

2023:PHHC:044843-DB
IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
207

Date of Decision: March 20, 2023

CRM-M-50775-2018

JARNAIL SINGH AND OTHERS

...PETITIONERS

Versus

STATE OF HARYANA

...RESPONDENT

CRM-M-50888-2018

SURESH KUMAR AND ANOTHER

...PETITIONERS

Versus

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Vinod Ghai, Sr. Advocate,
with Ms. Kanika Ahuja, Ms. Amrita Garg,
Mr. Chand Rathi, Ms. Anjali Sheoran,
and Ms. Kirti Ahuja, Advocates,
for the petitioners.

Ms. Rajni Gupta, Addl. A.G. Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J.

By this order, we propose to decide above-referred to two petitions, wherein the challenge is to the order passed by the trial Court on an application under Section 340 Cr.P.C. read with Section 195 (1) (b) Cr. P.C. for initiating proceedings against the petitioners.

2. Primarily, the reason for initiation of such proceedings is based upon the conclusion drawn by the Court that the petitioners, who were

witnesses in the trial, had not supported the prosecution case. Previously, during the investigation, they had stated a different version by involving all the accused persons in the crime but when they appeared in the witness-box and deposed on oath, they had totally resiled from their earlier version with a mala-fide intention to save the accused from the rigors of law. Referring them prima-facie guilty of giving false evidence on oath with a mala-fide intention to screen the accused when they are supposed to speak the truth, which they had disclosed during investigation while recording their statements under Section 161 Cr. P.C.. Vide the impugned order, which is under challenge, the Court had come to a conclusion and ordered that instead of the petitioners being taken to task under the summary proceedings under Section 344 Cr. P.C., it was a fit case where they were required to be prosecuted by way of regular trial. The Court had opined that a separate complaint, as contemplated by Section 195 (1) Cr. P.C. read with Section 340 Cr. P.C. and sub-section (1), be filed in the Court of the Chief Judicial Magistrate, Hisar, for taking cognizance against the petitioners and take action against them as per the provisions of Section 343 Cr. P.C. by treating it as a State case to be conducted by the Public Prosecutor.

3. Learned senior counsel for the petitioners has attacked the impugned orders by asserting that a mandatory procedure, as laid down under Section 340 Cr. P.C., has not been complied with. He has asserted that the Court to formulate its opinion, is mandated to hold a preliminary enquiry, which has not been so done in the present case before proceeding in the matter. Apart from that, it is asserted by him that prior to initiating the proceedings and taking a decision by passing the impugned order, no notice was issued to the petitioners, thus, violating the principles of *audi*

alteram partem. Non-application of mind by the Court is also asserted by referring to the order of conviction passed by the trial Court while convicting the accused whereas while dealing with the statements given by the petitioners in Court as prosecution witnesses, an opinion was expressed by the trial Court, which has been verbatim used in the present impugned order showing total non-application of independent mind and, therefore, there is no question of another opinion having been formed. On this basis, learned senior counsel for the petitioners has asserted that the impugned order, as passed by the Court below, cannot sustain and deserves to be set aside.

4. Learned counsel for the State, on the other hand, has contended that the Constitution Bench judgment of the Hon'ble Supreme Court in **Iqbal Singh Marwah & Anr. vs. Meenakshi Marwah & Anr.**, 2005 (2) RCR (Criminal) 178, while dealing with the aspect of holding an enquiry under the provisions of Section 340 Cr. P.C., has held that the opinion can be formed by the Court even without conducting a preliminary enquiry, if the formation of an opinion is otherwise possible. She further contends that the Hon'ble Supreme Court has held that no hearing is required to be provided to a person, against whom proceedings under Section 340 Cr. P.C. read with Section 195 Cr. P.C. are to be initiated. Reliance has also been placed upon a judgment of the Hon'ble Supreme Court in **Pritish vs. State of Maharashtra**, (2002) 1 SCC 253, which judgment and the opinion expressed in the said judgment has been upheld by the Constitution Bench, to support her contention.

5. Referring to the impugned order, learned counsel for the State has contended that the Court has applied its independent mind and has, on

appreciating the evidence as well as the challan presented to the Court, proceeded to come to a decisive conclusion with regard to the satisfaction that the proceedings need to be initiated against the petitioners herein. She contends that the mandate, as laid down under the statute and interpreted by the Hon'ble Supreme Court, stands duly followed and complied with by the trial Court calling for no interference by this Court in these petitions.

6. We have considered the submissions made by the learned counsel for the parties and with their assistance, have gone through the judgments of conviction of the accused, against whom the trial was conducted, apart from the impugned order passed by the trial Court allowing the application under Section 340 Cr. P.C. read with Section 195 (1) (b) Cr. P.C.

7. The Code of Criminal Procedure, 1973 is applicable to all criminal proceedings and controls the procedural aspect for the administration of justice to control the crime in the society. This uniform law is for the guidance of the Courts where they deal with separate Acts to establish faith in the society by punishing the guilty of the crime committed. However, it also takes care of a situation where the citizen who lie before a Court, which would be no less than a criminal conspiracy to subvert the ends of justice. Chapter XXVI of the Cr. P.C. deals with the provisions as to offences affecting the administration of justice. Section 340 under Chapter XXVI of Cr. P.C. deals with the same and for the ready reference the same is reproduced herein below:-

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub- section (1) of section

195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

- (a) record a finding to that effect;
 - (b) make a complaint thereof in writing;
 - (c) send it to a Magistrate of the first class having jurisdiction;
 - (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non- bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and
 - (e) bind over any person to appear and give evidence before such Magistrate.
- (2) The power conferred on a Court by sub- section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub- section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub- section (4) of section 195.
- (3) A complaint made under this section shall be signed,-
- (a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;
 - (b) in any other case, by the presiding officer of the Court.
- (4) In this section, " Court" has the same meaning as in section 195."

Since this Section deals with procedure mentioned in Section 195, therefore, Section 195 is reproduced herein below:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

- (1) No Court shall take cognizance-
- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
 - (ii) of any abetment of, or attempt to commit, such offence, or
 - (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court in situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

8. Under the provisions of Section 340 Cr. P.C., it is clearly mentioned that if the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any offence referred

to in Clause (b) of sub-section (1) of Section 195 Cr. P.C. which is with regard to prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence, and which appears to have been committed in or in relation to a proceeding in that Court in respect of the evidence given or produced in the proceedings in that Court, then such Court after such preliminary inquiry, if any, as it thinks necessary may record a finding to that effect, make complaint in writing and send it to a Magistrate of first class having jurisdiction. Here the word 'may' used conveys the sense that it is not mandatory that the Court is compulsorily bound to make preliminary enquiry before proceeding under Section 340 Cr. P.C., as in this provision itself it is also stated that conducting of preliminary enquiry is the prerogative of the Court if it thinks necessary. The intent of statutes shows that if the Court thinks necessary to conduct preliminary enquiry, it may do so before proceeding under Section 340 Cr. P.C., but when in the opinion of the Court, there is enough material to initiate proceedings there is no need to conduct preliminary enquiry. More so, while proceeding under Section 340 Cr. P.C., the Court is to record evidence, take documents etc. into consideration and it cannot straight-away hold guilty any person.

9. It is clear thus, that the citizen of the country if have fundamental rights, the same is coupled with their obligation and duty to speak the truth in the Court of law. Section 340 read with Section 195 of Cr. P.C. is one of the exception to the general rule that any person can lodge a complaint of an offence. When an offence is committed in relation to furnishing false evidence it attracts Section 193 IPC which is covered under Section 195 (1) (b) (i) Cr. P.C. and hence is amenable to be proceeded

against under Section 340 Cr. P.C. The objective of Section 340 of Cr. P.C. is to ascertain as to whether any offence affecting the administration of justice has been committed or not. Since the offence has allegedly affected the Court proceedings, the Court is well-empowered to either conduct or get conducted an enquiry and/or in presence of enough material on record, form its opinion to initiate the proceedings. There is no statutory requirement or legal obligation cast on the Court or the authorities concerned to afford any opportunity of hearing to the would be accused against whom the Magistrate might initiate the prosecution proceedings ***(Reference can be made to AIR 2002 SC 236-Prittish V/s State of Maharashtra)***.

It has become a trend these days that FIRs were lodged and the criminal proceedings are initiated. During the investigation, statements are made by the witnesses, however for the reasons known best to the witnesses, when they appear for their testimony before the competent Court of law, they resile from the statements and in many cases, the statements made under Section 164 of Cr. P.C. are also resiled. The witnesses turn hostile, which ultimately leaves the Court high and dry to decide the case truthfully as the evidence required for deciding the cases is shattered or eroded. The Courts are burdened with cases which are found to be untrue which leads to financial burdened on the tax payers and the genuine cases are delayed due to such pendency. The citizens of the country have a right to lodge the complaint for any offence or grievance or hurt caused to them, they are also duty bound to speak the truth in the Court of law. It is high time that the Courts strongly take action for making the false statements in the Courts of law to protect the citizen from unnecessary/unwanted litigation.

10. The law, as has been laid down by the Hon'ble Supreme Court while dealing with the provisions, as contained in Sections 195 (1) and 340 Cr.P.C., makes it amply clear that Section 340 provides for the procedure to be followed in cases mentioned in Section 195 Cr. P.C. Interpreting the language of Section 340, it has been held by the Supreme Court, in Iqbal Singh Marwah's case (supra), as follows:-

“18. In view of the language used in [Section 340](#) Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in [Section 195\(1\)\(b\)](#), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in [Section 195\(i\)\(b\)](#). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and

the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.

19. There is another consideration which has to be kept in mind. Sub-section (1) of [Section 340](#) Cr.P.C. contemplates holding of a preliminary enquiry. Normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered. [Section 341](#) provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. [Section 343 \(2\)](#) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no

provision of appeal against an order passed under [Section 343 \(2\)](#), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii).

20. An enlarged interpretation to [Section 195\(1\)\(b\)\(ii\)](#), whereby the bar created by the said provision would also operate where after commission of an act of forgery the document is subsequently produced in Court, is capable of great misuse. As pointed out in *Sachida Nand Singh*, after preparing a forged document or committing an act of forgery, a person may manage to get a proceeding instituted in any civil, criminal or revenue court, either by himself or through someone set up by him and simply file the document in the said proceeding. He would thus be protected from prosecution, either at the instance of a private party or the police until the Court, where the document has been filed, itself chooses to file a complaint. The litigation may be a prolonged one due to which the actual trial of such a person may be delayed indefinitely. Such an interpretation would be highly detrimental to the interest of society at large.

21. Judicial notice can be taken of the fact that the Courts are normally reluctant to direct filing of a criminal complaint and such a course is rarely adopted. It will not be fair and proper to give an interpretation which leads to a situation where a person alleged to have committed an offence of the type enumerated in clause (b)(ii) is either not placed for trial on account of non-filing of a complaint or if a complaint is filed, the same does not come to its logical end. Judging from such an angle will be in consonance with the principle that an unworkable or impracticable result should be avoided. In Statutory Interpretation by Francis Bennion (Third Ed.) para 313, the principle has been stated in the following manner :

"The court seeks to avoid a construction of an enactment that produces an unworkable or impracticable result, since this is unlikely to have been intended by Parliament. Sometimes however, there are overriding reasons for applying such a construction, for example where it appears that Parliament really intended it or the literal meaning is too strong."

The learned author has referred to *Sheffield City Council v. Yorkshire Water Services Ltd.* (1991) 1 WLR 58 at 71, where it was held as under :

"Parliament is taken not to intend the carrying out of its enactments to be unworkable or impracticable, so the court will be slow to find in favour of a construction that leads to these consequences. This follows the path taken by judges in developing the common law. ...the common law of England has not always developed on strictly logical lines, and where the logic leads down a path that is beset with practical difficulties the courts have not been frightened to turn aside and seek the pragmatic solution that will best serve the needs of society."

In *S.J. Grange Ltd. v. Customs and Excise Commissioners* (1979) 2 All ER 91, while interpreting a

provision in the [Finance Act](#) , 1972, Lord Denning observed that if the literal construction leads to impracticable results, it would be necessary to do little adjustment so as to make the section workable. Therefore, in order that a victim of a crime of forgery, namely, the person aggrieved is able to exercise his right conferred by law to initiate prosecution of the offender, it is necessary to place a restrictive interpretation on clause (b) (ii).

22. Dr. Singhvi has also urged that since we are dealing with a penal provision it should be strictly construed and in support of his proposition he has placed reliance upon a Constitution Bench decision in [Tolaram Relumal vs. State of Bombay](#), 1955 (1) SCR 158, wherein it was held that it is well settled rule of construction of penal statutes that if two possible and reasonable constructions can be put upon a penal provision, the Court must lean towards that construction which exempts the subject from penalty rather than the one which imposes penalty and it is not competent for the Court to stretch out the meaning of expression used by the legislature in order to carry out the intention of the legislature. The contention is that since [Section 195\(1\)\(b\)\(ii\)](#) affords protection from private prosecution, it should not be given a restrictive interpretation to curtail its scope. We are unable to accept such broad proposition as has been sought to be urged. In Craies on Statute Law (1971 Ed.- Chapter 21), the principle regarding penal provisions has been stated as under :

"But penal statutes must never be construed so as to narrow the words of the statute to the exclusion of cases which those words in their ordinary acceptations would comprehend..... But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed, like any other instrument, according to the fair commonsense meaning of the language used, and the court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument."

[In Lalita Jalan vs. Bombay Gas Co.](#) 2003 (3) RCR (Criminal) 76 (SC) : 2003 (6) SCC 107 this question was examined in considerable detail and it was held that the principle that a statute enacting an offence or imposing a penalty is to be strictly construed is not of universal application which must necessarily be observed in every case. The Court after referring to [Murlidhar Meghraj Loya vs. State of Maharashtra](#) AIR 1976 SC 1929, [Kisan Trimbak Kothula vs. State of Maharashtra](#) AIR 1977 Supreme Court 435, [Superintendent and Remembrancer of Legal Affairs to Govt. of West Bengal vs. Abani Maity](#) AIR 1979 SC 1029 and [State of Maharashtra vs. Natwarlal Damodardas Soni](#) AIR 1980 SC 593 held that the penal provisions should be construed in a manner which will suppress the mischief and advance the object which the legislature had in view.

23. That apart, the section which we are required to interpret is not a penal provision but is part of a procedural law, namely, Code of Criminal Procedure which elaborately gives the procedure for trial of criminal cases. The provision only creates a bar against taking cognizance of an offence in certain

specified situations except upon complaint by Court. A penal statute is one upon which an action for penalties can be brought by a public officer or by a person aggrieved and a penal act in its wider sense includes every statute creating an offence against the State, whatever is the character of the penalty for the offence. The principle that a penal statute should be strictly construed, as projected by the learned counsel for the appellants can, therefore, have no application here.”

11. From the above, it is apparent that there is no statutory requirement that the Court should give opportunity of hearing to the accused before filing a complaint nor is it necessary that a preliminary enquiry is to be held mandatorily. What is important is that an opinion has to be formed by the Court with regard to an enquiry which is a must but not a necessity for holding a preliminary enquiry, provided the opinion can be reached without such preliminary enquiry. The complaint, so sent, is to be treated as a police report. This has been so held that the Court, at the stage as envisaged in Section 340 Cr. P.C., is not deciding the guilt or innocence of a party, against whom proceedings are to be taken before the Magistrate but is at that stage only considering whether it is expedient, in the interest of justice, that an enquiry should be made by it for any offence affecting administration of justice. While interpreting the penal provisions, it has been stated that the penal provisions should be construed in a manner which will suppress the mischief and advance the object which the legislature had in view.

12. It can, therefore, be safely said that in the process of formation of an opinion by the Court, it is for the Court to take a decision whether to hold a preliminary enquiry or not as there is no such mandate under the statute. In case, the Court is otherwise in a position to form such an opinion that it appears to the Court that an offence, as referred to under Section 340 Cr. P.C., has been committed, the Court may proceed without holding a preliminary enquiry. Once an opinion has been formed with regard to the offence having been committed under Section 340 Cr. P.C., the Court needs to make a complaint in writing and the same has to be sent to a Magistrate of competent jurisdiction. The Magistrate has to deal with such a complaint under Section 343 Cr. P.C. as if it was instituted as a police report.

13. With these broad principles, we now proceed to consider the impugned orders.

Learned senior counsel for the petitioners has sought to project as if there is no application of mind by the Court and for that, reference has been made to the order of conviction passed by the trial Court while dealing with the report submitted under Section 173 Cr. P.C. against the accused.

14. A perusal of the judgment, which is of even date as the impugned order, would show due application of mind and formation of the opinion on the basis of the evidence led by the prosecution including the report, as submitted under Section 173 Cr. P.C. The submission, therefore, as has been made by the learned senior counsel for the petitioners, in itself, cannot be accepted for the reason that the material relevant for coming to a conclusion and forming an opinion prima-facie about the offence having been committed, as mentioned under Section 340 Cr. P.C., cannot be said to be without application of mind.

15. A perusal of the impugned order would show independent application of mind by the Court while passing the said impugned order. The reasons assigned for proceeding against the petitioners, in our opinion, are justified and cannot be faulted with. Nothing has been pointed out with regard to there being any other illegality in following the provisions of Section 340 Cr. P.C. except for the ones, as have been referred to above, and replied to on the basis of the law, as has been laid down by the Hon'ble Supreme Court mentioned above.

16. In view of the above, finding no merit in these petitions, the same stand dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(ALOK JAIN)
JUDGE**

March 20, 2023

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No