

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

C.R.A 687 of 2017
With
C.R.A 452 of 2018

Subham Roy Choudhury
Vs.
Sreejoyee Chakraborty

With
CRR 341 of 2019

Ajoy Roy Choudhury
Vs.
The State of West Bengal & Anr.

For the Appellant: Mr. Ajoy Roy Choudhury, Adv.,

For the Opposite Party: Mr. Avik Ghatak, Adv.,
Mr. Abhinav Rakshit, Adv.

For the State: Mr. Ranabir Roy Chowdhury, Adv.,
Mr. Maink Gupta, Adv.

Heard on: 18.05.2022

Judgment on: 11.04.2023

BIBEK CHAUDHURI, J. : –

1. CRA 687 of 2017 is an appeal under Section 341 of the Code of Criminal Procedure assailing an order dated 27th October, 2017 passed by the learned Additional District Judge, 1st Court at Alipore in Perjury Case No. Misc 26 of 2016. The learned Additional District Judge, 1st Court at Alipore summarily rejected the application filed by the appellant/petitioner under Section 340 of the Cr.P.C read with Section

195(1)(b) of the IPC ignoring the guidelines given by this Court in its order dated 12th October, 2017 in CRR No.3384 of 2017.

2. CRR 452 of 2018 is an appeal against the order dated 1st August, 2018 passed by the learned Judicial Magistrate, 2nd Court at Barrackpore in M Case No.515 of 2016 under Section 125 of the Cr.P.C rejecting an application under Section 340 of the Cr.P.C filed by the appellant herein and thereby refusing to take cognizance of commission of offence under Section 193 of the IPC.

3. CRR 341 of 2019 is a revision under Section 397 read with Section 482 of the Cr.P.C assailing an order dated 18th December, 2018 passed by the learned Additional Chief Judicial Magistrate at Alipore rejecting an application filed by the petitioner under Section 239 of the Cr.P.C.

4. The Above mentioned two appeals and the revision were heard together by this Court and this Court disposes of above numbered two appeals and the revision by a common and composite order as follows:-

5. At the outset, it is required to state brief outline of the incidents which put the party's series of litigations.

6. Subham Roy Choudhury and Sreejoyee Chakraborty are legally married husband and wife. It is not in dispute that their marriage was solemnized on 22nd February, 2016. After five days of marriage the respondent/wife went back to her paternal home for some medical tests. The appellant and his family members came to know subsequently that the respondent has been suffering from Relapsed ITP Post Splenectomy (advance stage of cancer) for nine years prior to marriage. When the

appellant came to know about the said fact, he filed a suit for annulment of marriage in the court of the learned District Judge at Alipore which was registered as Mat Suit No.42 of 2016. The said suit is pending before the learned Additional District Judge, 5th Court at Alipore, South 24 Parganas.

7. The respondent/wife made her appearance in the said matrimonial suit and filed an application claiming alimony pendente lite which was registered as Misc Case No.21 of 2016. It is contended by the appellant that the said application was filed making false and fabricated statement and allegations of criminal nature against the appellant and his old parents on affidavit. According to the appellant filing of the said application on affidavit containing false and frivolous allegations against the appellant and his parents amount to offence under Section 191 of the IPC punishable under Section 193 of the IPC. Accordingly the appellant filed an application in the trial court under Section 340 of the Cr.P.C. The said application was registered as Misc Case No.26 of 2016. It was contended by the appellant that the petition for alimony pendente lite contained deliberate and conscious false statement. Secondly, such statements were made by the respondent for wrongful gain causing wrongful loss to the appellant and her parents and the allegations being criminal in nature, the trial court ought to have proceeded to hear out Misc Case No.26 of 2016 in accordance with the provision under Section 340 of the Cr.P.C.

8. The above named appellant has filed CRA No.452 of 2018 under Section 341 of the Cr.P.C assailing the order dated 1st August, 2018 passed by the learned Judicial Magistrate, 2nd Court at Barrackpore in M Case No.515 of 2016 under Section 125 of the Cr.P.C thereby rejecting the another application under Section 340 of the Cr.P.C filed by the appellant.

9. In the memorandum of appeal it is stated by the appellant that the respondent herein filed an application under Section 125 of the Cr.P.C praying for maintenance against the appellant. The said application under Section 125 of the Cr.P.C contained false and frivolous statement of criminal nature. It was alleged that on 26th February, 2016 the mother-in-law of the respondent asked the petitioner to hand over all her ornaments to her, but the petitioner refused to hand over her ornaments to her mother-in-law as a result she was tortured by the family member of her husband. The petitioner also made false statement of demanding Rs.3 lakhs for repairing and beautification of ground floor of the matrimonial home of the petitioner on 27th February, 2016. On 2nd March, 2016 the appellant and her parents again demanded her ornaments and on her refusal she was mentally tortured. The respondent became mentally sick as a result of physical and mental torture perpetrated by her husband and parents-in-law immediately after marriage and on 3rd March, 2016 she had to leave her matrimonial home and was admitted to the hospital.

10. According to the appellant all such allegations on affidavit are altogether false and frivolous. No such incident took place in her

matrimonial home. On the contrary, the father of the respondent told the father of the appellant over phone that he wanted to take his daughter to his house for emergent blood test and medical examination. Being suspicion the appellant and his family members inquired into the matter and they subsequently came to know that the respondent was suffering from the serious disease. The said fact was concealed by the respondent and her family members before marriage.

11. The learned Magistrate by passing the impugned order dated 1st August, 2018 rejected the application under Section 340 of the Cr.P.C filed by the appellant.

12. CRR No.341 of 2019 was filed by the father of the appellant assailing an order dated 18th December, 2018 passed by the learned Additional Chief Judicial Magistrate at Alipore, South 24 Parganas thereby rejecting an application under Section 239 of the Cr.P.C filed by the petitioner.

13. I proposed to deal with the above stated appeals first and then CRR No.341 of 2019 will be taken up for discussion. It is submitted by the learned Advocate for the appellant that the appellant used to work in United States of America, at the relevant point of time, the appellant is highly educated young man and initially he found in the respondent a proper match because the respondent is also highly qualified lady having MBA degree from a well reputed institute. Marriage was solemnized on 22nd February, 2016. Initially both the appellant and the respondent were very happy. The appellant took the respondent to USA consulate for her

biometric with prefixed appointment on 25th March, 2016. He contemplated that immediately after marriage he would take his wife to USA. He also fixed appointment for US Visa for the respondent at US consulate on 7th March, 2016 and purchased air ticket for his wife on 12th March, 2016. The appellant subsequently came to know that the respondent had been suffering from blood cancer and she was under treatment in the Oncology Department of Appollo Clinical Hospital since last nine years. The respondent and her parents concealed and suppressed all facts before her marriage with the appellant. Thus, the respondent and her family members played fraud upon the appellant and the fraud was confirmed on 7th March, 2016.

14. It is submitted by the learned Advocate for the appellant that the opposite party knowing fully well that none of her parents-in-law never ever ill treated her at any point of time in any manner whatsoever during her few days at her matrimonial home, desperately made false allegations both in the petitions for alimony pendente lite and under Section 125 of the Cr.P.C. The allegations of torture made by the respondent against the appellant and his parents are absolutely false and concocted. She also made an allegation that her father-in-law demanded a sum of Rs.3 lakhs for repairing and beautification of the ground floor of her matrimonial home. It is submitted by the learned Advocate for the appellant that the averments made in the petitions for alimony pendente lite and under Section 125 of the Cr.P.C contain false allegation which *per se* is abuse of the process of law. The respondent approached the trial court with

uncleaned hand. Learned Advocate for the appellant submits that Section 195(1)(b)(i) states that no court shall take cognizance of any offence punishable under Sections 193-196, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, no prosecution would be lodged except on the complaint in writing of that court or of such officer of that court as that court may authorise in writing in this behalf, or of some other court to which that court is subordinate. By filing the petitions under Section 340 of the Cr.P.C the appellant invites court's attention alleging that an offence under Section 193 of the IPC was committed by the respondent. The trial courts in both the proceedings ought to have considered the applications under Section 340 of the IPC filed by the appellant by making preliminary inquiry, regarding its finding to that effect and then making a complaint thereof in writing and sending it to a competent court having jurisdiction to try an offence under Section 193 of the IPC.

15. In support of his contention the learned Advocate for the appellant refers to certain decisions of the Hon'ble Supreme Court and other High Courts including this Court obtaining copies thereof from the website <http://indiankanoon.org>. It is needless to mention that citations published in Indiankanoon cannot be relied upon by a court of law. Because Indiankanoon website has not been approved as a confirmed legal journal by the Hon'ble Supreme Court. Therefore, I propose to state hereinbelow the names of the parties and the case number and the date of disposal while referring to the said judgment.

16. In **Sunny Bhumbla vs. Shashi : CRA No.197 SB of 2010 (O&M)** decided by the High Court of Punjab & Haryana on 25th January, 2010 the scope of Section 340 came up for consideration. In the said case the respondent admitted in her cross examination about her employment, salary, inheritance of landed property. After completion of cross examination, she again placed on record another affidavit dated 27th August, 2008 solemnly affirming therein that she had inadvertently not mentioned about the source of income as well as employment in the earlier affidavit dated 14th August, 2008. Thereafter the appellant moved an application under Section 195 of the Cr.P.C for initiating proceedings against the respondent for submitting a false affidavit before the learned trial court, in order to get more maintenance from the appellant. A Single Bench of the High Court of Punjab and Haryana held that the learned trial court has given a go by to the provision of Section 340 of the Cr.P.C. The approach adopted by the learned trial court is unwholesome and is depreciable. The impugned order is absolutely silent as to whether the application has been dismissed or allowed, if so for which reasons. Accordingly the trial court was directed to decide the application under Section 340 of the Cr.P.C in accordance with law. In **Dilip Singh vs. State of U.P & Ors. : (Civil Appeal No.5239 of 2002)**, the Hon'ble Supreme Court by its judgment dated 3rd December, 2009 was pleased to set aside an appeal holding, inter alia, that the appellants successfully made their efforts to mislead the authorities and the courts which transmitted through three generations and the conduct of the appellant

and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. According to the learned Advocate for the appellant the respondent by making false allegations polluted the course of administration of justice and therefore proceeding under Section 340 of the Cr.P.C ought to have been initiated by the courts below in both the appeals.

17. Referring to another decision in **Syed Nazim Husain vs. The Additional Principal Judge Family Court & Anr.** passed in Writ Petition No.(M/S) of 2002 by a High Court of Judicature at Allahabad, Lucknow Bench, Lucknow on 9th January, 2003, it is submitted by the learned Counsel for the appellant that if an application under Section 340 is moved pending case bringing to the notice of the court that false evidence knowing well has been filed or fabricated in such proceedings, the court should dispose of the said application first before proceeding any further or before recording of further evidence.

18. Learned Advocate for the appellant has also filed some other decisions to argue that a marriage suppressing the serious illness of the respondent like cancer or malignant tumour is a nullity where such marriage has not been consummated due to the suffering of the respondent.

19. Mr. Avik Ghatak, learned Advocate for the opposite party/wife on the other hand, submits that the allegation of the petitioner is that the respondent has made some false allegations against the petitioner which

amounts to an offence under Section 191 of the IPC which is punishable under Section 193 of the IPC. Section 191 of the IPC States-

“ 191. Giving false evidence.—Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.”

In the instant case the respondent/opposite party alleged that immediately after marriage she was subjected to physical and mental torture at her matrimonial home inflicted upon her by her husband and in-laws. Due to such physical and mental torture she became ill and was admitted to hospital with the help of her father.

20. On the contrary, the case of the petitioner is of denial of such allegation it is demonstrated by the petitioner that she was happily residing at her matrimonial home till 7th March, 2016. Her husband took all steps for procurement of her Visa to take her to USA. The respondent voluntarily went to her paternal home with her father for medical treatment. Subsequently, the petitioner came to know that she is suffering from cancer for last nine years. According to the petitioner the averment made in the petition under Section 125 of the Cr.P.C as well as in the application under Section 24 of the Hindu Marriage Act are false statement unknowingly and willfully made by the respondent and therefore the respondent committed an offence under Section 193 of the IPC.

21. It is submitted by the learned Advocate for the respondent that the issue as to whether the respondent made false statement or not can only be determined at the time of final adjudication of the proceedings.

22. Learned Advocate for the respondent further submits that in view of Section 195(1)(b)(i) of the Cr.P.C no Court shall take cognizance of any offence punishable under Sections 193 to 196 when such offence is alleged to have been committed in or in relation to any proceeding in any court except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf or of some other court to which that court is subordinate. Therefore, the appellant/petitioners have no locus to file a complaint under Section 340 of the Cr.P.C. Accordingly, an appeal under Section 341 of the Cr.P.C is also not maintainable.

23. The Hon'ble Supreme Court in **Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & Anr.** reported in **(2005) 4 SCC 370** was pleased to held that Section 195(1) mandates the complaint in writing of the court for taking cognizance of offences enumerated in clauses (b)(i) and (b)(ii) thereof. Sections 340 and 341 Cr.P.C. which occur in Chapter XXVI give the procedure for filing of the complaint and other matters connected therewith. The heading of this Chapter is - 'Provisions as to offences affecting the administration of justice'. Though, as a general rule, the language employed in a heading cannot be used to give a different effect to clear words of the Section where there cannot be any doubt as to their ordinary meaning, but they are not to be treated as if they were marginal

notes or were introduced into the Act merely for the purpose of classifying the enactments. They constitute an important part of the Act itself, and may be read not only as explaining the Sections which immediately follow them, as a preamble to a statute may be looked to explain its enactments, but as affording a better key to the constructions of the Sections which follow them than might be afforded by a mere preamble. The fact that the procedure for filing a complaint by Court has been provided in Chapter XXVI dealing with offences affecting administration of justice, is a clear pointer of the legislative intent that the offence committed should be of such type which directly affects the administration of justice, viz., which is committed after the document is produced or given in evidence in Court. Any offence committed with respect to a document at a time prior to its production or giving in evidence in Court cannot, strictly speaking, be said to be an offence affecting the administration of justice.

24. It is further held by the Hon'ble Supreme Court in the above mentioned report in paragraph 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 interest 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(i)(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 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. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.”

25. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr.P.C. contemplates holding of a preliminary

enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

26. The Division Bench of Bombay High Court in **Dr. Santosh Chandrashekhar Shetty vs. Ameeta Santosh Shetty** reported in **(2019) 3 Mah LJ 189**. Similarly held that action under Section 340 Cr.P.C is to

be initiated at the discretion of the court and discussion will have to be exercised considering the parameters laid down by the Hon'ble Supreme Court.

27. In the above mentioned reported decision also an applicant husband contended that deliberate and misleading statements have been made by the respondent wife in her reply. The Hon'ble Bombay High Court found that there is no adjudication made so far on the averments made by wife on the basis of which the civil application is filed. While deciding expediency of taking action, the court cannot weigh the magnitude of injury suffered by the person affected but the court is more concerned with the effect or impact of such on the administration of justice. In view of the above fact, at this stage, it cannot be stated that the alleged false or misleading allegations made by the one respondent have any serious impact upon the administration of justice.

28. The decision of **Iqbal Singh Marwah (supra)** was subsequently followed in the case of **Amarsang Nathaji vs. Haardik Harshadbhai Patel & Ors.** reported in **(2017) 1 SCC 113**. Paragraph 6-10 of the instant judgment is relevant and quoted below:-

“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 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* [*Pritish v. State of Maharashtra*, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] .)

8. In *Iqbal Singh Marwah v. Meenakshi Marwah* [*Iqbal Singh Marwah v. Meenakshi Marwah*, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] , a Constitution Bench of this Court has gone into the scope of Section 340 CrPC. Para 23 deals with the relevant consideration: (SCC pp. 386-87)

“23. In view of the language used in Section 340 CrPC 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 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.”

9. Having heard the learned counsels appearing on both sides and having gone through the impugned order and also having regard to the subsequent development whereby the parties have decided to amicably settle some of the disputes, we are of the view that the matter needs fresh consideration. We are also constrained to form such an opinion since it is fairly clear on a reading of the order that the Court has not followed all the requirements under Section 340 CrPC as settled by this Court in the decisions referred to above regarding the formation of the opinion on the expediency to initiate an inquiry into any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 IPC, when such an offence is alleged to have been committed in relation to any proceedings before the court. On forming such an opinion in respect of such an offence which appears to have been committed, the court has to take a further decision as to whether any complaint should be made or not.

10. No doubt, such an opinion can be formed even without conducting a preliminary inquiry, if the formation of opinion is otherwise possible. And even after forming the opinion also, the court has to take a decision as to whether it is required, in the facts and circumstances of the case, to file the complaint. Only if the decision is in the affirmative, the court needs to make a complaint in writing and the complaint thus made in writing is then to be sent to a Magistrate of competent jurisdiction.”

29. Thus, from the principles enunciated by the Hon'ble Supreme Court in series of decisions, some of which are quoted above, it is ascertained that an application for committing offence under Section 191 of the Cr.P.C is to be filed by the court before whom such false statement has been made. A private party cannot file a complaint alleging commission of offence punishable under Section 193 of the IPC.

Secondly, Before lodging a complaint the court must come to a decision that the defendant/respondent has intentionally given a false statement at any stage of judicial proceeding or fabricated false evidence for the purpose of using the same at any stage of judicial proceeding.

Thirdly, As a natural consequence thereof the learned Magistrate or the learned Judge in whose court's applications under Section 125 of the Cr.P.C and Section 24 of the Hindu Marriage Act respectively are pending shall have to come to a decision that the respondent has made false statement in course of judicial proceeding for the purpose of using the same in the said proceeding. The learned Magistrate or the learned Judge can only come to such decision after taking evidence of the parties. Decision as to whether a party to a proceeding makes a false statement in her petition or not cannot be decided without taking evidence before adjudicating the case.

Fourthly, The trial court will also decide that it is expedient for the interest of justice to initiate an enquiry into the offence of false evidence.

Fifthly, On prima facie satisfaction of the offence which appears to have been committed, the court may lodge a complaint under Section 193 of the Cr.P.C against the respondent and such application shall be disposed of following the procedure contained in Section 340 of the Code.

30. In the instant case, the appellant invites the court to draw up a proceeding under Section 340 of the Cr.P.C immediately after the respondent filed an application under Section 24 of the Hindu Marriage Act and an application under Section 125 of the Cr.P.C.

31. I am in agreement with the orders made by the trial court that such proceeding cannot be initiated at the present stage.

32. In view of the above discussion the appeals being CRA 687 of 2017 and CRA 452 of 2018 and CRR 341 of 2019 are dismissed on contest however, without cost.

33. The trial court is directed to take expeditious step to dispose of the matrimonial suit pending between the appellant and the respondent and the maintenance case under Section 125 of the Cr.P.C expeditiously.

(Bibek Chaudhuri, J.)