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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 1305/2025, CRL.M.A. 28060-28062/2025

VINOD KRIPASHANKAR PATHAK, @ VINOD PATHAK @ V
KUMARAppellant

Through: Mr. Saran Suri, Ms. Ruchi Jain and
Mr. Sahil Goyal, Advocates.

versus

COL (RETD) RAMPAL SUHAGRespondent

Through:

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **18.09.2025**

1. The present appeal under Section 380 read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023¹ is directed against order dated 31st May, 2025 passed by the District Judge-02, South West, Dwarka Courts, Delhi dismissing the application of the Petitioner under Section 340 of Code of Criminal Procedure, 1973². The facts giving rise to the present application under Section 340 of Cr.P.C. are evident from the order of the Trial Court, which is considered apposite to extract in its entirety:

"1. Vide separate judgement of even date the suit filed by the respondent/plaintiff hearing CS no. 516734/2016 is decreed.

2. In the present application, the applicant/defendant alleges that the plaintiff has committed perjury by filing a falsified document before this Court. It is contended that in the earlier suit between the parties, bearing CS(OS) No. 2412/2011, the plaintiff had relied upon an email dated 16.02.2011 purportedly sent by the defendant, and had filed an actual printout of the said email. However, in the present suit, the plaintiff is alleged to have omitted or erased the portion of the said email which was

¹ "BNSS"

² "Cr.P.C."



unfavourable to him, thereby filing a manipulated and reconstructed version of the email. The applicant asserts that the unaltered and complete version of the said email has been placed on record by him as Ex DW1/13, and that a comparison of the same with the email filed by the plaintiff would establish the manipulation. It is further submitted that the plaintiff has deliberately refrained from tendering the said email in evidence in the present suit, despite having filed it in the previous proceedings.

3. *The respondent/plaintiff has opposed the application, contending that it is in fact the applicant/defendant who is guilty of suppressing material facts and making false claims before the Court. It is asserted that the email relied upon and filed by the plaintiff is neither forged nor fabricated in any manner.*

4. *Considered.*

5. *Upon comparison of the two email chains, it is observed that the chain filed by the plaintiff comprises only two emails, whereas the chain submitted by the defendant contains four email exchanges between the parties. There is no apparent forgery in the document as such.*

6. *Accordingly, the application is dismissed.*

7. *File be tagged to the main suit and be consigned to record room."*

2. As is evident from the above order, the controversy relates to the filing of email communications in the civil proceedings. The grievance of the Appellant/defendant is that the Respondent/plaintiff produced two different sets of documents, and upon comparison, the Appellant alleges that one of them was manipulated so as to conceal/ remove the unfavourable portions of the email. On this basis, the Appellant sought initiation of action under Section 340 of Cr.P.C. against the plaintiff for perjury and use of forged documents.

3. The Court has considered the rival submissions and the record. At the outset, it is important to note that the civil suit itself has already been decreed against the Appellant by order dated 31st May, 2025. The present grievance is confined to the allegation that the copy of the email communications filed by the plaintiff was altered or manipulated.

4. In this context, it bears emphasis that whenever an application under



Section 340 of Cr.P.C. is moved, it is not mandatory for the Court to straightaway lodge a complaint. The statutory requirement is that the Court must first form an opinion that it is expedient in the interest of justice to direct an inquiry or prosecution. Unless such satisfaction is recorded, no proceedings can be set in motion.

5. Further, it is not the case of the Appellant that the alleged forgery was committed when the document was already in the custody of the Court (*custodia legis*). On the contrary, the allegation is that the manipulation occurred before the document was filed in Court.

6. On this aspect, the legal position is no longer *res integra*. The Supreme Court in its recent order in **Akrockiasamy v. State of Tamil Nadu & Anr.**,³ relying on its earlier judgement in **Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.**,⁴ has held that Section 195(1)(b)(ii) of Cr.P.C., applies only when the alleged forgery is committed with respect to a document after it has been produced or given in evidence in a proceeding, i.e., when the document is in *custodia legis*. If the forgery is alleged to have been committed prior to its filing in Court, the bar under Section 195(1)(b)(ii) is not attracted, and the remedy of the aggrieved party lies elsewhere.

7. In light of the above settled position of law, the contention of the Appellant for invoking Section 340 of Cr.P.C. against the Respondent cannot be sustained. The Trial Court, upon a comparison of the email chains produced by both sides, found no apparent forgery. Even otherwise, the alleged act falls outside the ambit of Section 195(1)(b)(ii) of Cr.P.C.

³ In *SLP (Crl.) No.5805/2023* decided on 10th September, 2024.

⁴ (2005) 4 SCC 370.



8. The Court is therefore not inclined to entertain the present petition and the same is dismissed along with pending applications.

SANJEEV NARULA, J

SEPTEMBER 18, 2025

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