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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRL.A. 1201/2025 & CRL.M.A. 25434/2025,
CRL.M.A. 25435/2025

SATISH KUMAR SHARMA & ANR.Appellants

Through: Mr. R.K. Dhawan, Ms.
Nisha Dhawan, Mr. V.K.
Teng and Mr. Pawan
Karan Deo, Advs.
Appellant No. 1 in person.

versus

THE STATE NCT OF DELHI AND ORSRespondents

Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
J.P. Sharma, PS Farsh
Bazar, Delhi.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

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27.08.2025

1. The present appeal is filed by the appellants under Section 380 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') challenging the order dated 16.05.2025 (hereafter '**impugned order**') passed by the learned Additional Sessions Judge ('ASJ'), Shahdara District, Karkardooma Courts, Delhi in Criminal Appeal No. 109/2023.

2. By the impugned order, the learned ASJ dismissed the application filed by the appellants under Section 379 of the BNSS read with Sections 212/229/3(5) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').

3. The brief facts are that the marriage between Appellant No. 2 and Respondent No. 2 was solemnized on 20.02.2018, whereafter, Appellant No. 2 and Respondent No. 2 moved to



USA on 22.04.2018. On 10.03.2020, one male child was born out of the said wedlock.

4. Thereafter, some misunderstandings took place between the parties, whereafter, Appellant No. 2 allegedly deserted Respondent No. 2 and refused to maintain her.

5. That on 23.08.2022, Respondent No. 2 filed a compliant under Section 12 of the Protection of Women from Domestic Violence Act, 2005 (**‘DV Act’**) before the learned Metropolitan Magistrate (**‘MM’**) against the appellants and their family members. The learned MM by order dated 23.06.2023 dismissed the complaint filed by Respondent No. 2 for want of territorial jurisdiction.

6. Aggrieved by the aforesaid order, Respondent No. 2 preferred an appeal under Section 29 of the DV Act before the learned Additional Sessions Judge being Criminal Appeal No. 109/2023.

7. Respondent No. 2, thereafter filed a complaint which led to registration of FIR No. 264/2023 at Police Station Farsh Bazar under Sections 498A of the Indian Penal Code, 1860 (**‘IPC’**) and Sections 3/4 of the Dowry Prohibition Act, 1961 against the appellants and their family members.

8. The Investigating Officer in the aforesaid FIR filed a closure report and the same was forwarded to the learned magistrate. By order dated 06.12.2024, the learned magistrate accepted the closure report filed by the Investigating Officer, noting that Respondent No. 2 failed to participate in the investigation. It was further noted that Section 498A of the IPC was one of the most misused provisions and the case registered



by Respondent No. 2 fell in the same category.

9. The learned ASJ by judgment dated 27.11.2024, allowed the appeal filed by Respondent No. 2 under Section 29 of the DV Act, noting that the learned MM had the territorial jurisdiction to proceed with the complaint filed by Respondent No. 2.

10. Aggrieved by the aforesaid judgment, the appellants preferred a revision petition before this Court being CRL. REV. (MAT.) 117/2025. After noting the arguments advanced by the appellants, this Court by order dated 12.03.2025, stayed the operation of the judgment dated 27.11.2024.

11. It is alleged that on 03.04.2025, the appellants received a Citation Notice from a US Court, whereby, they came to know that Respondent No. 2 had filed a case for child custody determination against Appellant No. 2.

12. It is alleged that Respondent No. 2 in the said case has declared that she along with the minor child have been living in USA since September 2024, pursuant to which, on 09.05.2025, the appellants filed an application under Section 379 of the BNSS read with Sections 212/229/3(5) of the BNS before the learned ASJ in Criminal Appeal No. 109/2023 alleging the offence of perjury against Respondent Nos. 2 and 3.

13. It is alleged that Respondent Nos. 2 and 3 before the learned ASJ had falsely submitted that the minor child of Appellant No. 2 and Respondent No. 2 was residing at the parental home of Respondent No. 2 during the pendency of the appeal, however, both Respondent No. 2 and her minor child at the relevant time were residing in USA.

14. The learned ASJ by the impugned order dismissed the



application filed by the appellants noting that the judgment dated 27.11.2024 was not decided on the basis of the residence of the minor child.

15. Aggrieved by the impugned order, the appellants have preferred the present appeal.

16. The learned counsel for the appellants submits that the learned ASJ failed to consider that Respondent Nos. 2 and 3 had falsely submitted before him that the minor child during the pendency of the appeal was residing at the parental home of Respondent No. 2, however, the same is contrary to her declaration made before the US Court, wherein, Respondent No. 2 states that she along with her minor child have been living in USA since September 2024.

17. He submits that the learned ASJ failed to appreciate the fact that one week after marriage, Respondent No. 2 had shifted to USA and had no intention of coming back to India.

18. He further submits that the learned ASJ failed to appreciate the fact that the divorce between Appellant No.2 and Respondent No. 2 had been granted by a US Court and their minor child was born in USA and was an American citizen.

19. I have heard the learned counsel for the appellants and perused the record.

Analysis

20. The appellants have filed the present appeal under Section 380 of the BNSS [*erstwhile* Section 341 of the CrPC], which empowers the Appellate Court to direct withdrawal of the complaint under Section 379 of the BNSS [*erstwhile* Section 340



of the CrPC] or, as the case may be, to direct making of the complaint.

21. The limited question before this Court is whether the learned ASJ erred in not initiating the proceedings against the respondents under Section 379 of the BNSS.

22. Before delving into the facts of the present case, it is imperative for this Court to discuss the law in relation to Section 379 of the BNSS. Section 379 of the BNSS provides for a preliminary inquiry, if the Court deems it necessary, before lodging of a complaint when an application is made to it constituting allegations of the offences mentioned in Section 215(1)(b) of the BNSS, which provides for prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. The said provision reads as under:

*“379. Procedure in cases mentioned in section 215.—(1) When, upon an application made to it in this behalf or otherwise, **any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 215**, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, 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,—*

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has



neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub-section (4) of section 215.

(3) A complaint made under this section shall be signed—

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.

(4) In this section, “Court” has the same meaning as in section 215.”

23. The Hon’ble Apex Court in the case of **Chajoo Ram v. Radhey Shyam and another** : 1971 (1) SCC 774 had held that prosecution for perjury should be sanctioned only when the perjury appears to be deliberate and conscious and conviction is likely. It was further held that it is to be seen if a *prima facie* case of deliberate falsehood is made out in the facts of the case. The relevant portion of the said judgment is reproduced hereunder:

“7. The prosecution for perjury should be sanctioned by 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 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. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation: it seems to have ignored the fact that the appellant was a Panch and authorised to act as such and his explanation was not implausible. The High



Court further appears to have failed to give requisite weight to the order of the District Magistrate which was confirmed by the Sessions Judge, in which it was considered inexpedient to initiate prosecution on the charge of alleged false affidavit that the appellant had not acted as Sarpanch during the period of the stay order. The subject-matter of the charge before the District Magistrate was substantially the same as in the present case. **Lastly, there is also the question of long lapse of time of more than ten years since the filing of the affidavit which is the subject-matter of the charge. This factor is also not wholly irrelevant for considering the question of expediency of initiating prosecution for the alleged perjury. In view of the nature of the alleged perjury in this case this long delay also militates against expediency of prosecution.** And then by reason of the pendency of these proceedings since 1962 and earlier similar proceedings before the District Magistrate also the appellant must have suffered both mentally and financially. In view of all these circumstances we are constrained to allow the appeal and set aside the order directing complaint to be filed.”

(emphasis supplied)

24. In the case of ***Iqbal Singh Marwah v. Meenakshi Marwah* : (2005) 4 SCC 370**, it was observed that the Court is not bound to make a complaint in every case and the discretion is to be exercised *only* when it is expedient in the interests of justice to do so. It was held that the expediency has to be ascertained on the basis of the impact which is caused upon administration of justice. The relevant portion of the judgment is as under:

“23. In view of the language used in Section 340 CrPC 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 interests 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(1)(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. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.”

(emphasis supplied)

25. It is not in doubt that in case the wife is found to have committed an offence as defined under Section 215 of the BNSS, an appropriate inquiry can be ordered under Section 379 of the BNSS. However, it is not necessary that in every case the Court has to order an inquiry under Section 379 of the BNSS. It is a settled law that the Court may refrain from passing any order in regard to filing of false evidence if it is not expedient in the interest of justice.

26. In the present case, the appellants have alleged that Respondent Nos. 2 and 3 had falsely submitted before the learned ASJ regarding the residency of the minor child during the pendency of the appeal.

27. The learned ASJ by the impugned order had specifically noted that the judgment dated 27.11.2024, whereby, the appeal filed by Respondent No. 2 under Section 29 of the DV Act was allowed, was not decided on the basis of the residence of the minor child.



28. In the present case, the inconsistencies in Respondent No.2's submissions, even if taken at face value, do not rise to the level of willful perjury or fabrication that necessitates invoking Section 379 of the BNSS. The learned ASJ has correctly applied the principle that such proceedings are discretionary and should only be initiated when expedient in the interest of justice. Moreover, it is settled law that initiating perjury proceedings is not a matter of course but requires a deliberate and conscious obstruction of justice, which is absent in this case.

29. Routine abuse of power under Section 379 of the BNSS 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 379 of the BNSS 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.

30. Therefore, in view of the aforesaid discussion, this Court does not find any infirmity in the impugned order to warrant interference in the same.

31. The present appeal is accordingly dismissed. Pending Application(s), if any, also stand disposed of.

AMIT MAHAJAN, J

AUGUST 27, 2025

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