



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 1676 OF 2024

Abhay Arun Daithankar,
Age: 45 years, Occ : Pvt. Service,
R/o Sadguru Nagar, Near
Kalika Devi Temple,
Old Ausa Road, Latur.

... PETITIONER

V/s.

1. Mousami w/o Abhay Daithankar,
Age: Major, Occ : Household,
R/o Jai Niwas behind Sahyadri Hospital,
Near Rajiv Gandhi Chowk, Latur.
2. Aaditya s/o Abhay Daithankar,
Age: 18, Occ : Education,
R/o Parijat behind Sahyadri Hospital,
Near Rajiv Gandhi Chowk, Latur.
3. Arya s/o Abhay Daithankar,
Age: 12, Occ : Education,
Through his mother i.e. Respondent no.1
R/o Parijat behind Sahyadri Hospital,
Near Rajiv Gandhi Chowk, Latur..

... RESPONDENTS

.....
Dr. R.R. Deshpande h/f. Priyanka Deshpande, Advocate for the Petitioner
Mr. Amol A. Kokad, Advocate for the Respondent No.1.
.....

CORAM : Y.G. KHOBRAGADE, J.
DATE : 10.02.2025

ORAL JUDGMENT:-

1. At the outset it is submitted that considering the matrimonial dispute between the Petitioner and Respondent No.1, this Court has granted

sufficient opportunities to both the sides for settlement of dispute between them despite of same, they have failed to settle the dispute. Irrespective of the the facts, this Court also intervened and gave understanding by mediating but both the parties declined to settle the dispute. Therefore, both the parties were called upon to argue the matter on merit.

2. Rule. Rule made returnable forthwith. With the consent of both sides, heard finally at the stage of admission.

3. Heard at length Mr. Deshpande, the learned counsel appearing for the Petitioner and Mr. Kokad, the learned counsel appearing for the Respondent Nos.1 to 3.

4. By present petition, the Petitioner/Husband has questioned the legality and validity of orders dated 22.08.2024 passed below Exh.39 and Exh.46 by the learned Family Judge, Latur, in Petition No. E-239/2021. The present Petitioner is the Original Non-Applicant and present Respondent Nos.1 to 3 are the Original Applicants in proceeding bearing Petition No.E-239/2021, filed under Section 125 of the Code of Criminal Procedure, 1973 (for brevity herein-after to be referred as "Cr.P.C.") The Petitioner is the husband of Respondent No. 1 and father of the Respondent Nos. 2 & 3. For the sake of brevity, parties to present petition shall be referred in their original capacity as Applicants and Non-Applicant.

5. Brief facts which has given rise to the filing of this petition are that, on 25.05.2001, marriage of the Petitioner and Respondent No.1 was solemnized as per the customs and rites prevailing in their society. Out of said wedlock, they came to be blessed with two children i.e. present Respondent Nos. 2 & 3. However, due to domestic violence raised at the hands of the Non-Applicant as narrated in the application u/s 125 of Cr.P.C., the Non-Applicant No.1 was compelled to stay at her parental house with her children.

6. The Applicants Nos.1 to 3 have instituted a Petition No. E-239/2021 under Section 125 of the Cr.P.C., and thereby prayed for maintenance. The Applicants have also filed an application for interim maintenance. Further the petition is also supported by the Affidavit of Assets and Liabilities in pursuance of guidelines framed by the Hon'ble Supreme Court in the case of *Rajnish V/s. Neha and Another; (2021) 2 SCC 324*, the Applicant No. 1 had file an affidavit of Assets and Liabilities at Exh.6.

7. The learned counsel appearing for the present Petitioner canvassed that, though the Respondent No.1 filed an affidavit of assets and liabilities, however, the Respondent No.1 failed to disclose her educational qualification and left many columns blank therein. Therefore, the Respondent No.1 have concealed facts of her education in declaration form of assets and liabilities and furnished false affidavit which amounts to an offence u/s 195 of Indian Penal

Code, 1860 (for brevity hereinafter to be referred as “IPC”), hence, it is necessary to take action u/s 340 of Cr.P. C.

8. The learned counsel for the present Petitioner further canvassed that, the present Respondent concealed and did not disclose following material of facts as under:

- a) The Original Applicant has completed her Diploma in Medical Electronics Engineering Polytechnic in the year 2000.
- b) The Original Applicant has completed professional course of Beauty Therapist in the year 2018 from the Astha Skill Development Center, Latur.

9. Therefore, the present Petitioner has filed Exh.46, an Application under Section 340 read with Section 195 of the Cr.P.C., and thereby prayed for initiation of action against the present Respondent No.1/Original Applicant No. 1 for an offence punishable u/Sec. 193, 195 of Cr.P.C. However, the learned trial Court passed the impugned order dated 22.08.2024, holding that prior to decision on the application for interim maintenance, the Petitioner has filed present application and omission of details of educational qualification, that has no impact on administration of justice, neither it caused any prejudice to the present Petitioner, hence, rejected the application.

10. The learned counsel appearing for the Petitioner relied on Judgment dated 07.03.2018 passed by the Co ordinate Bench of this Court at

Principal Seat in ***Criminal Application No.728/2017 (Farid Ahmed Qureshi V/s. State of Maharashtra and Anr.)***, wherein it is held that, for filing of complaint under Section 340 read with Section 195(1)(b) of Cr.P.C., for making false statement before this Court, contrary to the record and for not disclosing true and correct facts is made out. Therefore, opinion of the Court is that, the offences as contemplated under Section 193, 196, 199, 200 and 209 of the I.P.C. appears to have been committed.

11. Further he relied on Judgment dated 30.10.2012 passed by the Co ordinate Bench of this Court at Principal Seat in ***Civil Application No.12382/2016 in Appeal From Order No.102/2011, CPR Manufacturing Industries Limited V/s. Sergi Transformer Explosion Prevention Technologies Pvt. Ltd. And Ors.; 2013 All M.R. (1) 153***, wherein it is held that, in a proceeding under Section 340 of the Cr.P.C. only a *prima facie* opinion is required to be reached out by the Court and challenge is required to be established during trial.

12. Per contra, the learned counsel appearing for the Respondents canvassed that, merely omission about disclosure of educational qualification in the affidavit of assets and liabilities does not constitute perjury as contemplated under Section 195 of the I.P.C. It is further canvassed that, keeping some columns blank in the prescribed form, as per the guidelines laid down in the

case of **Rajnesh** cited (supra), it does not warrant initiation of action contemplated under Section 340 of the Cr.P.C. It is further canvassed that, merely submitting a declaration form of assets and liabilities on affidavit and giving declaration stating that, the information disclosed in the affidavit does not amount to perjury and no offence has been constituted, unless the declarant enter into witness box and testify the statement made in said declaration. However, the Petitioner has filed application Exh.46 and prayed for action under Section 340 of the Cr.P.C., at the primary stage even prior to decision of application for interim maintenance. Therefore, the learned trial Court has rightly rejected the application, hence, prayed for dismissal of the petition.

13. Having regard to the submissions canvassed on behalf of both sides, I have gone through the petition paper book. It is not in dispute that, on 25.02.2011, the marriage of Petitioner and Respondent No.1 was solemnized and out of said wedlock, the Respondent Nos.2 and 3 are born. Admittedly, the Respondents have filed Petition No.E-239/2021 under Section 125 of the Cr.P.C. and prayed for maintenance against the Petitioner. The Respondents have filed a separate application for grant of interim maintenance. It is a matter of record that, the Respondent No.1 filed affidavit disclosing her assets and liabilities, educational qualification, employment, source of earning as per law laid down by the Hon'ble Supreme Court in case of **Rajnesh** cited (supra).

14. On the face of the record, it *prima facie* appears that, the Respondent No.1 filed assets and liabilities affidavit at Exh.6 but she has not disclosed her educational qualification and some columns are left blank may be due to lack of knowledge or for want of information or due to non understanding of the information. In column no.(f) of the affidavit, the Respondent No.1 disclosed the name of the employer as Abhay Arun Daikthankar i.e. Petitioner, who is the Husband of the Respondent No.1 and shown his profession as Teacher and monthly income of Rs.80,000/-.

15. The Respondent No.1 also furnished declaration stating that, the information which has been given in the Affidavit of Assets and Liabilities are true and correct and in case the statement made in the affidavit is found incorrect, it would certainly constitute an offence under Section 199 read with Section 191 and 193 of the I.P.C. punishable with imprisonment up to 7 years and fine and also punishable under Section 209 with imprisonment up to 2 years and fine. So also, the Respondent No.1 verified the contents of the affidavit of assets and liabilities.

16. The Petitioner filed Exh. 46, an Application and prayed for action u/s 340 of Cr.P.C., for the offence u/s 195 of IPC, alleging that, the Respondent-Wife filed an affidavit pertaining to assets and liabilities by not disclosing her educational qualification and kept some columns blank, hence,

she has committed perjury because the Respondent No.1 has completed Diploma in Medical Electronics Engineering from Women's Polytechnic Latur in the year of 2005 and she has completed professional course of Beauty Therapist in the year 2018 from the Astha Skill Development Center, Latur.

17. On 22.08.2024, the learned Family Court passed the impugned order below Exh.46 considering various case laws cited therein and held that, Section 340 of the Cr.P.C., mandates preliminary enquiry and an opportunity of hearing to the Accused before a complaint under Section 195 of the Cr.P.C. is necessary. It is further held that, as per the ratio laid down in case of Dr. ***Santosh V/s. Amita; 2019 (3) Mh.L.J. 189***, it is explicit that even the Court comes to the conclusion that, offence is made out but the Court is not bound to make complaint regarding the commission of offence and said course will be adopted only if the Court thinks fit that it is expedient in the interest of justice to do so and not in every case. And non-disclosure of educational qualification in the assets and liabilities which does not make impact on the administration of justice and no prejudice is caused to the present Petitioner.

18. Chapter XI of the I.P.C. provides prosecution for false evidence and other offences against public justice. Section 340 of the Cr.P.C. provides perjury in cases for the offences under Section 195. Needless to say that, merely the Respondent No.1 did not disclose her educational qualification it does not *ipso*

facto attract Section 340 of the Cr.P.C. and no prosecution can be launched under Section 195, 191, 199 of the I.P.C. It is not the case of Petitioner that, though the Respondent No.1 is drawing regular income but she has suppressed said fact and made false statement on oath. On perusal of Exh.46, it does not appear that, the Respondent No.1 has submitted false information with an intention to claim maintenance against the Petitioner. Therefore, to my mind no action is required to be taken under Section 340 of the Cr.P.C. Further, merely non-disclosure of educational qualification in the form of enclosure of assets and liabilities does not affect the administration of justice. Therefore, I do find that, the findings recorded by the learned Family Court are just and proper and no interference is called at the hands of this court.

19. The Petitioner also challenged the order dated 22.08.2024 passed below Ex.39. Needless to say that, the Petitioner has filed Exh.39 an application for issuance of direction to file documents mentioned in Annexure-1 attached with the application vide Section 91 of the Cr.P.C. On 22.08.2024, the learned Family Court passed the impugned order holding that, the Respondent No.1/ Original Applicant has already filed requisite documents along with Exh.42. The Respondent No.1 filed other documents i.e. Account of Statements of Vishwakarma Mahila Bachat Gat, Spurti Mahila Bachat Gaut, which shows that, the Respondent No.1 does not hold account. Therefore, impugned order dated

28.02.2024 passed below Exh.39 is just and proper and no interference is called at the hands of this Court.

20. In view of above discussion, the Writ Petition is dismissed. Rule is discharged.

21. Needless to say that, the Respondent/Wife filed a Petition No. E-239/2021 and prayed for maintenance for herself and her minor children. The application for interim maintenance is still pending. However, the Petitioner dragged the Respondent-Wife to this Court and compelled her to avail service of the legal practitioner and shifted financial burden on the shoulder of Respondent No.1 for making payment of fees to the legal practitioner. The Respondent-Wife has no source of income and due to filing of this petition, the Respondents are facing delay in getting justice. Therefore, considering the fact that the Respondents are struggling for their survival and to meet bread and butter but they are compelled to incur expenses towards litigation charges. Therefore, to overcome from such exigencies, it would be just and proper to direct the Petitioner to pay Rs.20,000/- towards litigation charges to the Respondents within a period of 15 days from today, failing which said amount shall be recovered from the Petitioner towards arrears of maintenance charges.

[Y.G. KHOBRAGADE, J.]