



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

914 CRIMINAL WRIT PETITION NO. 2012 OF 2019

SARANG S/O. SURESH SHIKKENIS

VERSUS

**VAISHALI W/O. SARANG SHIKKENIS @ VAISHALI D/O.
MUKUNDRAO WAGH**

....

Mr. Amol R. Joshi, Advocate for the Petitioner

Mr. E. K. Dhokale, Advocate for the Respondent

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 31.01.2025

PER COURT :-

1. Heard the learned counsel for the Petitioner and the Respondent, at length.

2. By the present Petition, the Petitioner challenged the order dated 16.03.2019, passed by the learned District and Sessions Judge, Jalgaon below Exh.80 in Civil M.A. No.104 of 2015.

3. The learned counsel for the Petitioner canvassed that, the Petitioner and Respondent are the husband and wife. The Respondent wife had moved an application under Section 25 of

the Guardianship and Wards Act, 1980 before the District Judge, Jalgaon. The Respondent filed an affidavit Exh.25 in Civil M.A. No.104 of 2015 on 03.11.2015 denying that the Petitioner is not biological father of female child "Swara". The petitioner's denial of the child's paternity contradicts the pleadings in Petition PE No.239 of 2013 instituted under Section 125 of Cr.PC. before the Family Court, Pune, wherein the Respondent sought maintenance for herself and the minor daughter Swara. It is further canvassed that, the Respondent affirmed that the Petitioner had not met the minor daughter Swara even once since her birth till 03.11.2015. Thus, the said statement is entirely false, and the Respondent provided false evidence before the District Judge in proceedings under the Guardianship and Wards Act. Therefore, the Respondent wife has committed offences u/s 193, 195, 196, 199, 200 and 209 of the Indian Penal Code. Consequently, the Petitioner/husband filed an Application Exh.80, seeking initiation of criminal prosecution against the Respondent wife under Section 340 of Cri.PC. On 16.03.2019, the learned District Judge, Jalgaon, passed an order in Civil Misc. Application No.104 of 2015 by saying "*other side to say*". The said order is questioned by the Petitioner in the present Petition.

4. The learned counsel for the Petitioner canvassed that, when the Petitioner/Applicant filed an Application under Section 340 of Cri.P.C., and prayed initiation of criminal prosecution against the Respondent / accused, in that event it is not necessary on the part of the District Judge to call say of the Respondent wife. However, the District Judge passed the impugned order and called say of the Respondent wife. Therefore, impugned order is illegal and bad in law, hence, prayed to quash and set aside the same.

5. In support of these submissions, the learned counsel for the Petitioner relied on the case of ***State of Punjab Vs. Jasbir Singh, 2022 (6) K.L.T. 276***, decided by the Hon'ble Supreme Court on 15.09.2022, wherein the following questions were arose :-

“(i) whether section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?

(ii) what is the scope and ambit of such preliminary inquiry?”

6. In order to answer the question No.(i), the Hon'ble Supreme Court considered the cases of ***Pritish Vs. State of Maharashtra and Others, (2002) 1 SCC 253*** and the conflict law laid

down in the case of *Sharad Pawar Vs. Jagmohan Dalmiya & Ors*, (2010) 15 SCC 290, as well as the case of *Iqbal Singh Marwah Vs. Meenakshi Marwah*, (2005) 4 SCC 370 and answered the question No.1 in negative, holding that no opportunity of hearing is required.

7. It is further relied on order dated 05.08.2024 passed in the case of *Ritesh Deoram Patil Vs. Kirti Ritesh Patil in Criminal Writ Petition No.585 of 2023 (Coram: Shivkumar Dige, J.)*, wherein the case of *State of Punjab Vs. Jasbir Singh*, is cited and held that it is not necessary to call say of other side.

8. After going through the judgment of *State of Punjab Vs. Jasbir Singh*, cited (supra), it does not appear that, the Hon'ble Supreme Court observed in it's judgment that, say of the adverse party cannot be called on the application presented u/s 340 of Cr.PC. But it appears that, as per Section 340 of Cr.PC., it is necessary to conduct the preliminary inquiry and it is not necessary to give an opportunity of hearing to the other side prior to initiation of preliminary inquiry as per the ratio laid down in the case of *Iqbal Singh Marwah* cited (supra). Therefore, the Hon'ble Supreme Court answered the above question that, an opportunity of hearing to the

‘would be accused’ before a complaint is made under Section 195 of Cr.P.C., not necessary.

9. In case-in-hand, the Petitioner/husband sought to initiate action under Section 340 of Cr.P.C., against the Respondent wife in a proceeding under Section 25 of the Guardianship and Wards Act, 1980 on ground that, the Respondent/wife has filed an affidavit Exh.25 in Civil M.A. No.104 of 2015 on 03.11.2015, denying that the Petitioner is not biological father of minor female child Swara, which is contradictory statement made in Petition PE No.239 of 2013 filed under Section 125 of Cr.P.C. before the family Court, Pune, for grant of maintenance for herself and minor daughter Swara. The Petitioner further alleged that, the Respondent wife made a false statement on affidavit that, the Petitioner had not met minor daughter Swara even once since her birth, till 03.11.2015, but the said statement is completely false.

10. According to the Petitioner, the Respondent wife has made false statement in her affidavit in Petition PE No.239 of 2013 before the Family Court, as under:-

- “a) The Respondent mother [Respondent No.1] had stated on oath in her own Affidavit-in-chief, filed in P.E. 239/2013 before Hon’ble Family Court Pune, at point 10 on page 6 in line 10 to 18 on page 7 of same Affidavit-in-chief that the Petitioner father has met Kum. Swara on 04 November 2011.*
- b) Further in point 11 of above mentioned Affidavit-in-chief in P.E. 239/2013 before Hon’ble Family Court Pune, the Respondent mother (Respondent No.1) had stated that the Petitioner Father had visited house of Respondent’s parents at Jalgaon on 25th December 2011 to meet Kum. Swara and his wife.*
- c) The contents of above mentioned Point 11, in Affidavit-in-chief in P.E. 239/2013 before Hon’ble Family Court Pune, are re-affirmed on oath by Respondent No.1 herein in her Cross Examination in Point no.28 on page no.21 of Exhibit 22, in P.E.239/2013 on 11 December 2015 before the Hon’ble Family Court Pune.*
- d) The Respondent mother (Respondent No.1) had herself affirmed on oath in above same Affidavit-in-chief (Exh.22 in P.E.239/2013) at point 12 on page 8 to point 15 on page 12 that Kum. Swara was living with Petitioner Father till Respondent No.1 left the matrimonial alliance.*
- e) The Petitioner father had submitted his photographs (document evidence) with Kum. Swara of the above two dated 04 November 2011, 25 December 2011 and of various dates from 26 March 2012 to 22 June 2012 in the proceedings of P.E. 239/2013 before Hon’ble Family Court Pune, at Exh No.43 and the Respondent mother (Respondent No.1) has admitted on oath in her Cross Examination in P.E. 239/2013 before Hon’ble Family Court Pune on date 11th December 2015 on page 22 in Paragraph / Point no.29 in her same Examination in Chief.”*

11. The Petitioner therefore seeks action against the Respondent wife under Section 340 of Cr.P.C. for the offence under Section 195 read with Sections 193, 196, 199, 200, 209 of I.P.C. Accordingly, on 16.03.2019, the learned District Judge, Jalgaon, passed the impugned order, seeking the Respondent's response in compliance with the principles of natural justice. However, this does not amount to the initiation of a preliminary inquiry by the learned District Judge. Merely, the learned District Judge called say of the other side, which does not amount to initiate preliminary inquiry and cause of action arose to the petitioner.

12. Needless to say that, the observations made by this Court in the case of **Ritesh Deoram Patil**, cited (supra) decided on 05.08.2024 while exercising discretionary powers, cannot be considered a binding precedent. So also, in case of **State of Punjab Vs. Jasbir Singh** cited (supra) it is not held that, the concerned Court can not call say of the adverse party. But while making preliminary enquiry and an opportunity of hearing to the 'would be accused' before the complaint made under Section 195 of Cr.P.C., is not necessary.

13. However, it is made clear that, if the Respondent wife submits her say on Exh.80 and if the District Judge *prima-facie* come to the opinion about initiation of proceeding under Section 340 Cr.P.C. as against the Respondent wife, it may be the preliminary inquiry and shall comply clauses (a), (b), (c), (d) and (e) of Section 340(1) of Cr.P.C. Therefore, to my mind, no cause of action arose to the present Petitioner at this juncture.

14. In view of the above discussions, the Writ Petition is dismissed.

[Y. G. KHOBRAGADE, J.]

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