

CRR (F) No.477 of 2019

Neutral Citation No.2023:PHHC:154749

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

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**CRR (F) No.477 of 2019
Date of Decision: 02.12.2023**

Deepika Srivastava

... Petitioner

Versus

Gaurav Shrinivas

... Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. S.P. Srivastava, Advocate,
for the petitioner.

(Through Video Conferencing)

MANISHA BATRA, J.

1. The present petition has been filed by the petitioner Deepika Srivastava challenging the order dated 24.09.2018 passed by learned Additional Principal Judge, Family Court, Faridabad whereby, he had dismissed an application filed by the petitioner for prosecution of the respondent under Section 344 of Cr.P.C.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the petitioner had filed a petition seeking dissolution of her marriage with the respondent by passing a decree of divorce, in the Family Court, Faridabad. A decree was passed in her favour on 16.02.2018. During the pendency of the divorce petition before the Family Court, the respondent had sworn an affidavit in his evidence submitting therein a complaint was lodged by the father of the respondent at Police Station Patna Air Port to the effect that the petitioner had left

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her matrimonial home on 24.06.2014 while taking away all her clothing, expensive items and jewellery gifted to her by the family of the respondent. It is submitted that the petitioner had filed an application under the provisions of Right to Information Act, 2005 (For short “Act, 2005”) to the SHO Police Station, Air Port Patna to seek veracity of the contents of the affidavit with regard to filing of the abovesaid complaint and it was informed by SHO PS Air Port Patna that no such complaint was ever given at the Police Station. It is submitted that the respondent by filing a forged/false document and annexing the same with his affidavit had committed an offence of perjury with Court for which he was liable to be held guilty and convicted. It was submitted that she had filed an application before the learned Additional Principal Judge, Family Court, Faridabad for seeking action against the respondent. But the said application had been dismissed vide order dated 24.09.2018.

3. Learned counsel for the petitioner who has appeared through video conferencing facility has argued that the impugned order is not sustainable in the eyes of law and is liable to be set aside as the material placed on record by the petitioner proved that the respondent had fabricated false evidence in the form of complaint alleged to have been filed before the Police Station, Air Port Patna with an intention to use such evidence in the divorce petition that was filed by the petitioner against him. He has argued that it was, therefore, necessary and expedient in the interest of justice that the respondent should be tried for giving or fabricating false evidence in the Court and committing offence of perjury. He has further argued that the learned Additional Principal Judge has erred in declining the prayer so made by the petitioner and, therefore, the impugned order being not sustainable in

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the eyes of law is liable to be set aside. In support of his argument, learned counsel for the petitioner has referred to authorities cited as **Dy. General Manager, Redesignated as Dy. Director, Inter-State Bus Terminal and others v. Sudershan Kumari (Smt.) and others**, (1997) 3 Supreme Court Cases 496; **Suo Moto Proceedings against Mr. R.Karuppan, Advocate**, AIR 2001 SC 2204 and **Dhananjay Sharma v. State of Haryana and others**, AIR 1995 SC 1795.

4. I have heard learned counsel for the petitioner and have given due deliberations to the contentions raised by him besides perusal of the record.

5. As per Section 344 of Cr.P.C., if at the time of delivery of any judgment or final order disposing of any judicial proceeding, the Court of Session or Magistrate expresses an opinion to the effect that any witness appearing in such proceedings had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, false evidence, take cognizance of the offence. The object of this provision is to deal with the evil of perjury in a summary way. For exercising power under this section, Court at the time of delivery of judgment or final order must at the first time express opinion to the effect that the party/witness before it has either intentionally given false evidence or fabricated such evidence and secondly, the Court must come to the conclusion that in the interest of justice, the person concerned should be punished summarily for the offence which he/she appears to have been committed. The expediency has to be judged by the

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Court by weighing not the magnitude of injury suffered by the person affected by such false evidence, but having regard to the effect or impact, such commission of offence has upon the administration of justice. For invoking this provision of law, it is imperative on the part of the Court to form an opinion to come to a prima facie conclusion that the witness/party has made false statement and there should be material to justify permission of such opinion.

6. In the instant case, the respondent while recording his evidence before the Family Court, Faridabad had filed his sworn affidavit and along with the same had produced on record a copy of written information/complaint shown to have been given by his father to the Incharge of Police Station, Patna Air Port. The present petitioner had moved an application under Section 344 of Cr.P.C. before the concerned Court alleging that this document was a fabricated document as she had moved an application under the provisions of Act, 2005 with Police Station, Patna Air Port and no such written information/complaint as relied upon by the respondent was proved to have been given. Learned counsel for the petitioner asserted that this was sufficiently indicative of the fact that the respondent had produced fabricated and false evidence and was liable to be tried for making perjury with the Court. The learned Family Court had dismissed the application as filed by the petitioner under Section 344 of Cr.P.C. by observing that it did not stand proved that the abovesaid complaint had not been filed before the concerned Police Station and was a false and fabricated document.

7. On giving due deliberations to the contentions as raised by both the sides, I am of the opinion that no doubt, swearing of false affidavits and

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production of false evidence in judicial proceedings aims at striking a blow at the rule of law and has the tendency to impede, instruct and interfere with the administration of justice and action is required to be taken for preventing perjury. However, at the same time, it is also to be seen as to whether the allegations of producing false evidence as levelled by the complainant are prima facie made out or not. In the instant case, the petitioner did not produce any material on record to show that at the time of decision of the petition pending before the Additional Principal Judge, Family Court or passing of final order, any opinion had been expressed by the concerned Court that the respondent had knowingly or wilfully given any false evidence or had fabricated false evidence for the purpose of using the same before the Court.

8. No doubt, the respondent is shown to have placed on record a copy of a written information shown to be submitted before Incharge of Police Station, Patna Air Port. The petitioner claimed that she had sought information under the provisions of Act, 2005 which revealed that no such complaint had been filed by father of the respondent. However, neither copy of any such application moved by the petitioner had been produced on record nor she has placed on record, the information so received from the Police Station, Patna Air Port. More so, the learned Family Court before whom such report had been produced has observed that the report received under the provisions of Act, 2005 did not mention at all that the respondent or his father had not filed the complaint as relied upon by the latter before the concerned Police Station or any forged seal was affixed on such complaint. It had also observed that only an information had been given to the Incharge of the concerned Police Station by the abovesaid complaint and

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no action was sought from the police authorities. Obviously, by producing abovesaid complaint/information on record, no case of perjury was made out against the respondent as it had not been proved that this document had been fabricated by him and was intentionally given by the respondent. As such, it could neither be stated to be necessary nor expedient in the interest of justice to try the respondent for giving or fabricating any false evidence during the trial of the divorce petition as filed by the petitioner.

9. No infirmity or illegality as such can be found in the order passed by learned Additional Principal Judge, Family Court, Faridabad. Finding no merits, the petition is accordingly dismissed.

02.12.2023
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No