

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT NAGPUR, NAGPUR.

...

CRIMINAL APPEAL NO. 643/2022

Mithun s/o Ghanshyam Kherde

.. Appellant

versus

Smt.Shrawani w/o Mithun Kherde and another

.. Respondent

.....
Mr.M.G. Kherde, Adv. (in person)

Ms.Padma Chandekar, Advocate for Respondents
.....

CORAM: ANIL L. PANSARE, J.

DATED : 20th February, 2023.

PC:

Heard learned counsel for respective parties.

2. The appellant has filed the present Appeal under Section 341 of the Code of Criminal Procedure, 1973 (in short, “the Code”). The appellant is aggrieved by the order dated 26th July 2022 passed by the learned Judge Family Court No.4, Nagpur in Petition E-25/3029. By the impugned order passed below Exh.282-A, the learned Judge of the Family Court has rejected the application filed by the appellant u/s 340 of the Code. It appears that the application u/s 125 of the Code is pending before the Family Court. The respondent is the applicant before the Family Court. The appellant claims that respondent-wife has committed offences punishable u/ss. 177, 181, 188, 192, 193, 194, 195, 196, 199, 200, 209, 210 and 211 of the Code.

3. Section 340 of the Code provides for the procedure to be followed if it appears to the Court that the offences referred to in clause (b) of sub-section (1) of Section 195 of the Code has been committed. Section 195 of the Code provides that no Court shall take cognizance of the offence punishable u/s 172 to 188 of the IPC, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is

administratively subordinate. It further provides that no court shall take cognizance of any offence punishable u/s 193 to 196, 199, 200, 205 to 211 and 228 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court. Thus, for the Court to arrive at whether the offences mentioned above have been committed, it will have to enquire as to whether the offence as alleged, have been committed in, or in relation to, any proceeding in any court. The enquiry is provided u/s 340 of the Code. The learned Family Court after hearing both sides, was of the opinion that the documents produced, affidavit tendered and the evidence filed by the respondent-wife has not been appreciated and that it is only after appreciation and consideration of the said documents at the time of final decision of the case and until the same is appreciated and considered, the Court cannot presume that the wife has deliberately or consciously misguided the Court and has interfered in the administration of justice. In other words, the Court has rendered the finding that the application is premature.

4. I do not find any perversity in the order impugned since to arrive at a conclusion as to whether the documents mentioned above have been tendered in relation to the proceeding before the Court, it will have to go through the entire evidence led by both the sides, so also the documents and thereafter the Court will be in a position to appreciate whether the offence referred to in clause (b) of sub-section (1) of Section 125 of the Code, has been committed and that thereafter the Court will have to conduct preliminary enquiry and pass appropriate orders u/s 340 of the Code.

5. Thus, the learned Judge of the Family Court has not committed any error in rejecting the application. In fact, the learned Family Court has indicated in the impugned order that the accusation made can be considered at the time of rendering judgment. In the result, the appeal fails and is dismissed in motion hearing itself. In the circumstances, the parties to bear

their own costs.

[ANIL L. PANSARE, J.]

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