

IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. APP. 341 CR. P.C. No.2 of 2023

In
CRIMINAL REVISION No.219 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Nawada

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Gorelal Yadav S/O Sarju Yadav R/O Mohalla- Vip Colony, Near Dav School
At P.S. And Distt.- Nawada.

... .. Petitioner/s

Versus

Priyanka Bharti W/O Sri Gorelal Yadav, D/O Sri Krishna Kumar R/O Village
And P.S- Pakribarawa, Distt.- Nawada- 805124.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Nivedita Nirvikar, Sr. Advocate
For the Respondent/s : Mr. Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

6 04-01-2024 Heard learned senior counsel appearing on behalf
of appellant.

2. On perusal of record, it appears that notice validly served upon respondent, namely Priyanka Bharti, vide order dated 30.10.2023, where respondent fails to join the present proceedings.

3. At the outset, it is submitted by learned senior counsel Mrs. Nivedita Nirvikar, that while issuing notice vide order dated 30.10.2023, by one of the learned Co-ordinate Bench of this Court, proceedings of learned Trial Court was stayed but inadvertently it is missing from that order.

4. Learned senior counsel submitted that decision on



interim maintenance of Rs. 3,000/- was passed in favour of respondent, namely Priyanka Bharti, without considering the fact that she is currently working as a school teacher. For the concealment of said fact an application under Section 340 of Code of Criminal Procedure (in short Cr.P.C.) was preferred before the learned Trial Court, which was rejected through impugned order dated 02.02.2023, without even preliminary enquiry.

5. It would be apposite at this stage to reproduce Section 340 of Cr.P.C. for better understanding of the case, which is as under:-

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 interest 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 or by such officer of the
Court as the Court may authorise in writing
in this behalf.]*

*(4) In this section, " Court" has the
same meaning as in section 195.*

6. It is submitted by learned senior counsel assailing impugned order that application under Section 340 of Cr.P.C., of appellant was rejected mainly considering the law that same be initiated only when there is any forgery in the document filed in connection with evidence, which is available on record but same is not the correct position of law rather any concealment of fact, to persuade the Court giving a favorable finding also falls under ambit of Section 340 of Cr.P.C., as same is also affecting administration of justice, which is the core consideration.

7. It is further pointed out by learned senior counsel that present impugned order was passed without having any preliminary inquiry. It is submitted that preliminary inquiry as contemplated in the act is not for finding whether any particular person is guilty or not, where basic purpose is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.



8. In support of aforesaid submissions learned senior counsel relied upon Para-16 of the legal report of Hon'ble Supreme Court as reported in the matter of **Pritish Vs. State of Maharashtra**, reported in **2002 (1) SCC 253**, which has been reproduced at this stage for better understanding of the case, which is as under:-

16. Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the Magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be made into any offence affecting administration of justice. In *M.S. Sheriff vs. State of Madras* (AIR 1954 SC 397) a Constitution Bench of this Court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide



on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into.

9. In view of above, impugned order dated 02.02.2023, which has been passed without preliminary inquiry is hereby set aside, with a direction to Trial Court to pass a fresh order after preliminary enquiry upon the materials founding application under Section 340 of Cr.P.C. within four weeks after receiving this order as to proceed further in this matter.

10. Appeal stands allowed.

11. However, it is made clear that interim maintenance of Rs. 3,000/- for respondent, namely Priyanka Bharti, shall remain continued.

(Chandra Shekhar Jha, J.)

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