

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.219 OF 2019**

Sandeep Khemraj Todi ...Applicant

vs.

Neha Sandeep Todi And Ors. ...Respondents

....

Mr. Sandeep Todi, Applicant present in-person.

Mr. R.M. Pethe, APP, for the Respondent State.

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CORAM : ANUJA PRABHUDESSAI, J.

DATE : 24 APRIL 2023

P.C. :

. This is an application to initiate proceedings under Section 340 r/w Section 195 of Cr.P.C.

2. The Applicant herein was married to Respondent No.1. The matrimonial dispute between the parties resulted in the Respondent No.1 lodging FIR against the Applicant, pursuant to which C.R.No.20/2017 was registered against him with Samta Nagar Police Station for offences punishable under sections 498-A, 406 r/w. 34 of the Indian Penal Code. The Applications for Anticipatory Bail filed by the Applicant were dismissed by the Sessions Court on 26/04/2017 and by this Court by order dated 26/06/2018 in Anticipatory Bail Application No.794/2017.

3. The Applicant claims that the statement recorded in para 3 of order dated 26 June 2018 that in the month of October 2016, the Applicant retained the entire stridhan and other articles of the First Informant and drove her out of her matrimonial house along with children is a false statement. He submits that Respondent No.1 had failed to provide any material as regards misappropriation of stridhan. He submits that the Investigating Officer did not bring it to the notice of the Court that the Respondent No.1 had not produced any evidence to indicate that the Applicant was in possession of the stridhan. He claims that the Respondents have perpetuated various transgressions and falsities in the proceedings of Anticipatory Bail Application No.794 of 2017. Hence, he seeks to initiate proceedings under section 340 r/w. 195 of Cr.P.C. against the first informant (Respondent No.1), the Investigating Officers (Respondent Nos.2 and 3) and the advocates (Respondent Nos.4 and 5) who represented the Respondent No.1 in ABA/20/2017, for willfully giving false evidence, making false claims, false reports ultimately leading to miscarriage of justice. He has relied upon decisions of the Apex Court in **Pritish vs. State of Maharashtra & Ors.(2002) 1 SCC 253**, **Perumal v/s. Janaki (2014) 1 SCR 591** and **Arish Azgar Qureshi v/s. Farid Ahmad Qureshi, Criminal Appeal No.387 of 2019, New Delhi, 26 February 2019**. He has also relied upon the decision of the learned Single Judge of this Court in **Union of India & Ors. vs. Haresh Virumal Milani Civil WP(St.) No.4899 of 2017 dated 17 April 201**.

4. The issue before the Apex Court in *Pritish* (supra) as well as learned Judge of this Court in *Haresh Milani* (supra) was whether the person against whom proceedings u/s 340 are proposed, has right to be heard during the preliminary enquiry conducted by the Court. These decisions are not applicable to the facts of the case, as the question for consideration is whether proceedings u/s 340 Cr.P.C. can be initiated on the premise that Respondent No.1 had made a false statement in the FIR as regards misappropriation of stridhan and that the Investigating Officers suppressed the fact that Respondent No.1 had not produced material to prove misappropriation of stridhan.

5. In *Aarish Asgar Qureshi* (supra), the challenge was to the order of the High Court wherein inquiry under section 340 of Cr.P.C. was ordered on the premise that the statement made in the anticipatory bail application was false. The Apex Court referred to the previous decisions in *Chhaju Ram v/s. Radheshyam* (1971) 1 SCC 774, *Chandrapal Singh and ors. v/s. Maharaj Singh and anr.* (1982) 1 SCC 466 and *R.S. Sujatha v/s. State of Karnataka and ors.* (2011) 5 SCC 689 and observed that to initiate proceedings under Section 340 of the Cr.P.C. there should be something deliberate - a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise. It was held that the statement made in the anticipatory bail application cannot be tested against unimpeachable evidence as evidence was not led. The Apex Court observed that all

that the High Court had seen was a preliminary investigation report that too by a police officer, together with a High Court order granting anticipatory bail, none of which could be considered as unimpeachable evidence against which it could be clearly stated that a prima facie case of perjury had been made out.

6. In ***Perumal*** (supra) it is held that to constitute an act of giving false evidence, a person must make a statement which is either false to the knowledge or belief of the maker or which the maker does not believe to be true. Further, it requires that such a statement is made by a person (1) who is legally bound by an oath; (2) by an express provision of law to state the truth; or (3) being bound by law to make a declaration upon any subject. It is held that a police officer filing a charge-sheet does not make any statement on oath nor is bound by any express provision of law to state the truth, though being a public servant is obliged to act in good faith. It is held that the High Court not only have an authority to exercise such jurisdiction under Section 195 but also an obligation to exercise such powers in appropriate cases.

7. In ***Santosh Chandrashekhar Shetty (Dr.) vs. Mrs. Ameeta Santosh Shetty and Anr. 2019 (3) Bom. C.R. 141*** the Applicant - husband had sought to initiate proceedings under Section 340 of Cr.P.C. on the ground that the Respondent -wife had made false and misleading statements in her reply to the civil application as well as in the application filed by her for enhancement of maintenance. The

Division Bench of this Court after considering several decisions has summarised the law laid down by the Apex Court on Section 340 of Cr.P.C. as under:-

“27....

A] The Court is not bound to make a complaint regarding commission of offence and the said course will be adopted only if the Court is of the opinion that it is expedient in the interests of justice to do so and not in every case;

B] Before ordering filing of complaint, the Court may hold a preliminary enquiry. But it is not necessary to hold preliminary enquiry in every case and when the Court is otherwise in a position to form an opinion which is a condition precedent to form an opinion which is a condition precedent for initiating action under Section 340, the Court may dispense with the enquiry;

C] Even if the Court comes to the conclusion that prima facie, a case of commission of offence is made out, it is not necessary in every case to direct filing of a complaint. The Court cannot direct filing of a complaint unless on the basis of material on record is of the opinion that it is expedient in the interest of justice to direct filing of a complaint. As held by the Constitution Bench of the Apex Court in the case of Inbal Singh (supra), expediency will

normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by the alleged offence but having regard to the effect or impact of such commission of offence has upon the administration of justice.

D] As observed in paragraph 24 of the decision of the Constitution Bench in the case of Iqbal Singh, normally a direction for filing of a complaint is not made during the pendency of proceedings and that is done at the stage when proceeding is concluded and final judgment is rendered.”

8. In the instant case, Respondent No.1 had lodged the FIR against the Applicant and others for subjecting her to cruelty within the meaning of Section 498A IPC. Allegations were also levelled against the Applicant for misappropriating her stridhan and other articles. The allegations levelled in the First Information Report cannot be considered as unimpeachable evidence. The Applicant contends that the Respondent No.1 has not proved that he was in possession of stridhan and that the Investigating Officers have suppressed this fact from the Court. Suffice it to say that the allegations can be proved only in the course of the trial. It is not in dispute that the trial has not yet commenced and truthfulness of the statement is not decided. It is only after recording the evidence it can be decided whether the allegations levelled in the First Information Report are true or false. In such circumstances, proceedings under

Section 340 of Cr.P.C. cannot be initiated on the basis of the statement made in the First Information Report or on the premise that the allegations in the FIR are false. Hence, at this juncture, no case is made out to initiate proceedings under Section 340 of Cr.P.C.

9. Under the circumstances, the application stands dismissed.

(ANUJA PRABHUDESSAI, J.)