

Crl.R.C.(MD)No.1181 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.03.2025

Pronounced on : 30.04.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

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Thiruselvam

... Petitioner

Vs.

1.Kavitha

2.E.Mohan

Special Sub Inspector,
Kottar Police Station.
Now Special Sub Inspector,
Traffic Wing,
Kottar Police Station.

3.Prema

Sub-Inspector,
Armed Reserve,
Maravar Kudiyrupu,
Nagercoil.

... Respondents

Prayer : This Criminal Revision Case filed under Section 438 and 442 B.N.S.S., to call for the records relating to the order dated 28.05.2024 made in Crl.M.P.No.3961 of 2022 on the file of the Judicial Magistrate



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No.II, Nagercoil and set aside the same by appreciating the above said fact.

For Petitioner : Mr.P.Samuel Gunasingh

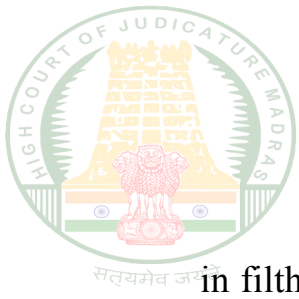
For R1 : Mr.M.Ramu

For R2 & R3 : Mr.R.Pon Karthikeyan

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.3961 of 2022 dated 28.05.2024 on the file of the Court of the Judicial Magistrate No.2, Nagercoil, in dismissing the complaint filed under Sections 190(1)(a), 200 and 340 of the Code of Criminal Procedure and Sections 193 r/w 109 of the Indian Penal Code.

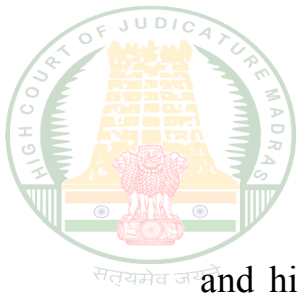
2. The case of the petitioner/complainant is that the marriage between the petitioner and the first respondent was solemnized on 20.01.2011 and subsequently, there arose misunderstanding and they are living separately, that on 14.06.2014 at about 07.30 a.m., the first respondent along with her relatives Thangapandiyan and S.Rajadurai and 4 or 5 other persons assembled unlawfully, broke open the back gate of the petitioner's house and trespassed into the house and abused the petitioner



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in filthy language and caused criminal intimidation, that the petitioner has lodged a complaint before the Kottar Police Station on 14.06.2014 itself but there was no action, that the Kottar Police has convened a katta panchayat and directed the petitioner and his father to allow the first respondent in their house, that subsequently as per the direction of this Court, FIR came to be registered in Crime No.203 of 2015 against the first respondent and her relatives, that in the meanwhile, on 14.09.2014 at about 05.00 a.m., the first respondent, by alleging that she was attacked by the petitioner and his parents, got herself admitted at Asaripallam Government Hospital at about 09.40 a.m., that the Kottar Police, after getting information from the hospital, visited the first respondent at about 10.45 a.m. and recorded a statement from her but no case came to be registered, that subsequently on 20.09.2014, the first respondent visited the Kottar Police Station at about 06.00 p.m. and gave a written complaint and on that basis, the second respondent registered a case in Crime No.785 of 2014 for the offences under Sections 294(b), 323 and 506(2) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, that the third respondent taking up the investigation came to the house of the petitioner at about 03.00 p.m. on 20.09.2014 and arrested the petitioner



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and his father and produced them before the jurisdictional Magistrate at about 00.10 hours and were remanded to judicial custody, that the third respondent has then filed a final report and the same was taken on file in C.C.No.315 of 2014 and after trial, the learned Magistrate has passed a judgment dated 01.07.2017 acquitting the petitioner and his parents, that during trial, the respondents came to be examined on 27.09.2016, 02.06.2017 and 06.06.2017 respectively, that all the respondents have adduced false evidence, that neither the first respondent nor the prosecution has preferred any appeal against the acquittal judgment, that the petitioner has filed a complaint under Section 193 r/w 109 IPC in Crl.M.P.No.7935 of 2019 before the Court of the Judicial Magistrate No.2, Nagercoil and the learned Magistrate has passed an order dated 22.12.2021 dismissing the said petition mainly on the ground that complaint has to be preferred either by the Court or by any person authorised by the Court and that therefore the petitioner was constrained to file the present complaint under Section 340 Cr.P.C.

3. The learned Magistrate, taking the petition filed under Sections 190(1)(a), 200 and 340 Cr.P.C. and Sections 193 r/w 109 IPC on file in



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Crl.M.P.No.3961 of 2022, conducted an enquiry under Section 202 Cr.P.C.

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The petitioner examined himself as P.W.1 and produced two witnesses, his father Thangappan and another witness Sureshkumar and the learned Magistrate, upon considering the materials available on record and on hearing the petitioner's side, has passed the impugned order dated 28.05.2024 dismissing the complaint under Section 203 Cr.P.C. Challenging the dismissal of the complaint, the present revision came to be filed.

4. It is pertinent to mention that the petitioner has earlier filed a complaint under Sections 190(1)(a) and 200 Cr.P.C. raising the very same contentions now raised in the present complaint and the said petition was taken on file in Crl.M.P.No.7935 of 2019 and in the enquiry conducted under Section 202 Cr.P.C., three witnesses came to be examined including the petitioner and more importantly, the learned Magistrate has called for a report from the concerned police and in pursuance of the same, they have submitted a report and the learned Magistrate, upon considering the materials available on record including the report submitted by the concerned police, has passed the order dated 22.12.2021 dismissing the



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said petition as legally not maintainable.

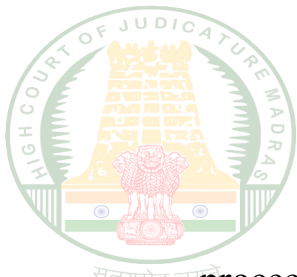
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5. The main contention of the petitioner is that on the basis of the false complaint lodged by the first respondent, the respondents 2 and 3 have created false records and arrested the petitioner and his father and that they have given false evidence before the trial Court.

6. Before entering into further discussion, it is necessary to refer Section 195 Cr.P.C.,

“Section 195 Cr.P.C. creates a bar against taking cognizance of certain offence as the Court cannot initiate proceedings for these offences unless a complaint filed by a specific authority.”

7. The very purpose of the above section is to ensure that the administration of justice is not undermined and public servants can discharge their duties without undue interference. Section 195(1) Cr.P.C. specifies that no Court can take cognizance of the offences punishable under Sections 193 to 196, 199, 200, 205 to 211 and 228 when such an offence is alleged to have been committed in, or in relation to, any



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proceeding in any Court.
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8. In the present case, the petitioner has sought for action for the offence under Section 193 IPC. Section 193 IPC penalizes the act of intentionally giving false evidence or fabricating false evidence in any stage of a judicial proceedings. As already pointed out, as per Section 195(1)(b) Cr.P.C., no Court shall take cognizance punishable under Section 193 IPC unless a complaint in writing is made by the Court in which offence was committed or by an officer authorised by that Court.

9. It is necessary to refer the recent judgment of the Hon'ble Supreme Court in ***James Kunjwal Vs. State of Uttarakhand and another*** reported in ***2024 LiveLaw (SC) 574***, wherein, the Hon'ble Apex Court has listed out the yardsticks that need to be fulfilled to book a person for the offence of perjury;

“16. What we may conclude from a perusal of the above-noticed judicial pronouncements is that:-

(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);



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(ii) Such proceedings should be initiated when doing the same is “expedient in the interests of justice to punish the delinquent” and not merely because of inaccuracy in statements that may be innocent/immaterial;

(iii) There should be “deliberate falsehood on a matter of substance”;

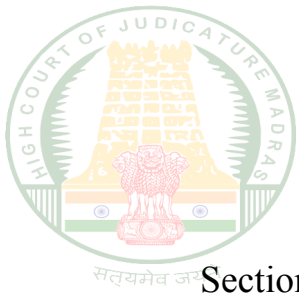
(iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;

(v) Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.

....

20. We find that at least three of the possible scenarios, as discussed supra, in which a court would be justified in invoking these powers on the face of it appear to be unmet, prosecution, therefore, would be unjust. ...”

10. In cases where false evidence is alleged to have been given, the Court has to see under Section 340 Cr.P.C. whether it is expedient to proceed with the complaint. To put it in other way, cognizance for the offence under Section 193 IPC cannot be taken without following the prescribed procedures under Sections 195 and 340 Cr.P.C. The object of



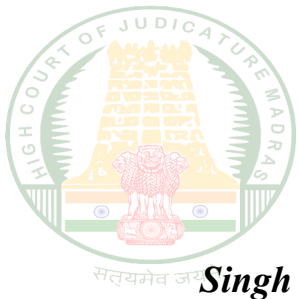
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Section 340 Cr.P.C. is to ascertain whether any offence affecting administration of justice has been committed in relation to any proceedings before or any document produced/given in evidence in Court, during the time when the document or evidence was in *custodia legis* and whether it is also expedient in the interest of justice to take such action.

11. In *Amarsang Nathaji Vs. Hardik Harshadbhai Patel and others* reported in **2017 (1) SCC 113**, the Hon'ble Apex Court has specified two pre-conditions for initiating proceedings under Section 340 Cr.P.C.: Firstly, the material produced before the Court must establish a *prima facie* case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-Section (1) of Section 195 Cr.P.C. and secondly, it is expedient in the interests of justice that an inquiry should be made into the alleged offence. It is pertinent to mention that 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 right.

12. A Constitution Bench of the Hon'ble Supreme Court in *Iqbal*



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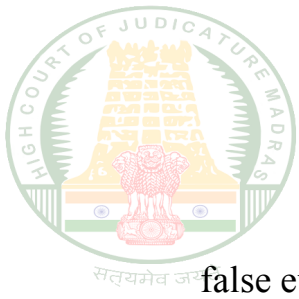
Singh Marwah and another Vs. Meenakshi Marwah and another

reported in **2005 (4) SCC 370** has dealt with the scope of Section 340

Cr.P.C. and held as follows:-

“18. 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.”

13. The expediency of taking action is typically determined by the court based on the impact of the forgery or forged document on the administration of justice, rather than solely the magnitude of injury suffered by the affected individual. In the present case, the petitioner specifically contends that despite recording a statement from the first respondent on 14.09.2014 while she was an inpatient at Asaripallam Government Hospital, no case was registered. However, after the complaint lodged on 20.09.2014, respondents 2 and 3 allegedly fabricated false records, leading to the arrest of the accused and the presentation of



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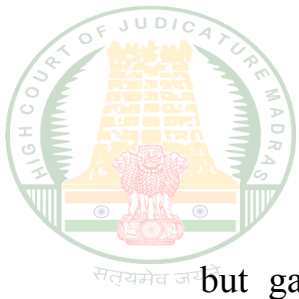
false evidence during the trial, consistent with their earlier stance.

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14. The learned counsel appearing for the respondents 2 and 3 would submit that during the pendency of the petitioner's earlier complaint, the learned Magistrate has called for a report from the concerned police and the concerned police, while conducting enquiry, the first respondent requested the police not to register any case against her husband and husband's family and that subsequently, as her husband and his family members did not visit the injured first respondent, she was constrained to lodge the complaint on 20.09.2014.

15. It is not in dispute that on the basis of the complaint given by the first respondent on 20.09.2014, FIR came to be registered and after investigation, charge sheet came to be filed and that after trial before the jurisdictional Court, the petitioner and his parents were acquitted from the above case.

16. It is not the case of the petitioner that the first respondent has not given any complaint with regard to the occurrence held on 14.09.2014,



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but gave a complaint with respect to an incident that did not occur.

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Admittedly, the second respondent recorded the statement of the first respondent at the Asaripallam Government Hospital. But as already pointed out, FIR came to be registered only on the basis of the complaint lodged on 20.09.2014 and the third respondent proceeded with the investigation and filed the final report.

17. Considering the averments raised in the complaint and the statement of the petitioner and other witnesses, it can easily be inferred that the respondents did not intentionally provide false evidence.

18. As rightly contended by the learned counsel appearing for the respondents 2 and 3, the petitioner has failed to establish a *prima facie* case against the respondents. Even assuming that there existed *prima facie* case that alone would not obligate the Court to lodge a complaint, as it retains discretion in the matter.

19. As rightly contended by the learned counsel for the respondents, the petitioner's acquittal in the criminal case does not inherently imply that



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the witnesses provided false evidence. Moreover, the Magistrate did not find that the respondents deposed falsely or fabricated records.

20. Considering the charges levelled, this Court finds it inexpedient to prefer a complaint. Therefore, the impugned order dismissing the petition cannot be found fault with. Consequently, this Court concludes that the revision lacks merit and is liable to be dismissed.

21. In the result, this Criminal Revision Case stands dismissed. No costs.

30.04.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Judicial Magistrate No.II,
Nagercoil.



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K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
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Dated : 30.04.2025