



2024:DHC:9418



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 19th November, 2024***+ **CRL.M.C. 3341/2022**

RAHUL KESARWANIPetitioner

Through: Mr. Abhey Narula, Adv.

versus

STATE OF NCT OF DELHI & ANR.Respondents

Through: Mr. Utkarsh, APP for the
State with SI Mahesh
Kumar, PS Kalkaji.**CORAM:****HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J.**

1. This present petition is filed challenging the order dated 11.04.2022 (hereafter '**impugned order dated 11.04.2022**') passed by the learned Additional Sessions Judge (ASJ), Saket Courts, Delhi in Criminal Appeal No. 135/2021.

2. The petitioner also challenges the order dated 17.11.2021 (hereafter '**impugned order dated 17.11.2021**') passed by the learned Metropolitan Magistrate (MM), Saket Courts, Delhi (**Trial Court**) in FIR No.198/2012 registered at Police Station Kalkaji for offences under Sections 498A/406 of the Indian Penal Code, 1860 (IPC), whereby the learned MM dismissed the application filed by the petitioner under Section 340 of the Code of Criminal Procedure, 1973 (CrPC).

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Signed By: HARMINDER KAUR
Signing Date: 06.12.2024
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3. Briefly stated, Respondent No.2 lodged a complaint against the petitioner leading to FIR No. 198/2012, alleging offenses under Sections 498A and 406 of the IPC. After trial, the petitioner (accused) was acquitted of all charges by judgment dated 14.05.2019 passed by the learned Trial Court.

4. Following the acquittal, the petitioner filed an application under Section 340 of the CrPC before the trial court, asserting that Respondent No.2 provided false testimony and fabricated documents during the trial, including:

- Forged bills allegedly evidencing jewelry purchases from M/s Kiran Jewellers.
- Misrepresentation of financial information, including income tax records and wedding expenses.
- Allegations of false claims regarding unpaid electricity bills.

5. The learned MM, by the impugned order dated 17.11.2021, noted that the facts as stated by the petitioner were not such that would affect the administration of justice. It was observed that the alleged false statements and documents provided by Respondent No.2, during the proceedings did not meet the threshold for initiating perjury proceedings. It was held that the discrepancies and contradictions in Respondent No.2's submissions, such as the alleged forged jewellery bills, income tax details, and claims regarding wedding expenses, were not conclusively proven to be intentionally false or materially obstructive to justice.

6. The learned ASJ, by the impugned order dated 11.04.2022,



had dismissed the petitioner's appeal and upheld the impugned order dated 17.11.2021, observing that the allegations made by the petitioner regarding forged jewellery bills, misrepresentation of financial details, and false statements were insufficient to warrant the initiation of proceedings under Section 340 of the CrPC. The learned ASJ emphasized that the power under Section 340 of the CrPC is discretionary and should be exercised only when it is expedient in the interest of justice. The learned ASJ reiterated that mere contradictions or discrepancies in evidence do not justify criminal prosecution unless there is clear intent to deceive and material impact on the administration of justice, and therefore, found no merit in interfering with the learned trial court's order.

7. The learned counsel for the petitioner submits that Respondent No.2 deliberately and willfully committed perjury by providing false statements and forged documents during the proceedings related to FIR No. 198/2012.

8. He submits that Respondent No.2 relied on fabricated jewellery bills from M/s Kiran Jewellers, which were disproven by the testimony of the proprietor (PW5), who categorically denied any sale to Respondent No.2 and confirmed that the bills were forged. Further, Respondent No.2 misrepresented her financial position, including claims about wedding expenses and income, which were contradicted by her submissions to the Income Tax Department, where she admitted that she neither incurred the claimed expenses nor had the alleged earnings.

9. He submits that Respondent No.2 falsely accused the



petitioner of demanding ₹1 lakh for unpaid electricity bills, despite evidence from BSES proving that the bills for the relevant period had already been paid. These misrepresentations, according to the learned counsel, were not minor inaccuracies but deliberate and calculated attempts to mislead the court and malign the petitioner.

10. The limited question before this Court is whether the learned MM and the learned ASJ erred by not initiating the proceedings against the respondent under Section 340 of the CrPC.

11. Section 340 of the CrPC provides for an inquiry and filing of a complaint in case the party is found to have committed offences referred in Section 195(1)(b) of the CrPC, which relates to filing of false evidence in any judicial proceedings. Section 340 of the CrPC reads as under:

“340. 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



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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;

(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.”

12. It is not in doubt that in case the wife is found to have committed an offence as defined under Section 195 of the IPC, an appropriate inquiry can be ordered under Section 340 of the CrPC. However, it is not necessary that in every case the Court has to order an inquiry under Section 340 of the CrPC. It is a settled law that the Court may refrain from passing any order in regard to filing of false evidence if it is not expedient in the interest of justice.

13. It is pertinent to note that the learned ASJ and the learned MM have explicitly recorded their satisfaction that they do not deem it appropriate in the interest of justice to initiate prosecution under Section 340 of the CrPC. It was specifically noted by the learned ASJ that the administration of justice was not hampered in the present case.

14. The allegations made by the petitioner, including claims of forged jewellery bills, false financial submissions, and fabricated statements regarding electricity bills, were duly considered by the learned MM and ASJ. Both courts found that the discrepancies



highlighted by the petitioner did not conclusively establish intentional and material falsehoods that would warrant prosecution under Section 340 of the CrPC.

15. One of the primary factors to be considered whether it is expedient in the interest of justice to initiate the proceedings is the impact caused by the falsehood and the intent behind the same.

16. In the present case, the inconsistencies in Respondent No.2's submissions, even if taken at face value, do not rise to the level of willful perjury or fabrication that necessitates invoking Section 340 of the CrPC. The courts below correctly applied the principle that such proceedings are discretionary and should only be initiated when expedient in the interest of justice. Moreover, it has been established through various judicial precedents, including *Iqbal Singh Marwah v. Meenakshi Marwah : (2005) 4 SCC 370* that initiating perjury proceedings is not a matter of course but requires a deliberate and conscious obstruction of justice, which is absent in this case.

17. Routine abuse of power under Section 340 of the CrPC to harass the other side and settle scores cannot be allowed. Litigants cannot be allowed to put in motion the judicial process to gratify their feelings of animosity by exacting revenge against the other side. The propensity of parties embroiled in matrimonial disputes seeking proceedings under Section 340 of the CrPC on mere surmises and suspicion with a revengeful desire to harass the other side needs to be discouraged. Parties embroiled in matrimonial disputes are often seen making



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exaggerated claims. Such claims are dealt with by the Courts on the basis of evidence led by the parties. As in the present case the petitioner husband was acquitted when the respondent wife was not able to prove her allegations beyond reasonable doubt. The inability of the wife to prove her allegations cannot be basis for initiation of proceedings under Section 340 of the CrPC.

18. Therefore, in view of the above and the findings of the courts below, this Court does not find any infirmity in the impugned orders to warrant interference in the same.

19. The present petition is therefore dismissed.

20. No further orders are required in the interest of justice.

AMIT MAHAJAN, J

NOVEMBER 19, 2024