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03.07
2024
Ct. No. 3

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

C.R.R. 38 of 2023
Sri Naresh Kumar Bansal
Vs.
Smt. Rinki Agarwal @ Bansal

Ms. Suman Shehanabis
Ms. Madhushri Dutta

...For the Petitioner

Mr. Nigam Mittal

...For the Opposite Party

The petitioner has preferred this application challenging the order dated 19th January, 2023 passed by the learned Judicial Magistrate, 2nd Court, Siliguri in M.R. No. 12 of 2020.

While disposing of an application under Section 340(1) of the Criminal Procedure Code, the Court below by the impugned order observed that as no evidence is adduced in this case till now the petition is kept in abeyance until evidence is completed in this case.

In a proceeding under section 125 of the Code of Criminal procedure initiated at the instance of opposite party herein/wife the petitioner herein/husband preferred an application under section 340(1) of Cr.P.C. contending that the adverse allegations leveled against present petitioner by the opposite party herein never happened and the wife /opposite party only interested in making ambiguous and vexatious allegations against the petitioner herein without any iota of evidence in support of her submissions and thereby trying to misguide the court. Therefore according to petitioner, wife/opposite party is guilty of the act

of perjury for making false statements on affidavit before the court and for which petitioner has sought for an under section 340(1) of Cr.P.C.

Learned Counsel appearing on behalf of the opposite party vehemently opposed such prayer and contended that in order to cause delay in disposal of opposite party's application under section 125 of Cr.P.C. seeking maintenance, the petitioner herein made several attempts which includes present vexious petition under section 340(1) of Cr.P.C., which is liable to be rejected in limini.

Needless to say that there are two pre-conditions to invoke jurisdiction under the said provisions Firstly material produced before the court must make a prima facie case for a complaint for the purpose of inquiry of an offence referred in section 195 (1) (b) and secondly it is expedient in the interest of justice that an inquiry should be made into the alleged offence. Furthermore while invoking section 340, the court must be satisfied that there is a prima facie case of deliberate falsehood on a matter of substance and there is reasonable foundation for the charge. Mere contradictory statements in a judicial proceeding may not by itself always sufficient to prosecute under Section 199 or 200 IPC.

Based upon the above principle of law court below has not committed any mistake in making aforesaid observation at this early stage of proceedings and also in the absence of prima facie evidence. As such I do not find any perversity or impropriety in the order impugned, which may call for interference by this Court at this stage.

In such view of the matter, the application, being C.R.R. 38 of 2023 is hereby dismissed.

The Court below is directed to dispose of the main Application filed under Section 125 of the Code of Criminal Procedure, being M.R. No. 12 of 2020 preferably within a period of twelve weeks from the date of communication of this order since it is pending for a considerable period of time.

(Ajoy Kumar Mukherjee, J.)