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

CRA-S-1132-2022 (O&M)

Date of Decision: August 26, 2022

Kamaljeet Kaur and another

.....Appellants

Versus

Harbhajan Singh and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Naveen Gupta, Advocate
for the appellants.

.....

RAJESH BHARDWAJ, J.(ORAL)

CRM-30364-2022

For the reasons mentioned in the application, the same is allowed and Annexure A-6 is taken on record.

CRM-22368-2022

For the reasons mentioned in the application, the same is allowed and Annexures A-1 to A-5 are taken on record.

CRM-22369-2022

Instant application is filed for condonation of delay of 68 days in filing the present appeal.

It has been contended by counsel for the applicant-appellant that earlier the applicant-appellant approached this Court under Section 482 Cr.P.C. by filing CRM-M-13894-2022, however, as there lies a statutory remedy under Section 341 Cr.P.C. for impugning the order dated 03.02.2022 passed by learned Additional Principal Judge (Family Court) Ambala, the

same was withdrawn on 11.05.2022 with liberty to avail alternative remedy

and thus, the present appeal has been filed under Section 341 Cr.P.C. and hence, in the process delay of 68 days occurred in filing the accompanying appeal. It is contended that delay is unintentional and the applicant-appellant would suffer an irreparable loss and injury if the appeal is not heard on merits.

After hearing the counsel for the applicant-appellant, the Court is of the opinion that delay of 68 days in filing the present appeal deserves to be condoned.

Hence, application is allowed. Delay of 68 days in filing the present appeal is condoned.

Main case

Appellants have approached this Court impugning the criminal complaint dated 03.02.2022 filed under Section 340 Cr.P.C. and impugned order dated 03.02.2022 passed by the learned Additional Principal Judge, Family Court, Ambala, thereon and the summoning order dated 07.02.2022 passed by learned JMIC, Ambala, alongwith all consequential proceedings arising out of the complaint being absolutely wrong, illegal and perverse.

It has been contended that the dispute is between the husband and the wife. The marriage of appellant No.1-Kamaljeet Kaur took place with respondent No.1 on 17.02.2017 as per Sikh rites and ceremonies. However, after the marriage, the matrimonial dispute took place between the husband and the wife and thus, the same ran into rough weather. The wife was allegedly shunted out of the matrimonial home on 25.09.2017. She filed FIR No.74, dated 03.03.2018, under Sections 323, 406, 498-A IPC, which is pending adjudication before the learned JMIC, Ambala. Learned

application dated 17.04.2018 praying for grant of maintenance under Section 125 Cr.P.C. against respondent No.1-Harbhajan Singh. During pendency of the same, respondent No.1 filed an application dated 18.09.2019 under Section 340 Cr.P.C. against the appellants as a counter-blast to the petition filed by petitioner No.1 under Sections 125 Cr.P.C. and the FIR No.74 dated 03.03.2018, as mentioned above. Learned Family Court while dismissing the petition under Section 125 Cr.P.C. has recorded a finding that appellant No.1/wife had made false averments supported by an affidavit that she had no source of income as she was not working, though she was working as a Librarian in National Dental College, Derabassi and earning a sum of Rs.12,000/- per month at the time of filing the petition on 17.04.2018, vide judgment dated 15.10.2019.

It has been contended that the findings arrived at by learned Family Court in dismissing the application filed under Section 125 Cr.P.C. are totally frivolous and contrary to the evidence on record and hence the appellants had challenged the same by way of filing CRR(F)-1122-2019, which is pending adjudication before this Court. He contends that the learned Family Court has passed the impugned order dated 03.02.2022 against the appellants for offence under Section 191 IPC punishable under Section 193 IPC and sent the complaint to the Court of learned JMIC, Ambala, for conducting further inquiry. He submits that the learned JMIC, Ambala, has illegally passed the summoning order dated 07.02.2022 against the appellants and the same is unsustainable in the eyes of law.

Counsel for the appellants has vehemently contended that the impugned order dated 03.02.2022 initiating the proceedings under Section 340 Cr.P.C. and summoning order dated 07.02.2022 are totally illegal and

perverse and deserve to be set aside as the same are passed in a mechanical manner. He has submitted that the learned Family Court has not appreciated the statutory provisions of Sections 341 and 343 Cr.P.C. in a judicious manner. He has further submitted that as order dated 15.10.2019 by virtue of which the petition filed under Section 125 Cr.P.C. by appellant No.1 was dismissed has already been assailed by the appellants by way of CRR(F)-1122-2019 and the same is pending adjudication and hence the trial Court should have stayed the proceedings initiated against the appellants under Section 343 Cr.P.C. He has relied upon the letter dated 17.09.2018, Ex.R-1, (Annexure A-5) issued by the National Dental College and Hospital, Gulabgarh, Derabassi, District SAS Nagar (Punjab), wherein it has been mentioned that appellant No.1-Kamaljeet Kaur, joined the college as Assistant Librarian on 27.10.2015 and left her job at her own request giving unavoidable reasons on 31.03.2017. She was drawing consolidated salary of Rs.12,000/- per month. He submits that hence on 17.04.2018, i.e. the date of filing of petition under Section 125 Cr.P.C., she was no more in the job as Assistant Librarian. Thus, there was no false evidence given by appellant No.1 and hence initiation of proceedings under Section 340 Cr.P.C. is totally unsustainable in the eyes of law. He submits that in view of the same, the impugned complaint, impugned order and the summoning order, dated 03.02.2022 and 07.02.2022 respectively are totally unsustainable in the eyes of law. He has relied upon **Pepsi Foods Ltd. and another vs Special Judicial Magistrate and others** (1998) 5 Supreme Court Cases 749, **Sasikala Pushpa and others vs State of Tamil Nadu** (2019) 6 Supreme Court Cases 477, the order dated 27.09.2019 passed in case titled as **Parveen Kumar vs Anju and another** in CRM-M-41654-2019, and the

order dated 05.10.2016 passed in **Monica Phalswal vs Ramesh Kumar and others** in CRM-M-26675-2014.

Learned counsel for the appellants submits that as per the judicial precedent settled by Hon'ble Apex Court in the case of **Pepsi Foods Limited** (supra), it is held that the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial. Similarly, he submits that, this Court in the case of **Parveen Kumar** (supra), has been held that to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material will defeat its very purpose. In the case of **Sasikala Pushpa** (supra), Hon'ble Apex Court has held that before proceeding to make a complaint regarding commission of an offence referred to in Section 195(1)(b)Cr.P.C., the Court must satisfy itself that "it is expedient in the interest of justice" to lodge the complaint. In the case of **Monica Phalswal** (supra) this Court has held that the reasons given by the trial Judge to my mind even if it is found that there was some wrong statement made by the wife regarding her income, does not call for action under Section 340 Cr.P.C.. After all it must be understood that the dispute is between the husband and wife and parties are at liberty to take false and wrong pleas. Thus it does not entitle the trial Court to feel aggravated and then direct the filing of complaint through registry against the litigant that does not serve the purpose except the wasting of judicial time.

Counsel for the appellants has vehemently contended that weighing the facts and circumstances of the present case in the light of the above judicial precedents, initiation of proceedings against the appellants under Section 340 Cr.P.C. and summoning them, are totally unsustainable in the eyes of law and hence the same deserve to be set aside.

Heard.

Admittedly, the dispute is between appellant No.1 and respondent No.1, who are husband and wife. Due to the matrimonial discord, appellant No.1 left the matrimonial home on 25.09.2017 and both of them started living separately. Appellant No.1 filed FIR against respondent No.1 and thereafter approached the Family Court by way of filing the petition under Section 125 Cr.P.C. praying for grant of maintenance. However, learned Family Court dismissed the same vide its order dated 15.10.2019 and made observations regarding filing of a false affidavit by appellant No.1. Resultantly, the Family Court after conducting the preliminary enquiry, directed the proceedings under Section 340 Cr.P.C. to be initiated against the appellants in accordance with the statutory provisions. Appellant No.1 had already assailed the order dated 15.10.2019 by filing CRR(F)-1122-2019 and admittedly, which is pending adjudication before this Court. The learned Family Court after the preliminary enquiry has directed the initiation of proceedings under Section 340 Cr.P.C. A perusal of the provisions of Section 340 Cr.P.C. makes it evident that if the Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-Section (1) of Section 195, which appears to have been committed or in relation to a proceeding in that Court or, as the case may be, in respect of a

document produced or given in evidence in a proceedings in that Court, such Court may after such preliminary enquiry is competent to order the proceedings under Section 340 Cr.P.C. A perusal of the record would show that petition filed under Section 125 Cr.P.C. has been declined by the learned Family Court holding her not to be entitled for the maintenance prayed for. However, revision against the same is pending adjudication before this Court. Initiation of the proceedings under Section 340 Cr.P.C. is to carry out a thorough enquiry by affording opportunity to both the sides for establishing the truthfulness in the allegations. No doubt the appellants have relied upon certain documents and appended them on the date of filing of petition under Section 125 Cr.P.C., that she was no more employed, however the same is a subject matter of the enquiry where both the sides would lead their respective evidence for enabling the Court to draw a conclusion regarding the authenticity of the documents relied upon. There is no dispute regarding the judicial precedents relied upon by counsel for the appellants. However, keeping in view the facts and circumstances of the present case in hand, judicial precedents relied upon are distinguishable in the opinion of this Court. The allegations made by respondent No.1 regarding false averment by appellant No.1 about her employment cannot be considered as the general allegations made during the proceedings before the Family Court. Whether appellant No.1 was employed at the time of filing of the petition under Section 125 Cr.P.C. can be established only after conclusion of the enquiry. Initiation of the proceedings under Section 340 Cr.P.C. in itself cannot be said to be punitive. Rather the same is expedient in the interest of justice for maintaining the sanctity of the judicial proceedings. Counsel for the petitioners has placed on record the order

dated 04.08.2022, vide which the learned JMIC, Ambala has dismissed the application of the appellants for staying the proceedings under Section 343(2) Cr.P.C. Counsel for the petitioners though has placed on record this order, however, he has chosen not to impugn the same in these proceedings on the ground that the same would be assailed if so advised in separate proceedings under the law.

After hearing the counsel for the appellants and perusing the record, in the light of the statutory provisions and the judicial precedents, this Court is of the opinion that the impugned complaint and impugned orders suffer from no illegality. The Court is of the opinion that enquiry initiated under Section 340 Cr.P.C. is expedient in the interest of justice to meet the ends of justice. Thus, the appeal being devoid of any merit, is hereby dismissed.

However, nothing expressed herein would have any bearing on the proceedings before the trial Court.

August 26, 2022
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(RAJESH BHARDWAJ)
JUDGE

- 1. Whether speaking/reasoned ?**
- 2. Whether reportable ?**

Yes/No
Yes/No