

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 664 of 2022

Garima Shaw @ Guddi Shaw

Versus

Umesh Kumar Shaw & Another

For the Petitioner : Mr. Dinabandhu Chowdhury, Adv.
Mr. Iresh Paul, Adv.

For the Opposite Party No. 1 : Mr. Debajyoti Deb, Adv.
Mr. Shyamal Mondal, Adv.
Ms. Somdyuti Parekh, Adv.

Heard on : 08.01.2025

Judgment on : 05.03.2025

Ajay Kumar Gupta, J:

1. By filing this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973, the Petitioner has challenged the correctness, legality and propriety of an Order dated 03.11.2021 passed by the Learned Additional Chief Metropolitan Magistrate – II, Calcutta in the Complaint Case No. CNS No. 1058 of 2021.

2. By the said impugned order dated 03.11.2021, the Learned Magistrate took cognizance against the petitioner under Sections 193/199/209 of the IPC in a proceeding filed under Section 340 read with Section 195 of the CrPC.

3. The brief facts, leading to filing of this Criminal Revisional application, are as under: -

3a. The petitioner is a legally married wife of the opposite party no. 1. She had filed an application under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 being Misc. Case No. 17/2017. The said proceeding was dismissed for default by the Learned 18th Metropolitan Magistrate, Calcutta. At the relevant point of time, the petitioner/wife had been

residing in joint mess. After dismissal of the said case, the petitioner was ousted from her matrimonial house.

3b. Due to change in the circumstances, the petitioner/wife has filed a fresh application under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 praying reliefs as prayed for. The proceeding is pending before the Learned Metropolitan Magistrate, 6th Court at Calcutta.

3c. In the said proceeding, the husband has filed an objection raising point of maintainability, which has been decided by the Learned Magistrate vide Order dated 23.02.2021. The Learned Magistrate holds the proceeding is maintainable and further allowed interim maintenance to the tune of Rs. 39,000/- per month as maintenance in favour of the petitioner awaiting the disposal of the case by the Learned Magistrate vide order dated 23.03.2021.

3d. Being aggrieved by and dissatisfied with the said impugned order dated 23.03.2021, the opposite party no. 1 had filed an appeal being Misc. Appeal No. 100 of 2021 before the Learned Chief Judge, City Sessions Court at Calcutta, which was, however, allowed on 07.12.2021 whereby setting aside the impugned Order dated

23.03.2021 passed by the Learned Magistrate.

3e. Feeling aggrieved by the said Order dated 07.12.2021 passed in Misc. Appeal No. 100 of 2021, the petitioner has moved a Revisional application being CRR No. 314 of 2022. After hearing, the then Hon'ble Single Bench of this Court has been pleased to stay the impugned Order dated 23.03.2021 passed in Criminal Appeal No. 100 of 2021 on 02.02.2022.

3f. During pendency of the Revisional application, the opposite party no. 1/husband filed an application under Section 340 of the CrPC alleging, *inter alia*, that the petitioner/wife had made false statements in the affidavit of assets and liabilities filed before the Learned 6th Metropolitan Magistrate, Calcutta in connection with the Misc. Case No. 9 of 2019. The said application had been filed before the Learned 6th Metropolitan Magistrate. However, it was appeared and moved the same as complaint case before the Learned Additional Chief Metropolitan Magistrate – II, Calcutta on 03.11.2021.

3g. The Learned Additional Chief Metropolitan Magistrate – II, Calcutta took cognizance on the said complaint vide order dated

03.11.2021 and the case was further transferred to the file of the Learned 6th Metropolitan Magistrate, Calcutta. Though, the application was originally filed before the Learned 6th Metropolitan Magistrate, Calcutta since the original Misc. Case No. 9 of 2019 was pending before the said 6th Metropolitan Magistrate but without going through the relevant provisions of Section 340 read with Section 195 of the CrPC, Learned Additional Chief Metropolitan Magistrate – II, Calcutta took cognizance mechanically and ignored its jurisdiction. Hence, this Criminal Revisional application.

4. Learned counsel appearing on behalf of the petitioner vehemently argued and submitted that the opposite party no. 1 has filed application under Section 340 of the CrPC and moved before the Learned Additional Chief Metropolitan Magistrate – II, Calcutta although the said Court has no jurisdiction to take cognizance. Taking cognizance is absolutely bar in law of the offences stipulated in Section 195 of the CrPC.

5. The original case was filed before the Learned 6th Metropolitan Magistrate, Calcutta and the same was pending to the said Bench. The said application was required to be filed before the Court where the proceeding is pending. Any allegations with regard to

false statement, if made by any of the party thereof, that allegations must be looked into by the Court, where the original case is pending.

6. However, overlooking the real provision of Section 340 read with Section 195 of the CrPC, the Learned Additional Chief Metropolitan Magistrate – II, Calcutta took cognizance of the alleged offences treating as complaint case. Accordingly, same is bad in law and shall be liable to be set aside.

7. On the contrary, learned counsel appearing on behalf of the opposite party no. 1, on his usual fairness, candidly submitted that actually, the said application was filed before the Learned 6th Metropolitan Magistrate, Calcutta, where the original proceeding under Section 12 read with Section 23 of the Protection of Women from Domestic Violence Act, 2005 is pending. The same was registered as Complaint Case No. CNS No. 1058 of 2021. However, it was appeared before the Learned Additional Chief Metropolitan Magistrate – II, Calcutta on 03.11.2021 and the learned counsel moved the application, therefore, Learned Magistrate took cognizance and transferred the same to the file of the Learned 6th Metropolitan Magistrate at Calcutta for its disposal in accordance with law. The order of cognizance is not bad in law when it would not, at all, cause

prejudice to the Petitioner/wife. Therefore, there is no need to interfere with the said order of cognizance.

8. In support of his contention, the learned counsel appearing on behalf of the opposite party no. 1 has placed reliance of two judgments passed in the cases of ***Pritish Vs. State of Maharashtra and Others***¹ and ***Pradeep S. Wodeyar Vs. State of Karnataka***².

9. I have heard the arguments and submissions made by the learned counsels for both the parties and upon perusal of the judgments referred by the learned counsel appearing on behalf of the opposite party no. 1, this Court finds a moot question involved in the present case is that whether the cognizance taken by the Learned Additional Chief Metropolitan Magistrate – II, Calcutta in the case being Complaint Case No. CNS No. 1058/2021 vide order dated 3rd November, 2021 is correct or liable to be set aside?

10. It reveals from the application and arguments made by the learned counsel appearing on behalf of the opposite party no. 1 that the petition of complaint was actually filed under Section 340 of the CrPC arising out of Misc. Case No. 9 of 2019 for commission of

¹ (2002) 1 SCC 253;

² (2021) 19 SCC 62.

offences for making false statements before the Court falls under Sections 193/199/209 of the IPC. The application was filed originally before the Learned 6th Metropolitan Magistrate at Calcutta registered as Complaint Case No. CNS No. 1058/2021. But, wrongly the said complaint case was appeared/placed before the Learned Additional Chief Metropolitan Magistrate – II, Calcutta by the office concerned. Cognizance was taken on the basis of complaint filed by the complainant along with affidavits and certain documents seeking prosecution of accused under Sections 193/199/209 of the IPC though the allegation of the complainant was that the accused has mis-led the Learned Court by giving false statements and declarations in affidavit of assets and liabilities for obtaining interim order of maintenance from the Learned 6th Metropolitan Magistrate, Calcutta, thereby she has committed the offence of contempt of Court because she made false statements and declaration on affidavit of assets and liabilities and the Learned Magistrate allowed interim maintenance and residence until the disposal of the case filed under Section 12 read with Section 23 of the PWDV Act against the complainant/husband on the basis of such false statements and declaration.

11. The Learned Trial Court passed such order, *inter alia*, as follows: -

“Under such circumstances, I find it absolutely proper in the backdrop of the present market rate and status of the both the parties, that the respondent is directed to pay Rs. 39,000/- as maintenance to the petitioner per month awaiting the disposal of this case. The petitioner is accorded residential facilities in her matrimonial house.

O.C., of the Amherst Street P.S. is directed to render assistance to the petitioner in implementing order of this Court.

Also, a copy of this order be forwarded to O.C., Ranigunj P.S.

Therefore, as above the petitioner is allowed maintenance and residential order until the disposal of this case.”

12. The petitioner/wife has committed offence of contempt of Court, which is punishable under Sections 193/199/209 of the IPC as such, the Opposite Party No. 1/husband filed an application under Section 340 of the CrPC.

13. Before deciding the case in hand, this Court would like to enumerate herein below the provisions of Sections 340 read with Section 195 of the CrPC for ready reference.

Section 340 of 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 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 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."

Section 195 of CrPC reads as under:

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. — (1)

No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

except on the complaint in writing of that Court or by such officer of the Court as that Court may

authorise in writing in this behalf, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

14. Upon perusal of the aforesaid provisions, it appears that an application under Section 340 of the CrPC should be filed in the Court where original proceeding is pending and the Court can be Criminal, Civil or Tribunal in which the proceedings in relation to which the offences, as alleged, were committed and where original case filed is pending.

15. The purpose of Section 340 of CrPC is to preserve the administration of justice and to allow the parties to provide evidence for fair and proper adjudication of the case without being misrepresentation, misleading or suppression of order being intimidated.

16. Any party of the proceeding can file an application under Section 340 read with Section 195 of the CrPC before the Court, where the proceeding is pending for allegation of commission of the offences of contempt of Court as stipulated in Section 195 of the CrPC and upon such filing of complaint, the Court concerns, where the proceeding is pending, can conduct preliminary enquiry into the allegations made by the party.

17. This Court would like to refer the observations made by the Hon'ble Supreme Court in ***Pritish Vs. State of Maharashtra and Others***³ in paragraph nos. 8 and 9 as under:

8. Chapter XXVI of the Code contains provisions “as to offences affecting the administration of justice”. Among the 12 sections subsumed therein we need consider only three. Section 340 consists of four sub-sections of which only the first sub-section is relevant for the purpose of this case. Hence the said sub-section is extracted below:

“340. (1) When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interest 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

³ (2002) 1 SCC 253;

a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence 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.”

9. *Reading of the sub-section makes it clear that the hub of this provision is formation of an opinion by the court (before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion, the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when*

the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint. But once the court decides to do so, then the court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the court regarding its opinion. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, the purpose of preliminary inquiry, even if the court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.”

18. The law under Section 340 of CrPC on initiating proceedings has been laid down in several judgments of the Hon’ble Supreme Court. In the case of **Chajoo Ram vs. Radhey Shyam**⁴, the Hon’ble Court, in para 7, held as follows:

⁴ (1971) 1 SCC 774

“7.....No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too 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 interests 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.”

19. Scope of Section 340 of CrPC has already been dealt with in detail by the Constitution Bench of the Hon'ble Supreme Court in the case of ***Iqbal Singh Marwah v. Meenakshi Marwah***⁵. Relevant paragraph of the aforesaid judgment is quoted herein 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(1)(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

⁵ (2005) 4 SCC 370

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 enquiry 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 Section 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 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.”

20. In the case of **Ashok Kumar Aggarwal v. Union of India**⁶, allegation of perjury was leveled against Investigating Officer who is stated to have filed a false affidavit with respect to completion of

⁶ (2013) 15 SCC 539

enquiry but subsequently it was found that some further enquiry was conducted with respect to the incident in question. Hon'ble Supreme Court has discussed the scope of Section 340 read with Section 195 of Cr. P.C. and came to the conclusion that there was no attempt at the part of the Investigating Officer to mislead the Court. Particularly paragraph 8 is reproduced herein below:

“8. In this context, reference may be made of Section 340 under Chapter XXVI of the Cr. P.C., under the heading of “Provisions as to Offences Affecting the Administration of Justice”. This Chapter deals with offences committed in or in relation to a proceeding in the court, or in respect of a document produced or given in evidence in a proceeding in the court and enables the court to make a complaint in respect of such offences if that court is of the view that it is expedient in the interest of justice that an inquiry should be made into an offence. Clause (b) of Section 195(1) Cr. P.C. authorises such court to examine prima facie as it thinks necessary and then make a complaint thereof in writing after having recorded a finding to that effect as contemplated under Section 340(1) Cr. P.C. In such a case, the question remains as to whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offences and whether it is also expedient in the interest of justice to take any action. Thus, before lodging a complaint, the condition

*precedent for the court to be satisfied are that material so produced before the court makes out a prima facie case for a complaint and that it is expedient in the interest of justice to have prosecution under Section 193 IPC. (Vide: **Karunakaran v. T.V. EacharaWarrier, (1978) 1 SCC 18: AIR 1978 SC 290; and K.T.M.S. Mohd. v. Union of India, (1992) 3 SCC 178: AIR 1992 SC 1831).***”

21. The judgment referred by the opposite party no. 1 passed in **Pradeep S. Wodeyar Vs. State of Karnataka** is not applicable in the present case because in the said case, the order taking cognizance inadvertently mentioned that the Special Judge has taken cognizance against the accused instead of the offence, this would not vitiate the entire proceeding particularly where the material information on the commission of offence had brought to the notice and had been perused by the Special Judge. So, taking cognizance by the Special Court was, therefore, irregular. In order to prove that the irregularity vitiates the proceeding, the accused must prove the failure of justice as prescribed under Section 465 of the CrPC determining the objective behind prescribing that cognizance has to be taken of the offences and not the offender, a mere change in the factum of cognizance order would not alter the effect of the order for any injustice to be meted out.

22. Another judgment referred by the opposite party no. 1 is also not applicable in the present case because in the said judgment, the Hon'ble Supreme Court held that the accused cannot complain that he was not heard during the preliminary enquiry conducted by the reference Court under Section 340 of the CrPC because the persons against whom proceedings were instituted have no such rights to participate in the preliminary enquiry as held in the case of ***M. Muthuswamy Vs. Special Police Establishment***⁷.

23. Considering all aspects of the case in hand and as far as the legal position is concerned, the procedure for taking cognizance of offences under Sections 193/199/209 of IPC is governed by Section 195(1)(b)(i) read with Section 340 CrPC. It is submitted that there is an absolute bar against taking of cognizance for the offences specified under Section 195(1)(b)(i), Cr.P.C. by any means, except upon written complaint by the concerned Court. This is even if the offence of giving false evidence under Section 193 of IPC, or false statement made in declaration which is by law receivable as evidence under Section 199 of IPC and/or dishonestly making false claim in Court under Section 209 of IPC were allegedly committed in the proceedings before a

⁷ 1985 Cri LJ 420 (Mad)

Court of law. Explanation 2 to Section 193 IPC squarely covers the case in hand since investigation directed by law is specified to be a stage of judicial proceeding. The cognizance under Sections 193/199/209 of IPC is barred by Section 195(1)(b)(i) of Cr.P.C. as no written complaint was lodged by the Learned Magistrate against the Petitioner and until and unless the Court trying the proceeding filed under Section 12 read with Section 23 of PWDV Act gave a finding that the documents or affidavit of assets and liabilities submitted in that Court were false and fabricated and directed for lodging of complaint against the Petitioner/wife, the learned Court could not have taken cognizance against the Petitioner/wife, therefore, cognizance taken by the Learned Additional Chief Metropolitan Magistrate – II, Calcutta is not permissible as such, the same is bad in law.

24. Section 340 of Cr.P.C. prescribes the procedure as to how a complaint may be preferred under Section 195 of Cr.P.C. While under Section 195 of Cr. P.C., it is open to the Court before which the offence was committed to prefer a complaint for the prosecution of the offender, Section 340 Cr. P.C. prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 Cr. P.C. are mandatory and no Court can take cognizance of offences

referred to therein.

25. Accordingly, **CRR 664 of 2022** is **allowed**. Consequently, connected applications, if any, are also disposed of.

26. Interim order, if any, is hereby vacated.

27. Impugned Order dated 03.11.2021 passed by the Learned Additional Chief Metropolitan Magistrate – II, Calcutta in the Complaint Case No. CNS No. 1058 of 2021 is hereby set aside.

28. All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

29. Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Ajay Kumar Gupta, J)