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

Date of decision: 02.04.2025

+ MAT. APP.(F.C.)127/2025

SUMAN SHARMA

.....Appellant

Through: Ms. Meera Kaura Patel
(DHCLSC) with Ms. Ritika
Saini, Advs.

versus

MAHENDER SHARMA

.....Respondent

Through: Nemo.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE RENU BHATNAGAR

RENU BHATNAGAR, J. (Oral)

CM APPL. 19032/2025 (Exemption)

1. Allowed, subject to all just exceptions.

MAT. APP.(F.C.)127/2025 AND CM APPLs. 19031/2025 & 19033/2025

2. This is an appeal challenging the Order dated 17.08.2024 (hereinafter referred to as 'Impugned Order') passed by the learned Judge, Family Court, North District, Rohini, New Delhi (hereinafter referred to as the 'Family Court'), in HMA No. 598/2015 (58950/2016) titled *Mahender Sharma v. Suman Sharma*, whereby the application under Section 340 of the Cr.P.C. (corresponding



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Section 397 of the B.N.S.S., 2023) filed by the appellant was dismissed by the learned Family Court holding that the same is devoid of merits and no case for holding of inquiry under Section 340 of the Cr.P.C. is made out.

3. In brief, the facts leading to the filing of this appeal are that the appellant and the respondent got married on 25.04.2002 in accordance with the Hindu Rites and Customs, and one male child was born from their wedlock on 06.06.2003.

4. The present case is the third divorce petition filed by the respondent against the appellant, as the earlier divorce petitions were either settled/withdrawn or dismissed for want of jurisdiction.

5. In the present divorce petition, the appellant had filed an application under Section 340 of the Cr.P.C. against the respondent herein on the grounds that the respondent has committed perjury by stating different addresses at different places, by filing a false income affidavit stating to earn Rs. 15,400/- per month and that his Income-Tax is *Nil*, which is against the ITO record showing filing of ITR by him up till AY 2011-12. It is further stated that the respondent, in his income affidavit, stated that he is employed with Skybrage Freight Pvt. Ltd. since 01.06.2015. The webpage of the company of 2013 states that he was employed as a Manager. The appellant claimed that the respondent has put up a false claim of earning only Rs. 15,400/- as a person on a managerial post cannot be employed on such a meagre salary. He has also falsely shown his income from other sources as *Nil*, because he has sold his matrimonial house Kh. No. 426, near Balaji Mandir, Laxmi Vihar to his sister.



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6. We have heard the learned counsel for the appellant on this appeal. After hearing the submissions of the learned counsel for the appellant and going through the impugned order, we do not find any merit in the same.

7. As is reflected from the impugned order, the learned Family Court had dismissed the application of the appellant after considering the explanations tendered by the respondent to the alleged grounds of perjury. The learned Family Court found all the explanations tendered by the respondent as plausible and did not find any case for holding the inquiry. We quote from the impugned order as under:

"6. In the backdrop of the above observations, I will proceed to decide the present application. The first alleged perjury is regarding the different addresses mentioned by the petitioner in his income affidavit and in other proceedings. The petitioner has tendered a plausible and acceptable explanation that the address mentioned in his income affidavit was his current address at that time which was rented accommodation. In my opinion, it will neither be expedient nor in the interest of justice to hold an enquiry into this alleged perjury. So far as the mentioning of his Income-tax as "Nil" in his income affidavit, the income tax authorities have informed the respondent herself that the petitioners have filed ITRs only upto AY 2011-12. Therefore, no false affirmation has been in the income affidavit which was filed in 2015. Regarding the date of employment also, the petitioner has explained that he was re-employed in the same company, only this time as a fresher on a reduced salary. The explanation tendered by the petitioner is plausible and no case for holding an enquiry is made out. The explanation is equally plausible for the date of employment and the amount of salary. The last



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point raised by the respondent was that the salary of Rs. 15,400/- is too meagre for any person who has held managerial post. I am not quite convinced with this argument as it is between employer and employee as to how much salary is to be paid and there can never be a fixed formula for the same.

7. After considering the application and the arguments for both the parties, I am of the view that no case for holding an enquiry u/s 340 Cr.P.C. is made out. The application is devoid of merits and is accordingly dismissed.”

8. Section 195 of the Cr.P.C. deals with the aspect of taking cognizance of the offence of perjury in relation to an offence committed in any proceedings of the Court, whereas Section 340 of the Cr.P.C. empowers the Court to make a complaint of perjury, if, in its opinion, it is expedient in the interest of justice.

9. Section 195 of the Cr.P.C. reads as under:

“ 195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance-

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*(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or
(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or*



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(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), [except on the complaint in writing of that court or by such officer of the Court as that Court may authorize in writing in this behalf, or of some other Court to which that Court is subordinate]. (2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."



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10. Section 195 of the Cr.P.C. lays down a rule to be followed by the court which has taken cognizance of an offence specified therein, but contains no direction for the guidance of the court which desires to initiate prosecution in respect of an offence alleged to have been committed in or in relation to a proceeding in the latter court. For that purpose, one must turn to Section 340 of the Cr.P.C. which requires the court desiring to put the law in motion to prefer a complaint either *suo motu* or by an application made to it in that behalf.

11. Section 340 of the Cr.P.C. reads as follows:

“340. Procedure in cases mentioned in Section 195-

(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 subsection (1) of Section 195, 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



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case where that Court has neither made a complaint under subsection (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 195.

(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 authorize in writing in this behalf].

(4) In this section, "Court" has the same meaning as in Section 195."

12. It is held in a catena of judgements of the Apex Court that before making any complaint under Section 340 of the Cr.P.C., the Court is required to assess whether it is expedient in the interest of justice to take such decision. The prosecution for perjury should be sanctioned only in those cases where perjury appears to be deliberate and conscious and conviction is reasonably probable or likely. Every incorrect or false statement does not make it incumbent for the Court to order for prosecution.

13. In the judgement of ***Narender Kumar Srivastava v. State of Bihar and others***, (2019) 3 SCC 318, the Supreme Court has observed as under:

" Section 340 Cr.P.C. makes it clear that a prosecution under this Section can be initiated only by the sanction of the Court under whose proceedings an offence referred to in Section 195(1)(b)has allegedly been committed. The



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object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custody and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.”

14. In the case of **Narender Kumar Srivastava** (supra), the Supreme Court has quoted with approval its previous two judgments, and has observed as under:-

“ 18. This Court in “Chajoo Ram v. Radhey Shyam”, (1971) 1 SCC 774, held that the prosecution under Section 195 could be initiated only by the sanction of the court and only if the same appears to be deliberate and conscious. It emphatically held as under:

“ 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



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satisfied that there is reasonable foundation for the charge...”

15. In ***Santokh Singh v. Izhar Hussain & Anr.***, (1973) 2 SCC 406, the Supreme Court has held as:-

“ 11.....every incorrect or false statement does not make it incumbent on the Court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The Court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the Court should direct prosecution.....”

16. We have perused the impugned order. The learned Family Court, after considering the explanations of the respondent on the alleged grounds of perjury, and finding the explanations to be plausible, did not find any case to initiate/hold an inquiry for perjury under Section 340 of the Cr.P.C. Even otherwise as is the mandate of Section 340 of the Cr.P.C., and in the light of the above stated pronouncements, the Court is not required to make a complaint under Section 340 of the Cr.P.C. for every incorrect or false statement unless it may deem it expedient in the interest of justice to punish the delinquent.

17. In the present appeal, the appellant has not placed any material before us to differ from the findings of the learned Family Court.



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None of the conditions are made out by the appellant in the present case.

18. In view of the above, we find no merit in the present appeal. The same is, accordingly, dismissed along with all the pending applications.

NAVIN CHAWLA, J

RENU BHATNAGAR, J

APRIL 02, 2025/Pr/Kz

Click here to check corrigendum, if any