

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1809 OF 2024
IN
CAVEAT (L) NO.9320 OF 2024
IN
TESTAMENTARY PETITION NO.3908 OF 2023

Hilla Homi Dady alias]
Hilla Homi Dadysett alias Hilla Dady]
alias Hilla Dadysett alias H. H. Dady]
alias H. H. Dadysett alias Hilla H. Dady]
alias Hilla H. Dadysett] ... Deceased

Versus

1.

Hoshang Jehangir Khan
aged 63 yrs., of Mumbai,
Parsi Zoroastrian, Indian Inhabitant,
Married; Occupation: Business
Residing at 6, Shiv Shanti Bhavan,
146, M. Karve Road,
Churchgate, Mumbai 400 020.

]
2.

Rashna Hoshang Khan
Aged 60 yrs., of Mumbai,
Parsi Zoroastrian, Indian Inhabitant,
Married; Occupation: Advocate
Residing at 6, Shiv Shanti Bhavan
146, M. Karve Road,
Churchgate, Mumbai 400 020

]
- ... Applicants

In the matter of:

1.

Hoshang Jehangir Khan
aged 63 yrs., of Mumbai,
Parsi Zoroastrian, Indian Inhabitant,
Married; Occupation: Business
Residing at 6, Shiv Shanti Bhavan,
146, M. Karve Road,
Churchgate, Mumbai 400 020.

]
2.

Rashna Hoshang Khan

]

Aged 60 yrs., of Mumbai,	]	
Parsi Zoroastrian, Indian Inhabitant,	]	
Married; Occupation: Advocate	]	
Residing at 6, Shiv Shanti Bhavan	]	
146, M. Karve Road,	]	
Churchgate, Mumbai 400 020	]	... Petitioners

Versus

Khushroo Behramshaw Mogal	]	
Age 51 years, Parsi Indian Inhabitant	]	
of Mumbai residing at Room No.C-12,	]	
1 st floor, Novroz Baug, Dr. S.S.Rao Road,	]	
Ganesh Galli, Lalbaug, Parel	]	
Mumbai 400 012.	]	... Caveator

Mr. Dinyar Madon, Senior Advocate, Adv. Zubin Behramkamdin, Senior Advocate a/w. Ms. Anandini Fernandes, Adv. Ferzana Behramkamdin, Adv. Kalyani Deshmukh i/by FZB & Associates for the Applicant/Petitioner.

Mr. Sameer Logade a/w. Adv. Shahid Ansari, Adv. Mohd. Riyaz i/by G.L. Thonge for the Respondents.

Mr. R.V. Pai, Senior Advocate a/w. Adv. Mayur Khandeparkar, Adv. Bina Pai, Adv. Akshay P., Adv. Siddhi Bhosale, Adv. Ashesha Chheda, Adv. Varad Jadhav, Adv. Omkar Kalundrekar for the Applicant in IAL/21794/2025.

Mr. Shahed Ali Ansari a/w Ms. Mohammed Riyaz i/by G.L. Thonge for the Respondents in IA/1808 & 1809/2024 & CTS/9320/2024.

CORAM : KAMAL KHATA, J.
RESERVED ON : 17th July 2025.
PRONOUNCED ON : 14th August 2025.

JUDGMENT:

1) This is an Application filed under Section 340 read with Section 195 of Criminal Procedure Code (CrPC) 1973, on behalf of the Applicants, who are Original Petitioners.

2) The Applicants are the Executor and Executrix named in the last Will and testament dated 18th December 2015, together with four codicils, of one Hilla Homi Dady alias Hilla Homi Dadysett alias Hilla Dady alias Hilla Dadysett alias H.H. Dady alias H. H. Dadysett alias Hilla H. Dady alias Hilla H. Dadysett (hereinafter referred to as "the Deceased").

3) The Executors have instituted a Testamentary Petition No. 3908 of 2023 on 17th October 2023, seeking probate of the Will, which is still pending adjudication. The Applicant no. 1 has known the Deceased for the past 50 years. The father of Applicant No. 1 and the husband of Deceased were cousins - their maternal grandmother and grandfather, respectively, being siblings.

4) The son of the Deceased brother, being the sole surviving legal heir of the Deceased, has filed an Affidavit dated 26th July 2023, consenting to grant of probate in favour of the Petitioners.

5) By an Order dated 19th December 2023, the additional Registrar, Original Side/Additional Prothonotary Senior Master, directed issuance of general citation in the Petition. The Petition was listed on 15th March 2024, for grant of probate.

6) On 14th March 2024, one Khushroo Behramshaw Mogal e-filed a Caveat along with an Affidavit in Support dated 12th March 2024 in the said Petition, enclosing therewith an alleged last Will and

testament dated 23rd March 2023, purportedly executed by the deceased.

7) On 15th March 2024, the said Mr. Mogal, through his Advocate, appeared and stated that a Caveat had been filed on his behalf. This statement was duly recorded in the Order dated 15th March 2024.

8) Despite requests made by the Petitioners' Advocate, neither the caveat nor the Affidavit in support was served upon the Petitioner or their Advocate.

9) Due to the change in representation for the Petitioners, another letter dated 23rd March 2024, was addressed to the Advocates for the Caveator, requesting copies of the Caveat and the Affidavit in Support.

10) On 26th March 2024, the Advocates for the Caveator served upon the Petitioner's Advocate a copy of the Caveat and the Affidavit in Support thereof. Upon perusal of the said documents, the Petitioners became convinced that the Caveator is claiming to be a sole beneficiary of a portion of the estate of the Deceased on the strength of a forged and fabricated Will.

11) The Applicants submit that the forgery and fabrication of the purported Will dated 23rd March 2023 is evident from the following facts:

- a) The signature on the alleged Will is not that of the Deceased.
- b) The Caveator has no caveatable interest. He is neither an heir nor a relative of the Deceased, nor an heir under the provisions of the Indian Succession Act, 1925 as applicable to Parsis. This is evident from the alleged Will itself, annexed by the Caveator to his Affidavit in support of the Caveat.
- c) The Caveator claims that the Deceased referred to him as "just like my son" or "my nearest person" The Caveator is not related to the Deceased.
- d) Given the Applicant's close relationship with the Deceased and her predeceased husband, they are well aware, that neither the Caveator nor his father "Behramshaw Rustomji Mogal" were known to the Deceased, much less considered "just like my son" or "my nearest person" as alleged in the purported Will.
- e) The close personal relationship between the Deceased and the Applicants is evinced by the fact that the names of the Applicants (Applicant No.2, the wife of Applicant No. 1), were added by the Deceased as joint holders in her Bank Accounts, and the Applicant

No. 1 was nominated in respect of all her investments/assets.

f) There is no explanation as to why the Caveator waited almost a year after the Deceased's death to approach an Advocate, if indeed a valuable property (a bungalow at Kemps Corner) had been bequeathed to him.

g) The Will and Codicils executed between 18th December 2015 and 27th February 2023 do not mention the Caveator or his father at all, either as beneficiaries/nominees in any of the assets of the Deceased.

h) The Caveator's Affidavit fails to explain how he knew the Deceased, and apart from the alleged Will, there is no evidence of any acquaintance between them.

i) If the Caveator were truly "just like my son" or "my nearest person" as alleged, he would have been mentioned in at least one of the earlier testamentary documents, even if not as a beneficiary. For example, Mr.Yezdi Soli Doctor, Deceased's nephew, was expressly named in para 10 (b) of the Will dated 25th

December 2015 despite not receiving any bequest under it; subsequently, by Codicil dated 18th September 2019, a monetary gift was made to him.

j) A mere comparison of the signature on the alleged Will with the signatures on the four Codicils shows that they do not match in any manner.

k) The Deceased having given her own nephew only a sum of money, would have had no reason to bequeath her major asset - her share in a prime property at Kemps Corner, Mumbai, - to a complete stranger.

l) For over eight years, the Deceased's stated intention, including in her Will and Codicils, was to sell her share of the bungalow and donate the proceeds to charity. There was no conceivable reason for a change of mind within twenty-four days between 27th February 2023 and 23rd March 2023.

m) All earlier Wills and Codicils were internally consistent and executed in the presence of known trusted witnesses. By contrast, the witnesses to the alleged Will are unknown persons.

n) The alleged witnesses have signed on a separate page that appears to have been annexed to the alleged

Will, further casting doubt on its authenticity.

o) Despite allegedly being the sole beneficiary, the Caveator has not filed any petition for probate or letters of administration since the Deceased's death on 22nd May 2023. The Petitioner's however filed their probate Petition on 11th October 2023, and citation was published on 21st January 2024.

p) The Caveator surfaced only on 15th March, 2024 - when the Petition was listed for compliance and grant of probate orders - claiming to have filed a Caveat the previous day.

q) This conduct strongly suggests that that the alleged Will did not exist at the time of the Deceased's death and was subsequently fabricated in collusion with others, using information from the genuine testamentary documents to forge a signature.

r) The Deceased was at all times attended by trusted staff of several decades standing, who did not permit unknown persons into her residence.

s) The description of the Kemps Corner bungalow in the alleged Will has been lifted verbatim from the Will dated 25th December 2015.

t) A comparison of the alleged Will with the genuine Will and four Codicils clearly reveals fabrication, including a forged signature.

u) The alleged Will is riddled with typographical and grammatical errors in names, addresses and content – something wholly inconsistent with the Deceased education, literacy, and attention to detail.

v) The alleged Will names no executor and makes no provision for the residue of the estate, which is inconsistent with the Deceased's prior practice and intent.

12) Mr. Dinyar Madan, learned Counsel for the Applicants submits that the Caveator is attempting to mislead this Court by relying upon the purported Will dated 23rd March 2023, falsely claiming it to be genuine, despite being fully aware that it is false and fabricated. Upon inquiries within the Parsi community, it was discovered that the Caveator's own mother has filed a written statement in Suit No. 1905 of 2006 filed by the Caveator against his own family members, describing him as a mischievous person who has habitually attempted to extort money by blackmailing individuals for personal gain.

13) It has further come to light that the Caveator's stepfather

and brother have also filed a written statements alleging that the Caveator has committed several illegal and criminal acts, and that criminal complaints have been filed against him in various police stations. His own family members have stated that the Caveator has initiated proceedings against his stepfather and mother with intent to blackmail and extort money from them.

14) It has also been discovered that the Caveator defrauded his wife by selling her father's house and misappropriating sums from his pension accounts. He is alleged to have fabricated Wills and other documents in addition to the present one, and civil and criminal proceedings have been initiated against him by his brother-in-law in the Girgaon Court and the City Civil Court.

15) The Caveator has also allegedly instigated another woman-whom he claims to be his wife - to file a Suit No. 1285 of 2004 against her own family. These facts, it is submitted, demonstrate that the Caveator has a criminal disposition and is known to unlawfully usurp estate of others.

16) Mr. Madan submits that it is prima facie evident that the Caveator has fabricated the purported Will dated 23rd March 2023 to support his false claim over the estate of the Deceased. Such acts fall squarely within the ambit of section 463, 464 and 467 of the Indian Penal Code, 1860 and render him liable for prosecution and punishment under Sections 465 and 467 of the Indian Penal Code,

1860 (IPC).

17) Mr. Madan further submits that the Caveator has committed an offence under section 471 of the IPC, by fraudulently and dishonestly using a forged Will dated 23rd March 2023, claiming to be genuine, despite knowing it to be forged and fabricated.

18) In these circumstances, it is submitted that, in the interest of Justice, an inquiry should be conducted into the offences committed by the Caveator in relation to the forged Will dated 23rd March 2023, which he produced before this Court through his Caveat and Affidavit in support.

19) Learned Senior Counsel, Mr. Madan, accordingly, prays that this Application be allowed in terms of prayer clause A or B as deemed fit by this court.

20) In further support of his submissions, Mr. Madan places reliance on the Judgment of the Supreme Court in *State of Punjab versus Jasbir Singh*¹ wherein it was held that, in circumstances such as the present, there is no question of affording an opportunity of hearing to the accused prior to initiation of proceedings.

21) The relevant paragraphs of the judgment are extracted herein below for ready reference:

“1. The matter has been placed before a three Judges Bench arising from a reference made vide Order dated

¹ 2022 SCC OnLine SC 1240.

26.02.2020 seeking the following questions to be answered:

"(i) Whether Section 340 of the Criminal Procedure Code, 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?"

*5. To put the aspect in the right perspective and in sequence, we may note that the first judgment of three Judges Bench was *Pritish v. State of Maharashtra*¹ which noticed that the purpose of a preliminary inquiry under Section 340(1), Cr.P.C. was not to find whether a person is guilty or not but only to decide whether it was expedient in the interest of justice to inquire into the offence. It was thus observed that the Court is not obliged to make a preliminary inquiry on a complaint but if the Court decides to do so, it should make a final set of the facts which is expedient in the interest of justice that offence should be further probed into.*

*6. The reference Order is a conflicting view in *Sharad Pawar v. Jagmohan Dalmiya* to the extent that in para 7 while noticing the submissions of the counsels it was observed that it was necessary to conduct a preliminary inquiry as contemplated under Section 340 Cr.P.C. and "also to afford an opportunity of being heard to the defendants, which was admittedly not done." The latter was stated to be contrary to the view in *Pritish's* case.*

7. The reference Order also simultaneously noted the

observations in the Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah which was post the judgment in Pritish's case (supra) but prior to the judgment in Sharad Pawar's case (supra). In this behalf the extracted portion in 23 of the judgment reads as under: "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 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.

8. On having considered the matter, it is our view that the Constitution Bench's view would naturally prevail that makes the legal position quite abundantly clear. Not only that, if we may notice, what is reported in Sharad Pawar's case (supra) is only an Order and not a judgment. An Order is in the given factual scenario. The judgment lays down the principles of law. The scenario is that any Order or judgment passed by this Court becomes a reportable exercise to create more volumes of reported cases! This thus has a possibility at times of causing some confusion on the legal principles prevalent. The observations in the quoted paragraph extracted aforesaid apparently came out of the flow of the Order rather than pronouncing any principles of law and that is why the Bench itself categorized what is observed as an Order i.e., in the given factual scenario.

9. We have little doubt that there is no question of opportunity of hearing in a scenario of this nature and we say nothing else but that a law as enunciated by the Constitution Bench in Iqbal Singh Marwah's case (supra) is in line with what was observed in Pritish case (supra).

10. Interestingly both the judgments in Pritish's case and the Constitution Bench judgment in Iqbal Singh Marwah's case (supra) have not been noted in Order passed in Sharad Pawar's Case (supra). The answer thus to the first question raised would be in the negative."

22) Mr. Sameer Logade, Advocate for the Respondent, sought time to file an Affidavit in Response to the Interim Application. This

request was opposed by the Applicants counsel Mr. Madon. The Court accordingly granted Mr. Logade time to consider the decision in *State of Punjab v Jasbir Singh's (supra)* and to place on record any case law that would entitle him either to file a reply or to be heard in the matter.

23) On the next date of hearing, Mr. Logade again insisted on being heard for at least 15 minutes. This was once more opposed by Mr. Madon.

24) Upon a specific query posed by this Court to Mr. Logade, as to whether there existed any judgement entitling him to be heard at this stage, the answer was in the negative. Thereafter, I heard Mr. Madon and perused the record.

25) Prima Facie, this case appears to be a posthumous pursuit of riches unearned and a concerted attempt by unrelated party to usurp the estate. There is merit in Mr. Madon's submissions. A plain reading of the alleged Will raises serious suspicion. The Caveator is neither an heir nor a relative of the Deceased. The phrases 'just like my son' and 'my nearest person' appear to have been craftily employed to mislead the reader into believing that the Deceased shared a close relationship with the Caveator.

26) A comparison of the signature on the alleged Will relied upon by the Caveator and the Will and Codicils relied upon by the

Applicants shows clear dissimilarity. There is merit in Mr. Madon's contention that the description of the bungalow in the alleged Will has been lifted from the genuine Will dated 25th December 2015. The typographical errors in the names and addresses also raise suspicion, particularly since the Deceased was a well-read and meticulous person. The conduct of the Caveator - approaching the court after nearly a year - further adds to the suspicion.

27) Another factor warranting doubt is that the Deceased had executed a Will as far back as 18th December 2015, followed by several codicils, the last of which was as recent as 27th February 2023. This supports the genuineness of the 2015 Will. The mention of her nephew, coupled with his Affidavit consenting to grant of probate to the Applicants despite receiving only a monetary bequest, also strengthens the Applicant's case. The execution of a purported new Will just 24 days after the last codicil is highly suspicious. I find merit in Mr. Madon's submission that a preliminary inquiry under Section 340(1) CrPC is not to determine guilt, but to decide whether it is expedient in the interest of justice to inquire into the offence.

28) In this regard, the Hon'ble Supreme Court in the case of *Himanshu Kumar & Ors. vs. State of Chhattisgarh & Ors.*² analysis the law under Section 340 of the Cr.P.C., the relevant paragraphs are reproduced as under for ready reference:

² 2023 12 SCC 592

“76. Thus, from the above, it follows that there are two conditions, on fulfilment of which, a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceeding before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him.

79. The law under Section 340 CrPC on initiating proceedings has been laid down in several of our judgments. Thus, in Chajoo Ram v. Radhey Shyam [Chajoo Ram v. Radhey Shyam, (1971) 1 SCC 774 : 1971 SCC (Cri) 331], this Court, in para 7, stated as under : (SCC p. 779)

“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.”

82. It is clear through from a reading of the aforesaid judgments that there should be something deliberate – a statement should be made deliberately and consciously which is found to be false as a result of comparing it with unimpeachable evidence, documentary or otherwise.

83. It is true that an affidavit is “evidence” within the

meaning of Section 191 IPC and a person swearing to a false affidavit is guilty of perjury. But the matter does not rest here. Before initiating the proceedings for perjury, the court concerned has to consider whether it would be expedient in the interest of justice to sanction such prosecution. What the courts have to see at this stage is whether there is evidence in support of the allegations made by the Union of India (respondent herein) to justify the initiation of proceedings against the writ petitioners, more particularly, Writ Petitioner 1 herein who had filed the affidavit on behalf of himself and the other writ petitioners and not whether the evidence is sufficient to warrant his conviction. However, this does not mean that the court should not prima facie be of the opinion that there are sufficient and reasonable grounds for setting the machinery of criminal law in motion against the accused. As noted above, the Court has further to see that the false statement was deliberate and conscious and the conviction is reasonably probable or likely. In other words, before sanctioning the prosecution there must be a prima facie case of a falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. (See S.P. Kohli v. High Court of P&H [S.P. Kohli v. High Court of P&H, (1979) 1 SCC 212 : 1979 SCC (Cri) 252 : AIR 1978 SC 1753]).

84. This Court in *Muthu Karuppan v. Parithi Ilamvazhuthi* [*Muthu Karuppan v. Parithi Ilamvazhuthi*, (2011) 5 SCC 496 : (2011) 2 SCC (Cri) 709], has held as under : (SCC p. 501, paras 15-16)

“15. Giving false evidence by filing false affidavit is an evil which must be effectively curbed with a strong hand. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent, but there must be a prima facie case of

“deliberate falsehood” on a matter of substance and the court should be satisfied that there is a reasonable foundation for the charge.

16. In a series of decisions, this Court held that the enquiry/contempt proceedings should be initiated by the court in exceptional circumstances where the court is of the opinion that perjury has been committed by a party deliberately to have some beneficial order from the court. There must be grounds of a nature higher than mere surmise or suspicion for initiating such proceedings. There must be distinct evidence of the commission of an offence by such a person as mere suspicion cannot bring home the charge of making false statement, more so, the court has to determine as on facts whether it is expedient in the interest of justice to enquire into offence which appears to have been committed.”

85. Section 340 CrPC came up for the consideration before a three-Judge Bench of this Court in Pritish v. State of Maharashtra[Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] . In Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] , this Court was called upon to consider, whether it is mandatory on the part of the court to make a preliminary inquiry under Section 340 CrPC before filing a complaint under Section 195 CrPC and further, whether the court is required to afford an opportunity of hearing to the person against whom a complaint is filed before a Magistrate for initiating prosecution proceedings. This Court took the view that an opportunity to the would-be accused before the filing of the complaint was not mandatory and observed that the preliminary inquiry was itself not mandatory. The Court observed thus : (SCC pp. 258-61, paras 9-14 & 18)

“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.

10. “Inquiry” is defined in Section 2(g) of the Code as

‘every inquiry, other than a trial, conducted under this Code by a Magistrate or court’. It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of “warrant case” [as defined in Section 2(x)] of the Code the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

11. Section 238 of the Code says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the Magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the Magistrate is of opinion, in the aforesaid inquiry, that

there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.

12. Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.

13. The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. The learned counsel for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.

14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to

file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.

*18. We are unable to agree with the said view of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide *M. Muthuswamy v. CBI* [*M. Muthuswamy v. CBI*, 1984 SCC OnLine Mad 158]).”*

(emphasis supplied)

86. In *M.S. Sheriff v. State of Madras* [*M.S. Sheriff v. State of Madras*, (1954) 1 SCC 524 : AIR 1954 SC 397] , a Constitution Bench of this Court said that no expression on the guilt or innocence of persons should be made by the court while passing an order under Section 340CrPC. An exercise at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could then decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into. This decision of the Constitution Bench has also been followed in *Pritish* [*Pritish v. State of Maharashtra*, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] observing that the court, when decides to make a complaint under Section 340, is not to record finding of guilt or innocence of person against whom complaint is to be made before a Magistrate.

90. Later, the judgment in *Pritish* [*Pritish v. State of Maharashtra*, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] came to be relied upon by a two-Judge Bench of this Court in *Amarsang Nathaji* [*Amarsang Nathaji v. Hardik Harshadbhai Patel*, (2017) 1 SCC 113 : (2017) 1 SCC (Cri) 237] . While dealing with the propriety of the procedure adopted by the court making a complaint under Section 340CrPC, the Bench in *Amarsang Nathaji* [*Amarsang Nathaji v. Hardik Harshadbhai Patel*, (2017) 1 SCC 113 : (2017) 1 SCC (Cri) 237] observed as follows : (SCC p. 117, para 7)

“7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a *prima facie* satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position

to form such an opinion, that it appears to the court that an offence as referred to under Section 340CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. (See Pritish v. State of Maharashtra [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140])”

91. *The conflict between the two decisions of this Court of equal strength i.e. Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] and Sharad Pawar [Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290 : (2013) 1 SCC (Civ) 1188 : (2013) 2 SCC (Cri) 197] , was taken notice of by this Court in State of Punjab v. Jasbir Singh [State of Punjab v. Jasbir Singh, (2020) 12 SCC 96 : (2020) 4 SCC (Cri) 140] . A Bench of two Judges of this Court ultimately thought fit to refer the question to a larger Bench. The Court observed as under : (Jasbir Singh case [State of Punjab v. Jasbir Singh, (2020) 12 SCC 96 : (2020) 4 SCC (Cri) 140] , SCC p. 104, para 14)*

“14. In any event, given that the decision of the three-Judge Bench in Sharad Pawar [Sharad Pawar v. Jagmohan Dalmiya, (2010) 15 SCC 290 : (2013) 1 SCC (Civ) 1188 : (2013) 2 SCC (Cri) 197] did not assign any reason as to why it was departing from the opinion expressed by a Coordinate Bench in Pritish [Pritish v. State of Maharashtra, (2002) 1 SCC 253 : 2002 SCC (Cri) 140] regarding the necessity of a preliminary inquiry under Section 340 CrPC, as also the observations made by a Constitution Bench of this Court in Iqbal Singh Marwah [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri)

1101], we find it necessary that the present matter be placed before a larger Bench for its consideration, particularly to answer the following questions:

14.1. (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?

14.2. (ii) What is the scope and ambit of such preliminary inquiry?"

29) Subsequently, the full bench of Supreme Court in *Jasbir Singh (supra)* decided the issue that the purpose of a preliminary inquiry under Section 340(1), Cr.P.C. was not to find whether a person is guilty or not but only to decide whether it was expedient in the interest of justice to inquire into the offence.

30) In my view, the purported Will relied upon by the Caveator would certainly impact the administration of justice, cause a substantial injury to the Applicants, and deprive the Charity of a very valuable property. The existence of such a document would compel Courts to require the parties to lead evidence to prove it. The ratio of the Full-Bench decision in *Jasbir Singh's (supra)* squarely applies to the facts of this case.

31) I find no reason to permit the Respondents either to file a reply to the Interim Application or to address oral arguments in the

matter.

- 32) Interim Application is allowed in terms of prayer clause (b) altered as under:

“The Prothonotary and Senior Master through his representative shall lodge an appropriate Complaint before the jurisdictional Magistrate in respect of the offences punishable under Bharatiya Nyaya Sanhita, 2023 or Indian Penal Code, 1860 including under Sections 196, 199, 200, 463 and 471 of the Indian Penal Code, 1860, alleged to have been committed by the Caveator. Such Complaint shall be filed in accordance with Section 340(1)(b) and (c) read with Section 340 (3) (a) of the Code of Criminal Procedure, 1973.”

- 33) The Prothonotary and Senior Master to report compliance and status of the Complaint every three months to this Court. List matter for compliance on 14th November 2025.

- 34) All concerned to act on an authenticated copy of this Order.

(KAMAL KHATA, J.)