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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.06.2022

Pronounced on :27.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.A.No.638 of 2015

and

Crl.M.P.Nos.2173 to 2175 of 2016

B.Gokila	.. Appellant/ Respondent
	/versus/
1.Murugesan.R	..Defacto Complainant
2.Principal Judge, Principal Family Court, Chennai 600 104.	..Respondent/Complainant

Prayer: Criminal Appeal has been filed under Section 341 of Cr.P.C., praying to set aside the order dated 08.12.2014 in I.A.No.2363 of 2014 in I.A.No.21 of 2002 in O.P.No.291 of 2001 by the 2nd respondent Court and further proceedings pending before the VII Metropolitan Magistrate, George Town at Chennai in C.C.No.12 of 2015.

For Appellant :Mr.Y.Kavitha

For Respondents:Mr.N.Manokaran
(Amicus Curiae)

Mr.R.Murugesan,
Party-in-person

J U D G M E N T

This Criminal Appeal is filed under Section 341 of Cr.P.C., against the order of the Principal Judge, Family Court at Chennai passed in I.A.No.2363/2014, dated 08/12/2014 wherein, the information by way of sworn statement given by one R.Murugesan alleging perjury, was treated as a complaint and forwarded the material records to the 7th Metropolitan Magistrate, George Town, Chennai, for further action.

2. The sum and substance of the information treated as complaint is that, in the divorce petition in O.P.No.291/2001



(on the file of Principal Family Court, Chennai) filed for divorce by Murugesan on the ground of cruelty, Gokila/appellant herein as respondent in the said original petition for herself and on behalf of her minor child filed I.A.No.21/2002 seeking Rs.5,000/- to her and Rs.3,000/- to her minor daughter as maintenance for each and every hearing besides Rs.5000/- as litigation expenses.

3. In her petition, she has specifically stated that she is not working. She has no independent income. She is under the care and protection of her parent at Sirumugai near Coimbatore. For each and every hearing, she has to come from Coimbatore accompanied by her father, mother or brother to attend the Court at Chennai. To meet out her travelling expenses and litigation expenses, she need interim maintenance.

4. Murugesan, the first respondent herein filed counter and denied liability to pay maintenance. The Family Court after considering the plea made by both sides, by its order dated 30/04/2002 observing that, "it is pertinent to note that the petitioner (Gokila) is not working. She is solely depending upon her parents and brother" ordered interim maintenance of Rs.2,000/- p.m., to Gokila and Rs.1,000/ p.m to her minor daughter Karishma.

5. Pursuant to this order, it appears that Murugesan has paid a total sum of Rs.1,39,500/- as maintenance. Later, his O.P.No.291/2001 was dismissed on 08/02/2005. However, subsequently Gokila filed the divorce petition H.M.O.P.No.58/2008 before the 2nd Additional Sub-ordinate Judge, Coimbatore and the same was allowed. Thus, the marriage between Gokila and Murugesan solemnized on 14/11/1996 was dissolved on 30/10/2009.

6. While so, Murugesan has filed a complaint under Section 340(1) of Cr.P.C r/w Section 193 of IPC alleging that Gokila has committed perjury during the proceeding in I.A.No.21 of 2002 by suppressing the fact that she was working as Primary Teacher in Shree Saraswathi Vidyaah Mandheer School, Alangombu, Mettupalayam from 02/06/2001 to 30/08/2006. Suppressing this fact, she filed affidavit in her I.A.No.21/2002 that she is not working and she has not owned immovable property and has no source of income. Relying upon this false affidavit, the Court passed an order dated 30/04/2002, thereby Gokila has committed serious wrong to the Court for an offence punishable under Section 193 of IPC.

7. This complaint dated 3rd September, 2014 was taken on file as I.A.No.2363/2014 in I.A.No.21 of 2002 by the Principal Family Court, Chennai and the order was passed on 08/12/2014.



Consequently, the material records were forwarded to 7th Metropolitan Magistrate, George Town, Chennai, vide, proceedings dated 09/01/2015. The said order and proceedings are under challenge in this criminal appeal preferred by Gokila.

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8. It is relevant at this juncture to also point out that in his affidavit filed in I.A.No.2363/2014, Murugesan/1st respondent has also referred about another allegation of perjury committed by Gokila regarding her marital status. He has stated that Gokila in the proceedings before the Judicial Magistrate, Mettupalayam in M.C.No.22/2007, she has denied her second marriage with one Arjun on 25/02/2010. Therefore, he initiated proceedings against her for offence punishable under Section 193 IPC. That petition in Crl.M.P.No.769/2012 was not properly investigated by the police. Hence, he filed protest petition Cr.M.P.No.4334/2012 on 03/08/2012. The protest petition was dismissed on 24/08/2012 by the Judicial Magistrate, Mettupalayam on the ground that he has 'no locus standi' to sustain complaint alleging offence under Section 193 IPC. He challenged the order of the Judicial Magistrate before High Court in Crl.R.C.No.1262/2012 and the same was allowed on 21/03/2013. The SLP filed against the order passed in Crl.RC.No.1262/2012 dismissed on 13/01/2014.

9. The learned counsel for the appellant-Gokila submitted that the Court below failed to note that the application seeking action for perjury is result of personal vendetta and vitiated with malafide intention. The Court below failed to apply its mind regarding the second condition under Section 340 Cr.P.C as to whether it was expedient in the interest of justice to make an enquiry into the alleged false evidence given by the appellant. The learned counsel appearing for the appellant relying upon the observations made by the Court below regarding grant of sanction to prosecute for perjury submitted that, only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable, the Court should proceed to exercise its power under Section 340 Cr.P.C. The Court in its impugned order has not recorded its prima facie satisfaction about the deliberate falsehood made with an intention to cause penal action disturbance to the administration of justice.

10. This Court in view of the legal intricacy involved in the case appointed Mr.N.Manoharan as Amicus Curiae. He placed before this Court the law governing the offence of perjury and submitted that, the blood-line to initiate proceeding under Section 340 Cr.P.C is not falsehood in a judicial proceedings, but whether such falsehood aimed deliberately to get some beneficial order from the Court. Further, the twin condition imposed in Section 340 Cr.P.C is to first ascertain, whether any



offence affecting administration of justice committed in relation to any document produced or given in evidence and next whether it is also expedient in interest of justice to take such action.

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11. The learned Amicus Curiae, particularly relying upon the judgment of the Hon'ble Supreme Court in Amarsang Nathaji -vs- Hardik Harshadbhai Patel and others [2017(1) SCC 113], which has indicated the procedure to be followed by the Courts in forming opinion before lodging the complaint submitted that, in this case, on going by the documents, there is prima facie material available to indicate that Gokila while claiming maintenance in I.A.No.21/2002, suppressed her employment during the relevant point of time and had made false averment that she is not employed. Based on the suppression of fact and falsehood, the Court has ordered interim maintenance. The Reference Court, being satisfied through the petition and documents filed by Murugesan, had arrived at a conclusion that by filing false affidavit it appears that Gokila has committed perjury to have a wrongful gain.

12. The learned Amicus Curiae, referring the proceedings of the Reference Court dated 09/01/2015, submitted that the Principal Judge, Family Court, Chennai, after perusal of relevant documents, has observed that,

"It is expedient in the ends of justice on my part to file a written complaint against the respondent before Metropolitan Magistrate Court No.7, George Town, Chennai having jurisdiction to take appropriate criminal action against the respondent for filing false affidavit, as it appears that the respondent has committed perjury to have a wrongful gain. No notice is required to be given to the respondent at this juncture, under the light of decision of the Hon'ble Apex Court, reported in (2002)1 SCC 253 cited on the side of the petitioner"

This complaint is forwarded under Section 340 of Cr.P.Cr/w Section 193 of CPC for taking cognizance against the respondent in accordance with law."

13. The said order has been obviously passed in the absence of Gokila and without notice to her. The learned Principal Judge, Family Court has explicitly recorded that in view of the judgment reported in Pritish v. State of Maharashtra and others [2002 (1) SCC 253], no notice is required to be given to the respondent (Gokila) at this juncture. Para 9 of the judgement of the Hon'ble Supreme Court reads as below:-

"9. Reading of the sub-section makes it

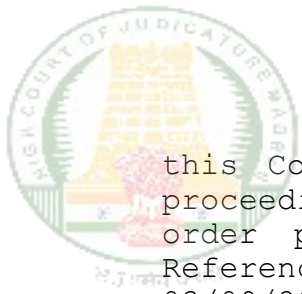


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clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

14. Therefore, in this appeal filed under Section 341 Cr.P.C by the aggrieved person, it is necessary to test whether the Reference Court has followed the procedure laid under the Act and as explained in Amarsang case by the Hon'ble Supreme Court and whether the perjury if any has affected the administration of justice and whether it is expedient in the ends of justice to initiate penal action against Gokila for perjury.

15. The learned Amicus Curiae, also brought to the notice of



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this Court that, alleged perjury is in respect of a judicial proceedings of the year 2002 resulting in wrongful gain by the order passed on 30/04/2002. The complaint forwarded by the Reference Court to the 7th Metropolitan Magistrate Court is dated 03/09/2014. In the entire complaint, there is no reason stated for initiating the complaint belatedly, except listing out its attempt to prosecute Gokila for perjury in respect of suppression of her marriage with Arjun on 25//02/2010 and pursuing her Maintenance Case (M.C.No.22/2007) before the Judicial Magistrate, Mettupalayam. Murugesan alleging she has made false statement before the Court on 11/11/2011 denying her marriage with Arjun and the birth of a male child through him.

16. The learned Amicus Curiae therefore submitted that the act of the Referring Court taking the petition filed by Murugesan as complainant and forwarding it to the Judicial Magistrate for further action, is procedurally correct. In fact, in a similar circumstances, this Court, in Crl.R.C.No.1262 of 2012 initiated by Murugesan against Gokila alleging perjury by Gokila for suppressing her second marriage, relying the judgment of the Hon'ble Supreme Court in N.Natarajan v. B.K.Subba Rao reported in [AIR 2003 SC 541], held that in criminal law a complaint can be lodged by anyone, who has become aware of a crime having been committed and thereby set the law into motion. In respect of the offences adverted to in Section 195 Cr.P.C., there is a restriction that the same cannot be entertained, unless a complaint is made by a Court because the offence is stated to have been committed in relation to the proceedings in that Court. Section 340 of Cr.P.C., is invoked to get over the bar imposed under Section 195 Cr.P.C. In ordinary crimes not adverted to under Section 195 of Cr.P.C., if in respect of any offence, law can be set into motion by any citizen of this country, we fail to see how any citizen of this country cannot approach even under Section 340 Cr.P.C. For that matter, the wording of Section 340 Cr.P.C are significant. The Court will have to act in the interest of justice on a complaint or otherwise. Assuming that the complaint may have to be made at the instance of a party having an interest in the matter, still the court can take action in the matter otherwise than on a complaint, that is, when it has received information as to a crime having been committed, covered by the said provision. Therefore, it is wholly unnecessary to examine this aspect of the matter. We proceed on the basis that the respondent has locus standi to present the complaint before the Designated Judge and held that, it is incumbent upon the Magistrate to proceed with Section 340 of Cr.P.C. As per the procedure laid down in the provision. However, though such complaint can be presented by any one, it should be presented in any event at any time, subjected to law of limitation.



17. Insofar as the facts of the case in hand, the offence alleged against the appellant is perjury which is punishable under Section 193 of IPC. For giving false evidence intentionally in a judicial proceedings is punishable with imprisonment of either description for a term, which may extend to 7 years and shall also be liable to fine. The Judicial proceedings in which the alleged false evidence given is in a matrimonial proceedings where interim maintenance sought under Section 24 of the Hindu Marriage Act, 1955, which is a proceeding civil in nature.

18. From the salary certificate issued by Shree Saraswathi Vidyaah Mandheer School, Alangombu, Mettupalayam, it appears that Gokila, daughter of K.R. Balakrishnan joined in their Institution as a Primary Teacher on 02.06.2001 and served till 31.08.2006. Subsequently, she rejoined in their Institution on 01.06.2007 and worked till 31.08.2008 and thereafter, she resigned the job. She again rejoined on 01.06.2009 and served till 31.03.2010. This certificate dated 15.09.2010 has been issued, pursuant to the summon received from the Judicial Magistrate Court, Mettupalayam in M.C.No.22 of 2007 for the hearing date on 24.09.2010 where Murugesan is a party. Thus, it is obvious that Murugesan is aware of her employment and salary in pending M.C.No.22 of 2017 and the certificate produced by the Institution, pursuant to the summon issued by the Court. While so, in his complaint dated 03.09.2014, he does not disclose any reason for the inordinate delay. Therefore, the non-explanation of the delay to be considered to test whether the complaint is filed to settle private vendetta and the complaint will anyway expedient to the cause of justice.

19. The learned Amicus Curiae brought to the notice of this Court that the observations of the Hon'ble Supreme Court in cases covering the issue in hand.

(i) R.S. Sujatha v. State of Karnataka reported in [(2011) 5 SCC 689]:

"18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest



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of justice to inquire into the offence which appears to have been committed."

(ii) Narendra Kumar Srivastava v. State of Bihar and others reported [(2019) 3 SCC 318]:

"9. On the other hand, the learned counsel appearing for the respondents, submits that the punishment for offence giving false evidence in judicial proceedings is stipulated in Section 193 IPC and the law governing taking of the cognizance of such an offence is contained in Section 195 CrPC. Section 195 CrPC puts a clear bar on taking of cognizance by a court, of an offence punishable under Section 193 IPC, unless it is on a complaint in writing of the court or such officer of the court as that court may authorise in writing in this behalf, in relation to a judicial proceeding of which court, the offence is alleged to have been committed. Since no such complaint has been made, the High Court was justified in quashing the order of the Magistrate. In this connection, reliance is placed on the judgment of this Court in M.S. Ahlawat v. State of Haryana.

17. Section 340 CrPC makes it clear that a prosecution under this section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted."

20. The learned Amicus Curiae reading Section 195 Cr.P.C. submitted that Section 195 Cr.P.C., is for two categories of cases. One under Section 195(1)(b)(i) and another 195(1)(b)(ii) of Cr.P.C. They deal with two different class of offences. Whereas Section 340 Cr.P.C, is a generic Section for the both class of offences, in Narendra Kumar Srivastava v. State of Bihar and others reported in (2019) 3 SCC 318, the Hon'ble Supreme Court held that "Clauses under Section 195(1)(b) Cr.P.C., i.e.



sub section 195(1)(b)(i) and sub-section 195(1)(b)(ii) cater to separate offences. Though Section 340 Cr.P.C is a generic section for offences committed under Section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of Section 195(1)(b) Cr.P.C."

21. In *Amarsang Nathaji v. Jardik Harshadbhai Patel and others* reported in (2017)1 SCC 113, the Hon'ble Supreme Court has given the principles to be followed for initiating proceedings under Section 340 Cr.P.C., which read as below:-

"5. There are two preconditions for initiating proceedings under Section 340 CrPC:

(i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 CrPC, and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Penal Code, 1860 (45 of 1860) (hereinafter referred to as "IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See *K.T.M.S. Mohd. v. Union of India* [K.T.M.S. Mohd. v. Union of India, (1992) 3 SCC 178 : 1992 SCC (Cri) 572]). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be



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made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See *Pritish v. State of Maharashtra*)”

22. In *Iqbal Singh Marwah v. Meenakshi Marwah* reported in [(2005) 4 SCC 370], a Constitution Bench of the Hon'ble Supreme Court has gone into the scope of Section 340 Cr.P.C. Wherein at para 23 the relevant point is discussed and the same is extracted below:-

“23. 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 interests 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(1)(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



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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."

23. The learned counsel appearing for the appellant has relied upon the judgments, where the Court have held that Section 340 of Cr.P.C., cannot be abused by persons who want to settle their personal vendetta and referred the following judgments:-

(i) Chjoo Ram v. Radhey Shyam and another reported in [1971 (1) SCC 774], wherein paragraph No.7 reads as below:

"7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems some- what mechanical and superficial: it does not reflect the requisite judicial deliberation:

(emphasis added)

.....Lastly, there is also the question of long lapse of time of more than ten years since the filing of the affidavit which is the subject-matter of the charge. This factor is also not wholly irrelevant for considering the question of expediency of initiating prosecution for the alleged perjury. In view of the nature of the alleged perjury in this case this long delay also militates against



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expediency of prosecution. And then by reason of the pendency of these proceedings since 1962 and earlier similar proceedings before the District Magistrate also the appellant must have suffered both mentally and financially. In view of all these circumstances we are constrained to allow the appeal and set aside the order directing complaint to be filed."

(ii) N.Natarajan v. B.K.Subbba Rao reported in [(2003) 2 SCC 76], the Hon'ble Supreme Court held in:

"15. We are conscious of the fact that the learned Designated Judge has not exercised his power under Section 340 CrPC as yet to lodge a complaint nor has he proceeded to hold an inquiry but at the same time we must notice that issue of notice on an application of this nature would have serious impact upon the Public Prosecutor in conduct of the case particularly when at every stage he has got to be conscious whether any of his statements would attract Section 340 CrPC. This is not the kind of atmosphere where a Public Prosecutor can function effectively, independently and fearlessly. In the conduct of the case a Public Prosecutor must have full freedom and he can even give up certain cases and request the court to discharge or acquit any accused. If that kind of autonomy is to be enjoyed by the Public Prosecutor, he cannot be fettered in conducting the proceedings. By initiating the proceedings against him, the learned Designated Judge has crippled the freedom of the Public Prosecutor in functioning effectively and such a matter certainly results in serious miscarriage in administration of justice and no advocate would be safe if such proceedings are initiated on the basis of the allegations of the nature made in the complaint. Either the learned Designated Judge has not applied his mind or he has not understood the scope of the application and if he had done either, he would have dismissed the application. That we do now.

(iii) In Bhargavbhai Gayaprasad Verma v. State of Gujarat and others reported in [MANU/GJ/0116/2018], the Gujarat High Court, Ahmedabad, has held as below:-

"12.12.even if, there are some irregularities in signing of documents, the law on the subject is extremely clear, where,



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initiation of prosecution for perjury or for polluting the stream of the administration of justice is only when the Court, prima facie, reaches to the conclusion that there was a deliberate and conscious attempt to misguide the Court and to interfere in the administration of the justice and it is also to see, whether, it is necessary in the interest of justice to prosecute the person concerned for the act of his having larger impact and such a commission of offence should not go unpunished."

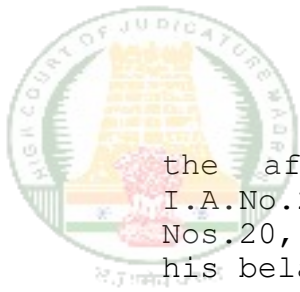
(iv) In Sasikala Pushpa and others v. State of Tamil Nadu reported in [(2016) SCC Online SC 1808], the Hon'ble Supreme Court has reiterated its earlier view taken.

"21. In Amarsang Nathaji v. Hardik Harshadbhai Patel [Amarsang Nathaji v. Hardik Harshadbhai Patel, (2017) 1 SCC 113 : (2017) 1 SCC (Cri) 237].

24. The first respondent appeared as party-in-person, on his part, filed 3 typed set papers containing all particulars and documents connected with the litigation between him and the appellant-Gokila, particularly, he strongly harped upon the judgment of this Court in Crl.R.C.No.1262 of 2012, wherein the appellant and the first respondent are parties and facts involves similar set of facts.

25. On considering the submissions made by the respective parties and the assistance rendered by the learned Amicus Curiae, this Court is clear in its mind that the facts found on record clearly indicates that the appellant herein had deliberately suppressed her employment in order to sustain her petition seeking maintenance, travel expenses and litigation expenses in a pending divorce petition. When she was gainfully employed during the relevant point of time, she on oath had stated that she has no income and depending on her parents. This suppression of fact had come to the knowledge of the first respondent in the year 2010 itself. However, he has not initiated any proceedings in connection with this perjury, though he has been pursuing against the appellant in respect of perjury committed by her namely, suppression of her second marriage in M.C.No.22 of 2007.

26. This Court finds that Murugesan/first respondent in this case has not assigned any reason for his belated complaint, even though he was pursuing the case against the appellant herein before several Forums. In fact, he was pursuing an identical petition before the High Court and the Hon'ble Supreme Court. In



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the affidavit filed by the first respondent-Murugesan in I.A.No.2363 of 2014, there is some averments in paragraphs Nos.20, 21 and 22, which could be remotely taken as a reason for his belated complaint. Those paragraphs are extracted below:-

"20.I state that besides this, as both of my parents were sick and aged, I was taking care of my parents in all the ways which includes giving Insulin Injection to my mother, who was diabetic patient, Washing of cloths, Cooking, feeding food etc.

21.I state that my father died on 10.11.2012 and my mother died on 06.07.2014.

22.I state that I was under "lot of trouble", "stress" and "worries" etc because of sudden death of both of my parents and the other court proceedings: (1) GWOP No.78/2011 before the Hon'ble Principal District Judge, Namakkal which was disposed on 10.07.2012, (2) CMP No.1185/2012 before the Hon'ble Judicial Magistrate Court, Paramathy, Namakkal District, which was disposed on 08.05.2012; (3)MC No.22 of 2007 before the Hon'ble Judicial Magistrate Court, Mettupalayam, Coimbatore District which was disposed on 08.05.2013; (4)C.C.No.138/2013 pending before the Hon'ble Judicial Magistrate Court, Mettupalayam, Coimbatore District; (5) CrI.R.C.No.1262/2012 before the Hon'ble High Court at Madras disposed on 21.03.2013 and (6) C.M.A.No.2948 of 2012 pending before the Hon'ble High Court at Madras."

27. This Court from these paragraphs could understand that multiple litigations are pending between the parties. They married in the year 1996 and got separated in 2009. Despite their the marital relationship ceased long ago, they enjoy continuing their litigative relationship.

28. To exercise the power under Section 340 of Cr.P.C., as the interpretation of the provision made by the Hon'ble Supreme Court indicates, the Court before entertaining the complaint to proceed further should satisfy itself, whether it is expedient in the interest of justice that an enquiry should be made into the offence referred to in Clause (b) of Sub-Section 1 of Section 195 of Cr.P.C. Mere extract of the expression in the order is not expected under law. The Referral Court ought to have recorded the reason whether it is expedient in the interest of justice.

29. In this case, the Referral Court has converted the



petition as complaint holding that it is expedient in the ends of justice and following the dicta laid down in Pritish v. State of Maharashtra case (cited supra). Without affording opportunity to the appellant herein it has converted the petition as a complaint and forwarded it to the judicial Magistrate. This procedure adopted cannot be found fault in the light of the dictum laid down by the Hon'ble Supreme Court. However, the Referral Court had failed to take note of the fact that the petition filed after inordinate delay and laches without any satisfactory explanation for the delay and it ought to have been subjected to the litmus test, whether the petition is filed on personal vendetta or to ensure the interest of justice not been done. The Referral Court has superficially approached the case without due judicial deliberation.

30. This Court, on apprising the facts in entirety finds that, no doubt, the perjury is caused by the appellant, but to prosecute her after delay of 12 years will neither secure the ends of justice nor expedient in the interest of justice.

31. Considering the multiple-litigations between the appellant and the first respondent, this Court is of the view that in the interest of justice as well as in the interest of the parties in order to avoid perpetual precipitation of ill-will among them, it is not expedient to entertain the complaint under Section 340(1) of Cr.P.C., which is impugned in this criminal appeal. The dictum laid down by the Hon'ble Supreme Court in Chjoo Ram v. Radhey Shyam and another (cited supra) squarely applies to the facts of the case in hand. Hence, this Criminal Appeal is allowed. Consequently, connected Miscellaneous Petitions are closed.

32. This Court records its appreciation to Mr.N.Manoharan, the Court appointed Amicus Curiae, who rendered his valuable service and assistance, which appropriately clarified the facts and law.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar

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To:

- 1.The Principal Judge, Principal Family Court, Chennai.
- 2.The VII Metropolitan Magistrate, George Town at Chennai.
- 3.Do through the Chief Metropolitan Magistrate, Chennai
(For information).

Copy to:

1.The Registrar(Judicial),
High Court, Madras.

2.The Section Officer,
Criminal Section,
High Court, Madras .

+1 cc to Mr.Giridhar & Sai, Advocate Sr.NO.39679

+1 cc to Mr.N.Manokaran, Advocate Sr.NO. 39984

Crl.A.No.638 of 2015
and

Crl.M.P.Nos.2173 to 2175 of 2016

AD(CO)

A.SK(08/07/2022)