

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 3430 of 2022

***Bibek Mondal
Vs.
The State of West Bengal & Anr.***

**For the petitioner : Mr. Sarthak Chowdhury, Adv.
Ms. Antara Das, Adv.**

Heard on : 24.01.2023

Judgment On : 24.01.2023.

Bibek Chaudhuri, J.

In a proceeding under Section 125 of the Code of Criminal Procedure pending before the learned Judicial Magistrate, 2nd Court, Chandernagore, the parties have filed affidavits of assets in terms of the guideline of the Hon'ble Supreme Court in *Rajnish Vs. Neha & Anr.* The learned Magistrate granted interim maintenance in favour of the wife/opposite party on the basis of such affidavits of assets. Subsequently, the husband/petitioner filed an application under Section 340 of the Code of Criminal Procedure before the learned Magistrate for initiating an enquiry alleging, *inter alia*, that the said affidavits of assets contained false statements and forged documents.

The learned Magistrate rejected the application on the ground that such application ought to be presented before the proper Court so that the same can be dealt with as if instituted in a police report and proceed with accordingly.

Prima facie the learned Magistrate failed to appreciate the provision contained in Section 340 of the Code of Criminal Procedure. If an allegation referred to in clause (b) of Sub-section (1) of Section 195, is made in respect of a document produced or given in evidence in a proceeding in the Court, such Court is under obligation to cause preliminary enquiry and ;

- (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 that 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;
- (e) bind over any person to appear and give evidence before such Magistrate.

The learned Magistrate did not hold any preliminary enquiry before rejecting such application under Section 340 of the Code of Criminal Procedure filed by the present petitioner.

In spite of such observation being made by this Court at the initial stage, this Court cannot admit the instant revision on the ground that any order passed under Section 340 of the Code of Criminal Procedure is appealable under Section 341 of the Code of Criminal Procedure. The petitioner is at liberty to file an appeal against the impugned order before the competent Court of law subject to the law of limitation.

The instant revision, is, therefore, dismissed.

(Bibek Chaudhuri, J.)

***Mithun De/
A.R. (Ct).
SI No.22.
D/L.***