

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.3887 OF 2022

Prashant s/o Subhashchandra Somani Applicant

Versus

State of Maharashtra Respondent

Mrs. R. S. Kulkarni, advocate for the applicant.
Mr. S. P. Sonpawale, APP for the State.

CORAM : R. M. JOSHI, J.
RESERVED ON : 30th JUNE, 2023.
PRONOUNCED ON : 10th JULY, 2023.

ORDER

1. By this application, applicant seeks initiation of criminal proceeding under Section 340 of Code of Criminal Procedure read with Section 195(1)(b)(i) for the offences punishable under Sections 192, 193, 199, 200 of the Indian Penal Code.

2. It is the contention of applicant that respondent No. 2 i.e. proposed accused is widow of Advocate Nitin Kabra, brother-in-law of applicant. Advocate Kabra met with an accident and thereafter applicant took care of respondent No. 2 and her children. Applicant contends that respondent No. 2 was remarried and after her re-

marriage she transferred the property in favour of Smt. Mamata Kabra, defendant No. 1 in Special Civil Suit No. 793/2022, by executing registered gift deed on 14th October, 2009 and thereafter she paid off the entire mortgage of Bank and made property bearing CTS No. 8377 free from encumbrances.

3. Applicant further contends that respondent No. 2 filed suit bearing Special Civil Suit No. 793/2012 seeking declaration to set aside Gift Deed dated 14th October, 2009 with the contention that said Gift Deed was result of mis-representation, fraud and coercion and hence the same is void. Application for injunction was moved however, the same was not pursued till the year 2020. As there was an attempt of respondent No. 2 to illegally enter the suit property and also to change lock of the same, report bearing Crime No. 32/2015 came to be lodged against her with the concerned police station for the offences punishable under Sections 454, 385 of the Indian Penal Code. Applicant transferred the suit property in favour of present applicant and his wife, who is daughter of defendant No. 1. Applications were moved vide Exhibits 70, 95 and 112 in Special Civil Suit No. 793/2012 seeking impleadment of applicant and his wife and seeking stay to the demolition. However, the same were rejected

by the Trial Court. Respondent No. 2 challenged the said order by filing Misc. Appeal No. 30/2020 before Additional District Judge, Jalgaon wherein injunction was granted against carrying out any changes in the suit property. Said order came to be taken exception by the applicant by filing Writ Petition No. 8295/2020 in this Court. It is the contention of the applicant that respondent No. 2 filed affidavit to oppose said writ petition. During trial of Special Civil Suit No. 793/2012, respondent No. 2 admitted in her deposition that the affidavit so filed was false. It is therefore contended that respondent No. 2 has committed an act of forgery and fabrication of documents and hence appropriate action under Section 340 of the Code of Criminal Procedure be initiated.

4. Learned counsel for the applicant states that there is no dispute about the facts that an affidavit was filed by respondent No. 2 in Writ Petition No. 8295/2020 and the copy of deposition of respondent No. 2 recorded in Special Civil Suit No. 793/2012, which is placed on record which indicate that there is admission given by respondent No. 2 about the said affidavit containing false statements. It is submitted that the said admission is more than sufficient reason to proceed under Section 340 of the Code of Criminal Procedure. To

buttress her submission, she placed reliance on judgments in the case of Pritish vs. State of Maharashtra and others, **AIR 2002 SC 236** and Karunakaran vs. T. V. Eachara Warriar and others, **AIR 1978 SC 290**.

5. In order to appreciate the contents of the application, relevant provisions of Section 340 of the Code of Criminal Procedure need to be considered which read thus :-

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 interest 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) xxx
- (e) xxx
- (2) xxx
- (3) xxx
- (a) xxx
- (b) xxx
- (4) xxx

6. A bare perusal of this provision indicates that to invoke it the Court is required to form an opinion that it is expedient in the interest of justice that an enquiry should be made into the offence referred in clause (b) to Sub-Section 1 of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or in respect of a document produced or given in evidence in the proceeding in that Court. It is only after formation of such prima facie opinion, an enquiry could be made into offence under Section 195(1)(b) of the Indian Penal Code or in respect of document produced or evidence given in the proceeding. Even for the purpose of conducting such preliminary enquiry, there must be material on record to form such opinion. Needless to state that action under this section can not be initiated casually and prematurely.

7. In the instant case, applicant is contending that since respondent No. 2 has filed affidavit before this Court in Writ Petition No. 8295/2020 and in the cross-examination conducted in Special Civil Suit No. 793/2012 she admits the contents of the same affidavit to be incorrect. It is thus clear that independently on the basis of affidavit filed before this Court in Writ Petition No. 8295/2020 and without relying upon evidence of respondent recorded in Special Civil

Case No. 793/2012, no finding can be recorded that the contents of affidavit are false. It is the Civil Court before whom evidence of the respondent is recorded and that Court only would be competent to interpret it and record findings thereon. Even otherwise, without considering the entire evidence and without recording of finding by the Court before whom such evidence is led, no prima facie opinion can be arrived at in respect of filing false affidavit. It is settled law that the evidence of witness cannot be considered in piecemeal nor any statement can be read or appreciated in isolation. The entire evidence of the witness needs to be taken into account in order to interpret the same. Cross-examination of respondent No. 2 conducted on behalf of the applicant herein indicates that though it is stated so that the contents of the affidavit are incorrect, it is further stated that the said contents of the affidavit are incorporated therein by the advocate and that she did not notice the said fact earlier. Thus, it is no unequivocal or unqualified admission of respondent No. 2 about filing of false affidavit before this Court. Such statement is clarified to the effect that the contents were incorporated by the advocate and that she signed the same by keeping trust on him. Merely because respondent No. 2 is an advocate, it cannot be presumed that what she states is incorrect.

The said evidence is subject matter of consideration and for recording finding thereon before the learned Civil Court. Admittedly, no findings are recorded in this regard till date. Thus, it would be pre-mature to call upon this Court to form any opinion at this stage that this is a case wherein false affidavit is filed and resultantly this is a case for initiating action under Section 340 of the Code of Criminal Procedure. In considered view of this Court, the application being pre-mature, cannot be entertained at this stage. Hence, application stands disposed of.

8. Pending application, if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

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