



**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

906 CRIMINAL WRIT PETITION NO. 139 OF 2025

SHAIKH MUSHIR AHEMAD S/O AHEMAD SAHAB

VERSUS

JOINT CIVIL JUDGE JUNIOR DIVISION

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Mr. Pandharinath R. Jadhav, Advocate for the Petitioner

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CORAM : Y. G. KHOBRADE, J.

DATE : 20.02.2025

PER COURT :-

1. Heard at length the learned counsel for the Petitioner.
2. By the present Petition, the Petitioner takes exception to the order dated 17.10.2024 passed by the learned Joint Civil Judge Junior Division, Mukhed Dist. Nanded below Exh.67 in PWDVA No. 33 of 2019, whereby the learned Magistrate refused to take action against the Respondent wife under Section 340 of Cr.P.C.
3. The learned counsel for the Petitioner canvassed in vehemence that, the Respondent wife filed a proceeding bearing PWDVA No.33 of 2019 under Section 12 of the Protection of Women from Domestic Violence Act. The Respondent wife filed evidence affidavit at Exh.44. The Respondent entered the witness box and

proved the contents of affidavit. Thereafter, he through his counsel cross-examined the Respondent wife. After the cross-examination is over, the Petitioner/ husband filed Exh.67 an application under Section 340 of Cr.P.C., and prayed for action against the Respondent/ wife for perjury contemplated under Section 195 of IPC on the following grounds:

- (i) The Respondent has falsely stated in her evidence affidavit that, her daughter born at village Chandola. However, birth of daughter took place in private hospital at Degloor. Therefore, the said statement is an offence under Section 191 of IPC.
- (ii) In evidence affidavit, the Respondent has stated on oath that she is residing at her maternal home but she has produce rent receipt to show that, she residing at Mukhed in rented premise. Therefore, the said statement made on oath is false, hence, it is an offence under Section 191 and 192 of IPC.
- (iii) The Respondent has made false statement on oath that, she did bachelor degree in science stream but she did Physiotherapy at Nizamabad, hence, it is an offence under Section 191 of IPC.
- (iv) In para No.8 of evidence affidavit, the Respondent has made a false statement about cause of action that, he being a husband not taking effort for cohabitation, however, in cross-examination, the Respondent has admitted that, she is not ready for cohabitation with the Petitioner, hence, it is an offence under

Section 191 of IPC.

(v) The Respondent falsely stated in her evidence affidavit that, she has no source of income and tried to mislead the court, hence, it amounts to perjury, therefore, it is necessary to prosecute the Respondent wife under Section 340 of Cr.PC.

4. On 17.10.2024, the learned trial Court passed an order below Exh.67 and rejected the application. The Learned trial Court held that, the veracity of version of Applicant and authenticity of document relied on Respondent, the Petitioner/ori. N.A., would be adjudicated at the time of final adjudication. Merely, giving a narration relating to the birth of the daughter at a particular place does not have adverse impact on the trial. So also, other allegation about falsehood the statements in evidence affidavit as well as cross-examination can look at the time of final adjudication.

5. Needless to say that, for taking action under Section 340 of Cr.PC, the Magistrate or the Court which conduct the trial has to come to the opinion that, the concerned witness has committed an offence of perjury contemplated under Section 195 of IPC. Thereafter, the concerned Court required to record findings to that effect and then require to make complaint in writing to the concerned Judicial Magistrate having jurisdiction to try the said offence.

6. In case of *Chajjoo Ram Vs. Radhe Shyam AIR 1971 SC 1367*, it is held that, before recommending action under Section 340 of Cr.P.C., the Court must satisfy that, the parties sought to be proceeded against intentionally committed the offence.

7. In case-in-hand, the Petitioner/husband alleged that, in the evidence affidavit, the Respondent/wife made false statements on oath as observed in para 3 (I) to (v) does not false within ambit of Section 191, 192 and 195 of IPC. Therefore, I do not find any substantial ground to interfere with findings recorded by the learned Trial court, hence, the Criminal Writ Petition is dismissed at the threshold.

[Y. G. KHOBRADE, J.]