

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

CRM-M-43138-2022

Date of decision : 02.02.2023

Vijay Singh and another

.....Petitioner(s)

Versus

State of Haryana and another

..... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr.Aditya Sanghi, Advocate for the petitioner(s)

Mr.Tanuj Sharma, AAG, Haryana

AMAN CHAUDHARY, J.

Present petition has been filed under Section 482 CrPC for quashing of impugned order dated 20.07.2022, Annexure P-1 passed by learned Sessions Judge, Sirsa, in CRR/303/2022 titled as ‘Vijay Singh and another Vs. State of Haryana and another’ whereby the impugned summoning order dated 28.10.2017, Annexure P-3 under Sections 420, 467, 468, 471, 511 IPC read with Section 340 CrPC passed by learned JMJC, Sirsa has been upheld. Further prayer is for quashing the impugned order dated 14.12.2016, Annexure P-10 passed by learned SDJM, Dabwali in Criminal Case No.114-1/2016, whereby the learned SDJM has directed the Reader of the Court to make a complaint in writing against the petitioners under Section 340 CrPC.

Brief facts of the case are that it has been stated that the father of the applicant namely Jairath had died during the pendency of the civil suit and he has been declared as legal heir of deceased by the Court. It has

further been averred that his father Jairath, was owner and in possession of land comprised in Rect. no.55 killa no.5min(4-7), 10/1(1-2), 15(7-13). Rect. No.56 Killa No.1(3-16),10(8-0), 11(7-11), khasra no.415(0-3), Rect. No.39 killas no.20(7-0),21(8-0), Rect. No.40 Killa no. 16(7-16), 25(7-16), Rect.no.55. Killa no.5min(3-9). Rect.No.56 Kila no.1 min(4-4) total land measuring 79 kanals 15 marlas as per fard jamabandi for the year 2007-08 situated at village Kheowali, Tehsil Dabwali, Distt. Sirsa, against which the used-persons being nephews of his father Jairath, filed a civil suit no.296 dated 6.5.1999 regarding their ownership of land measuring 78 kanals 10 marlas and they also produced some other person in place of his father Jairath and got filed written statement from him on 18.5.1999 and on 24.5.1999 got recorded statement of that person. The written statement, vakalatnama dated 18.5.1999 as well as statement dated 24.5.1999 bear the thumb impressions of some other person. When the applicant and his father protested against their forgery then they withdrew their suit on 28.5.1999. In this way, they committed offence under Sections 419,406,420,467, 468,471,511 IPC. Not only this, thereafter, they again filed a civil suit no.1461/2002 against his father and got forged decree dated 14.2.2003 from the court of Smt. Sunita Gupta, the then Addl. Civil Judge (Sr.Divn.), Dabwali, on the basis of which they also got sanctioned mutation no.1463 dated 07.07.2003, whereas both i.e. decree dated 14.2.2003 and the mutation dated 7.7.2003 are wrong, illegal and are liable to be set aside. In this regard, his father also filed a civil suit No.976/2011/2012 on 24.3.2011, in the court of Shri Kapil Rathi, Civil Judge (Jr.Divn.), Dabwali to set aside the judgment and decree dated 14.2.2003 and in the said suit, Shri Anil Kumar

Gupta, Handwriting and Finger Print Expert, in his evidence, specifically stated that in suit no.296 of 1999, no documents bear thumb impressions of Jairath. As such, accused played a fraud with his father and other family members by procuring false decree. Thus, a prayer for initiating action against the respondent under relevant Sections of IPC has been made.

The learned counsel for petitioners contends that there is no evidence except bald statement of Dharamvir that impersonator was produced in Court at the behest of the petitioners. Proper procedure as required before initiation under Section 340 CrPC has not been followed, inasmuch as that the preliminary enquiry as mandated under Section 340 CrPC has not been conducted and the Court has not formed an opinion that it is expedient in the interest of justice to initiate the proceedings. Still further, for attracting Section 195(1)(b)(ii) CrPC, the offence must be committed during the time when the document was *custodia legis*, however, in the present case, the document was not forged while in custody of the Court. Also that the decree in favour of the petitioners was passed in the year 2003 and respondent namely Jairath filed a suit in the year 2011 i.e., much after the same attained finality on the ground that the suit filed in 1999 false written statement and false statement was made before the Court. The impersonator Hari Singh died on 08.03.2012, the Panch Nachhtar Singh who identified him as Jairath also expired on 28.12.2011 and the said Jairath also expired on 26.12.2013. The son of Jairath with oblique motive filed multiple complaints under Section 340 CrPC, as such the proceedings should not be allowed to continue against the petitioners. The learned Courts have not

taken into consideration all the facts and have wrongly passed the impugned orders.

Learned State counsel on receipt of advance notice appears and submits that the impugned orders being well reasoned require no interference.

Heard.

In view of the argument with regard to procedure under Section 340 CrPC was not followed, it is apposite to refer to the said Section, which reads thus:-

“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."

The submissions of the learned counsel for the petitioners have been given anxious consideration but for reasons set out hereafter, these do not merit acceptance.

This Court is not delving into the intricacies of the case lest it may prejudice the case of either party. It is evident that the first complaint filed was returned to the complainant on his prayer, as he wanted to file it under Section 340 CrPC. The second complaint was entertained and order dated 08.07.2014 was passed by the trial Court, wherein summoning order was passed, which on having been challenged before the Revisional Court by the petitioners, was remanded to rectify a technical defect that the complaint was either to be filed by the Presiding Officer himself or through any authorized person of the Court, the cognizance having been taken of the offence by the Court itself. In this regard, the order passed by learned Sub-Divisional Judicial Magistrate dated 14.12.2016 is required to be reproduced which reads thus:

"6. In the present application, the applicant has alleged that the respondents filed a civil suit against the father of the applicant claiming themselves to be owner in possession of the land on the basis of a family settlement, and obtained the judgment and decree dated 14.2.2003 by playing fraud and misrepresentation not only upon the applicant but also with the court by producing some other person in place of father of the applicant whereas he never appeared before the court in that civil suit. The version of applicant finds corroboration from the document Ex.PI report of Handwriting and Fingerprint Expert filed in Civil Suit No.976 of 2011/2012. wherein it has been opined that the disputed thumb impressions alleged to be of Jairath appearing on the written

statement dated 18.5.1999, court statement, vakalatnama from the summoned file titled as 'Vijay Singh Vs. Jairath' and standard thumb impressions of Jairath appearing on the plaint dated 23.3.2011, affidavit, application and on the specimen sheet are not identical with each other and have not been affixed by one and the same person. From the aforesaid observation, it is very much clear that the respondents have played a fraud with the applicant as well as with the court and by doing so, they have got passed the judgment and decree dated 14.2.2003 from the court of Ms. Sunita Gupta, the then learned Addl. Civil Judge (Sr.Divn.), Dabwali. Thus, this court is of the considered opinion that offence under Sections 406,419,420,467,4681,471,511 appears to have been committed by the respondent. In terms of Section 340 Cr.P.C. read with Section 195 of Cr.P.C., Reader of this court is authorised to make complaint in writing before learned Chief Judicial Magistrate, Sirsa in this respect. Alongwith complaint, necessary documents be also attached. The applicant, Reader of this court and record keeper with necessary record are bound to appear and give evidence before the court of learned Chief Judicial Magistrate, Sirsa as and when required to do so in terms of Section 340(1)(e) of Cr.P.C. Application stands disposed of in terms of observations mentioned Magistrate above.”

Thereafter, the complaint was filed by the duly authorised person in terms of Section 195(1)(b) CrPC, i.e. the Reader to the said Court by appending therewith the relevant documents as mentioned in para 4 thereof:

“4. The order dated 14.12.2016 has been annexed as Annexure- 1, copy of judgment and decree dated 14.2.2003 have been annexed as Annexure-A2 and Annexure-A3, copy of report of Handwriting & Fingerprint Expert has been annexed as Annexure-A4, copy of written statement filed in civil suit no.296-C of 1999 has been annexed as Annexure-A5, copy of statement of Jairath recorded in Civil Suit No.296 of 1999 has been annexed as Annexure-A6, copy of order dated 28.5.1999 in Civil Suit No.976 of 2011-12 has been annexed as Annexure-A7, copy of vakalatnama filed on behalf of Jairath in Case No.1461 of 2002 has been annexed as Annexure-A8, and copy of

writing/family settlement filed in case no. 1461 of 2002 has been annexed as Annexure-A9.

5. That the undersigned being official of the court and having been authorised in this respect is duly competent to file the present complaint in terms of Section 195(1)(b) of Cr.P.C.”

The learned Chief Judicial Magistrate vide order dated 28.10.2017 summoned the petitioners after having taken into consideration the complaint and the material available on record finding sufficient ground against them for commission of the offence. Upon having taken the said order up in revision, the the submissions made by the petitioners were duly considered and the Revisional Court rightly observed thus:-

“6. The main contention raised on behalf of the revisionists is that there was no need to file the present complaint after more than 17 years of passing order of dismissal of the suit and no explanation has been supplied by the complainant in this regard. No doubt the application u/s 340 Cr.P.C. was filed on 20.05.2014 seeking criminal action against the revisionists who stated to have impersonated Jairath, father of the applicant. Initially, vide order dated 14.12.2016 the complaint was filed by the then S.D.J.M.Dabwali. The said order was challenged by filing a revision. Application u/s 340 Cr.P.C. was filed on 19.12.2016 through reader of the court of Sh.Parvesh Singla, the then learned SDJM, Dabwali. The stand taken by the revisionists that repeated complaints are being made by the applicant is apparently without any basis. The first complaint had been dismissed as withdrawn for filing complaint under section 340 CrPC. The second Application was filed under section 340 Cr.P.C. before the civil Court, which passed the decree, on which the order for filling the complaint had been passed on 08.07.2014. However the same was remanded by the Revisional Court to rectify the technical defect to file the complaint either by Presiding Officer himself or through any authorized person of the court as the court had taken cognizance of the offences itself. Vide order dated 8.7.2014 the Revisional court observed that the court may authorize in writing in this regard. The impugned summoning order has been passed on 28.10.2017 in the

remanded case and no 'third' complaint has been filed as is being projected by the Revisionist.

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8. Learned counsel for the revisionists has failed to point out as to how the impugned orders have been passed without exercise of the jurisdiction or how the impugned orders are not legal or proper. The arguments that there was 'no need' to file the present complaint, is concerned, it is pertinent to note that committing impersonation and procuring a decree on the basis of impersonation is the most plausible ground where the court should and must initiate action against the erring persons, as the fraud is not only played upon the person, against whom decree was procured by exercising fraud but the fraud had also been exercised upon the court who has been made to act on such impersonation and pass such decree.”

In the present case, the written statement dated 18.05.1999 filed in Court and the statement made in his evidence on 24.05.1999, were found to contain forged thumb impressions of father of the complainant, namely Jairath as per the report of the Handwriting and Finger Print Expert, as has been noticed in the revisional order. In the case of **Narendra Kumar Srivastava vs. State of Bihar and Ors.** (2019) 3 SCC 318, wherein Hon’ble The Supreme Court was considering a case involving false affidavits that had been prepared/forged outside the Court, it was held that:

“14. On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.”

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“17. Section 340 CrPC makes it clear that a prosecution under this section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence

in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.”

Hon’ble The Supreme Court in the case of **The State of Punjab vs. Jasbir Singh** (2022) LiveLaw (SC) 776, laid to rest the following questions:

- “(i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?
- (ii) what is the scope and ambit of such preliminary inquiry?”

After relying on the judgment in the case of **Prithvi vs. State of Maharashtra & ors.** (2002) 1 SCC 253, the first question was answered in the negative by noticing that the purpose of a preliminary inquiry under Section 340(1), Cr.P.C. was not to find whether a person is guilty or not but only to decide whether it was expedient in the interest of justice to inquire into the offence. It was thus observed that the Court is not obliged to make a preliminary inquiry on a complaint but if the Court decides to do so, it should make a final set of the facts which is expedient in the interest of justice that offence should be further probed into. The second question regarding the scope and ambit of such a preliminary inquiry, was also held to have been resolved in terms of the judgment of the Constitution Bench of Hon’ble The Supreme Court in the case of **Iqbal Singh Marwah vs. Meenakshi Marwah** (2005) 4 SCC 370. The para relevant of Iqbal Singh Marwah’s case (supra) reads thus:

“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 remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.” (emphasis supplied)

The petitioners in the present case have already availed of the remedy of filing a criminal revision petition, though unsuccessfully before the learned Additional Sessions Judge, Chandigarh, thus, this petition would amount to a second revision petition under the guise of petition under Section 482 Cr.P.C., as per Section 397(3) Cr.P.C., is the view of this Court, which finds support from the judgment in the case of **Krishnan vs. Krishnaveni and another** 1997(4) SCC 241, by Hon'ble The Supreme Court of India.

Still further, Hon’ble The Supreme Court of India in the case of **Jagmohan Singh vs. Vimlesh Kumar and Others**, Criminal Appeal No.741 of 2022, decided on 5.5.2022, held that, “While exercising jurisdiction under Section 482 of the Cr.P.C., the High Court should not ordinarily embark upon an enquiry into whether there is reliable evidence or not."

A parallel enquiry into the application under Section 340 by this Court under Section 482 Cr.P.C. is neither proper nor feasible. The correctness or genuineness of the averments in the application under Section 340 Cr.P.C. being question of fact can best be determined by the Court concerned for the purposes of making or not making a complaint by such Court to the court concerned, was observed in the case of **Sukhraj vs State of U.P.** 2021 (5) All LJ 156.

Considering the facts and circumstances of the case in light of the exposition of law, this Court finds no merit in the present petition and as such, the same is hereby dismissed.

It is clarified that no observations made hereinabove shall be considered as an expression of opinion on the merits of the case.

02.02.2023
gsv

(AMAN CHAUDHARY)
JUDGE

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