

107

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR(F)-462-2024 (O&M)
Date of decision: 02.04.2024

Monika

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Baljeet Beniwal, Advocate for
Mr. G.S. Nehra, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. The present revision petition has been preferred against the impugned order dated 16.12.2023 passed by the learned Family Court, Sonipat, vide which Reader of the Family Court was directed to file a complaint under Sections 191, 193, 199 & 209 of the Indian Penal Code, 1860 (for short 'IPC') read with Section 340 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') on behalf of the Court against the petitioner.

FACTUAL BACKGROUND

2. Briefly, the facts are that the marriage between the petitioner and respondent no. 2 was solemnized on 16.04.2016 as per Hindu rites and rituals.

However, matrimonial discord ensued and the petitioner filed a petition seeking grant of maintenance under Section 125 Cr.P.C. and both the parties were directed to file affidavits indicating their income and expenditure. In the said affidavit, the petitioner claimed to be unemployed while she was employed with the HDFC Bank for the last four years. Thereafter, respondent no. 2 filed an application under Section 340 Cr.P.C. read with Sections 191, 193, 199 & 209 IPC claiming that the petitioner has misled the Court by giving false information.

CONTENTIONS

3. Learned counsel for the petitioner, *inter alia*, contends that the impugned order was passed without following the procedure prescribed under Section 340 Cr.P.C. and the same is not sustainable in view of settled law since the provisions of Section 340 Cr.P.C. cannot be invoked by a private person. Further, a prior inquiry is required to be conducted to establish the alleged offence and a written complaint to that effect is required to be filed thereafter. Learned counsel for the petitioner has relied upon resignation submitted by the petitioner (Annexure P-4) on 30.08.2022 to contend that on the date of filing of her income-expenditure affidavit i.e., 19.09.2022, she was not employed. Moreover, the bank account in HDFC Bank was a salary account and as such, she was not supposed to disclose the same after submitting her resignation. The learned Court below has passed the impugned order without considering this fact. The respondent-husband-has filed an application under Section 340

Cr.P.C. read with Sections 191, 193, 199 & 209 IPC out of personal vendetta and private spite solely to wreak vengeance on the petitioner.

OBSERVATIONS AND ANALYSIS

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, the following question is framed:

‘Whether the proceedings under Section 340 Cr.P.C. can be allowed to be initiated in a matrimonial dispute at the ipse dixit of the estranged spouse, without formation of a prima facie opinion by the Court regarding its expediency in the interest of justice?’

5. The genesis of the present controversy lies in the claim of respondent No.2-husband that the petitioner-wife has given false information regarding her employment status while filing the income and assets affidavit, in view of ***Rajnesh Vs. Neha and another, (2021) 2 SCC 324***. While the act of giving false information, that has the potential to impact the adjudication of the case, cannot be condoned, the reaction to the same has to be proportional to its nature. If the act can be justified by providing a reasonable explanation or by proving that the same was not deliberate, concessions must be made. The proceedings under Section 340 Cr.P.C. being expedient in the interest of justice is the litmus test of its initiation. However, the formation of opinion regarding its expedient nature would call for a balance to be struck between all relevant factors.

6. A two Judge Bench of the Hon’ble Supreme Court in ***Subrata Roy Sahara Vs. Union of India, (2014) 8 SCC 470*** has taken note of the great

affliction caused by frivolous litigation and called for deterrence from mechanically filling ill-considered claims. Speaking through Justice J.S. Kheher, the following was observed:

"191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?..."

xxx xxx xxx

194. Does the concerned litigant realize, that the litigant on the other side has had to defend himself, from Court to Court, and has had to incur expenses towards such defence? And there are some litigants who continue to pursue senseless and ill-considered claims, to somehow or the other, defeat the process of law. "

7. The offence of perjury is not only detrimental to both procedural and substantial law but also fundamentally obstructs administration of justice by undermining the dignity of the legal process. While the IPC or the Cr.P.C. does not define the term 'perjury,' a two Judge bench of the Hon'ble Supreme Court in ***Kishorbhai Gandubhai Pethani Vs. State of Gujarat, (2014) 13 SCC 539***, speaking through Justice B.S. Chauhan, defined the same in the following terms:

“7. Perjury is an obstruction of justice. Deliberately making false statements which are material to the case, and that too under oath, amounts to crime of perjury. Thus, perjury has always to be seen as a cause of concern for the judicial system. It strikes at the root of the system itself and disturbs the accuracy of the findings recorded by the court. Therefore, any person found guilty of causing perjury, has to be dealt with seriously as it is necessary for the working of the court as well as for the benefit of the public at large.”

8. The object of Section 340 Cr.P.C. is to ascertain whether any offence affecting the administration of justice has been committed in relation to any proceeding before any Court and that it would be expedient in the interest of justice to initiate prosecution qua the same. Since the expression *“Court is of opinion that it is expedient in the interests of Justice”* is used in Section 340 Cr.P.C., the following become the two essential pre-conditions for invoking this provision:

- (i) The material produced before the Court must be sufficient for the formation of *prima facie* opinion that inquiry into an offence referred to in clause (b)(i) of sub-Section (1) of Section 195 of the Cr.P.C. as alleged in the complaint, is necessary.
- (ii) The Court must record a finding that it is expedient in the interest of justice that an inquiry should be made into the alleged offence.

9. Pertinently, a two Judge Bench of the Hon’ble Supreme Court in ***Amarsang Nathaji Vs. Jardik Harshadbhai Patel and others, (2017) 1 SCC 113***, has laid down the principles required to be considered while dealing with Section 340 Cr.P.C. Speaking through Justice Kurian Joseph, the following

was held:

“6. There are two pre-conditions for initiating proceedings under Section 340 Cr.P.C. - (i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-Section (1) of Section 195 of the Cr.P.C. and (ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence.

*7. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the Cr.P.C., having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See **K.T.M.S. Mohd. and Another v. Union of India, 1992(2) RCR (Criminal) 398 : (1992) 3 SCC 178**). The court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.*

8. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. 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 of the Cr.P.C. has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint

*should be filed as a matter of course. (See **Pritish v. State of Maharashtra and Others, 2002(1) RCR (Criminal) 92 : (2002) 1 SCC 253**). ” (emphasis added)*

10. Before proceeding further, the relevant statutory provisions are reproduced hereinunder for proper adjudication of the case at hand:

Section 24 of the IPC

"Dishonestly".-Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

Section 25 of the IPC

"Fraudulently".-A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

Section 191 of the IPC

Giving false evidence.-Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Explanation 1.-A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.-A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know."

Section 192 of the IPC

Fabricating false evidence.-Whoever causes any circumstance to exist or 1[makes any false entry in any book or record, or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public

servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said "to fabricate false evidence".

Section 193 of the IPC

Punishment for false evidence.- *Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.*

Explanation 1.-A trial before a Court-martial; 1[***] is a judicial proceeding.

Explanation 2.-An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Section 195 of the Cr.P.C.

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 by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

Section 340 of the Cr.P.C.

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 152 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; 1*
- (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.*

Section 3(3) of the General Clauses Act, 1897

“Affidavit” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing

Section 3 of the Oaths Act, 1969

Power to administer oaths.-

- (1) The following courts and persons shall have power to administer, by themselves or, subject to the provisions of sub-section (2) of section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:--*
- (a) all courts and persons having by law or consent of parties authority to receive evidence;*
- (b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.*
- (2) Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate or person may administer oaths and*

affirmations for the purpose of affidavits, if empowered in this behalf--

- (a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or*
- (b) by the State Government, in respect of other affidavits.*

Section 4. of the Oaths Act, 1969

Oaths or affirmations to be made by witnesses, interpreters and jurors.-

(1) Oaths or affirmations shall be made by the following persons, namely:--

- (a) all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any court or person having by law or consent of parties authority to examine such persons or to receive evidence;*
- (b) interpreters of questions put to, and evidence given by, witnesses; and*
- (c) jurors:*

Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of section 5 shall not apply to such witness; but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any Court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.”

11. The proceedings under Section 340 Cr.P.C. can be invoked only in exceptional circumstances, even with more circumspection in matrimonial cases, where the Court is of the opinion that a party has deliberately committed perjury, in order to extract a beneficial order from the Court. Further, drastic measures such as initiating prosecution under Section 340 Cr.P.C., are only permissible in the larger interest of the administration of justice and must not be misused to settle scores in matrimonial dispute. The estranged spouses, in a litigious fit, involve each other in multiple litigations and leave no stone unturned to inflict more misery on to each other. Owing to the same, this Court has recently seen an increase in initiation of perjury proceedings in matrimonial disputes. The law is well settled that only in case of glaring and conscious falsehood in which conviction is highly likely, can the prosecution be launched for perjury. The concerned Court, before embarking upon perjury proceedings, must form an opinion that prosecution is “*expedient in the interest of justice*” which is *sine qua non* for the same.

12. Section 340 Cr.P.C. was put in place with an intention to provide an effective remedy against presentation of false evidence during legal proceedings. The preservation of truth and maintenance of integrity of the judicial process is the paramount consideration behind enactment of the said provision. By making acts of perjury punishable, the legislature, in its wisdom, intended to deter all stakeholders from rendering false evidence. Section 340 Cr.P.C. requires the applicant to make a *prima facie* case suggesting that false

information was tendered into evidence with an intention to mislead the Court. Thereafter, the Court may conduct a preliminary inquiry to assess whether the allegations are substantiated and if there is a likelihood of conviction. However, the foremost consideration for the Court, in this regard, is not the occurrence of the alleged offence but the magnitude of the obstruction caused by the event to administration of justice. The extent to which the alleged false evidence has swayed the decision of the Court will be another essential consideration while holding a preliminary inquiry under Section 340 Cr.P.C. The recording of the opinion of the Court stating that the initiation of such proceedings is expedient in the interest of justice, is indispensable. However, mechanical and frequent invocation of provisions of Section 340 Cr.P.C. defeats its very object.

13. Pertinently, a Constitution Bench of the Hon'ble Supreme Court in ***Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another, 2005 AIR SC 2119***, speaking through Justice G.P. Mathur, made the following observations:

“18. In view of the language used in Section 340 Criminal Procedure Code 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.”

14. The scope and ambit of the preliminary inquiry, as envisaged under Section 340 Cr.P.C., was referred to a larger bench. Consequently, a three Judge bench of the Hon’ble Supreme Court in ***State of Punjab Vs. Jasbir Singh, 2022 CriLR (SC) 1198*** answered the reference regarding the nature of preliminary inquiry under Section 340 Cr.P.C. and whether the would-be accused should be afforded an opportunity of hearing before arriving at a decision qua the same, in negative. Placing reliance on ***Iqbal Singh Marwah’s*** case (*supra*), the following was held:

*“9. We have little doubt that there is no question of opportunity of hearing in a scenario of this nature and we say nothing else but that a law as enunciated by the Constitution Bench in Iqbal Singh Marwah's case (*supra*) is in line with what was observed in Pritish'case (*supra*).*

10. Interestingly both the judgments in Pritish's case and the Constitution Bench judgment in Iqbal Singh Marwah's case (supra) have not been noted in order passed in Sharad Pawar's Case (supra). The answer thus to the first question raised would be in the negative.

11. Insofar as the second question is concerned, the scope and ambit of such a preliminary inquiry, also stands resolved in terms of the Constitution Bench judgment of this Court in the Iqbal Singh Marwah's case (supra) as referred to aforesaid.” (emphasis added)

15. As previously discussed, the underlying principle behind enacting the provisions of Sections 195 and 340 of the Cr.P.C. is to provide punishment for offences against public justice. Accordingly, the Court will act as the complainant since the judicial system has a right and duty to protect itself from the misconduct of litigants who aim to pollute the fountain of justice by resorting to unethical practices like filing of false affidavits or claims. These provisions are also meant to restrain the temptation of the private litigants to launch prosecution for perjury on insufficient grounds actuated by personal vendetta, with the sole intention to spite the other party. As such, the remedy under Section 340 Cr.P.C. serves a greater purpose and was not intended to be employed in order to gratify feelings of vindictiveness and revenge. This sentiment was elucidated by a two Judge bench of the Hon’ble Supreme Court in ***M/s Bandekar Brothers Private Limited and another Vs. Prasad Vassudev Keni Etc., 2020 AIR SC 4247***, wherein, speaking through Justice Rohinton F. Nariman, the following was opined:

“8...However, section 195 of the CrPC, 1973 states that in the

*offences covered by it, no Court shall take cognizance except upon the complaint in writing of a public servant, insofar as the offences mentioned in sub-clause (1)(a) are concerned, and by the complaint in writing of the "Court" as defined by sub-section (3), insofar as the offences delineated in sub-clause (1)(b) are concerned. The reason for the enactment of section 195 of the CrPC, 1973 has been stated felicitously in **Patel Laljibhai Somabhai Vs. State of Gujarat, (1971) 2 SCC 376**, as follows:*

"7. The underlying purpose of enacting Section 195(1)(b) and (c) and Section 476, seems to be to control the temptation on the part of the private parties considering themselves aggrieved by the offences mentioned in those sections to start criminal prosecutions on frivolous, vexatious or insufficient grounds inspired by a revengeful desire to harass or spite their opponents. These offences have been selected for the court's control because of their direct impact on the judicial process. It is the judicial process, in other words the administration of public justice, which is the direct and immediate object or victim of those offence and it is only by misleading the courts and thereby perverting the due course of law and justice that the ultimate object of harming the private party is designed to be realised. As the purity of the proceedings of the court is directly sullied by the crime, the Court is considered to be the only party entitled to consider the desirability of complaining against the guilty party. The private party designed ultimately to be injured through the offence against the administration of public justice is undoubtedly entitled to move the court for persuading it to file the complaint. But such party is deprived of the general right recognized by section 190 CrPC, 1973 of the aggrieved parties directly initiating the criminal proceedings. The offences about which the court alone, to the exclusion of the aggrieved private parties, is clothed with the right to complain may, therefore, be appropriately considered to be only those offences committed by a party to a proceeding in

that court, the commission of which has a reasonably close nexus with the proceedings in that court so that it can, without embarking upon a completely independent and fresh inquiry, satisfactorily consider by reference principally to its records the expediency of prosecuting the delinquent party."

16. This Court is of the considered opinion that a justice dispensation system can be considered successful only if it is swift, accessible and affordable. However, the recent surge in matrimonial disputes motivated by litigious and vexatious spirit, has left the Courts with considerable pendency. The Hon'ble Supreme Court in ***Hussain and another Vs. Union of India, 2017 (5) SCC 702*** has observed that timely delivery of justice is a part and parcel of human rights. Similarly, a two Judge Bench of the Hon'ble Supreme Court has considered the detrimental impact of inordinate delay in conclusion of the investigation on the fundamental rights of the accused in ***State of Andhra Pradesh Vs. P.V. Pavithran, AIR 1990 Supreme Court 1266*** and enunciated that investigation into a criminal offence must be concluded expeditiously. Speaking through Justice Ratnavel Pandian, the following was held:

"7. There is no denying the fact that a lethargic and lackadaisical manner of investigation over a prolonged period makes an accused in a criminal proceeding to live every moment under extreme emotional and mental stress and strain and to remain always under a fear psychosis. Therefore, it is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the Court as the protector of the right and personal liberty of the citizen will step in

and resort to the drastic remedy of quashing further proceedings in such investigation.”

17. It is in this context that the vice of frivolous litigation initiated merely to harass the other party or settle scores with them must be discouraged. The judicial process is too sacrosanct to be allowed to be misused in order to gratify feelings of vengeance and pursue personal vendettas. For the provisions of Section 340 Cr.P.C. to be invoked, there must be some intentional act of a nature higher than a mere misstatement or inaccuracy. The Court shall not only consider whether a *prima facie* case exists but also ascertain whether launching prosecution for perjury is in the interest of public or otherwise. The judicial process cannot be allowed to be used as an instrument of oppression and needless harassment. It is a trite law that the Courts must not become tools to satisfy personal vendettas of the interested parties. Launching a lame prosecution on insufficient grounds would not only cost judicial time of the Courts but also public money. Therefore, prosecution should only be launched for perjury when it is *prima facie* established that it is expedient in the interest of justice to punish the delinquent.

18. Every incorrect and false statement lacking deliberate attempt to mislead the Court does not need to be addressed exclusively by initiation of perjury proceedings. The ends of justice would be met if the litigant making such incorrect statement is burdened with costs, proportional to facts and circumstances of each case. The Courts must separate the chaff from the grain

to ensure that the stream of justice is not clogged by ill-intended, vexatious proceedings. At times, allowing minor irregularities to be remedied is more advantageous to the cause of justice than initiating separate proceedings. It is only when a conscious attempt has been made to mislead the Court in an overpowering fashion to get a favourable result that proceedings under Section 340 Cr.P.C. can be reasonably initiated. Pertinently, a two Judge bench of the Hon'ble Supreme Court in ***Aarish Asgar Qureshi vs. Fareed Ahmed Qureshi and another*** (2019) 18 SCC 172, speaking through Justice Rohinton F. Nariman, has held as under:-

"7. The law under Section 340 on initiating proceedings has been laid down in several of our judgments. Thus in Chajoo Ram v. Radhey Shyam, (1971) 1 SCC 774, this Court, in para 7, stated:

"7. ... No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge."

8. Similarly in Chandrapal Singh and Others v. Maharaj Singh and Another, (1982) 1 SCC 466, this Court, in para 14, stated:

"14. That leaves for our consideration the alleged offence under Section 199. Section 199 provides punishment for making a false statement in a declaration which is by law receivable in evidence. We will assume that the affidavits filed in a proceeding for allotment of premises before the Rent Control Officer are receivable as evidence. It is complained that certain averments in these affidavits are false though no specific averment is singled out for this

purpose in the complaint. When it is alleged that a false statement has been made in a declaration which is receivable as evidence in any Court of Justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in affidavits accepted or rejected by courts with reference to onus probandi do not furnish foundation for a charge under Section 199, I.P.C. To illustrate the point, appellant 1 Chandrapal Singh alleged that he was in possession of one room forming part of premises No. 385/2. The learned Additional District Judge after scrutinising all rival affidavits did not accept this contention. It thereby does not become false. The only inference is that the statement made by Chandrapal Singh did not inspire confidence looking to other relevant evidence in the case. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out, in courts averments made by one set of witnesses are accepted and the counter averments are rejected. If in all such cases complaints under Section 199, I.P.C. are to be filed not only there will open up floodgates of litigation but it would unquestionably be an abuse of the process of the Court. The learned Counsel for the respondents told us that a tendency to perjure is very much on the increase and unless by firm action courts do not put their foot down heavily upon such persons the whole judicial process would come to ridicule. We see some force in the submission but it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an Advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under

Section 482, Cr. P.C., 1973"

xxx xxx xxx

9. Both these judgments were referred to and relied upon with approval in *R.S. Sujatha v. State of Karnataka and Others*, 2011(1) RCR (Criminal) 365 : (2011) 5 SCC 689 (at paras 15 & 16). This Court, after setting down the law laid down in these two judgments concluded:

"18. Thus, from the above, it is evident that the inquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of perjury. More so, the court has also to determine as on facts, whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed."

xxx xxx xxx

10. It is clear therefore from a reading of these judgments that there should be something deliberate- a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise.....

xxx xxx xxx

13. The case next cited by learned counsel for the respondent No.1 is *State of Goa v. Jose Maria Albert Vales alias Robert Vales*, 2017(3) RCR (Criminal) 981 : (2018) 11 SCC 659 in which the learned counsel relied, in particular, upon para 34. Para 34 of this judgment, in turn, relied upon the celebrated judgment of *M.S. Sherif v. State of Madras*, AIR 1954 Supreme Court 397, and ultimately concluded that as the High Court in that case had scrutinised the evidence "minutely" and had disclosed ample materials on which a judicial mind could reasonably reach the conclusion that further investigation was necessary in a Section 340 proceeding, held that the Section 340 proceeding must, therefore, go on. As has been stated in the facts of the

present case, the High Court has not scrutinised any evidence as there was none to scrutinise. Further, all that the High Court has seen is a preliminary investigation report, and that too by a police officer, together with a High Court order granting anticipatory bail, none of which can be said to be unimpeachable evidence against which it can clearly be stated that a prima facie case of perjury can be said to have been made out. This judgment also does not further the respondent's case. The respondent then relied upon Perumal v. Janaki, 2014(1) RCR (Criminal) 851 : (2014) 5 SCC 377 and para 20, in particular, to state that the High Courts not only have the authority to exercise such jurisdiction under Section 195 but also an obligation to exercise such power in appropriate cases. This proposition is unexceptionable. We have, however, found that the present is not such an appropriate case." (emphasis added)

19. Further, a two Judge bench of the Hon'ble Supreme Court in ***Muthu Karuppan, Commissioner of Police, Chennai Vs. Parithi Ilamvazhuthi and another, (2011) 5 SCC 496***, speaking through Justice P. Sathasivam, has opined as under:

"15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of "deliberate falsehood" on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge."

19. Similarly, a two Judge bench of the Hon'ble Supreme Court in ***Mohammad Ibrahim Vs. B. Rama Rao, AIR 1976 SC 1822***, has noted that situations may arise where pursuing prosecution for filing false statements in

affidavit may not be expedient in the interest of justice. Speaking through Justice Y.V. Chandrachud, the following was held:

“3. Section 479-A of the Code provides, to the extent material, that when any civil court is of the opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of judicial proceeding and that for the eradication of the evils of perjury and in the interest of justice, it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him, the court shall, at the time of delivery of the judgment disposing of the proceedings, record a finding to that effect and may, if it so thinks fit, make a complaint thereof in writing setting forth the evidence which is false. The statements made by the respondent in his counter affidavit in regard to the pendency of the complaint filed by Miss Narayanamma and the appellant's service record are, in their letter and in the literal sense, not true but that is not enough for sanctioning the prosecution. An essential pre-requisite of Section 479A is that the court must form the opinion that the witness had made the statement complained of "intentionally."

xxx xxx xxx

5. Under Section 479-A, Criminal Procedure Code not only is it necessary that the court must form the opinion that the witness had intentionally given false evidence, but it is further necessary that the court must come to the conclusion that for the eradication of the evils of perjury and in the interests of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him. On this aspect of the matter. there is many a circumstance showing that it is not in the instant case expedient in the interests of justice that the respondent should be prosecuted for having made false statements in his counter affidavit. There is a plausible explanation as to the circumstances in which the respondent came to make the two particular statements now complained of Secondly, the respondent did not occupy any high place in the hierarchy of the Secretariat staff and we are inclined to the view that he swore a statement which by his superior officer he was commanded to swear..”

20. Additionally, a three Judge Bench of the Hon’ble Supreme Court in ***Dr. S.P. Kohli, Civil Surgeon, Ferozepur Vs. The High Court of Punjab***

and Haryana, AIR 1978 SC 1753, speaking through Justice Jaswant Singh, has made the following observations:

“17. It is now well settled that prosecution for perjury should be sanctioned by courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely. It is also well recognised that there must be a prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge. (See Chajoo Ram v. Radhey Shyam. (1971) 1 SCC 774 : (AIR 1971 Supreme Court 1367).”

21. As far as the question of filing affidavits conveying false information qua maintenance proceedings is concerned, a Co-ordinate Bench of the Delhi High Court in *Kusum Sharma Vs. Mahender Kumar Sharma 2020(3) DMC 331*, speaking through Justice J.R. Midha, has opined as follows:

“79. However, an action under Section 340 Cr.P.C. is ordinarily not warranted in matrimonial litigation till the decision of the main petition unless the Court, for the reasons to be recorded, considers it expedient in the interest of justice, to deal with it earlier.”

CONCLUSION

22. Thus, keeping in view the judicial precedents and relevant provisions of law, the following guiding principles are laid down for invoking the provisions of Section 340 Cr.P.C. in matrimonial cases:

- (i) There must be sufficient material available on record to indicate conspicuous and intentional nature of the alleged falsehood and mere inaccuracy or misstatement would remain inadequate for launching such prosecution.

- (ii) The formation of a *prima facie* opinion by the Court that such prosecution is expedient in the interest of justice and, appropriate in view of the facts of the case is *sine qua non*.
- (iii) There must be a deliberately and consciously made statement which is found to be false after comparing it with unimpeachable evidence, documentary or otherwise.
- (iv) The Court must only sanction prosecution for perjury only in cases where it appears that conviction is reasonably probable and breaches the threshold for the charge of deliberate and conscious falsehood.
- (v) The Court must consider the magnitude of the obstruction caused by the alleged offence to administration of justice. It must also be seen if such falsehood has any impact on the outcome of the case.
- (vi) The proceedings for perjury cannot be launched in a mechanical manner, at the *ipse dixit* of an estranged spouse if plausible explanation has been provided for making such omission or misstatement. The failure to exercise due care and caution can be visited upon by imposing cost on the delinquent.
- (vii) As perjury is an offence against public justice, the Court will act as the complainant, in order to preserve the purity of the judicial process. No party can be allowed to abuse the process of Court as

an instrument of oppression and cause needless harassment to the other party, motivated purely by personal spite.

- (viii) The order passed on application under Section 340 Cr.P.C must reflect application of mind and satisfy the objective standards of reason and justice as it has the potential to affect the liberty of a citizen.

23. Adverting to the factual matrix of the case, the question that has come up for consideration before this Court is whether the alleged false affidavit was filed by the petitioner makes her liable to be prosecuted under Section 340 Cr.P.C. The petitioner had resigned from her job on 30.08.2022 as discernible from the email annexed as Annexure P-4, which clearly shows that she was unemployed on the date of filing of the income and assets affidavit. The concerned bank account that was not revealed by the petitioner was a salary account, which has become irrelevant on account of her resignation, for the purpose of determining maintenance. As such, the reason for not mentioning the said account in her income and assets affidavit has been reasonably explained. This Court is of the considered opinion that the said information would not have any bearing upon the final outcome of the case. There is nothing on record that would aid in formation of an opinion to the effect that it is a *prima facie* case of deliberate falsehood, made by the petitioner with *mala fide* intentions and an oblique motive.

24. A perusal of the record indicates that the learned Court below has passed the impugned order without recording its opinion that prosecution of the petitioner in the instant case, is expedient in the interest of justice. Therefore, this Court is of the opinion that the impugned order was passed without following the drill of the relevant statutory provisions. As such, the impugned order dated 16.12.2023 passed by the learned Family Court, Sonipat, is, hereby, set aside and the matter is remanded back to the learned trial Court with directions to consider it afresh in light of the discussion above.

25. Disposed of, accordingly.

26. Pending miscellaneous application(s), if any, shall also stand disposed of.

27. Registry is directed to circulate a copy of of this order to all the learned Family Courts within the jurisdiction of the States of Punjab and Haryana as well as Union Territory, Chandigarh for information and compliance.

[HARPREET SINGH BRAR]
JUDGE

02.04.2024
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No