

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M 5295/2021(O&M)

Date of decision: 04.08.2023.

Partha Protim Dutta

.....Petitioner

Vs.

Nilanjana Rajkhowa Dutta

.....Respondent

CORAM HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Sumeet Goel, Senior Advocate with
 Mr. Ajay Kalra, Advocate and
 Mr. Aarush Neeraj Vaid, Advocate for the petitioner.

 Mr. Manu Loona, Advocate for the respondent.

Nidhi Gupta, J.**CRM 23758/2023**

Prayer in this application under Section 482 Cr.PC moved by the petitioner is for amendment of Head Note, and prayer clause so as to incorporate a specific challenge to the FIR No.711 dated 9.3.2020 registered at PS Shivaji Nagar, Gurugram under Sections 466, 467,471, 473, 474, 476, 120-B, 34 IPC.

Notice of the application.

Ld. Counsel for the respondent accepts notice and states that he has no objection in case the application is allowed, and petitioner is allowed to amend the Head note and prayer clause, as detailed in the application.

In view of the above, application is allowed, and petitioner is permitted to amend the Head note and prayer clause as prayed for in the application.

Amended Head Note appended with the application is taken on record and Registry is directed to place the same at the appropriate place in the paper book and paginate the same.

Main case.

Prayer in this petition under Section 482 and Section 483 of the Code of Criminal Procedure is to quash and/or set aside order dated 07.03.2020 (Annexure P-6) passed by Additional Principal Judge, Family Court, Gurugram, in an application bearing No. Misc. HMA No. 4369 of 2018 under Section 340 Cr.P.C. instituted on 29.08.2015 by the Respondent (Annexure P-3) in the case bearing No. HMA-768- 2015 titled as “Partha Protim Dutta vs. Nilanjana Rajkhowa Dutta & Anr.” instituted on 29.08.2015; & also to quash FIR No. 711 dated 09.03.2020 under Sections 466, 467, 471, 473, 474, 476, 120-B, 34 IPC registered at PS Shivaji Nagar, Gurugram (Annexure P-7) in pursuance of Order dated 07.03.2020, and all the subsequent proceedings emanating there-from.

Brief facts of the case are that the marriage between the parties was solemnized on 30.09.2003 at Guwahati as per Hindu rites and customs. From the wedlock, two daughters were born on 21.07.2004 and 28.03.2007. Respondent-Wife filed complaint against the Petitioner Husband and FIR No. 236 dated 07.10.2011 under Sections 498A, 323, 406, 506 IPC was lodged against Petitioner at Police Station Sector 40, Gurugram. The

Petitioner was acquitted of all charges in the said case vide Judgment dated 07.11.2019 (Annexure P-1).

In the meantime, the petitioner filed petition HMA No. 768 of 2015 under Section 13 of the Hindu Marriage Act, 1955 for seeking divorce on the ground of adultery, cruelty and desertion. The said petition was disposed of by the Learned Family Court vide its judgment dated 30.03.2019 (Annexure P-2) and decree of judicial separation was passed by the Learned Court in the peculiar facts and circumstances of the case.

In the proceedings u/s 13 HMA Act, the Respondent filed an application dated 23.05.2018 under Section 340 Cr.P.C. read-with Section 151 CPC (Annexure P-3) against the Petitioner and others, alleging thereby that the petitioner had prepared a forged and fabricated judgment dated 17.10.2017 (Annexure P-4), whereby the Learned Family Court had allegedly granted divorce to the parties. The Respondent in her application under Section 340 Cr.P.C. alleged that Petitioner was getting married at Jaipur with someone on 12.05.2018. Upon coming to know regarding the proposed marriage, Respondent approached local police at Jaipur and attempted to stop the marriage of Petitioner. Upon being confronted, the Petitioner had handed over a copy of the alleged judgement dated 17.10.2017 and as such, the Petitioner allegedly proceeded with the marriage ceremony.

Vide the impugned order dated 07.03.2020, the Learned Family Court has directed the police to register an FIR. Hence, present revision petition.

Ld. Senior Counsel appearing on behalf of the petitioner submits that in pursuance to the impugned order, FIR No. 711 dated

09.03.2020 was registered at PS Shivaji Nagar, Gurugram under Sections 466/467/471/473/474/476/ 120B/34 IPC against the Petitioner.

It is submitted that scope of powers of Court while entertaining application under Section 340 Cr.P.C. is limited to the extent of examining if an offence referred to in Section 195(1)(b) Cr.P.C. in respect of a document produced or given in evidence in a proceeding in that Court, has been committed or not. It is submitted that if the Court after making such inquiry comes to a conclusion that an offence of the nature mentioned above has been committed, then the only recourse available to the said Court is to direct an officer of that Court to make a complaint in writing to the Judicial Magistrate who shall proceed further as per prescribed procedure. It is submitted that if the Court comes to a conclusion that no offence of the nature mentioned in Section 195(1)(b) has been committed, then the only recourse available to the Court is to dismiss the said application under Section 340 Cr.P.C. However, the said section does not in any manner empower the said Court to direct the police to register an FIR. The Court entertaining application under Section 340 Cr.P.C. is not a criminal Court exercising jurisdiction in terms of Chapter XII of Cr.P.C. which could direct registration of FIR.

Ld. Senior Counsel further submits that in the present case, the learned Court below has categorically noted that the alleged fabricated document has neither been used in a Court proceeding by way of evidence, nor has been produced in the Court for the purposes of Section 195 & 340 Cr.P.C. and as such, no complaint under Section 340 Cr.P.C. can be registered against Petitioner before the magistrate. It is submitted that despite this fact, the Court proceeded to direct the Police to register an FIR.

In support of his contentions ld. Senior Counsel for the petitioner relies upon **Iqbal Singh Marwah v Meenakshi Marwah, 2005(2)**

RCR(Criminal) 178; State (NCT of Delhi) v Pankaj Chaudhary and others, 2019 (11) SCC 575; M/s Bandekar Brothers Pvt. Ltd. and anr. V Prasad Vassudev Keni, etc. etc., 2020 AIR (Supreme Court) 4247; and Mrs. Saraswati Chatterjee v State, 2006 (23) RCR (Criminal) 863, wherein it has been held that Section 195(1)(b) Cr.PC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document *after* it has been produced or given in evidence in a proceeding in any Court ie during the time when the document was in custodia legis. It is submitted that in the present case, it has been recorded by the Court itself that the forged and fabricated document has not been used in the court proceedings by way of evidence.

Ld. Senior counsel further submits that in any event, the matter now stands compromised between the parties vide compromise dated 9.2.2023 (Annexure P-10) which has been placed on record vide CRM 11641/2023 which was allowed by this Court vide order dated 14.3.2023. It is therefore, submitted that the present petition be allowed, and the FIR No. 711 dated 9.3.2020 registered at PS Shivaji Nagar, Gurugram under Sections 466, 467, 471, 473, 474, 476, 120-B, 34 IPC, as well as impugned order dated 7.3.2020 (Annexure P-6) be set aside.

Ld. Counsel appearing on behalf of the respondent does not dispute the above said contentions and submissions made on behalf of the petitioner and admits the factum of compromise and submits that the matter may be allowed as prayed for.

In view of the above noted facts and admitted position, as well as the legal position as noted above, the present petition is allowed, and FIR No. 711 dated 9.3.2020 registered at PS Shivaji Nagar, Gurugram under

Sections 466, 467,471, 473, 474, 476, 120-B, 34 IPC, as well as order dated 7.3.2020 (Annexure P-6) are set aside.

Disposed of as above.

04.08.2023.
Joshi

(Nidhi Gupta)
Judge