



2024:DHC:7941



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 08th OCTOBER, 2024

IN THE MATTER OF:

+ **CRL.A. 218/2022 & CRL.M.A. 9409/2022**

SEEMA LAL

.....Appellant

Through: Mr. Pranav Gupta, Mr. Anil Kumar,
Mr. Siddhant Verma, Mr. Purva
Popli, Mr. Sushal Tripathi, Mr. Arya
Tripathi, Mr. Himanshu Kalra, Mr.
Shankar Kant Nirala, Mr. Saraswat,
Mr. Saurabh Kumar, Mr. Rishi Raj
Singh, Mr. Sambhav Shekhar, Mr.
Anant Bhardwaj, Mr. Satyananand
and Mr. Kunal Awana, Advocates.

versus

PAWAN KUMAR LAL & ANR.

.....Respondents

Through: Mr. Kuldeep Rana, Advocate.
Ms. Priyanka Dalal, APP for the
State.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Appellant has approached this Court challenging Order dated 23.02.2022 passed by the learned Additional Sessions Judge, Dwarka Courts, Delhi in CA No.85/2021 disposing of an application filed by the Respondent herein under Section 340 CrPC for committing an offence of perjury.
2. The facts of the case are that the marriage between the Appellant and the Respondent was solemnized on 18.06.1998. Disputes arose between the



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parties. It is stated that a petition for divorce under Section 13(1)(a) of the Hindu Marriage Act was initiated by the Respondent against the Appellant herein. It is stated that the Appellant instituted proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (*in short* 'DV Act') against the Respondent. It is further stated that an affidavit of income and assets was filed by the Appellant on 24.02.2021.

3. It is stated that on 07.04.2021, when the matter came up for hearing before the learned Metropolitan Magistrate, an adjournment was sought by the Proxy Counsel for the Respondent as the main Counsel was not available and the matter was adjourned. However, during the hearing, the Appellant submitted that the Respondent has stopped paying monthly maintenance from August, 2017 as the Appellant had refused to permit the Respondent to enter the house. The said Order further shows that upon inquiry, the Respondent, who was present in Court, had undertaken to pay a sum of Rs.20,000/- per month towards maintenance to the Appellant. The Respondent also undertook to bear the expenses towards electricity, gas bill, cable connection, water and other miscellaneous expenses along with the medical expenses. The statement of the Respondent was recorded and in view of that, the Respondent was directed to pay a sum of Rs.20,000/- per month to the Appellant herein from 07.04.2021.

4. Aggrieved by the Order dated 07.04.2021, the Respondent herein challenged the said order by filing an appeal being CA No.85/2021 before the learned Additional Session Judge. The learned Additional Session Judge *vide* Judgment dated 23.02.2022 set aside the Order dated 07.04.2021 passed by the learned Metropolitan Magistrate.

5. The Judgment dated 23.02.2022 passed by the learned Additional



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Sessions Judge setting aside the Order dated 07.04.2021 was also under challenge before this Court in CRL.M.C.2732/2022 and this Court *vide* Judgment dated 08.10.2024 in CRL.M.C.2732/2022 has upheld the Judgment dated 23.02.2022 passed by the learned Additional Session Judge, meaning thereby, the Order dated 07.04.2021 has been set aside.

6. Material on record indicates that on 16.09.2021, statement of the Appellant herein was recorded wherein the Appellant had stated that on 08.10.2018, she met with an accident whereby she suffered grievous injuries and she was immobile and bedridden for 4-5 months. The statement also states that she had also taken a loan of Rs.2.5 lakhs @ 1.5% per month from one Advocate Ratan, who had arranged that money from one of his relatives but she has neither paid any interest nor she has returned the principal amount. It has been recorded in the statement that while making a statement, the Appellant started stammering and while telling the exact date of her illness and she was prompted by her Counsel. The statement also records that the Appellant has not told the exact period of her illness which was referred to as "Corona Period" and that the Appellant herein told that though she was having all symptoms of Covid-19 but she had not gone for any test for the fear of being put in the hospital. On the basis of the fact that a wrong statement has been given by the Appellant, proceedings under Section 340 CrPC have been initiated against the Appellant.

7. It is this order which is under challenge in the instant appeal.

8. Heard learned Counsels for the parties and perused the material on record.

9. Learned Counsel for the Appellant contends that the proceedings before the learned Additional Session Judge emanated from a challenge to



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the Order dated 07.04.2021 passed by the learned Metropolitan Magistrate. He states that during the hearing on 07.04.2021, Respondent herein was present in Court, who volunteered to pay a sum of Rs.20,000/- per month to the Appellant towards maintenance and he was also willing to bear the medical expenses and the loan of Rs.3.5 lakhs. It was this order which was under challenge and during the pendency before the learned Additional Session Judge, the statement of the Appellant was recorded.

10. It is stated that in her income affidavit before the Trial Court, the Appellant has not stated about any loan. However, the Appellant herein had taken a loan which was in the knowledge of the Respondent. It is stated that the Appellant had not filed any false affidavit.

11. *Per contra*, learned Counsel for the Respondent, supports the proceedings under Section 340 CrPC.

12. This Court has perused the income, assets and expenditure affidavit of the Petitioner therein. In the affidavit, the Petitioner has declared her monthly income as "Nil". There is no detail regarding any medical expenditure and also there is no detail regarding any loan. However, the Order dated 07.04.2021 wherein the Respondent herein had agreed to bear the medical expenditure and also pay the loan of Rs.3.5 lakhs is a voluntary statement. The statement reads as under:-

"Statement of respondent Pawan Kumar Lai S/o Sh. Bajrang Lal, Age 44 years, R/o C49, Khajan Basti, Nagal Rai, New Delhi 110046.

On SA

I am respondent in the present case. I undertake to pay a sum of Rs.20,000/- per month towards maintenance



to the complainant and also undertake to bear the expenses towards electricity bill, gas bill, cable connection, water bill and other misc. expenses. Further, I am also willing to bear the medical expenses of the complainant and also willing to pay the loan amount sum of Rs.3.5 Lacs. This is my true and voluntarily statement.”

13. There is, thus, no false statement by the Appellant before the learned Metropolitan Magistrate. In the order impugned herein, the learned Additional Sessions Judge in Paragraph 7 records that on perusal of the affidavit filed before the Trial Court and the statement on oath made before the learned Appellate Court, it is clear that the Appellant herein had lied during the proceedings before one of the courts committing an offence under Section 195 IPC.

14. This Court has perused the statement of the Appellant which reads as under:

"Statement of respondent Seema Lal w/o Sh. Pavan Kumar Lal; r/o H.No. D-2/185, 1st floor, Jeevan Park, Near Gautam Nursing Home, Pankha Road, Uttam Nagar, New Delhi-110059.

On S.A.

On 08.10.2018, I had met with an accident, in which I suffered grievous injuries in my right leg, due to which I remained immobile and bedridden for about 4 -5 months and could not work for about 2-2 ½ years.

For the purpose of my treatment, I have taken loan of Rs. 2.5 Lakhs (in several installments) on interest @1.5 p.m. from Ratan Advocate, who had arranged that



money from one of his relatives. Neither I have paid any interest, nor, I have refunded any principal amount of this loan till date.

About two years back, at this stage, the respondent had started stammering and telling the exact date and has been duly prompted by her counsel, however, still she is not able to state the exact period of her illness, which she had referred to as Corona. She had also stated that though she was having all the symptoms of corona, but she had not gone for any test, otherwise, the authorities have put her in hospital.

Again she has been asked to calmly to remember the month and year of her having fallen ill.

Then she had stated that it was about Two years or one and half years back, that she had suffered that fever.

Again, I had taken further loan of rupees 1 Lakh (In several instalments) from the same person on the same terms and conditions. Neither I have paid any interest, nor, I have refunded any principal amount of these loan till date. My husband and had no knowledge of these loans. There payment of these loans along with interest is my responsibility."

15. The fact that the Appellant stammered while recording her statement because she could not recollect the date of taking the loan alone cannot make a case under Section 340 CrPC. The impugned Order does not show that the Appellant has on affidavit stated either before the learned Metropolitan Magistrate or before the learned Additional Sessions Judge regarding loans taken by her.

16. A reading of the entire order shows that a statement of the Appellant was recorded regarding the loan taken and she fumbled in the Court while



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giving the statement. This Court is of the opinion that this alone would not make out a case under Section 195 IPC for which proceedings under Section 340 CrPC have been initiated. Further, the Order dated 07.04.2021 has been set aside.

17. This Court is not in a position to appreciate as to under what circumstances and why the statement of the Respondent was recorded. Learned Additional Sessions Judge has set aside the Order dated 07.04.2021 *vide* Judgment dated 23.02.2022. The learned Additional Sessions Judge ought to have seen that the proceedings have emanated from a matrimonial dispute. The Respondent has filed a case for divorce and the Appellant has initiated proceedings against the Respondent under the Domestic Violence Act. Exaggerations regarding income, expenditure etc., of the spouse and the parties is made in the income affidavit and normally maintenance is calculated on the basis of guess-work. On 07.04.2021, a voluntary statement was given by the Respondent herein willing to pay Rs.20,000/- per month. A perusal of the statement shows that the Respondent was aware of some kind of loan which was to be paid by the Appellant.

18. This Court is of the opinion that the Appellant herein has not fabricated any evidence in the proceedings before the learned Metropolitan Magistrate on 07.04.2021 and there was no necessity of the learned Additional Sessions Judge to record any statement while considering the correctness of the Order dated 07.04.2021. Since the proceedings emanate from matrimonial proceedings and the Order dated 07.04.2021 passed by the learned Metropolitan Magistrate already stands set aside, this Court is of the opinion that no useful purpose would be served in proceeding further against the Appellant herein under Section 340 CrPC more so as stated earlier Order



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dated 07.04.2021 from where the proceedings emanate has been set aside.

19. The appeal is disposed of along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

OCTOBER 08, 2024

hsk/yc