

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CRR-88-2020(O&M)

Date of Decision: 05.12.2022

Judgement reserved on 15.11.2022

Abhishek Kalia

--Petitioner

Versus

State of Haryana & others

--Respondents

CORAM:- HON'BLE MR. JUSTICE RAJESH BHARDWAJ.

Present:- Mr. Dinesh Arora, Advocate for the petitioner.

RAJESH BHARDWAJ.J (Oral)

CRM-1068-2020

This is an application seeking condonation of delay of 71 days that has occurred in filing the accompanying revision petition.

Learned counsel for the applicant-petitioner submits that the delay of 71 days that has occurred in filing the accompanying revision petition is totally unintentional and bonafide. He submits that after passing of the impugned order the petitioner approached this court for filing the revision petition, however, certain documents were asked for by the counsel and petitioner took some time to collect those documents. Counsel submits that on account of the same there occurred a delay of 71 days in filing the accompanying revision petition. He submits that petitioner would suffer an irreparable loss if the delay is not condoned.

In view of the submissions made by the counsel, present application is allowed. The delay of 71 days that has occurred in filing the accompanying revision petition is condoned.

Main Petition

The present revision petition has been filed impugning the order dated 30.7.2019 passed by the learned Addl. Sessions Judge, Faridabad, whereby order dated 31.10.2018 passed by the learned JMIC, Faridabad accepting the complaint filed by the petitioner under section 340 Cr.P.C has been set aside and the complaint has been dismissed.

The brief facts of the case are that petitioner solemnized marriage with respondent no.2 on 15.1.2015, however, a matrimonial discord took place between both of them and as the rift kept on widening, respondent no.2 lodged FIR No.0015 dated 21.9.2015 registered under sections 376 r.w.s 511, 354-A(1), 377 and 323 IPC was registered at Women Police Station, Sector 16, Faridabad, against the petitioner and his family members. The investigating agency investigated the case thoroughly, however, found the offence alleged under sections 323, 354-A(1), 376, 511, 377 IPC not substantiated and thus the same were deleted and challan under section 173 Cr.P.C was filed under sections 498-A and 406 IPC against the petitioner and his parents. Aggrieved of the same, petitioner and his parents filed separate petitions under section 482 Cr.P.C i.e. CRM-M-7041-2016 and CRM-M-34082-2016 before this court praying for quashing of the FIR in question. This court vide order dated 11.10.2017 accepted the petitions so filed and quashed the FIR in question.

The petitioner thereafter filed a petition under Section 340 Cr.P.C for taking action against the respondents Vijeta Kalia, Ramesh Khanna and Girish Gandhi for giving a false complaint against him and his parents. Learned JMIC, Faridabad vide order dated 31.10.2018 accepted the

same qua the wife namely Vijeta Kalia and father-in-law Ramesh Khanna but declined the same qua respondent no.3 Girish Gandhi. Aggrieved by the same, the respondents preferred an appeal under section 340(1) Cr.P.C before the learned Addl. Sessions Judge, Faridabad impugning the order dated 31.10.2018. Learned Appellate Court accepted the appeal filed by respondents no.2 and 3 vide impugned order dated 30.7.2019. Aggrieved by the same the petitioner (husband) has approached this court by way of filing the present revision petition.

Learned counsel for the petitioner has vehemently contended that the learned Appellate Court without adverting to the settled law and the facts and circumstances of the case has wrongly accepted the appeal filed by respondents no.2 and 3 by reversing the well reasoned order passed by the learned JMJC, Faridabad. He submits that evidently there was a matrimonial discord between the petitioner and respondent no.2. She filed a false and frivolous FIR against the petitioner and his parents, wherein the allegations pertaining to the offence under sections 376 and 377 IPC were levelled only in order to humiliate the petitioner and his family members. He submits that during investigation the allegations pertaining to the sexual abuse of respondent no.2 were not substantiated and hence the same were deleted by the investigating agency. Resultantly, the challan under section 173 Cr.P.C was filed only for the offence under sections 498-A and 406 IPC. He submits that thereafter the petitioner and his parents approached this court by way of filing CRM-M-7041-2016 and CRM-M-34082-2016 before this court praying for quashing of the FIR in question and finding their prosecution as an abuse of the process of law, this court quashed the

FIR in question vide order dated 11.10.2017. He submits that from the facts and circumstances of the case, it is apparent that respondent no.2 had made a false statement and misled the court and thus she and respondent no.3 were liable for proceedings under section 340 Cr.P.C. Counsel submits that the petitioner filed a petition under section 340 Cr.P.C which was duly accepted by the learned JMIC, Faridabad, who observed that in view of the order dated 11.10.2017 of the Hon'ble High Court in the aforementioned two petitions, the respondents had taken false and frivolous stand in order to punish the petitioner and his father in a false case and thus committed an offence under sections 199, 203 and 211 IPC and hence they were liable for the action to be taken against them for lodging a false complaint against the petitioner and his father. Resultantly, the petition filed under section 340 Cr.P.C was accepted by the learned JMIC, Faridabad. Counsel submits that the learned Appellate Court has miserably failed in appreciating the facts and circumstances of the case and the law applicable and reversed the same and set aside the order passed by the learned JMIC, Faridabad vide order dated 30.7.2019. Counsel further submits that findings of the Appellate Court that the learned JMIC could not have accepted the petition filed under section 340 Cr.P.C merely on the basis of the order passed by the High Court dated 11.10.2017 vide which the FIR in question was quashed, is totally unsustainable in the eyes of law. He submits that since the inception of the FIR the allegations made against the petitioner and his parents were false and frivolous and it is because of the same that except the offence under sections 498-A and 406 IPC, rest of the offences were deleted by the investigating agency itself and thereafter the FIR was quashed by this court. He submits that Section 199 IPC was applicable as the respondents made a

false statement. He further submits that the respondent no.2 had also made a statement under section 164 Cr.P.C before the learned JMIC, Faridabad against the petitioner but as the FIR in question was quashed by the High Court, the false statement made by respondent no.2 was proved. Counsel submits that the impugned order deserves to be set aside.

I have heard learned counsel for the petitioner at length and have gone through the record carefully.

Having perused the record, this court finds that for the just decision of the controversy involved the relevant statutory provisions of Sections 340 Cr.P.C and that of Section 195 Cr.P.C are relevant and the same are reproduced as under:-

“340. Procedure in cases mentioned in section 195.

(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.

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

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in

respect of a document produced or given in evidence in a proceeding in any Court, or

[\(iii\)](#) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

[\(2\)](#) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

[\(3\)](#) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

[\(4\)](#) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

[\(a\)](#) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

[\(b\)](#) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

A perusal of the statutory provision of Section 195 Cr.P.C would make it clear that the Legislature has enacted this provision which is bifurcated in two parts (1) Section 195 (1)(a) deals with the offence under sections 172 to 188 IPC, Abetment or attempt to commit such offence and of any criminal conspiracy to commit such offence. So far as Section 195(1)(b) is concerned, the same pertains to the offence punishable as mentioned herein committed in relation to any proceedings in any court. Section 340 Cr.P.C prescribes the procedure to be followed for the prosecution of offence under Section 195 Cr.P.C for contempt of lawful authority.

The petitioner has invoked Section 340 Cr.P.C primarily on the premise that the respondents filed a false and frivolous complaint against him and his father, however, the allegations were not substantiated and hence the FIR was quashed by this court. This court quashed the FIR by invoking its power under section 482 Cr.P.C. The ingredients to be satisfied for invoking the provisions of Section 195 Cr.P.C and Section 340 Cr.P.C are entirely different from what has been contended by learned counsel for the petitioner. Lodging of the FIR by the respondents even if the same is quashed does not constitute the requisite ingredients for invoking the statutory power under Section 195 Cr.P.C. Section 195(1)(b) Cr.P.C deals with the offence committed during the court proceedings. Hon'ble Supreme Court in cases of ***Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another***, AIR 2005 SC 2119 has held that in view of the language used in Section 340, the court is not bound to make a complaint regarding the commission of an offence referred to in Section

195(1)(b) as the section is conditioned by the words 'court if of opinion that it is expedient in the interest of justice'. This shows that such a course will be adopted only if the interest of justice requires and not in every case.

This court has quashed the FIR in question to secure the ends of justice and thus prevented the abuse of process of law. Thus the same is not sufficient enough to arrive at a conclusion that the respondents had committed an act making them liable for initiating the proceedings under section 340 Cr.P.C.

Taking into consideration the arguments raised by counsel for the petitioner on the anvil of the law settled, this Court is of the opinion that the impugned order dated 30.7.2019, passed by learned Addl. Sessions Judge, Faridabad suffers from no illegality and resultantly the present petition is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

05.12.2022

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No