



**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

237

CRM-M-50563-2022

Date of decision: 31st January, 2025

Varun Mehta

...Petitioner

Versus

Ashok Kumar Aggarwal

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Munish Behl, Advocate and
Mr. Sanjeev Nagpal, Advocate for the petitioner.

Mr. Sanjiv Gupta, Advocate for the respondent.

MANISHA BATRA, J (ORAL):-

The instant petition under Section 482 of Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner seeking quashing of order dated 22.02.2022 passed by the Court of Judicial Magistrate Ist Class, Ambala in complaint No. COMI-107 of 2021, titled as '*Ashok Kumar Aggarwal VS. Varun Mehta*', whereby the petitioner had been ordered to be summoned to face proceedings under Section 340 of Cr.P.C.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned application/complaint under Section 340 of Cr.P.C. had been filed by the present respondent-complainant on the allegations that he had filed a civil suit titled as *Ashok Kumar Vs. Varun Mehta*, before the Court of Additional Civil Judge, Senior Division, Ambala seeking relief of permanent injunction. Written statement had been filed by



the present petitioner in that suit on 07.09.2022. In para No. 1 of the said written statement, it was pleaded that the present petitioner was a tenant under the respondent on payment of rent at the rate of Rs. 75,000/- per month. Further, in an application given by the present petitioner at Police Station Sadar, Ambala on 02.10.2020 as against the respondent-complainant, he had admitted that he was a tenant under the complainant. The same fact had been affirmed by him in a written compromise signed by him on 02.10.2020 itself at the police station. However, while filing reply to a petition for ejectment of the present petitioner from the demised property owned by the respondent, he took a plea that no relationship of landlord and tenant existed between the parties and there was no question of payment of any rent by the present petitioner to the respondent. The respondent by submitting that the petitioner had made a false statement before the Court in the form of reply submitted in the ejectment petition, prayed that proceedings under Section 340 of Cr.P.C. be initiated against him and he be summoned as an accused to face trial for making false depositions in the Court.

3. To prove the allegations as levelled in the application-complaint, the respondent appeared before the learned trial Court as CW-1 and produced on record exhibit C-1 copy of rent agreement. After hearing learned counsel for the present respondent and considering the material placed on record, learned judicial Magistrate observed that the present petitioner had made contradictory statements in the written statement of the civil suit filed against him by the respondent and the reply filed in the ejectment petition filed against him and those contradictions had material



effect on the interest of the respondent-complainant. By further observing that, it was expedient in the interest of justice to summon the present petitioner under Section 340 of Cr.P.C., the learned Magistrate sent the complaint to the Court of Chief Judicial Magistrate for summoning the present petitioner. Feeling aggrieved from the order dated 22.02.2022, the present petition has been filed by the petitioner.

4. It is argued by his counsel that the impugned order is not sustainable in the eyes of law, as while passing the same, learned Magistrate ignored the fact that no case for issuing summons against him had been made out. It is argued that the respondent had entered into an agreement to rent out his property to the petitioner for a period of three years commencing from 01.10.2019. Due to outbreak of COVID-19, the rented shop had remained closed thereby resulting into suffering of financial losses by the petitioner. He was unable to pay the rent and planned to vacate the premises. The respondent filed a civil suit for restraining him from vacating the same. The respondent was already having three months rent in advance. Subsequently, he filed ejectment petition. The petitioner in his reply has taken plea regarding denial of relationship of landlord and tenant in view of the fact that the rent agreement was an unregistered document and not because of any other reason. There was no intention on the part of the petitioner to take any false plea. He has already vacated the premises in September, 2021. The provisions of Section 340 of Cr.P.C. are not at all attracted. While passing the impugned order, the learned Magistrate did not take this fact into consideration. Therefore, it is urged that the impugned order is liable to be set aside.



5. Reply has been filed by the respondent. It is argued by learned counsel for the respondent that the contradictory pleas as taken by the present petitioner in two different litigations initiated by respondent as to their relationship of landlord and tenant, certainly amount to making false statement before the Court and attracted the provisions of Section 340 of Cr.P.C.. It is therefore, argued that the impugned order does not deserve any interference and the petition is liable to be dismissed.

6. At the outset, it would be proper to refer that there are two conditions for initiating proceedings under Section 340 Cr.P.C., which may be mentioned as under :

- (i) Materials produced before the Court must make out 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 of Cr.P.C.; and
- (ii) It is expedient in the interest of justice that an inquiry should be made into the alleged offense.

7. Section 340 Cr.P.C. has provided for meticulous procedure regarding initiation of the inquiry. The procedure as mentioned therein has to be followed for making an opinion that it is expedient in the interest of justice to file a complaint against the respondents in exercise of powers conferred under Section 340 of Cr.P.C. It is well settled that in the process of formation of opinion by the Court, it is expedient in the interest of justice that an inquiry should be made into, the requirement should only be to have a *prime 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 under Section 340 Cr.P.C has been committed, the Court may dispense with preliminary inquiry and even it is not mandatory that a complaint should be filed as a matter of course. In this regard, reference can be made to an authoritative pronouncement of a Constitution Bench of Hon'ble Supreme Court, which had gone into scope of Section 340 Cr.P.C. in case cited as ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another : 2005 (2) RCR (Criminal) 178***. Paragraph No. 23 of this judgment is relevant for the purpose of this case, which reads as under:

“23. 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(i)(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 inquiry 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 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. The claim of the respondent is that the petitioner took false pleas in the ejectment petition filed by him to the effect that the relationship of landlord and tenant was not existing between the parties though in the prior litigation, this fact had very much been admitted by him and by doing so, the petitioner had committed the offence of perjury and therefore, inquiry under Section 340 of Cr.P.C. was liable to be initiated against him, whereas according to the petitioner, the ingredients for commission of offence of perjury have not been attracted at all and no process could be issued against him.

9. On giving due deliberation to the contentions raised by both the sides and on a perusal of the documents placed on record, it is revealed that two contradictory pleas with regard to relationship between the parties had certainly been taken by the petitioner in the ejectment petition as well as in the civil suit as filed by the respondent against him. He has admitted that he had not vacated the demised premises as on the date when ejectment petition had been filed. Meaning thereby, that the plea that no relationship of landlord and tenant existed between themselves was certainly a false plea. The argument that since the agreement between the parties was an unregistered document, therefore, such plea had been taken, does not have any force. It is, therefore, to be considered that the fact that the petitioner had taken plea contradictory to the plea as taken in the suit previously filed by the respondent, was very much within his knowledge and he had taken a



false/wrong plea in the ejectment petition.

10. However, the question that arises for consideration is as to whether, the petitioner was liable to be prosecuted on account of false plea so taken by him. For that purpose, in my considered opinion, the learned Magistrate was still required to form an opinion that it was expedient in the interest of justice to initiate an inquiry into the offence of false evidence while having regard to overall factual matrix as well as probable consequences of such prosecution. Reliance in this regard can be placed upon *K. Karunakaran vs. T.V. Eachara Warriar and another : (1978) (1)SCC 18*, wherein it was observed that the mere fact that a deponent has made contradictory statements at two different stages in a judicial proceedings is not by itself always sufficient to justify a prosecution for a perjury under Section 193 Cr.P.C. But it must be established that the deponent has intentionally given a false statement in any stage of the judicial proceedings or fabricated false evidence for the purpose of being used in any stage of the judicial proceedings and such a prosecution for perjury should be taken only if it is expedient in the interest of justice. Reliance can further be placed upon *Sasikala Pushpa vs. State of Tamil Nadu : 2019(6)SCC 477*, wherein it was held that for prosecution under Section 195 read with Section 340 Cr.P.C, perjury must be established. It was further observed that before proceedings to make a complaint regarding commission of an offence referred to Section 195(1)(b) of Cr.P.C., the Court must satisfy itself that “it is expedient in the interest of justice”. The language in Section 340 Cr.P.C. shows that such a course will be adopted only if the interest of justice requires and not in every case.



11. In ***Dhirubhai Mohanbhai Bhanderi vs State of Gujarat : Law Finder Doc Id # 2232945***, the High Court of Gujarat had observed that the object of Section 340 makes it clear that before lodging a complaint, it is necessary that Court must be satisfied that it was expedient in the interest of justice to lodge the complaint. The mere fact that a person had made contradictory statements in a judicial proceeding or a contradictory stand has been taken during the proceedings, by itself, always would not be sufficient to justify the prosecution, even if it appears that the proceeding has been initiated on behalf of a person who alleges that it was not instructed by him, but if it has been without any criminal intent or when anything has been brought on record to show that any harm has been caused to him. Merely on allegations or only to vindicate the personal vendetta, the Court would not initiate any inquiry unless it comes to the conclusion that it is expedient in the interest of justice. Unless, it is clearly brought on record that the prosecution is in the interest of justice, Court cannot contemplate to move the machinery against any private individual as the foundation of facts are not *prima facie* made clear as the very intention of the accused becomes doubtful.

12. Lastly, reliance can be placed upon ***Chajoo Ram Vs. Radhay Shyam and another : 1971 (1) SCC (774)***, wherein the Hon'ble Supreme Court had observed that the prosecution for perjury should be sanctioned by the Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No-doubt giving of false evidence and filing false affidavit is an evil which must be curbed with the strong hand but to start prosecution of perjury and



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 interest 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.

13. On applying the ratio of law, as laid down in the above discussed authorities, to the present case, I am inclined to hold that no doubt it stood *prima facie* established on record that the petitioner had made a false averment in the form of reply to the effect that the relationship of landlord and tenant did not exist between the parties though at the relevant time, it was not so, but, the plea so taken is not of such nature, qua which it can be considered to be expedient in the interest of justice that the petitioner should be prosecuted for perjury. Litigation had already been initiated by the respondent against the petitioner. The *inter se* grudges between the petitioner and respondent as such were already there. In my opinion, the proceedings under Section 340 of Cr.P.C. could not be made as an instrument by the respondent to satisfy his personal vendetta. It cannot be ignored that the recommendation for action under Section 340 should be at the satisfaction of the Court making recommendation as to *mens rea* of the party sought to be proceeded against as observed in ***Bibhuti Bhusan Bassu vs. Corporation of Calcutta and others : 1982 Criminal Law General 909***. The respondent has however failed to demonstrate as to how, the averment made in the reply as to denial of their relationship, could be considered to be made with the



intention to do any wrong to the respondent, even if, the same was to be considered as a false averment. On considering the overall facts and circumstances and in view of the position of law as discussed above, this Court is satisfied that it was not expedient in the interest of justice that the petitioner should have been prosecuted for the offences of perjury. It cannot be stated that there was any deliberate and conscious attempt on the part of the petitioner to misguide the Court and to interfere in the administration of justice. Rather, this Court is of the opinion that it will be in the interest of justice to avoid perpetual precipitation of the ill will amongst the parties by giving a quietus to the proceedings so initiated. Accordingly, the impugned order is set aside and the petition is allowed.

14. Since the main petition has been allowed, pending application, if any, is rendered infructuous.

[MANISHA BATRA]
JUDGE

31st January, 2025

Parveen Sharma

1. Whether speaking/ reasoned	:	Yes
2. Whether reportable	:	Yes