

CRM-M-12502 of 2019

2023:PHHC:044034

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-12502 of 2019

Date of decision: 13.03.2023

Som Prabha and another

.....Petitioners

Versus

Ashok Kumar and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Present: - Mr. Ashwani Gaur, Advocate, for the petitioner.

NAMIT KUMAR, J.

This petition has been filed by the petitioners under Section 482 Cr.P.C. for quashing of order dated 13.10.2014 passed by the Court of learned Judicial Magistrate Ist Class, Hisar, whereby application filed by the petitioners under Section 340 Cr.P.C. for summoning the respondents under Sections 191/192/193/196/199/200/420/463/464/467/468/471/120-B IPC, has been dismissed and also for quashing of order dated 24.09.2018 passed by the Court of learned Additional Sessions Judge, Hisar, whereby appeal preferred by the petitioners against order dated 13.10.2014 of the JMIC, Hisar, has been dismissed.

Brief facts of the case are that petitioners filed an application under Section 340 Cr.P.C. before the Judicial Magistrate Ist Class, Hisar, for summoning the respondents under Sections 191/192/193/196/199/200/420/463/464/467/468/471/120-B IPC pleading therein that father of respondents No.2 to 6 filed a civil suit against the petitioners and others titled as 'Gulab v. Harbans Lal etc.' which was decreed on 31.10.2012 by the Court of learned Civil Judge (Junior

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Division), Hisar. It was further submitted that in the said civil suit, one mutation No.392 dated 19.11.1930 in Urdu language was produced as Ex.P1, which was prepared and certified by respondent No.1-Ashok Kumar. Respondents No.2 to 6 in collusion with respondent No.1 got the said mutation rewritten as per their liking in order to grab the land of the petitioners. In the rewritten mutation, which was annexed with the application as Annexure-B, words like 'Hiba' and 'Gulab' were wrongly written, however, in the certified copy of mutation No.392, which was annexed as Annexure-A with the application, obtained by the petitioners from the copying agency, DC Office, Hisar, words 'Hiba' and 'Gulab' were not written. Petitioners alleged that as per original register, Annexure-B which had been got rewritten did not tally with Annexure-A. It was further submitted that during cross-examination, counsel for the petitioner-complainants had raised objection before the Court on the same at the time of producing Ex.P1 and Ex.P1/A on the ground of it being uncertified as Ex.P1 was not got photostat from the original record but the Court did not decide the same. Neither the person who prepared the Hindi version of mutation No.392 was produced in the Court as witness nor the person who had rewritten the same was produced in the Court as witness. Petitioner-complainants submitted that said mutation was rewritten by respondents No.2 to 6 to cause wrongful loss to the petitioners.

After hearing learned counsel for the petitioners and going through the record, application of the petitioners under Section 340 Cr.P.C. was dismissed by the Court of learned Judicial Magistrate Ist

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Class, Hisar, vide impugned order dated 13.10.2014. Aggrieved against order dated 13.10.2014, petitioners preferred appeal, which has also been dismissed by the Court of learned Additional Sessions Judge, Hisar, vide order dated 24.09.2018.

Learned counsel for the petitioners contended that the impugned orders are against the settled proposition of law. Both the Courts below have failed to appreciate that translated copy of the mutation produced by respondents No.2 to 6 did not tally with the original document. He further submitted that respondents No.2 to 6 have committed forgery to gain benefit out of the civil suit and cause wrongful loss to the petitioners. Therefore, respondents are liable to be summoned under Sections 191/192/193/196/199/200/420/463/464/467/468/471/120-B IPC.

I have heard learned counsel for the petitioners and perused the record.

Petitioners filed application under Section 340 Cr.P.C. before the Court to launch prosecution against the respondents on the ground that they had produced forged document during proceedings of civil suit titled 'Gulab versus Harbanslal'. Hon'ble Supreme Court in ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another, 2005(2) R.C.C.(Criminal) 178***, has held that section 195(1)(b)(ii) of Cr. P.C. 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 i.e.during the time when the document was in *custodia legis*. It is

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admitted fact that no addition or deletion was made in the document Ex. P1 when it become part of the Court record. In view of above observation of Hon'ble Supreme Court, since alleged act of forgery, if any, was committed, the same was committed prior to producing the alleged document before the court, therefore, provision of section 340 Cr. P.C. are not attracted in the present case.

As per the settled proposition of law, proceedings under Section 340 Cr.P.C. are not to be initiated in every case where offences are purportedly made out. In fact, the said proceedings are to be initiated only in a situation, where the Court considers it expedient in the interest of justice to make a complaint. This shows that such a course of filing a complaint will only be adopted, if the interest of justice requires and not in every case.

In view of the facts and circumstances mentioned hereinabove, it would certainly not be expedient in the interest of justice to initiate proceedings under Section 340 Cr.P.C.

Therefore, I find no merit in the present petition and hence, the same is hereby dismissed.

(NAMIT KUMAR)
JUDGE

13.03.2023
R.S.

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No