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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2770-2022 (O&M)

Date of Decision: December 23, 2022

Ravinder Kumar

.....Appellant

Versus

Deepika Rani and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.P.K.S.Phoolka, Advocate
for the appellant.

.....

RAJESH BHARDWAJ, J.

CRM-50376-2022

Instant application is filed for condonation of delay of 31 days in filing the accompanying appeal.

It has been contended by counsel for the applicant/appellant that the appellant filed the revision petition against the impugned order passed by learned Family Court, Bathinda, on 07.11.2022, however, objection was raised by the Registry and thereafter the revision petition was refiled on 14.11.2022. However, again an objection was raised regarding maintainability of the revision petition against the impugned order and then it was found that it was the appeal which was maintainable and not the revision petition. He submits that on account of the same, there occurred a delay of 31 days in filing the present appeal and the same is bona fide and unintentional and if the same is not condoned and the appeal is not heard on merits, the appellant would suffer an irreparable loss and injury.

After hearing the counsel for the applicant/appellant and going

through the record, the Court deems it appropriate to condone the delay and

hear the applicant/appellant on merits.

Accordingly, application is allowed. Delay of 31 days in filing the accompanying appeal is condoned.

Main case

Instant appeal has been filed by the appellant against the order dated 20.09.2022 passed by learned Additional Principal Judge, Family Court, Bathinda, vide which application filed by the appellant under Section 340 Cr.P.C. was dismissed.

It has been contended by counsel for the appellant that the learned Additional Principal Judge, Family Court, Bathinda, has illegally declined the application under Section 340 Cr.P.C. vide impugned order dated 20.09.2022, which is against the settled law and hence the same deserves to be set aside. He submits that the appellant filed a petition under Section 13 of the Hindu Marriage Act (for brevity, 'the HMA') against respondent No.1, which is pending adjudication. He has submitted that the respondent/wife filed application under Section 24 of the HMA for maintenance pendent lite on the basis of false facts. He submits that the respondent/wife had made false averments in para 3 of the application wherein she stated that she has no independent source of income and hence she is unable to maintain herself and thus, she is living at the mercy of her parents. He has submitted that she filed affidavit as well regarding the same. He has submitted that in response to the application filed by the respondent/wife, the appellant has examined Shri Gurmeet Singh, Business Facilitator, IDBI Bank, Bathinda, to prove her salary account and as per the same, the respondent/wife has a bank account where her salary is deposited.

He submits that in view of this it is crystal clear that respondent/wife has

concealed the factum regarding her employment intentionally and thus has misled the Court by filing a false affidavit that she has no independent source of income. He submits that in view of the provisions of Section 340 Cr.P.C., respondent/wife is liable to be proceeded against but the learned Family Court has failed to appreciate the same and thus dismissed the application filed by the appellant under Section 340 Cr.P.C. without adhering to the settled principles of law. It is submitted that the impugned order deserves to be set aside and the respondent/wife be proceeded in accordance with the provisions of Section 340 Cr.P.C.

Heard.

Needless to say that relationship between the appellant and the respondent/wife is not in dispute. The appellant has filed the petition under Section 13 of the HMA in which the respondent/wife has filed an application under Section 24 of the HMA praying for grant of maintenance pendent lite. The respondent/wife made averments regarding her not having any independent source of income, however, the appellant led evidence to prove on record her account statement which would show some of her income ranging from Rs.6,000/- to Rs.7,000/-. There is nothing on record to show that this amount being earned by the respondent/wife was sufficient for her survival. For resolving the controversy involved, it is relevant to appreciate the provisions of Section 340 Cr.P.C., which read as under:-

“Section 340 Cr.P.C.:(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests 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 in 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 proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section(1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section(4) of Section 195.

(3) A complaint made under this Section shall be signed,-

- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
- (b) in any other case, by the presiding officer of the Court, or by behalf;

(4) In this Section, "Court" has the same meaning as in Section 195."

The Legislature in its wisdom has specifically enumerated in the statutory provisions of Section 340 Cr.P.C. that if any Court is of the opinion that **it is expedient in the interest of justice that an inquiry should be made, then further such Court may, after such preliminary inquiry, record a finding to that effect or make a complaint thereof in writing.** Hon'ble Supreme Court in **Iqbal Singh Marwah & Anr vs**

Meenakshi Marwah & Anr, 2005 (4) SCC, 370 has already appreciated this issue and has laid down that it is the discretion of the Court, in a given case, to decide whether or not to initiate an inquiry under Section 340 Cr.P.C. In the case in hand even if the wife is earning an amount of Rs.7,000/-p.m., as contended by counsel for the appellant, the same cannot be said to have resulted in concealment to the extent of urging the Court to initiate an inquiry against the wife under Section 340 Cr.P.C. In a dispute between husband and wife both may have a personal motive to harass each other, however, the Court has to strike the balance in a given situation and take rational decision.

Weighing the facts and circumstances of the present case on the anvil of law settled, this Court is of the opinion that it is not expedient in the interest of justice to initiate an inquiry under Section 340 Cr.P.C. against the respondent/wife. Resultantly, this Court does not find any infirmity in the order passed by the learned Family Court and hence, the present appeal filed by the appellant/husband is hereby dismissed.

December 23, 2022
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(**RAJESH BHARDWAJ**)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |