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

+ LPA 723/2018
DEEP DAS

.....Appellant

Through: Mr. Ashok Aggarwal, Sr. Adv.
and Mr. Kirti Uppal, Sr. Adv.
with Dr. Sanjay Kumar, Ms.
Arpita Sawhney, Ms. Pallavi
Kiran, Mr. Arun Kumar Jana,
Mr. Harshit Dixit, Mr. Nilesh
Bharadwaj, Mr. Priyansh
Sharma, Ms. Shivangi
Mayaramka, Mr. Shrenik Jain,
Advs.

versus

UNION OF INDIA & ORS

.....Respondents

Through: Mr. Ripudaman Bhardwaj
CGSC with Mr. Kushagra
Singh and Mr. Amit Kumar
Rana Advs. for R-1/UOI
Dr. B. Ramaswamy, CGSC for
R-2
Ms. Shyel Trehan, Sr. Adv.
with Mr. Rohan Poddar, Mr.
Utkarsh Vatsa and Mr. Pranav
Sarathi, Advs. for R-3

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

ORDER

04.11.2025

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1. Through the present Appeal, the Appellant assails the correctness of the Judgment and Order dated 19.11.2018 [hereinafter referred to as "Impugned Order"], whereby the learned Single Judge, in CM No. 35879/2018 filed by Respondent No.3 in W.P. (C) No. 7357/2016, has directed the Registrar General to make a complaint to



the Magistrate under Section 340 of the Code of Criminal Procedure, 1973 [hereinafter referred to as 'CrPC'] [corresponding to Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023] for proceeding against the Appellant for commission of offence under Section 193 of the Indian Penal Code, 1860 [hereinafter referred to as 'IPC'] [corresponding to Section 229 of the Bharatiya Nyaya Sanhita, 2023].

2. In the facts of the case, the Appellant filed a Writ Petition W.P. (C) 7357/2016, seeking an appropriate direction to Respondent Nos.1 and 2 to revoke the recommendation and marketing authorization granted by Respondent No.2 to Respondent No.3. During the pendency of the aforesaid Writ Petition, Respondent No. 3 filed an application (Crl. M.A. No.13461/2016) under Section 340 CrPC, seeking initiation of proceedings against the Appellant, which was not decided.

3. Further, *vide* Order dated 28.09.2018, this Court in Writ Petition W.P. No. 7585/2016 directed the Managing Director of Boehringer Ingelheim India Pvt. Ltd. to file an affidavit affirming, on oath, certain facts and particulars. Pursuant thereto, upon filing of the said affidavit, Respondent No. 3 preferred another application, being C.M. No. 35879/2018, under Section 340 CrPC, which was listed for the first time on 12.11.2018, and the following order was passed:

"CM No.35879/2018

1. This is an application filed under Section 340, CrPC on behalf of respondent no.3, inter alia, praying that proceedings be initiated against the petitioner under Section 195, CrPC. The affidavit filed by the Managing Director of the Boehringer Ingelheim India Pvt. Ltd. indicates that the petitioner (Dr. Deep Das) had been receiving honorarium from the said company. Notwithstanding the said relationship, Dr Deep Das had filed an affidavit stating that "the petitioner has no relation, whatsoever, with any entity including Boehringer Ingelheim". It is apparent that the said statement affirmed by Dr Deep Das is incorrect. This Court is, prima facie, of the view



that the appropriate proceedings for perjury ought to be initiated in this case.

2. Dr Deep Das is directed to be personally present in the Court on the next date of hearing.

3. List on 19.11.2018.

4. Order dasti under signatures of the Court Master.”

4. On the next date of hearing, i.e. 19.11.2018, learned Single Judge, while referring to the reply submitted by the Appellant to the previous application, i.e. CrI. M.A. 13461/2016 proceeded to pass the Impugned Order.

5. Subsequently, it may be noted that W.P. (C) 7357/2016 was withdrawn by the Appellant on 14.01.2019, *albeit* subject to payment of costs.

6. The procedure envisaged under Section 340 of CrPC mandates that upon receipt of an application under the said provision, the Court is first required to examine the allegations contained therein and apply its judicial mind to ascertain whether a *prima facie* case is made out. Only if the Court, upon such consideration and, if deemed necessary, after conducting a preliminary inquiry, forms an opinion that there exists sufficient material to proceed against the concerned person for offences falling within the ambit of Section 195(1)(b) of the CrPC [corresponding to Section 215 of the Bharatiya Nagarik Suraksha Sanhita, 2023], may it thereafter take recourse to the procedure prescribed under sub-section (1)(a) to (c) of Section 340. Conversely, if the Court finds, upon such preliminary inquiry, that no material exists warranting prosecution, the application is liable to be rejected.

7. In the facts of the present case, the course adopted by the learned Court in straightaway registering the complaint and issuing notice immediately upon receipt of the application, without following the mandatory procedure contemplated under Section 340 CrPC, is ex



facie not in conformity with law.

8. Additionally, it is manifest that no opportunity was afforded to the Appellant to file a reply, nor was any further inquiry conducted by the learned Court prior to the passing of the Impugned Order.

9. It is, therefore, evident that the Appellant was not granted a proper and effective opportunity of being heard before the learned Court proceeded to issue directions to the Registrar General, *vide* the Impugned Order, to lodge a complaint before the concerned Magistrate.

10. The initiation of criminal proceedings at the behest of the Court is a serious step, which ought not be resorted to unless the Court grants proper opportunities to the Appellant to submit his response and justify his stand.

11. On this limited ground, the Impugned Order is set aside and remitted back to the learned Single Judge (Roster Bench) to decide Crl. M.A. 35879/2018 again, after granting an opportunity to the Appellant to file a reply.

12. The parties, through their respective counsel, are directed to appear before the learned Single Judge (Roster Bench) on 02.12.2025.

13. In view of the above, the present Appeal stands disposed of.

ANIL KSHETARPAL, J.

HARISH VAIDYANATHAN SHANKAR, J.

NOVEMBER 04, 2025

sp/sha /rgk/kv