

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

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CRM-M-56518-2023 (O&M)
Date of decision: 15.04.2024

Navnimrat Kaur

...Petitioner

Versus

Harsimran Singh Johal and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Ashish Gupta, Advocate
for the petitioner.

MANISHA BATRA, J. (Oral)

1. Prayer in this petition, filed under Section 340 Cr.P.C., has been made by the petitioner for holding an inquiry and making a complaint to the concerned Magistrate against the respondents for committing offences punishable under Sections 193, 196, 199 and 200 of IPC.
2. As per submissions made in the petition, the petitioner through her father has lodged an FIR bearing No. 128 dated 11.06.2019 under Sections 406 and 498-A of IPC against respondent No. 1, who is her husband, respondent No. 2, who is her mother-in-law and her father-in-law. The respondents moved an application for grant of anticipatory bail bearing **CRM-M-27534-2019** before a coordinate Bench of this Court. During the pendency of the said petition, they filed an application bearing

CRM-2470-2020 (Annexure P-2), whereby permission was sought to place on record certain documents. It is alleged that the said application was supported by an affidavit (Annexure P-3), duly sworn by respondent No. 1. The case of the petitioner is that in paragraph No. 6 of CRM-2470-2020, the respondents had pleaded that no locker existed in the name of either of them or in the name of father of respondent No. 1 at Jalandhar at or any other place. It is alleged that this plea was palpably false and was brought to the notice of the Court and, therefore, the coordinate Bench of this Court, vide order dated 22.01.2020 (Annexure P-4), gave directions to the State counsel to verify the veracity of the plea so taken by the respondents. It is further submitted that the respondent-State, through DSP, Sub Division Faridkot, filed his affidavit (Annexure P-6) submitting that on inquiry made from the Union Bank of India, Model Town Branch, Jalandhar, it was revealed that there were two lockers in the name of respondent No. 2 and her husband and one of them was surrendered on 27.02.2018. State had also annexed, the copy of information given by the Manager of said bank in this regard as Annexure P-7.

3. It is submitted by learned counsel for the petitioner that false averments supported by affidavit qua the respondents having no locker in their names had been made due to the reason as there were specific allegations in the FIR lodged against them that the gold ornaments given to them at the time of marriage of the petitioner had been kept by respondent No. 2 in her locker and were never returned to the petitioner. It is submitted that falsity of the version in **CRM-2470-2020** further stood established from the admission made by respondent No. 2 during her cross-examination in a petition filed by the petitioner under the provisions of Protection of Women from Domestic

Violence Act, 2005 (*for short 'DV Act'*) about her having a locker in Union Bank of India, jointly with her husband.

4. The petitioner has sought action against the respondents by submitting that since in **CRM-2470-2020**, the respondents had made false averments qua their not having any locker in the names of either of them and even an affidavit was sworn and annexed with the application, therefore, they are apparently guilty of making false averments and filing false affidavit before this Court and are liable to be tried and punished for commission of offence for giving and using information known to be false as well as of making false statement, which has affected the administration of justice and accordingly, it is prayed that to hold the majesty of the Court, order of inquiry under Section 340 Cr.P.C. be passed.

5. At the outset, it would be proper to refer that there are two conditions for initiating proceedings under Section 340 Cr.P.C., which may be mentioned as under :

- (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 Cr.P.C.; and
- (ii) It is expedient in the interest of justice that an inquiry should be made into the alleged offense.

6. Section 340 Cr.P.C. has provided for meticulous procedure regarding initiation of the inquiry. The procedure as mentioned therein has to be followed for making an opinion that it is expedient in the interest of justice to file a complaint against the respondents in exercise of powers conferred under Section 340 of Cr.P.C. It is well settled that in the process of formation

of opinion by the Court, it is expedient in the interest of justice that an inquiry should be made into, the requirement should only be to have a *prime 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 under Section 340 Cr.P.C has been committed, the Court may dispense with preliminary inquiry and even it is not mandatory that a complaint should be filed as a matter of course. In this regard, reference can be made to an authoritative pronouncement of a Constitution Bench of Hon'ble Supreme Court, which had gone into scope of Section 340 Cr.P.C. in case cited as ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another : 2005 (2) RCR (Criminal) 178***. Paragraph No. 23 of this judgment is relevant for the purpose of this case, which reads as under:

“23. 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(i)(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 inquiry 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 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

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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.”

7. The claim of the petitioner is that by taking a false plea in **CRM-2470-2020** filed in **CRM-M-27534-2019**, to the effect that respondents were not having any locker in their names, they have committed the offence of perjury and, therefore, inquiry under Section 340 Cr.P.C. must be initiated against them. On a perusal of the record, I am convinced about the fact that the respondents in **CRM-2470-2020** have taken a false plea that neither of them is having any locker in his/her name at Jalandhar, though it stands established from the report of DSP as well as by the admission of respondent No. 2 herself during her cross-examination in the petition filed by the petitioner under the provisions of DV Act against her and others, that she was having a locker jointly in the name of her husband and herself. Though **CRM-2470-2020** is shown to be signed by counsel for the respondents only and the affidavit annexed with the same is shown to be signed by respondent No. 1 and not by respondent No. 2, however, it is to be assumed that the contents of this application as well as the affidavit were very much within the knowledge of both the respondents, therefore, it *prima facie* appears that the

respondents made false averments and filed affidavit in support thereof for the purpose of using the same for securing benefit of pre-arrest bail.

8. Now, question that arises for consideration is as to whether the respondents are liable to be prosecuted on account of the false plea being taken by them and swearing an affidavit by one of them in support thereof. For that purpose, this Court is still required to form an opinion that it is expedient in the interest of justice to initiate an inquiry into the offence of false evidence while having regard to the overall factual matrix as well as probable consequences of such prosecution. In this regard, reliance can be placed upon *K. Karunakaran vs. T.V. Eachara Warriar and another : (1978) (1)SCC 18*, wherein it was observed that the mere fact that a deponent has made contradictory statements at two different stages in a judicial proceedings is not by itself always sufficient to justify a prosecution for a perjury under Section 193 Cr.P.C. But it must be established that the deponent has intentionally given a false statement in any stage of the judicial proceedings or fabricated false evidence for the purpose of being used in any stage of the judicial proceedings and such a prosecution for perjury should be taken only if it is expedient in the interest of justice. Reliance can further be placed upon *Sasikala Pushpa vs. State of Tamil Nadu : 2019(6)SCC 477*, wherein it was held that for prosecution under Section 195 read with Section 340 Cr.P.C, perjury must be established. It was further observed that before proceedings to make a complaint regarding commission of an offence referred to Section 195(1)(b) of Cr.P.C., the Court must satisfy itself that “it is expedient in the interest of justice”. The language in Section 340 Cr.P.C. shows that such a

course will be adopted only if the interest of justice requires and not in every case.

9. In *Dhirubhai Mohanbhai Bhanderi vs State of Gujarat : Law Finder Doc Id # 2232945*, the High Court of Gujarat had observed that the object of Section 340 makes it clear that before lodging a complaint, it is necessary that Court must be satisfied that it was expedient in the interest of justice to lodge the complaint. The mere fact that a person had made contradictory statements in a judicial proceeding or a contradictory stand has been taken during the proceedings, by itself, always would not be sufficient to justify the prosecution, even if it appears that the proceeding has been initiated on behalf of a person who alleges that it was not instructed by him, but if it has been without any criminal intent or when anything has been brought on record to show that any harm has been caused to him. Merely on allegations or only to vindicate the personal vendetta, the Court would not initiate any inquiry unless it comes to the conclusion that it is expedient in the interest of justice. Unless, it is clearly brought on record that the prosecution is in the interest of justice, Court cannot contemplate to move the machinery against any private individual as the foundation of facts are not prima facie made clear as the very intention of the accused becomes doubtful.

10. Lastly, reliance can be placed upon *Chajoo Ram Vs. Radhay Shyam and another : 1971 (1) SCC (774)*, wherein the Hon'ble Supreme Court had observed that the prosecution for perjury should be sanctioned by the Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No-doubt giving of false evidence and filing false affidavit is an evil which must be

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curbed with the strong hand but to start prosecution of perjury and 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 interest 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.

11. On applying the ratio of law as laid down in above cited authorities to the peculiar facts and circumstances of the present case, I am inclined to hold that no doubt it stands *prima facie* established on record that the respondents had made false statement in **CRM-2470-2020**, though it was signed by their counsel only and the affidavit annexed with the same was signed by respondent No. 1 only and not by respondent No. 2, however, at the same time, in my considered opinion, the false plea so taken is not of such nature, qua which it can be considered to be expedient in the interest of justice that the respondents should be prosecuted for the offence of perjury. **CRM-2470-2020** was filed by the respondents during the pendency of a petition for grant of anticipatory bail as filed by them in the FIR lodged by the petitioner. There are multiple litigations between the parties. The *inter se* grudges between the petitioner and respondents appear to be large. In my opinion, the proceedings of this Court cannot be made as an instrument by any of the parties to satisfy their personal vendetta.

12. More so, the recommendation for action under Section 340 Cr.P.C. should be at the satisfaction of the Court making recommendation as

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to *mens rea* of the party sought to be proceeded against and as observed in *Bibhuti Bhusan Bassu vs. Corporation of Calcutta and others : 1982 Criminal Law General 909*, the same is a condition precedent. The petitioner has failed to demonstrate as to how the application CRM-2470-2020 was moved with an intention to do wrong to her, if at all this Court is to consider the case of the false averments.

13. On considering the overall circumstances of the case, this Court is satisfied that it is not expedient in the interest of justice that the respondents should be prosecuted for the offence of perjury for the eradication of evils of perjury. It cannot be stated that there was any deliberate and conscious attempt on the part of the respondents to misguide the Court and to interfere in the administration of justice. Rather, this Court is of the view that it will be in the interest of justice to avoid perpetual precipitation of the ill will amongst the parties by not passing any order for conducting any inquiry for lodging any complaint as against the respondents. Accordingly, finding no adequate reasons to justify the conclusion that it is expedient in the interest of justice to file a complaint, the present petition is dismissed.

15.04.2024

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable	Yes