ under Article 227 of the Constitution of India and inherent powers under Section 482 of Criminal Procedure Code (for short “Cr.P.C.”), challenging order dated 03.01.2018 passed by the learned Metropolitan Magistrate, 68th Court, Borivali, Mumbai and order dated 22.02.2021 passed by the Sessions Court, Dindoshi in Criminal Appeal No.95 of 2019.

2. The Respondent No.1 has initiated the proceedings under the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as “D.V. Act”) in the Court of learned

Metropolitan Magistrate, 68th Court, Borivali, Mumbai, which was numbered as DV/324/2016. The Respondent No.1 sought various reliefs under the provisions of the said Act. The Respondent No.1 filed affidavit under Section 23(2) of the D.V. Act. The Petitioner and others filed reply in the said proceedings dated 21.04.2017. Thereafter additional reply was filed by the Petitioner on 16.06.2017.

3. The Petitioner filed application under Section 340 of Cr.PC. in the D.V. proceedings alleging offences under Sections 177, 181, 182, 191, 193, 199, & 209 of Indian Penal Code (for short 'IPC'). It was prayed that, appropriate proceedings be initiated against Respondent No.1 vide Section 340 of Cr.PC.. The application was filed on 16.06.2017.

4. The learned Metropolitan Magistrate vide order dated 03.01.2018 rejected the application preferred by Petitioner seeking action under Section 340 of Cr.PC. against Respondent No.1.

5. The order dated 03.01.2018 was challenged by the Petitioner by preferring appeal under Section 341 of Cr.PC. before the Court of Sessions at Dindoshi viz. Criminal Appeal No.95 of 2019. Vide Order dated 22.02.2021, the learned Additional Sessions Judge, Dindoshi, dismissed the appeal.

6. Learned Advocate for the Petitioner submits that, both the Courts have committed an error in refusing the relief in accordance with Section 340 of Cr.P.C. Both the orders are contrary to law. The Courts have failed to consider the purport of Section 340 of Cr.P.C. It is the duty of the party to state the true facts before the Court. The offences invoked under Section 340 of Cr.P.C. were squarely applicable against Respondent No.1. The Sessions Court has committed error in coming to the conclusion that, in the Sale Deed executed on 25.10.2010, since the Respondent No.1 was the only daughter of her parents and just to avoid any future issue of succession certificate, her parents had included her name in the Sale Deed. The learned Sessions Judge has also erred in coming to the conclusion that, though the sale deed is in the name of Respondent No.1, she cannot be said to be exclusive owner. The said conclusion was arrived at on the bare words of Respondent No.1. There is registered Sale Deed dated 25.10.2010 of the property i.e. Flat No.403, 4th Floor, Shirley Co-operative Housing Society, IC Colony, Borivali (West), Mumbai, in which the name of Respondent No.1 reflects as the first transferee followed by the name of her parents. The said Sale Deed was in existence at the time of filing the application under the D.V. Act. Thus, the Respondent No.1 had made an averment which was false to her knowledge. Perusal of Sale Deed makes it clear that, the

Respondent No.1 was the first holder. The Petitioner had prima facie proved by producing the registered sale deed that the Respondent No.1 was the owner of property of the flat in Borivali for which no formal proof was required. The Respondent No.1 contended that, she has no shelter for herself. The sale deed showed her name at first place. The rent agreement was for a period of about 2 years from 12.07.2016 to 11.07.2018. The Respondent No.1 had falsely stated that, she does not own any property in her name and being homeless. She had prayed for alternate accommodation. The Respondent No.1 had suppressed the fact that, the flat at Borivali stands in her name and claimed an accommodation. The Respondent No.1 committed an offence by giving false evidence on oath. The learned Sessions Judge had committed an error by observing that, mere non mentioning that, the Respondent No.1 was working as Vice President of Trawell Tag Cover Moreco Company would not make a prudent man to infer that, she had hidden her income or suppressed something which is material. The Respondent No.1 was awarded interim maintenance to the tune of Rs.50,000/- on 06.03.2020. False averments in pleadings are sufficient to attract Chapter XI of IPC.

7. Learned Advocate for the Petitioner has relied upon the following decisions :-

- i) *Sanjeev Kumar Mittal Vs. State*¹.
- ii) *A. Hiriyanna Gowda and Another Vs. State of Karnataka and others*².

8. Learned Advocate for Respondent No.1 submitted that the Petition is devoid of merits. The Court of learned Magistrate and the Sessions Court have refused to grant relief to the Petitioner. The whole object of initiating proceedings by the Petitioner is to delay the proceedings under the D.V. Act. The Respondent No.1 was ill treated. She was abused and assaulted. The application under Section 340 of Cr.P.C. was frivolous. The learned Magistrate and the learned Sessions Judge have assigned reasons for declining the prayers made by the Petitioner. The Respondent No.1 has filed affidavit-in-reply opposing the relief sought in this Petition dealt with the grounds urged by the Petitioner.

9. Learned Advocate for Respondent No.1 has relied upon the following decision :-

- i) *Iqbal Singh Marwah & Anr. Vs. Meenakshi Marwah & Anr.*³.
- ii) *Chajoo Ram Vs. Radhey Shyam & Anr.*⁴.
- iii) *Ashok Kumar Aggarwal Vs. Union of India & Ors*⁵

1 2011 (121) DRJ 328

2 1998 SCC OnLine Kar 351

3 2005(4) SCC 370

4 1971 SCC 172

5 (2013) 15 SCC 539

10. The Respondent No.1 filed an Application under Section 12 of the D.V. Act on 14.10.2016. Apart from the other reliefs, the Respondent No.1 had sought Residence Orders under Section 19 of the D.V. Act. The Petitioner and others filed a reply to the main application under Section 12 of the D.V. Act. The Petitioner also filed additional reply. The Petitioner filed application under Section 340 of Cr.P.C. on 16.06.2017 and contended that the Respondent No.1 owns the property situated at prestigious colony, Borivali, Mumbai, i.e. Flat No.403, 4th Floor, Shirley Co-operative Housing Society Ltd., Borivali (West), Mumbai. The registered Sale Deed of the said property in which the Respondent No.1 is shown as the first transferee followed by her parents. Thus, the Respondent No.1 owns independent 2BHK Flat in prestigious locality and does not need any residence order. The parents of Respondent No.1 have given their flat located at Bandra on rent of Rs.45,000/- per month as per the duly registered Leave and License agreement. The respondent No.1 has deliberately submitted wrong information in the Court that her parents are dependent on her. The Respondent No. in her application mentions that her monthly expenditure of Rs.1,53,000/- and her salary is of Rs.1,18,000/- and that she has to look after her parents and household expenditure. The respondent No.1 is working as Vice President in a Trawell Tag Cover Moreco Company. She has deliberately made false

submissions and suppressed material facts and intentionally omitted to give vital information. Hence, action may be initiated against respondent No.1 for various offences as stated therein. The respondent No.1 had opposed the said application by filing reply.

11. The learned Magistrate vide order dated 03.01.2018 rejected the application seeking action under Section 340 of Cr.P.C. While rejecting the said application it was observed that, it is not disputed that the name of Respondent No.1 is mentioned in Sale Deed of the flat No.403 situated at IC Colony, Borivali (West), Mumbai. However, the Respondent No.1 had submitted that, her name is inserted in the Sale Deed at the instance of her parents. It is not the case of the Petitioner that the Respondent No.1 has committed any forgery in the document after it was produced before the Court. Action under Section 340 of Cr.P.C. is to be taken in the interest of justice. The Petitioner had appeared in the case in response to the notice of the Court in respect of the application under Section 12 of the D.V. Act and seeking action against Respondent No.1 under Section 340 of Cr.P.C. It is for the Court to satisfy itself that any deliberate and conscious forgery has been committed by anybody and it is against the interest of justice. Though vide discretion is given to the Court, it has to be exercised with great care and caution. Trial of the case is at preliminary stage

and evidence of the parties are yet to be recorded. By way of pleadings, both the parties have made allegations against each other. Any submission made in the pleading which may be false according to other side, action under Section 340 of Cr.P.C. cannot be initiated. Whether the Respondent No.1 was subjected to domestic violence at the hands of Petitioner and others and she is entitled for any relief as provided under the provisions of the D.V. Act would be decided after recording the evidence. The original documents are not filed on record by the parties. The respondent No.1 has clearly pleaded about her income in the case. Only not mentioning of post in the pleadings and stating that her parents are depend on her cannot be terms as an offence as alleged by Respondent No.1. It cannot be said that the Respondent no.1 has intentionally given false evidence in the case. Some inaccuracy in the statement of the parties made inadvertently cannot justifying action under Section 340 of Cr.P.C.

12. The Petitioner filed reply to the affidavit under Section 23(2) of the D.V. Act on 08.06.2018. The Respondent No.1 filed rejoinder to the reply dated 08.06.2018. Rejoinder, sur-rejoinder and sur-sur-rejoinder were also filed. The learned Magistrate vide order dated 06.03.2020 partly allowed the application below Exhibit-1 and the Petitioner herein was directed to pay Rs.50,000/- per

month to Respondent No.1 towards maintenance from the date of filing of this application i.e. 14.10.2016 delivered the decision of the case. The order dated 06.03.2020 were challenged by the Petitioner before the Sessions Court by preferring Criminal Appeal No.106 of 2020. The learned Sessions Judge vide order dated 10.03.2021, partly allowed the appeal and the impugned order dated 06.03.2020 was partly quashed and set aside to the extent of quantum of Petitioner was directed to pay Rs.30,000/- per month to Respondent No.1 towards interim monetary relief from the date of filing the application dated 14.10.2016.

13. The Petitioner has preferred Petition before High Court challenging the orders of maintenance and respondent No.1 has challenged order of Sessions Court reducing quantum of maintenance. Those proceedings are pending in this Court. The petitioner had preferred an appeal before the Sessions Court at Dindoshi viz. Criminal appeal No.95 of 2019 challenging order dated 03.01.2018 passed by the learned Metropolitan Magistrate rejecting the application under Section 340 of Cr.P.C. Vide order dated 22.02.2021, the learned Additional Sessions Judge passed lengthy order by analysing the facts and law and dismissed the appeal preferred by the Petitioner. The learned Sessions Judge was pleased to confirm the order of magistrate by observing that the

first Court has properly considered the facts and the scope of Section 340 of Cr.P.C.

14. I do not find any reason to deviate from the view taken by both the Courts below. No case is made out to interfere in the impugned orders passed by the learned Metropolitan Magistrate and the learned Sessions Judge. The learned Sessions Judge has discussed all the judgments placed for consideration by the parties while dismissing the appeal. The Respondent No.1 is the wife of Petitioner. She had initiated the proceedings under the D.V. Act. Interim maintenance was granted to her, which order was partly confirmed by the Sessions Court. The main application was pending before the Court of learned Metropolitan Magistrate. The learned Magistrate and the learned Sessions Judge have assigned cogent reasons while passing the impugned orders. Some inaccuracy in the statement made inadvertently would not warrant action under Section 340 of Cr.P.C. No case was made out for initiating the offence as contended by the Petitioner in his orders under Section 340 of Cr.P.C.. Both the applications are required to be confirmed. Both the sides have relied upon the decisions in support of their arguments. The law is well settled and it is not necessary to discuss the ratio laid down in the said decisions. Hence, I pass the following order :-

ORDER

Criminal Writ Petition No.2080 of 2022 is rejected and
disposed off.

(PRAKASH D. NAIK, J.)