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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 920/2017**

HARJEET SINGH MENDIRATTAAppellant
Through: Mr. M.S. Jadhav, Ms. Kalpana, Ms.
Monika Arora, Advs.

versus

STATE & ORSRespondents
Through: Mr. Shivendru Chauhan, Mr. J.P.
Singh, Advs. for R-2 to 4 along with
R-2 to 4 in person

CORAM:
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER
05.11.2024

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1. The present petition has been filed challenging the order dated 23.05.2017 whereby the application filed by the petitioner under Section 340 Cr. PC has been dismissed.
2. The order dated 23.05.2017 is reproduced as under;

*“Misc DJ No.61184/16
Harjeet Singh Mendiratta v. Sonia Mendiratta & Ors
23.05.2017
Present: None.*

In view of the reasons stated in the detailed judgment delivered today in the main probate petition No.42303/16 titled as Sonia Mendiratta v. State of NCT of Delhi, application u/s 340 CrPC stands rejected.

File be consigned to record room.

*(SUJATA KOHLI)
Additional District Judge,
(Central), Pilot Court, Delhi
23.05.2017”*



3. Learned counsel for the petitioner submits that in the judgment dated 23.05.2017 passed in probate case No.42303/2016 tilted as *Sonia Mendiratta v. The State and Ors.* the probate petition was dismissed. However, it has been submitted that even the in judgement dismissing the probate case, the learned Trial Court has not given any reason for the dismissal of application under Section 340 Cr. PC.
4. Section 340 Cr. PC falls in the chapter XXVI of the Code of Criminal Procedure, 1973 titled “*provision as to offence affecting the administration of justice*”. The bare perusal of the Section 340 Cr. PC makes it clear that upon the application being moved, the Court has to form an opinion on whether it is expedient in the interest of justice that an enquiry should be made into any offence as referred to 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 an evidence in a proceeding such Court may after such preliminary inquiry, if any, as thinks necessary may to proceed as per the Clause a to e of sub clause 1 of section 340.
5. Thus, Section 340 Cr.PC application could not have been dismissed by the learned trial court merely because the probate petition has been dismissed. The learned Trial Court was required to form an opinion as to whether it would have been expedient in the interest of justice to conduct an inquiry or not. However, surprisingly, the learned Trial Court has not proceeded in accordance with the law. Therefore, the impugned order has to be set aside.



6. Learned counsel for the respondent has taken a technical objection that the petitioner should have filed an FAO against the impugned order, and the present criminal appeal filed is not maintainable. Learned counsel further submits that the learned Trial Court has dismissed the application under Section 340 Cr. PC based on the reasons given in the order.
7. I consider that both the contentions given by learned counsel for the respondent are noted only to be rejected. As far as filing of the criminal appeal or the FAO is concerned that has no bearing as the impugned order itself is not sustainable on the face of it. Secondly, the learned Trial Court was required to proceed as per the law as given under Section 340 Cr. PC. Hence, the petition is disposed of.
8. The matter is remanded back and the application of the petitioner under Section 340 of Cr. PC be restored to its original number. The learned Trial Court is directed to proceed in accordance with the law and on the merits of the case.
9. Both the learned counsel for the parties submit that the concerned jurisdiction will now be the south district. Hence, the matter be placed before the learned Principal District and Sessions Judge, South for assigning the same to the competent Court.
10. Copy of this order be sent to the learned Principal District and Sessions Judge, South.
11. Parties are directed to appear before the learned Principal District and



Sessions Judge, South on 19.11.2024. However, it is made clear that this Court has not gone into the merits of the case and no expression made herein shall be tantamount to be an expression of the merits of the case.

DINESH KUMAR SHARMA, J

NOVEMBER 5, 2024

Pallavi/SMG