



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 % *Reserved on: 10th December, 2025*
Pronounced on: 24th December, 2025

+ **W.P.(CRL.)2758/2024**

ABHISHEK KUMAR

S/o Late Sh. R.K.N Sinha

R/o E-203, Metro Vihar, Arihant Marg,

DMRC Mukundpur Depot, Delhi-110033.

.....Petitioner

Through:

versus

NEHA LAL

D/o Late Sh. N K Lal

R/o C-2408, C-Block, Near Hanuman Mandir,

Indira Nagar, Lucknow, U.P.-226016.

.....Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. A Writ Petition under Article 226 of Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as "BNSS"*) has been filed on behalf of the **Petitioner/Abhishek Kumar** to restore the Application of the Petitioner under *Section 25 read with Section 28 of the Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as "D.V. Act")* and also the Application under Section 340 Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C"*) dated 12.10.2022, to be decided on merits. A further prayer is made that the case may be transferred to another Trial Court, for fair and impartial judicial hearing to determine the truth in regard to the child of the Petitioner.



2. The **facts in brief** are that on 21.07.2012, the Respondent/wife had filed a Complaint under Section 12 D.V. Act against the Petitioner/husband and his relatives seeking certain reliefs which was registered *vide* Case No.35, CT Case No. 441V/2012 (New number CT Case No.50221/2016) before the learned Mahila Court, Delhi. The Petitioner was summoned by the learned JMFC (Mahila Court) *vide* Summoning Order dated 21.07.2012, on various grounds.

3. Thereafter, the Petitioner on 12.10.2022, filed an Application under Section 25(2) read with Section 28 and Article 21 and Article 14 of the Constitution of India, to challenge the Summoning Order dated 21.07.2012; sought compensation of Rs.12,00,000/- for making him face the trial for more than a decade; and also to ascertain the truth of the unborn baby/child of the Petitioner.

4. On 18.10.2014, the Petitioner/husband filed another Application under Section 340 Cr.P.C.

5. Both these Applications were kept pending by the learned Trial Court, to be decided after the conclusion of trial *vide* Order dated 07.11.2022. This Order dated 07.11.2022, of deferment of the two Applications was challenged by the Petitioner before learned ASJ, but the Revision Petition was dismissed *vide* Order dated 06.04.2023.

6. A W.P. (Crl.) No.1217/2023 was filed in which directions were given *vide* Order dated 29.01.2024 to the Trial Court, ***“to pass an effective order on the said Application of petitioner”***.

7. On 06.08.2024, the Complaint under Section 12 D.V. Act was dismissed. However, on the same date, *vide* a separate Order, the two ***Application under Section 340 Cr.P.C. and Application under Section 25***



read with Section 28 D.V. Act were also disposed of the learned JMFC (Mahila Court) by observing that ***“on perusal of file and keeping in mind the fact that the present petition has been dismissed, the court does not deem it necessary to deliberate upon the aforementioned Application”.***

8. The impugned Order dated 06.08.2024, dismissing both the Applications, has been challenged on the grounds that it has been passed in violation of the directions of the High Court in the Writ Petition decided on 29.01.2024, and has caused grave injustice to the Petitioner. Article 51A (h) of the Constitution of India speaks in regard to the *“Spirit of the inquiry”* and Article 39A of the Constitution of India lays down *“Equal Justice,”* but the same has been denied by the learned Trial Court.

9. It is submitted that these observations of the learned Trial Court that there is no necessity to deliberate on the two Applications and consequent dismissal, are contrary to the earlier Order dated 12.10.2022. The vital contentions raised in the Application by the Petitioner have not been decided on merits and has been disposed of in a routine mechanical manner.

10. Despite the directions of this Court, the learned Trial Court has not decided these Applications on merits, after considering the written submissions and judicial substance on record, which the Trial Court was bound to follow in the light of the directions of this Court. No sufficient reason has been given for not initiating the proceedings under Section 340 Cr.P.C. The grave injustice has been caused to the Petitioner by not punishing the Respondent for perjury, but has been allowed to go scot-free being a woman. As a result, he has been running from pillar to post to seek redressal of violation of his fundamental right to live with peace of mind and justice.



11. The Trial Court was swayed by the emotions and sentiments towards the Respondent because she is a woman. Neither any action had been taken against her under Section 340 Cr.P.C. *nor any compensation* of Rs.12 lakhs on account of false judicial prosecution for 12 long years which was filled with falsehood, blatant lies, false statements, concealment and fabrication of evidence, *has been awarded to the Petitioner*, despite the fact that Respondent is earning a handsome salary of Rs.1.60 lakhs per month. The Trial Court has merely dismissed the two Applications of the Respondent and ignored the lawful prayers of the Petitioner, thereby violating Article 14 of the Constitution of India.

12. It is further submitted that this Court has jurisdiction under Section 227 Constitution of India to correct the jurisdictional errors committed in excess of power and to correct the error of law apparent on the face of record, when the principles of natural justice have been violated by the Courts subordinate to it. Reliance is placed on T.C. Basappa vs. T. Nagappa and Anr., (1955) 1 SCR 250, in support thereof.

Challenge to Application of the Petitioner under Section 25(2) read with Section 28 D.V. Act:

13. The grievance of the Petitioner in regard to the dismissal of his Application under Section 25(2) read with Section 28 of the D.V. Act filed to challenge the Summoning Order dated 21.07.2012, was that a trial conducted on the basis of: (i) several false averments and serious falsehoods; (ii) false and fabricated evidence; (iii) gross concealment of material facts and documents relating to the ongoing proceedings; (iv) deliberate and serious acts of fraud played upon the Petitioner and the Court; and (v) false



affidavits, which stand proved on record through judicial evidence, is not permissible in law.

14. It is contended that the Respondent is a highly educated, professionally qualified, and able-bodied person who approached the Court without regard for truth or the sanctity of judicial proceedings. The Petitioner alleged that the proceedings initiated by the Respondent under the D.V. Act, was founded upon false averments and fabricated evidence, coupled with deliberate concealment of material facts and documents. It was asserted that the Respondent filed false Affidavits with the intention of committing fraud upon both the Petitioner and the Court, *thereby leading to the passing of the Summoning Order dated 21.07.2012* which according to the Petitioner, stands vitiated by fraud and is *non est* in the eyes of law and liable to be recalled.

15. She had also filed a D.V. Act Petition on 21.07.2012 followed by a Complaint under Section 125 Cr.P.C., on 31.07.2012. ***The Petition under Section 125 Cr.P.C was allowed and monthly allowance of Rs.10,000/- per month was awarded to the Complainant.***

16. It was further claimed that D.V. Act was akin to Section 125 Cr.P.C. and, therefore, she was not entitled for any relief under the provisions of D.V. Act. She has not filed any Application under Section 17 D.V. Act nor sought any right of residence in the shared household in the last decade, which is the vital and basic purpose of enactment of D.V. Act. The Petition under D.V. Act was based on single incident.

17. Furthermore, it is established on record that the Complainant is not a victim of any kind of domestic violence; rather she is an artificial and false victim not entitled to evoke provisions under D.V. Act.



18. The purpose of trial is to check the genuineness and the truthfulness of the levelled allegations against a person. The allegations made by the Complainant were false, frivolous and vexatious. She had deliberately concealed material facts and had furnished Affidavits with false statements. She was a dishonest litigant playing foul game.

19. She had also filed false Complaints in CAW Cell against the Petitioner and his relatives, which had been proved to be false. The conduct of the Complainant was extremely cruel and she had given *false medical evidence*.

20. The Complainant on 14.05.2012 had filed her first Complaint alleging forcible abortion and dowry harassment by the Petitioner and the family members. In the case under Section 498A IPC, the Petitioner was sent to the Jail for nine days, despite no fault on his part and he has been honourably acquitted on true merits of the case. He had a horrific experience at the hands of the Complainant.

21. The Respondent had also filed a Complaint under 156(3) Cr.P.C. dated 28.09.2012, against the Petitioner during the inquiry against the Petitioner in the Complaint before CAW Cell, wherein she sought a registration of separate FIR or inclusion of Section 313 & 120B in the FIR. A detailed Report was given by the I.O.

22. This Complaint of the Respondent was tagged on 14.03.2014 by the learned CMM under Section 210 Cr.P.C. along with the Charge Sheet under Section 498A IPC. *The Criminal case under Section 498A/406 IPC has been decided vide judgement dated 07.03.2020 and the Petitioner has been acquitted.*



23. It is further contended that although the parties were married on 28.01.2012, the Respondent left the matrimonial home on 02.04.2012, barely 63 days into the marriage, without any justifiable cause. It is alleged that during this period, the Respondent was residing in the matrimonial home along with her parents and elder sister, while no relatives of the Petitioner were residing with them. The Petitioner disputes the allegations of forcible abortion and submitted that documentary evidence, Ex. CW1/4 establishes that the Respondent was pregnant and that she left the matrimonial home approximately 35 days after confirmation of pregnancy, in the absence of the Petitioner. *It is contended that the judgment in the case under Section 498A IPC recorded the findings that the allegations relating to forcible abortion, were false and frivolous.*

24. It is asserted that the unborn baby of the Respondent was in the safe custody of the Complainant and, therefore, it is important to ascertain how, when, where and why did the Complainant secretly kill the unborn child of the Respondent and why she made false allegations of forcible abortion trying to implicate the Petitioner under Section 313 and 120B IPC. It is necessary to establish significant questions as to how did she erase and destroy the evidence of having committed heinous crime against the human species and who all were involved in the murder of the unborn child of the Complainant and also to ascertain in which Hospital and under the supervision of which Doctor, did the abortion happen. It is, therefore, alleged that there is concealment of material facts, as detailed in the Application. *The vital questions in regard to the child have not been asked from the Respondent, as had been sought by the Petitioner in his Applications.*



25. The Respondent has deliberately and seriously misused and abused the beneficial provisions of women law against the Petition and his relatives, to cover up the truth in regard to the child of the Petitioner, which has not been decided by invoking and exercising the jurisdiction under Section 165 and Section 114 of the Indian Evidence Act, 1872.

26. Reliance is placed on H.S. Bedi vs. National Highway Authority of India, RFA 784/2016 decided on 22.01.2016, wherein the judgment of A. Shanmugam vs. Ariya Kshatriya, (2012) 6 SCC 430 was reiterated that dishonest and unscrupulous litigants have no place in law Courts. Reliance is also placed on S.P. Chengalvaraya Naidu vs. Jagannath, (1994) 1 SCC 1 and Naresh Kher vs. S. Jagjit Singh & Ors., Ex.FA 5/2019 & CM APPL.10276/2019 decided by this Court on 03.02.2022 and A.V. Papayya Sastry & Ors. vs. Government of A.P. & Ors., 2007 V AD (S.C.) 21

27. Reliance is also placed on Kishore Samrite vs. State of U.P., (2013) 2 SCC 398; Indian Bank vs. Satyam Fibres (India) Pvt. Ltd., 1996 (5) SCC 550; Ram Chandra Singh vs. Savitri Devi and Ors., decided on 09.10.2003; Guddappa Chikkappa Kurbar and Anr. Vs. Balaji Ramji Dange, AIR 1941 Bombay 274; Hip Foong Hong vs. H. Neotia and Company, 1918 Appeal Cases 888; State of A.P and Other vs. T. Suryachandra Rao, (2005) 6 SCC 149 and T. Arivandandam vs. T.V. Satyapal and Anr., (1977) 4 SCC 467.

28. Reliance is also placed on Kishan Singh vs. Gurpal Singh & Ors., AIR 2010 SC 3624, wherein the Apex Court observed that there may be cases where Sections 41 to 43 of Indian Evidence Act dealing with the relevance of previous judgments in subsequent cases, may be taken into consideration.



29. In *Dharnidhar Dev vs. Dhundiraj*, 5 Bom. LR 230 it was held that for a judgment to be admissible, it is not necessary that it should be *inter parties* or a judgment *in rem*.

30. *It is, therefore, submitted that the Summoning Order dated 21.07.2012 passed in the D.V. Act Complaint be set aside and compensation of Rs.12 lakhs be paid by the Respondent* for initiating false and malicious prosecution without any justifiable reasons and by making false averments in the pleadings and also to discover and *ascertain the truth of the burden of unborn child of the Respondent* and taken appropriate legal action against the Petitioner.

Challenge to the Application Under Section 340 Cr.P.C dated 18.10.2014:

31. The averments in this Application are that two Affidavits filed by the Respondent declaring her assets and liabilities, were patently false, contrary to law and was an attempt for personal gains and therefore, she was guilty of perjury punishable under Section 193 IPC.

32. The Petitioner asserted that in the detailed Affidavit of Income dated 14.08.2014, the Respondent had given her address as that of *Seemapuri*. However, in her Application under Order VIII Rule 1 read with Section 151 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC"*) along with the Affidavit on Oath, she disclosed her address as that of *West Sant Nagar, Burari*. It is further stated that she claimed to have left her earlier address on account of the humiliation and the outrage of her modesty by the Petitioner.

33. The Petitioner has thus, claimed that the two Affidavits filed by the Complainant/Respondent on Oath, reveals that she had been deliberately giving false addresses. She is not residing at the present address and has



misled the Court in this regard for which Contempt of the Court was made out. In fact, she never stayed at both the addresses despite which she has recklessly stated so in her Affidavits.

34. In the CAW Cell complaint, she stated that she shifted from Ghaziabad to Pandav Nagar, where she claimed to be residing. In her Complaint, CC No.441V she claimed that she had no other alternative but to leave the house of Petitioner and she shifted to *Pandav Nagar* where she is presently residing. ***She has, therefore, falsely verified her address in the two Affidavits.***

35. It is further alleged that the Respondent had not approached the Court with clean hands and had suppressed material facts, while making selective disclosures tailored to obtain favourable orders. Thus, *such conduct amounted to falsification of pleadings and abuse of the judicial process.*

36. It has been repeatedly stated that there were ***false allegations and averments made by the Respondent in the pleadings***, which were sufficient to attract Contempt proceedings. She had deliberately modified the details in the Affidavit by erasing the contents of *para No.8 (i) to (ix)* and suppressed material facts. She had given false information in her detailed Affidavit in paragraph No.7.6 (XXV) and intentionally disclosed the facts as per her own convenience. Furthermore, various Complaints have been filed by the Respondent namely a Complaint dated 23.06.2012 before P.S. Madhu Vihar, 23.07.2012 under Section 23 for grant of interim maintenance. Complaint Case No.125/12 dated 28.09.2012 under Section 500 IPC was filed by Smt. Prity Lal (mother-in-law) and the Respondent/Complainant with a demand of Rs.10 lakhs. It is claimed that ***personal information about her PAN Card and Passport, has been intentionally not disclosed.***



37. She had falsely claimed in her *Complaint Case No.441V/12* under D.V. Act that she suffered loss of earning on account of *under pressure resignation* from her job in March, 2012, at the time of her marriage which was solemnized on 28.01.2012. Despite the best efforts, she was unable to procure any job.

38. According to the Petitioner, the averments made in the Affidavits on oath, are false and frivolous. It is alleged that prior to marriage, the Respondent was frequently travelling within the NCR, communicating with multiple persons over the phone, and attending her office at *Bhera Enclave, West Delhi*.

39. The Respondent left the matrimonial home on 02.04.2012, on the pretext of visiting her parental home. She allegedly made false allegations in her Complaint dated 14.05.2012 to the CAW Cell and in the present D.V. Act proceedings, claiming that she had been forced to resign from her job. It is further alleged that she falsely claimed to have been forced out of the matrimonial home on 02.04.2012. In the Application under Section 23 D.V. Act for grant of Interim Maintenance, she claimed that she had been forced by the Petitioner to leave the matrimonial home.

40. The Petitioner further contends that in the Application under Section 12 D.V. Act, the Respondent stated that her parents were residing at the matrimonial home. The mobile call detail records of Smt. Preeti Lal are relied upon to assert that the Respondent's mother was continuously residing with the newly married couple, while no other relatives of the Petitioner was staying at the matrimonial home at Indirapuram, Ghaziabad. It is alleged that there was no occasion for the Respondent to have been forced to leave the matrimonial home and that she voluntarily left along with her parents,



allegedly after terminating the pregnancy in the absence of the Petitioner, on the pretext of visiting their native place at *Bhagarpur, Bihar*.

41. In the *Divorce Petition under Section 13(1)(ia)* Hindu marriage Act, 1955 she stated that she was threatened that if her parents did not arrange for a Ford Figo Car for the Petitioner before he returned home, he would throw her from the balcony on coming returning back home and the Complainant should either leave or get the car.

42. It is claimed that there were major improvements from time to time and new facts and allegations were introduced only to spite the Petitioner. From the aforesaid contradictory statements in different pleadings, it is evident that she has committed perjury.

43. Further, the Complainant had intentionally concealed the name of third Respondent i.e. Rohit Kothari with whom she had extra marital affair since before her marriage and had absconded with him. Likewise, she had stated in her Complaint to ACP, CAW Cell that gold ornaments worth Rs.5 lakhs were given to the Petitioner's mother and his elder sister.

44. On 22.06.2012, the Complainant *wrote a letter* and *enclosed a list with cost of approx. Rs.30 lakhs by stating that the list of articles, gifts and money was given to the Petitioner at the time of marriage*. It is further asserted that similar wrong assertions have been made in the Complaint Case alleging that her parents were persons of limited means and also claimed that huge expense of approx. Rs.30 lakhs were incurred in the marriage. She claimed that gold, silver, diamond jewellery were given but were snatched and retained by the Petitioner, his mother and sister. She asserted that the silver utensils were retained by the "cruel husband". She further asserted that the articles given in the marriage were retained by the



Complainant. The expenditure incurred on marriage including family members was Rs.15 lakhs. Personal loan from relatives for marriage was approx. Rs.4.25 lakhs. It is claimed that these facts about incurring expenses and retention of jewellery and dowry articles by the Petitioner and his family members, are all false.

45. The Petitioner alleges that the Respondent declared herself as unemployed while disclosing her past employment with Pest Free India, from which she claimed to have resigned in March 2012. She stated that she had no source of income and had borrowed Rs.3 lakhs from relatives to sustain herself. She also disclosed monthly expenditure exceeding Rs.24,000/-. It is asserted that the Respondent continued to be employed even after marriage, but deliberately failed to disclose her income for February and March, 2012 in the Affidavit of Income.

46. It is further alleged that the Respondent falsely claimed that her father was unwell and not in service for several years and that she herself was unemployed. The Petitioner questions how, in such circumstances, she was able to bear litigation expenses for over two and a half years. It is also alleged that her claim of spending a minimum of Rs.30,000/- per month on herself, apart from litigation expenses, is inconsistent with her assertions of unemployment. According to the Petitioner, the detailed Affidavit reflects personal expenditure of approximately Rs.9 lakhs, indicating that she was either employed or engaged in business with an income of not less than Rs.30,000/- per month.

47. It is lastly, alleged that the Respondent concealed material facts in her detailed Affidavit by stating that she did not consume alcohol, whereas she was allegedly habitual of smoking and consuming alcohol. ***It is therefore,***



contended that the particulars furnished in the Affidavit were patently false, rendering her liable for perjury.

48. A prayer is, therefore, made that the two Applications of the Petitioner i.e. Application under Section 25 read with Section 28 D.V. Act dated 12.10.2022 and the Application under Section 340 Cr.P.C dated 18.10.2014, be directed to be decided by the learned Trial Court, on merits.

Reply by the Respondent/Wife to the Application under Section 340 Cr.P.C:

49. The Respondent/wife in the Reply to the Application under Section 340 Cr.P.C (filed before the learned Mahila Court) had raised preliminary objections contending that the Application was wholly frivolous, baseless, misleading, and filed with the sole intention of delaying the proceedings and harassing her. It was alleged that the Petitioner was in the habit of filing similar applications in multiple forums and was misusing Section 340 Cr.P.C. as a “*Brahmastra*” to pressurise the Respondent.

50. The Respondent denied all allegations of concealment, false statements, fabrication of documents, and perjury, asserting that she had filed only genuine cases and true affidavits. She further alleged that the Petitioner was making bald, imaginary, and scandalous allegations not only against her but also against her counsel and the courts, thereby attempting to undermine the dignity of the legal profession and the administration of justice.

51. It is further stated that bald and false allegations made by a frustrated person who failed to satisfy his ego as his wife has refused to follow his insane diktats, does not amount to any offence including the perjury.



52. It is further stated that the Complainant had no personal immovable property in Delhi and anywhere in India or abroad and she is residing on rent. Naturally as well as due to illegal efforts of the Petitioner, she has to change her rental accommodation from time to time and whenever she shifted to a new place, she had informed the Court on first available opportunity.

53. It was further stated that the Petitioner was selectively producing documents from different proceedings to mislead the Court, was attempting to act as a “self-styled judge,” and was mixing issues from various independent litigations and filing frivolous Applications. The Respondent stated that no material fact had been concealed, that all disclosures were made to the best of her knowledge, and that any alleged discrepancies did not materially affect the merits of the case.

54. The Respondent has asserted that the present Petition is without merit and is frivolous, vexatious and an abuse of process of law and the Application under Section 340 Cr.P.C. is liable to be dismissed at the threshold.

Counter-Affidavit to the Petition filed by the Respondent:

55. A Counter-Affidavit has been filed on behalf of the Respondent, wherein it is submitted that the impugned Order dated 06.08.2024 of the learned JMFC (Mahila Court), is reasonable and does not require any interference by this Court. The Writ Petition is not only malicious, mischievous and ill-motivated, but is also devoid of merit.

56. A preliminary objection is taken that the Petitioner has not challenged the impugned Order dated 06.08.2024 by way of Statutory Appeal under Section 29 D.V. Act or by way of Revision under Section 440 BNSS, but



has directly approached this Court without availing the alternate, appropriate remedy available to him under the law. Therefore, no extra-ordinary power is required to be exercised by this Court under Article 226/227 Constitution of India.

57. Reliance is placed on Radha Krishan Industries vs. State of H.P. (2021) 6 SCC 771, wherein it has been stated by the Supreme Court that Article 226 can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well. The High Court has the discretion not to entertain a Writ Petition. One of the restrictions placed on the power of High Court is where *an alternate effective remedy is available* to the aggrieved person. Aside from this, the exceptions to the rule of alternate remedy, are when the Writ Petition is filed for the enforcement of a fundamental right or there is violation of principles of natural justice or the order or proceedings are wholly without jurisdiction or the *vires* of a legislation is challenged. When a right is created by a Statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the Writ jurisdiction under Article 226 Constitution of India. The rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion. The Petitioner had a right to file an Appeal against the impugned Order, rather than approaching this Court in Writ jurisdiction.

58. It is further submitted that the relief sought by the Petitioner in his Application dated 12.10.2022 was to ascertain the truth of the baby which has been *earlier rejected by the learned Principal Judge, Family Court vide Order dated 20.03.2023 in MT Case 151/2021*. That Order already stands



challenged in W.P. (Crl.) No.1025/2023, where this relief has already been agitated.

Rejoinder to the Counter-Affidavit filed by the Petitioner:

59. The **Petitioner in his Rejoinder to the Counter-Affidavit** has reiterated that the truth about the child has not been decided by the Trial Court despite over a period of 12 years. Thus, the Trial Court was neither sensible nor sensitive towards the child which was a human life consideration before it.

60. The Petitioner is also entitled to compensation of Rs.12 lakhs for this false judicial prosecution for 12 long years. A dishonest and unscrupulous female litigant/Respondent had played a fraud in the judicial proceedings.

61. Despite a Complaint being made under Section 340 Cr.P.C, no legal action has been taken against her. Learned JMFC has not only disobeyed or ignored the directions of this Court by Order dated 29.01.2024, but has also disobeyed the directions of the Parliament, Supreme Court of India and this Court on “*whims and fancies*,” which is a serious matter of concern and has caused serious prejudice and discrimination to the Petitioner who has not only been deprived of justice, but his faith has diminished in approaching this Court.

62. It is, therefore, submitted that the Petition is maintainable and the Order dated 06.08.2024 is perverse and unreasoned and is therefore, liable to be set aside.

Submissions heard and record perused.

63. The *brief facts* are that the marriage between the Petitioner and the Respondent was solemnised on 28.01.2012. Matrimonial disputes arose



shortly thereafter, and the Respondent left the matrimonial home barely after two months, on 02.04.2012.

64. Soon thereafter, on 21.07.2012, the Respondent instituted proceedings under Section 12 D.V. Act, before the Ld. Mahila Court, Delhi. Parallel proceedings were also initiated between the parties, including: (1) proceedings *under Section 125 Cr.P.C.*, wherein interim maintenance of Rs.10,000/- per month was granted to the Respondent *vide* Order dated 07.03.2019; (2) FIR under Section 498A IPC, in which the Petitioner was ultimately acquitted *vide* Order dated 07.03.2020; and (3) Divorce proceedings before the Family Court.

65. The Petitioner then filed an Application dated 18.10.2014, under **Section 340 Cr.P.C** and Application dated 12.10.2022 under **Section 25(2) read with Section 28 D.V. Act**, seeking recall and modification of the **Summoning Order dated 21.07.2012 passed in the proceedings under Section 12 D.V. Act**, on the ground that the same were obtained by fraud, concealment of material facts, and false affidavits.

66. *Vide* Order dated 07.11.2022, the learned Trial Court deferred consideration of these two Applications to be taken up after the conclusion of trial. The said Order was unsuccessfully challenged by the Petitioner in Revision and thereafter before this Court, wherein directions were issued on 29.01.2024 to pass an effective Order on the pending Applications.

67. On 06.08.2024, the main Petition under Section 12 D.V. Act was dismissed. On the same date, the learned JMFC (Mahila Court) disposed of the Petitioner's pending Applications by observing that, since the main Petition stood dismissed, no further deliberation was necessary.



68. Aggrieved by the said disposal of his Applications without adjudication on merits, and alleging violation of the directions issued by this Court, the Petitioner has preferred this present Writ Petition.

I. Application dated 12.10.2022 under Section 25 read with Section 28 of the DV, 2005:

69. By this Application, the Petitioner had challenged the Summoning Order dated 21.07.2012 *vide* which he had been summoned in the Petition under Section 12 D.V. Act. While the trial was pending and the evidence was being recorded, the Petitioner sought to challenge the Summoning Order after 10 years by filing the present Application.

70. The grounds of challenging the Summoning Order, were on merits wherein he essentially claimed that there was no domestic violence proved against him and the allegations made by the Complainant in her Complaint under Section 498A/406 of IPC, did not prove any act of cruelty against the Petitioner. The Complainant had also made false allegations that the child that she was carrying was forcibly aborted. It was further asserted that he was being made to suffer endlessly over a period of more than ten years and the Petition under D.V. Act was the third round of litigation and amounted to harassment and therefore, not only made a prayer that the Summoning Order dated 21.07.2012, be set-aside but also he be granted compensation in the sum of Rs.12,00,000/- and a separate enquiry be conducted about the circumstances in which the child was aborted.

71. It is pertinent to note that all these aspects were matter of trial and the learned JMFC *vide* Order dated 06.08.2024, has already dismissed the Petition under D.V. Act. The challenge raised by the Petitioner in his



Application to the Summoning Order, was in fact on the merits of the Case, which have been duly considered.

72. Furthermore, he himself has stated that the allegations made by the Complainant about forcible abortion has been held to be false in the Judgment dated 07.03.2020 under Section 498A/406 IPC, wherein these allegations of the Complainant, have been found to be false.

73. In fact, the Petitioner in an oblique way is making the allegations about the abortion of his child for which, he was at liberty to initiate appropriate action but the same could not have been held against the Complainant, as is sought to be asserted by him.

74. The Petitioner had also sought compensation on account of prolonged litigation. However, the learned JMFC (Mahila Court) while finally dismissing the Petition did not consider in his wisdom and in totality of circumstances, to grant compensation. The Petitioner could have agitated this aspect before the learned JMFC, at the time of final arguments. Once the final Judgment is silent about giving any compensation, it is considered as deemed denial.

75. The Petitioner had a serious grievance to the deferment of the Application but from the contents of the Application, it was evident that the challenge was on merits and therefore, it was rightly deferred by the learned JMFC.

76. The last grievance of the Petitioner, is that the Application has been disposed of without any speaking Order giving the reasons for dismissal. However, this contention is absolutely baseless for, as already observed, the challenge to the Summoning Order and the various grounds raised in the Application, were the merits of the Petition, which have already been



considered and the Petition dismissed. Once, there is already an expression on the merits on all these aspects in the main Petition, there was no occasion for the Trial Court to have repeated the same findings while disposing of his Application.

77. It may be re-emphasised that it was the Summoning Order dated 21.07.2012, which was challenged and it merged in the final dismissal of the DV Petition, and it did not stand independent of the final Judgment.

78. However, the averments made by the Complainant were considered in the light of the evidence recorded during the trial and were not found to establish a case under Section 498A IPC and the Petitioner had been acquitted. Even if the evidence led in the case has not substantiated the allegations made in the Complaint to make out a case under Section 498A IPC, it cannot be said that the averments were patently false. They may not have been found sufficient for conviction, but the right of the Complainant to set the Police machinery in motion cannot be outrightly denied to any litigant. If he was aggrieved of being made to suffer litigation for such a long time, it cannot be overlooked that each party have their respective rights under the law which may or may not get decided in the favour of either party. This in itself cannot be a ground to seek compensation in the present Writ Petition especially when disputed facts are involved.

79. ***Allegations in regard to Abortion:*** Much has been agitated by the *Petitioner about the abortion undertaken by the Complainant and her assertion that it was caused forcibly in her complaint to the CAW Cell leading to FIR under Section 498A/406 IPC.*



80. In the light of the allegations made by the Petitioner, it is pertinent to refer to Suchita Srivastava vs. State, (2009) 9 SCC 1, wherein the Supreme Court observed as under:

22. There is no doubt that a woman's right to make reproductive choices is also a dimension of "personal liberty" as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a "compelling State interest" in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices."

81. This case of Suchitra Srivastava, (supra) was referred by the Apex Court in the case of X vs. Principal Secretary, Health and Family Department, Govt. of NCT of Delhi and Anr., (2023) 9 SCC 433 wherein it was recognised the right of women to make reproductive choices, which is a dimension of personal liberty under Article 21 of the Constitution. It also recognized that right to reproductive choice also includes the right not to procreate. In doing so, it placed the reproductive rights of woman within the core of constitutional rights.



82. Thus, in the present case, the Complainant may have got the child aborted, but as held in the case of X vs. State, (supra) it is the autonomy of a woman specially when there is a matrimonial discord, to decide to carry the child or to abort the child in exercise of her right to dignity and personal autonomy.

83. Again, this in itself cannot be a ground which may call for further investigations especially when it was taken as one of the grounds in the Complaint under 498A IPC and was duly considered in the trial thereof.

84. There is no merit in regard to the challenge to the Application under Section 25 read with Section 25 D.V. Act. *There is no merit in the challenge to the Order dated 06.08.2024 vide which the Application under Section 25 read with Section 28 of D.V. Act, was dismissed.*

II. Application of the Petitioner under Section 340 Cr.P.C dated 18.10.2014, which was dismissed vide the Order dated 06.08.2024:

85. Section 340 Cr.P.C therefore, provides that where any offence appears to have been committed in or in relation to a proceeding in that Court or in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, make a Complaint to the Magistrate in respect of such offence.

86. It is evident that the allegations raised by the Petitioner in his Application under Section 340 Cr.P.C, essentially relate to alleged inconsistencies and non-disclosures in the Affidavits of Income filed by the Respondent/wife, in her DV Petition to claim maintenance.

87. The Petitioner has claimed that the Complainant had falsely stated that she was made to resign from her job at the time of marriage; was forced out of her home and that she had no source of income.



88. However, the basic facts in respect to the Complainant having left the job or having left the matrimonial home, are basically not in dispute but both the Parties have given the reasons for doing so, from their respective perspective. The respondent may have been meeting her expenditure through whatever sources, but that in itself cannot be sufficient to conclude that she has deposed falsely, about her personal income in her Affidavit of Income. The mere fact that the Respondent was able to meet her expenses does not, by itself, lead to a presumption that she was employed or having independent earnings. It is but natural that she would meet her day to day expenses from whatever source, but that can be no indication that she has stated falsely that she was not employed. Pertinently, the Petitioner has also not given any specific details of her income, to corroborate his assertions.

89. The Petitioner has not placed any specific or cogent material to establish that the Respondent was employed or engaged in business during the relevant period. The allegations in this regard rest largely on conjectures and surmises, which fall short of the threshold required for invoking Section 340 Cr.P.C.

90. The second set of allegations is in regard to the residence of the Respondent. It was claimed that she had given different residential address in different Applications/ Pleadings. The Respondent has explained that she has no permanent immovable property of her own and has been residing in rented accommodations, which she was constrained to change from time to time owing to financial difficulties and circumstances arising out of matrimonial discord. It has been her consistent stand that whenever she shifted her residence, the same was duly disclosed to the Court at the earliest available opportunity.



91. Merely because different addresses were mentioned in different affidavits or pleadings, in the absence of any cogent material to show that such disclosures were *deliberately false* or were *made with an intention to mislead the Court* or *gain an undue judicial advantage*, does not constitute perjury so as to attract the provisions of Section 340 Cr.P.C.

92. Moreover, as rightly observed by the learned Trial Court, the Petition filed by the Respondent under Section 12 D.V. Act itself stood dismissed after consideration of the entire material on record. Once the substantive proceedings stood concluded against the Respondent, no useful purpose would be served in initiating collateral proceedings for perjury, on the basis of the same set of facts.

93. Before concluding, it would be relevant to refer to the case of Chajoo Ram vs. Radhey Shyam, (1971) 1 SCC 774, wherein it was observed as under:

*“12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction **suppression must be of material fact.****Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction.**a person invoking the discretionary jurisdiction of the court **cannot be allowed to approach it with a pair of dirty hands.** But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”*

94. Likewise, in State (NCT of Delhi) vs. Pankaj Chaudhary, (2019) 11 SCC 575 it was held by this Court that prosecution for perjury be sanctioned by the courts only in those cases where perjury *appears to be deliberate* and



it would be *expedient in the interest* of justice to punish the delinquent and *not merely because there is some inaccuracy in the statement*.

95. Similar observations were made in the case of Yashovardhan Birla vs. Kamdhenu Enterprises Ltd., 2023 SCC OnLine Del 7311.

96. A Co-ordinate bench of the Delhi High Court in the case of Rahul Kesarwani vs. State of Nct of Delhi & Anr., CrI.M.C. 3341/2022 decided on 19.11.2024 observed as under:

“Routine abuse of power under Section 340 of the Cr.P.C to harass the other side and settle scores cannot be allowed. Litigants cannot be allowed to put in motion the judicial process to gratify their feelings of animosity by exacting revenge against the other side. The propensity of parties embroiled in matrimonial disputes seeking proceedings under Section 340 of the Cr.P.C on mere surmises and suspicion with a revengeful desire to harass the other side needs to be discouraged. Parties embroiled in matrimonial disputes are often seen making exaggerated claims. Such claims are dealt with by the Courts on the basis of evidence led by the parties. As in the present case the petitioner husband was acquitted when the respondent wife was not able to prove her allegations beyond reasonable doubt. The inability of the wife to prove her allegations cannot be basis for initiation of proceedings under Section 340 of the Cr.P.C.”

97. It thus, emerges from the aforesaid judgements is that to attract Section 340 Cr.P.C., there ***must be suppression of material fact, which should be deliberate and consciously done to gain an undue advantage, and thereby approaches the court with clean hands. The ultimate test is the interest of justice and not wrecking personal vendetta or to settle score.***

98. Furthermore, it is trite law that Section 340 Cr.P.C. espouses a special power to be exercised where there is blatant misuse of judicial procedures. This provision is not intended to be invoked mechanically or at the instance of every incorrect statement, but is designed to address situations where the judicial process itself is sought to be subverted through deliberate falsehood,



fabrication of evidence, or conscious suppression of material facts. It is only where false statements are not merely incidental or peripheral, but go to the root of the adjudication of the matter and have a direct bearing on the relief sought that the Court has a bounden duty to examine whether such conduct warrants action under Section 340 Cr.P.C.

99. All these facts have been rightly appreciated by the learned Trial Court while dismissing the Application under Section 340 Cr.P.C. The contention of the Petitioner that there are no reasons given while dismissing the Application, is without merit. *The Application under Section 340 Cr.P.C. has been rightly dismissed for cogent reasons.*

Conclusion:

100. The allegations raised by the Petitioner, both in support of proceedings under Section 340 Cr.P.C. and under Section 25(2) read with Section 28 D.V. Act, essentially rest on mere disputed facts, inconsistencies and inferences drawn from the material on record as given by the Respondent, which have been correctly appreciated by the learned JMFC (Mahila Court) while dismissing the two Applications. Once the substantive proceedings under the D.V. Act stood dismissed after due consideration of evidence, no useful purpose would be served in pursuing other Applications on the same factual foundation.

101. The two Applications have been rightly dismissed by the learned Trial Court *vide* impugned Order dated 06.08.2024. The impugned Order dated 06.08.2024 does not suffer from any illegality or perversity. There is no merit in the present Petition, which is accordingly, **dismissed**.



102. The pending Application(s) are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

**DECEMBER 24, 2025
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