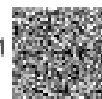
**CRR(F)-1332-2023 (O&M)****-1-****246-3 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR(F)-1332-2023 (O&M)****Date of decision: 20.08.2024****Ashish Kumar****... Petitioner****versus****Pooja and others****... Respondents****CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR****Present: Mr. Ajay Singh Ghangas, Advocate
for the petitioner.***********HARPREET SINGH BRAR, J.(Oral)****CRM-38766-2023**

The present application is preferred under Section 5 of the Limitation Act, 1963 seeking condonation of delay of 49 days in filing the present revision petition.

For the reasons mentioned in the application, the delay of 49 days in filing the present revision petition is hereby condoned.

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1. The present revision petition has been preferred against order dated 04.05.2023 passed by the learned Additional Principal Judge, Family Court, Sonipat vide which the application moved by the petitioner under Section 340 Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.') read with Section 195 Cr.P.C, was dismissed.

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2. Briefly, the facts are that the marriage between the petitioner and respondent No.1 was solemnised on 27.04.2016 and a daughter i.e. respondent No.2, was born out of the said wedlock. However, matrimonial discord ensued and respondents No.1 and 2 filed a petition for maintenance under Section 125 Cr.P.C., claiming to have no independent source of income. However, respondent No.1 failed to disclose certain material facts qua her educational qualifications and employment status in the affidavit filed by her with respect to her assets and liabilities. Subsequently, respondent No.1 withdrew her claim for maintenance and Rs. 5,000/- per month was awarded as maintenance to respondent No.2 under Section 125 Cr.P.C. by the learned Family Court. In view of the false information presented by respondent No.2, the petitioner preferred an application under Section 340 Cr.P.C. read with Section 195 Cr.P.C., which was dismissed by the learned Family Court vide impugned order dated 04.05.2023, noting that a wrong affidavit was filed due to an honest oversight by the counsel's office and the fact that respondent No.1 has withdrawn her claim for maintenance.

3. Learned counsel for the petitioner *inter alia* contends that respondent No.1 has concealed the fact that she also possesses a degree of Bachelor of Education in her affidavit dated 24.03.2022 (Annexure P-3) qua assets and liabilities. Moreover, she has failed to mention that she is working as a Trained Graduate Teacher(TGT) for Sanskrit in Delhi and earning Rs. 1400/- per day, pending which has been admitted by her in proceedings initiated by the petitioner under Section 9 of the Hindu Marriage Act, 1955. Respondent



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No.2 has another account in the Punjab National Bank, the details qua which are not reflected in the said affidavit. Claiming the lack of information to be a *bona fide* mistake, respondent No.1 sought to file an amended affidavit the day the petitioner moved an application under Section 340 Cr.P.C. However, the amended affidavit also does not reflect the actual income or bank details of respondent No.1. The learned Family Court has fallen into grave error by taking a lenient view and dismissing the application under Section 340 Cr.P.C. merely because respondent No.1 has voluntarily given up her claim for maintenance, as it is evident that respondent No.1 is attempting to cover up her attempt to misguide the Court and harass the petitioner.

4. Having heard learned counsel for the petitioner and after perusing the record with his able assistance, it appears that the lacunae in the assets and liabilities affidavit of respondent No.1 were caused due to a mix up of the documents by the office of her counsel. Soon after realizing his mistake, an application was moved to amend the said affidavit. The application was allowed and a fresh affidavit was filed which duly mentions that respondent No.1 is working as a Trained Graduate Teacher for Sanskrit. Not only did respondent No.1 place her salary slip on the record but also voluntarily gave up her claim for maintenance as she was selected for a government job. As such, no *mala fide* intention that would hinder the cause of justice can be made out in the matter at hand.

5. This Court discussed the matter of invoking Section 340 Cr.P.C. in proceedings arising from matrimonial disputes *in extenso* in **Monika vs.**



State of Haryana and others in CRR(F)-462-2024 decided on 02.04.2024, wherein the following guiding principles were enunciated:

“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.”

6. The object of Section 340 Cr.P.C. is to ascertain whether any offence affecting the administration of justice has been committed in relation

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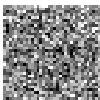
to any proceeding before any Court and that it would be expedient in the interest of justice to initiate prosecution qua the same. Since the expression “*Court is of opinion that it is expedient in the interests of Justice*” is used in Section 340 Cr.P.C., the following become the two essential pre-conditions 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.

As such, 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.

7. A perusal of the impugned order dated 04.05.2023 indicates that respondent No.1 has given up her claim for maintenance and filed an amended affidavit to reflect the information that was inadvertently missing from the original affidavit. In view of the above, this Court is of the considered opinion that the learned Family Court has correctly appreciated the facts and circumstance of the case to refuse initiation of proceedings under Section 340 Cr.P.C. against respondent No.1, as the same would not be expedient in the interest of justice. Furthermore, the learned Family Court has



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duly recorded a well-reasoned opinion which does not merit interference.

8. Accordingly, the present petition is dismissed and impugned order dated 04.05.2023 passed by the Additional Principal Judge, Family Court, Sonipat is upheld.

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

20.08.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

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