



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % **Pronounced on: 16th March, 2022**

+ **CRL.M.C. 2507/2020, CRL.M.A. 17779/2020 (stay)**

SANJAY GUPTA & ANR.Petitioners

Through: Mr. Manish Vashisht, Sr. Adv.
 with Mr. Rikky Gupta and Mr.
 Manashwy Jha, Advs.

Versus

STATE & ANR.Respondents

Through: Mr. G.M. Farooqui, APP for
 R-1/State.
 Mr. Satish Tamta, Sr. Adv. with
 Mr. Shariq Iqbal, Adv. for R-2.

AND

+ **CRL.M.C. 2508/2020, CRL.M.A. 17783/2020 (stay)**

SANJAY GUPTA & ANR.Petitioners

Through: Mr. Manish Vashisht, Sr. Adv.
 with Mr. Rikky Gupta and Mr.
 Manashwy Jha, Advs.

Versus

STATE & ANR.Respondents

Through: Mr. G.M. Farooqui, APP for
 R-1/State.
 Mr. Satish Tamta, Sr.
 Adv. with Mr. Shariq Iqbal, Adv.
 for R-2.

AND

+ **CRL.M.C. 2509/2020, CRL.M.A. 17786/2020 (stay)**

SANJAY GUPTA & ANR.Petitioners

Through: Mr. Manish Vashisht, Sr. Adv.
 with Mr. Rikky Gupta and Mr.
 Manashwy Jha, Advs.

Versus



STATE & ANR.

.....Respondents

Through: Mr. G.M. Farooqui, APP for R-1/State.

Mr. Satish Tamta, Sr.
Adv. with Mr. Shariq Iqbal, Adv.
for R-2.**CORAM:****HON'BLE MS. JUSTICE ASHA MENON****J U D G M E N T**

1. By this common judgment, three petitions filed under Section 482 Cr.P.C. by the petitioners, Sh. Sanjay Gupta and Smt. Kamlesh Gupta, shall be disposed of. The respondent No.1 is the State and respondent No.2 is Alka Gupta.

2. The petitions have been filed under Section 482 Cr.P.C. seeking quashing of the criminal cases filed under Section 340 Cr.P.C. by respondent No.2 being CC Nos. 18563/2018, 18564/2018 and 18565/2018, and the common order dated 13th March, 2020 passed by the learned District & Sessions Judge, New Delhi District, Patiala House Courts, New Delhi in the revision petitions filed by the respondent No.2 being Criminal Revision Nos. 548/2019, 549/2019, and 550/2019 respectively.

3. Mr. Manish Vashisht, learned senior counsel for the petitioners, has argued that the revision itself was not maintainable against the orders of the learned Metropolitan Magistrate dated 27th July, 2019. It was his contention that under Section 341 Cr.P.C., only an appeal lay against an order under Section 340 Cr.P.C. It was submitted that therefore, the



revision itself had to be dismissed, however instead, it had been allowed and the matters remanded back to the learned Metropolitan Magistrate.

4. However, as rightly pointed out by Mr. Satish Tamta, learned senior counsel for the respondent No.2, these pleas had neither been raised before the learned District & Sessions Judge, nor is there any pleading before this court to this effect that the revision was not maintainable, as only an appeal lies against an order under Section 340 Cr.P.C. Though, attention was drawn to a passing reference in the grounds that the order was not revisable, since, no such arguments were advanced before the learned District and Sessions Judge, therefore, this Court does not see any necessity to consider these pleas in the present cases and questions of law may be considered in other appropriate proceedings.

5. Since the prayers in the petitions are similar, the prayers as made in CRL.M.C. 2507/2020, are reproduced herein-below:

“a. Quashing the proceedings pending in the Court of Ms Ankita Lal, Metropolitan Magistrate, New Delhi District, Patiala House Court, New Delhi bearing CC No. 18563 of 2018, titled as "Alka Gupta Vs Sanjay Gupta & Anr" being application filed under section 340 Cr.P.C. by Respondent No.2.

b. Setting aside the impugned order dated 13.03.2020 as passed by the Court of Shri Dinesh Kumar Sharma, Learned District & Sessions Judge New Delhi District, New Delhi in Criminal Revision No.548/2019 titled as "Alka Gupta Vs Sanjay Gupta".



c. Call for the records of the case including the records of the complaint cases under section 340 CrPC bearing C.C. No. 18563/2018 titled as "Alka Gupta Vs Sanjay Gupta & Anr" & C.C. No. 4615/2017 titled as "Sanjay Gupta & Anr Vs Alka Gupta" pending before the Court of Ms Ankita Lal, Metropolitan Magistrate, New Delhi District, Patiala House Courts, New Delhi.

d. Pass such other and further orders as this Hon'ble Court deems fit and proper in the facts and circumstances of the case."

6. It is the contention of the learned senior counsel for the petitioners that the respondent No.2 has been making several attempts at wriggling out of a Family Settlement, to which, her husband (since expired) was a party. It was submitted that originally, Sh. Rajiv Gupta (late husband of respondent No.2), had instituted a partition suit being CS (OS) 1968/2003, claiming to have had a share in the properties described in Schedule A to the plaint (Annexure P-2 to the petitions), including the property being Plot no. 47, Amrita Shergil Marg, New Delhi, measuring 500 sq. yards, which was owned by 9 family-owned companies, namely Tanvi Trading & Credits Pvt. Ltd., Wesman Finances Limited, Swift Commercial Pvt. Ltd., Sampat Real Estates Pvt. Ltd., Regency Exports Pvt. Ltd., Infinite Commercial Pvt. Ltd., Eminent Commercial Pvt. Ltd., Bhishma Exports Pvt. Ltd., and Anchal Commercial Pvt. Ltd.

7. The suit was decreed on 9th January, 2006, after the parties moved the court under Order XXIII Rule 3 CPC setting out that the parties had compromised all matters and had settled the disputes. This application being I.A. 220/2006 had been signed by all the parties to the suit. Copy of



the same has been placed on record as Annexure P-3 to the petitions. It was recorded in para 9 of the said application that the plaintiff therein, namely, Sh. Rajiv Gupta (since deceased) shall hold two properties, namely, Property No.4, Palam Marg, Vasant Vihar, New Delhi and Property No. 5, Vasant Marg, Vasant Vihar, New Delhi, as the absolute owner thereof, having an unfettered right to deal with them in any manner that he would like, with no claim over them from the side of the defendants No.1 to 3, which includes the petitioners No.1 & 2 herein. Additionally, a sum of Rs.7,30,65,861/- was also paid to the plaintiff/Rajiv Gupta in full and final settlement of his claims. In return, he had given up all claims in the remaining properties, as described in Schedules A & B to the said plaint, including properties standing in the names of the family companies and the cash lying in the banks in the name of Smt. Pramod Gupta and in respect of other moveable and immovable properties standing in the names of Sh. Sanjay Gupta, Sh. L.R. Gupta and Smt. Pramod Gupta. The judgment dated 9th January, 2006, decreed the suit in accordance with this Compromise Application.

8. Learned senior counsel for the petitioners submitted that after having enjoyed the fruits of the Settlement by taking over the two properties and the sum of Rs.7,30,65,861/-, the said Sh. Rajiv Gupta filed several applications in an attempt to rescind and wriggle out of the settlement. He filed two applications being I.A. 11162/2006 & 10004/2007, alleging that he had signed the Compromise Application as his wife and children were starving, but the court dismissed the applications on 3rd September, 2007 (Annexure P-6 to the petitions),



holding that the compromise had been acted upon, monies had been paid and the properties too, had been transferred.

9. On 4th February, 2011, Sh. Rajiv Gupta again instituted another partition suit being CS (OS) 255/2011 through his sister, Ms. Sumangli Gupta@ Ms. Sumangli Jain, who assailed the compromise decree. Certain other litigations also were instituted at his instance through his daughter, and wife being respondent No.2. Complaints were given to the ROC as also to the Economic Offences Wing. Subsequently, the respondent No.2 filed three complaint cases being CC Nos. 132/2011, 133/2011 and 134/2011 before the learned Metropolitan Magistrate, New Delhi, Patiala House Courts on 25th November, 2011 alongwith applications under Section 156(3) Cr.P.C. The learned Metropolitan Magistrate dismissed the applications under Section 156(3) vide order dated 02nd May, 2012 (Annexure P-13 to the petitions). The matter was taken in revision and further to the Supreme Court and, at all levels, the view taken by the learned Metropolitan Magistrate was upheld. In the meantime, the petitioner No.1 had commenced execution proceedings in which a contempt application was filed, which was dismissed by the High Court vide order dated 19th November, 2014 (Annexure P-14 to the petitions) whereafter, that matter too reached the Supreme Court.

10. While adjudicating the said appeal, the Supreme Court vide order dated 05th March, 2018 (Annexure P-18 (Colly) to the petitions), held that the parties had settled the matter amongst themselves and the criminal complaints filed by respondent No.2 being CC 132/2011, 22604/2016, 27780/2016 and 23684/2016 were closed. A review was preferred by



respondent No.2 against the said order which was also dismissed by the Supreme Court on 12th April, 2018. On the basis of these orders of the Supreme Court, the learned Metropolitan Magistrate consigned the records of the complaint cases vide order dated 21st July, 2018.

11. The respondent No.2, inspite of this closure, chose to move an application to revive her applications filed under Section 340 Cr.P.C. in her complaint cases and the learned Metropolitan Magistrate, vide order dated 08th August, 2018, wrote in the margin of the said application “be put up with the application under Section 340”, and later, on 10th September, 2018, fixed the matter for “CE”. Furthermore, the learned Metropolitan Magistrate vide its order dated 27th July, 2019 (Annexure P-24 to the petitions), erred further, according to learned senior counsel, by treating the three petitions filed by respondent No.2 as the replies to the petitions of the present petitioners, as they too had moved, earlier in time, three applications under Section 340 Cr.P.C. The learned Metropolitan Magistrate clubbed the six applications together for disposal.

12. According to the learned senior counsel, while the learned District & Sessions Judge rightly held the procedure adopted to be wrong, however erred in remanding the matters back, as in the light of the closure of the complaint cases by the Supreme Court, it ought to have closed the matters when specific submissions to this effect had been made by and on behalf of the present petitioners. It was submitted that the three applications under Section 340 Cr.P.C. filed by respondent No.2 were stated to have been filed as a response to the applications moved by the petitioners under Section 340 Cr.P.C. alleging false averments in the



applications under Section 156(3) Cr.P.C. Once the complaints had come to an end and once the petitioners had willingly made a statement that they were not pursuing their applications, nothing remained for the learned District & Sessions Judge, to remand the matter. Hence, it was submitted that the three applications moved by respondent No.2 be quashed.

13. Mr. Satish Tamta, learned senior counsel for the respondent No.2 on the other hand, submitted that when the applications under Section 340 Cr.P.C. had been filed by respondent No.2, the learned Metropolitan Magistrate had correctly listed it for recording the complainant's evidence. The learned District & Session Judge was right in observing that it was a strange procedure of treating the applications under Section 340 Cr.P.C. filed by respondent No.2 to be her replies to the three applications filed by the petitioner prior in time, as each of these applications were distinct and separate. Moreover, those applications under Section 340 Cr.P.C. were different complaints and registered as such and the Supreme Court had not directed their closure. As such, without an inquiry based on evidence, the applications under Section 340 Cr.P.C. could not be disposed of.

14. According to the learned senior counsel for the respondent No. 2, the petitioners herein had not even drawn the attention of the Supreme Court to the pendency of their own applications under Section 340 Cr.P.C. Therefore, there was no occasion to treat those applications registered as separate complaints as closed alongwith the complaint cases



filed by the respondent No.2. Hence, learned senior counsel submitted that the present petitions be dismissed.

15. I have heard the arguments of the learned senior counsel and have considered the material on record.

16. The scope and powers of this court under Section 482 Cr.P.C have been discussed and illustrated in a catena of judgements. The Supreme Court in *Priti Saraf v. State (NCT of Delhi)*, 2021 SCC OnLine SC 206 has made the following observations:-

“28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception.

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31. Be it noted that in the matter of exercise of inherent power by the High Court, the only requirement is to see whether continuance of the proceedings would be a total abuse of the process of the Court. The Criminal Procedure Code contains a detailed procedure for investigation, framing of charge and trial, and in the event when the High Court is desirous of putting a halt to the known procedure of law, it must use proper circumspection with great care and caution to interfere in the complaint/FIR/charge-sheet in exercise of its inherent jurisdiction.”
(emphasis added)

17. Section 340 Cr.P.C. reads 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 or by such officer of the Court as the Court may authorise in writing in this behalf.]

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

18. The court is required to, under this provision, form an opinion that it is expedient in the interest of justice to make an inquiry into the question of the commission of an offence under Section 195(1)(b). It is clear that in the present case, neither the learned Metropolitan Magistrate nor the learned District & Sessions Judge, made an effort to consider whether it was expedient to even hold an inquiry. The expediency is to be determined even before commencing the inquiry, which would help the court to decide whether a complaint must be made in writing to the Magistrate First Class. Thus, the original order of the learned Metropolitan Magistrate listing the matter for "CE" without application of mind was itself erroneous. It was still stranger for the learned Metropolitan Magistrate to have assumed that the subsequent applications moved by the respondent No.2 could be considered as responses to the earlier applications filed under Section 340 Cr.P.C. by the petitioners. To that extent, the learned District & Sessions Judge was right in setting aside the order dated 27th July, 2019. But since it failed to apply its mind on the expediency of proceeding further and seems to have remanded the matters back to the Trial Court in a routine manner, there is a manifest non-application of mind by the learned District & Sessions Judge as well.



19. Turning back to the procedure provided under Section 340 Cr.P.C., there are three stages. When the court comes across the commission of an offence under Section 195(1)(b) IPC, whether on an application or of its own, the first stage would be in considering the expediency in holding an inquiry. Once it decides this question in the affirmative, the court will proceed to the second stage of holding such an inquiry. On the conclusion of the inquiry, it will proceed to the third stage and decide whether to close proceedings or file a complaint in accordance with the prescribed procedure. Each stage has to be crossed. Else the words in the provision would be rendered otiose, which is not permissible.

20. It is no doubt true that the applications under Section 340 Cr.P.C. have been registered separately by the learned Metropolitan Magistrate. When the files were consigned in 2018, without an order on any of these applications, these applications too were consigned alongwith the main complaints. At best, it could be inferred that the learned Metropolitan Magistrate had closed the proceedings even under Section 340 Cr.P.C. and at worst, it could be held that it had not taken a decision. Taking the worst-case scenario, once the learned court was approached by the respondent No.2 by means of the application for re-calling of her applications under Section 340 Cr.P.C., the court failed to proceed in terms of Section 340 Cr.P.C by determining whether even a preliminary inquiry was required in the matter. That question can well be considered by this court in exercise of its power under Section 482 Cr.P.C., especially to determine whether the continuance of the proceedings would be a total abuse of the process of the court.



21. The applications placed at Annexure P-21 of the petitions are those moved by the respondent No.2 under Section 340 Cr.P.C. The applications filed by the present petitioners under Section 340 Cr.P.C are placed on record at page No. 375 of the petitions. The applications moved by the petitioners related to averments made by the respondent No.2 in her applications under Section 156(3) of Cr.P.C. The respondent No.2 filed the applications at Annexure P-21 in response to the allegations in the petitioners' applications under Section 340 Cr.P.C. as it is stated therein that "the said application is the foundation of the present application for invocation of the provisions of Section 340 of the Code". Possibly the learned Metropolitan Magistrate was prompted by such statements to treat the applications of respondent No.2 as responses to the applications of the petitioners, which, of course, was wrong.

22. But more importantly, the grounds taken for alleging the commission of the offence under Section 195(1)(b) IPC are very relevant. The reason the respondent No.2 has accused the petitioners of making false statements is her claim that she was not a party to the compromise, on the basis of which, the partition suit CS (OS) 1968/2003 was decreed on 9th January, 2006 and which has become final. Since similar applications were moved, for easy reference, para 9 of application being CC No. 23684/2016 i.e., Annexure P-21 in CRL.M.C. 2507/2020 is reproduced hereinbelow:

"9. Therefore, a false averment has been made by the Accused Persons in the following effect :-



- i. That the Complainant is a party to the decree and judgment dated 09.01.2006 passed by the Hon'ble High Court of Delhi in CS [OS] No.1968 of 2003; and*
- ii. That the Complainant has received 2 prime properties under the said judgment and order and the said properties are 5, Vasant Marg, Vasant Vihar and 4, Palam Marg, Vasant Vihar; and*
- iii. That the Complainant has given a solemn undertaking to the Hon'ble Court as well as to the Accused No.1 herein as well as to the Accused No.1's."*

23. All through the lifetime of Sh. Rajiv Gupta and now his wife, these are the very pleas that have been taken: that the compromise had been arrived at with a degree of coercion as Rajiv Gupta and his family were on the verge of starvation; that the respondent No.2 was not a party to that compromise; and that she had rights to the properties which she had not conceded. These pleas were taken right up to the filing of the review petition before the Supreme Court being R.P. (C) No. 1028/2018 in SLP(C) No. 6137/2015. The Supreme Court dismissed the same. The complaint cases were also founded on these very pleas and those complaint cases stood closed by the highest court of the land. The applications under Section 340 Cr.P.C. are a shameless attempt to agitate the same issues and a refusal to respect the quietus placed by the Supreme Court on the *inter se* disputes of the parties.

24. Thus, even if the respondent No.2 had moved the application for calling up her applications under Section 340 Cr.P.C. and the learned Metropolitan Magistrate thought it fit to call them up as they were not specified in the orders of the Supreme Court, it appears to this Court that



the present effort, particularly, in the light of the averments made in para 9 reproduced herein-above, reflects another attempt to reopen closed issues. By seeking an opportunity to lead evidence on the plea of preliminary inquiry, it appears to this Court that the respondent No.2 seeks to lead evidence on civil matters that were concluded long back and on which the lid had been placed by the Apex Court. No clearer abuse of the process of the court can exist.

25. Thus, on the ground that once the Supreme Court had recorded the settlement of all disputes between the parties and had closed the complaint cases which were founded on pleas that the respondent No.2 was not a party to the settlement in the partition suit and the applications under Section 340 Cr.P.C. filed by the respondent No.2 were founded on the pleas of Settlement taken by the petitioners in their applications under Section 340 Cr.P.C. and which they are not pressing, this Court is of the considered view that it is not expedient in the interest of justice to even proceed with a preliminary inquiry and that the attempt of the respondent No.2 to rake up old issues, being sheer abuse of the process of law, cannot be permitted.

26. This Court thus considers it just and proper to allow these petitions and quash the common order of the District & Sessions Judge dated 13th March, 2020 in the revision petitions filed by the respondent No.2 being Criminal Revision Nos. 548/2019, 549/2019, and 550/2019 respectively as also the criminal cases filed under Section 340 Cr.P.C. by respondent No.2 being CC Nos. 18563/2018, 18564/2018 and 18565/2018 respectively, and all proceedings emanating therefrom.



27. The petitions are accordingly disposed of alongwith the pending applications.

28. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

MARCH 16, 2022

ck

