

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS
&
THE HONOURABLE MRS. JUSTICE C.S. SUDHA

WEDNESDAY, THE 22ND DAY OF MARCH 2023 / 1ST CHAITHRA, 1945
CRL.A NO. 56 OF 2023

AGAINST THE COMPLAINT FILED BY SHERISTADAR U/S.340 CR.P.C.
WHICH WAS TAKEN ON FILE AS CC 196/2020 BEFORE THE JUDICIAL
FIRST CLASS MAGISTRATE COURT-I MUVATTUPUZHA DATED 4/3/2020
AS PER THE ORDER PASSED IN M.P.211/2016 IN M.C.109/2015 BY
THE FAMILY COURT, MUVATTUPUZHA DATED 24-7-2019)

APPELLANT:

RITHU MARIA JOY
AGED 29 YEARS
D/O. JOY, ILLIKKAL HOUSE, MARAVANTHURUTHU P.O.,
MARAVANTHURUTHU KARA, KULASEKARAMANGALAM VILLEGE,
VAIKOM TALUK.

BY ADVS.BENNY JOSEPH
M.B.SANDEEP
R.PRIYA
AMAL STANLY

RESPONDENTS:

1 SHEJOY VARGHESE
AGED 32 YEARS
S/O. VARGHESE, VETTICKANAKUDY HOUSE, POOPANI ROAD,
KARATTUPALLIKARA, PERUMBAVOOR VILLAGE,
KUNNATHUNADU TALUK.

2 STATE OF KERALA,
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADVS.K.SHIBILI NAHA
A.LOWSY
NIVEA K.G.

SRI. SAIGI JACOB PALATTY-SR. PP

THIS CRIMINAL APPEAL HAVING COME UP FOR FINAL HEARING
ON 15/03/2023, THE COURT ON 22.03.2023 DELIVERED THE
FOLLOWING:

“C.R.”

ALEXANDER THOMAS & C.S.SUDHA, JJ.

Crl.Appeal No.56 of 2023

Dated this the 22nd day of March, 2023

J U D G M E N T

C.S.SUDHA, J.

This appeal under Section 341 Cr.P.C. has been filed by the sole accused in C.C.No.196/2020 on the file of the Judicial First Class Magistrate Court-I, Muvattupuzha. The said case has been taken on file on the basis of Annexure A3 Complaint of the Sheristadar, Family Court, Muvattupuzha, which in turn is on the basis of Annexure A2 order dated 24/07/2019 in M.P.No.211/2016 in M.C.No.109/2015 on the file of the Family Court, Muvattupuzha.

2. The appellant/accused filed M.C.No.109/2015 seeking maintenance under Section 125 Cr.P.C. against her estranged husband/respondent. In the said case, while the appellant was examined as PW1, she was asked in the cross examination as to whether she was employed as a doctor in a clinic and earning salary. The appellant answered in the negative and claimed to have no means to maintain herself. The proprietor of 'Doctor 32', Kakkanad, namely, RW2, was examined by the respondent/husband to

disprove her case. RW2 in her examination deposed that the appellant herein is working in her clinic as a trainee and that she is being paid an amount of ₹4,000/- monthly as stipend. The respondent/husband then filed M.P.No.211/2016 contending that the statement made by the appellant herein on oath denying her employment status would come within the definition of the offence of giving false evidence as contemplated under Section 191 IPC, punishable under Section 193 IPC. Hence, the request for lodging a complaint against the appellant before the jurisdictional Magistrate by invoking the power under Section 340 Cr.P.C. for commission of the offence punishable under Section 193 IPC.

3. On the basis of the said complaint, the learned Family Court Judge found that the offence alleged to have been committed by the appellant is one among the offences mentioned under Section 195(1)(b)(i) Cr.P.C. and hence was of the opinion that it was expedient in the interest of justice to make an enquiry. On a consideration of the oral evidence of RW2 and Ext.B4 attendance register maintained in the clinic, the court concluded that the materials on record *prima facie* showed that the appellant under oath, had made a false statement in her examination before the court and so an offence punishable under Section 193 IPC had been made out, for which action under Section 340 Cr.P.C. required to be taken. Hence M.P.No.211/2016

was allowed as per Annexure A2 order and direction was given to lodge a complaint against the appellant herein under Section 340 Cr.P.C. before the jurisdictional Magistrate. Pursuant to the order, the Sheristadar, Family Court, Muvattupuzha, filed Annexure A3 complaint before the Judicial First Class Magistrate Court-I, Muvattupuzha, which court in turn has taken the case on file as C.C.No.196/2020.

4. In the appeal memorandum it is alleged that Annexure A3 complaint is not maintainable as it is opposed to law, facts and circumstances of the case. The enquiries stated to have been conducted by the Family Court, was without considering the materials on record or considering it in the proper perspective, which has resulted in causing serious miscarriage of justice. The materials on record do not show the involvement of any public interest or intention to give any false statement. As Annexure A3 complaint is without complying with the provisions of Section 340 Cr.P.C., the same is not maintainable and hence liable to be withdrawn, contends the appellant.

5. Heard Sri.Benny Joseph, the learned counsel for the appellant ; Ms.Lowsy, the learned counsel for the first respondent and Sri.Saigi Jacob Palatty, the learned Senior Public Prosecutor.

6. Admittedly, the appellant herein was examined as PW1 in M.C.No.109/2015, a proceeding under Section 125 Cr.P.C., before the

Family Court concerned. In the cross examination, she was asked thus -
“*You are working at Doctors 38 at Kakkanad (Q). No (A). Doctor 38 is run by a doctor named Kavitha Biji. I have acquaintance with this firm.*”
“*..... the respondent says you are working at 'Doctor 32' at Kakkanad and earning salary (Q) it is false (A)*”. “*..... The respondent says you are willfully not working despite best opportunities available. (Q). I always try to develop my carrier [sic] as a part of which I'm preparing for specialisation examination overseas (A).*”

7. Now the question is, whether the aforesaid answers given by the appellant herein is perjury justifying initiation of action under Section 340 Cr.P.C., the question we are called upon to answer. Section 340 Cr.P.C. coming under Chapter XXVI dealing with provisions as to offences affecting the administration of justice, reads thus -

“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 sub-section (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 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 to 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 195.

3) A complaint made under this section shall be signed-

- (a) where the court making the complaint in 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 195."

Section 195 Cr.P.C. coming under Chapter XIV dealing with conditions requisite for initiation of proceedings, reads thus -

"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-

- (a) (i) xxxx xxxx xxxx*

(ii) xxxx xxxx xxxx

(iii) xxxx xxxx xxxx

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code, 1860 (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) xxxx xxxx xxxx

(iii) xxxx xxxx xxxx

[except on the complaint in writing of that court or by such officer of the court as that court may authorise in writing in this behalf, or of some other court to which that court is subordinate].”

8. Here, we refer to the Constitution Bench decision of the Apex Court in **Iqbal Singh Marwah v. Meenakshi Marwah: 2005 KHC 647 : AIR 2005 SC 2119**, wherein it has been held that, in view of the language used in Section 340 Cr.P.C., 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 interest 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 the administration of justice. (See also, **Ashok Kumar Aggarwal v. Union of India, (2013)15 SCC 539 : 2013 KHC 4916 ; State of Punjab v. Jasbir Singh, 2022 SCC (ONLINE) SC 1240 : 2022 KHC 6991 ; Himanshu Kumar v. State of Chhattisgarh, 2022 SCC (ONLINE) SC 884 :2022 KHC 6713**).

8.1. We also refer to the dictum of the Apex court in **Chandrapal Singh v. Maharaj Singh, 1982(1) SCC 466**. In the said case certain averments in the affidavits filed in a rent control proceedings were pointed out to be false, on the basis of which proceedings under Section 340 had been initiated. It has been held that when it is alleged that a false statement has been made in a declaration which is receivable as evidence in any court of justice or before any public servant or other person, the statement alleged to be false has to be set out and its alleged falsity with reference to the truth found in some document has to be referred to pointing out that the two situations cannot co-exist, both being attributable to the same person and, therefore, one to his knowledge must be false. Rival contentions set out in

affidavits accepted or rejected by courts with reference to *onus probandi* do not furnish foundation for a charge under Section 199 IPC. Acceptance or rejection of evidence by itself is not a sufficient yardstick to dub the one rejected as false. Falsity can be alleged when truth stands out glaringly and to the knowledge of the person who is making the false statement. Day in and day out in courts averments made by one set of witnesses are accepted and the counter-averments are rejected. If in all such cases complaints under Section 199 IPC are to be filed, not only there will open up floodgates of litigation but, it would unquestionably be an abuse of the process of the Court. When it was pointed out that a tendency to perjure is very much on the increase and unless by firm action, courts do not put their foot down heavily upon such persons, the whole judicial process would come to ridicule, the Apex court held that though there was force in the said argument, it was held that it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court.

9. In **Chandrapal Singh** (*Supra*), the complainant, an Advocate, had lost in both courts in the rent control proceedings and thereafter he had rushed to the criminal court with a complaint under Section 340. This conduct of the complainant itself, according to the Apex Court, spoke

volumes. Added to this, it was also noticed that there were also other litigations pending between the parties for quite long. In the said background it was held that invoking the jurisdiction of criminal court was an abuse of the process of law.

10. From the aforesaid decisions it is clear that before taking action under Section 340 Cr.P.C., the court concerned is required to see as to whether - (i) the materials produced before the court makes out a *prima facie* case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 Cr.P.C., and (ii) it is expedient in the interest of justice that an inquiry should be made into the alleged offence. As held in **Prithi v. State of Maharashtra, 2002(1) SCC 253**, the purpose of a preliminary inquiry under Section 340(1) Cr.P.C. is not to find whether a person is guilty or not but only to decide whether it is expedient in the interest of justice to inquire into the offence. It was thus observed that the Court is not obliged to make a preliminary inquiry on a complaint but if the Court decides to do so, it should make a final set of the facts which is expedient in the interest of justice that the offence should be further probed into. This shows that such a course will be adopted only if the interests 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 the administration of justice. Therefore, in order to initiate prosecution for perjury, the Court must *prima facie* reach a conclusion that there has been a deliberate and conscious effort to misguide the Court and interfere in the administration of justice. More so, it has to be seen whether such a prosecution is necessary in the interest of justice.

11. On going through Annexure A2 order, we find that the learned Family Court Judge has not arrived at a conclusion that it is expedient in the interest of justice that an enquiry should be made into the alleged offence as there had been a deliberate and conscious effort to misguide the court or interfere in the administration of justice. As held in **Chandrapal Singh** (*Supra*), day in and day out averments are made by the parties to the case, some of which are accepted and some others are rejected. If in all such cases, proceedings for perjury are to be filed, not only will that open up floodgates of litigation, but it would also be an abuse of the process of the Court and the courts will not have time for any other matter apart from

considering such issues. Therefore, in these circumstances, we hold that this is not a fit case in which the proceedings under Section 340 Cr.P.C. ought to have been initiated.

In the result, the appeal is allowed. The complainant in Annexure A3 complaint is directed to withdraw the complaint.

Interlocutory applications, if any pending, shall stand disposed of.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C.S.SUDHA, JUDGE

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APPENDIX OF CRL.A 56/2023

PETITIONER ANNEXURES

- Annexure A1 THE CERTIFIED COPY OF THE DEPOSITION OF RW2 IN M.C.109/15 BEFORE THE FAMILY COURT, MUVATTUPUZHA DATED 4.6.2016
- Annexure A2 THE CERTIFIED COPY OF ORDER M.P.211/2016 IN M.C.109/15 DATED 24.7.2019 PASSED BY THE FAMILY COURT, MUVATTUPUZHA
- Annexure A3 CERTIFIED COPY OF COMPLAINT IN C.C.NO.196/2020 DATED 4.3.2020 PENDING BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT-I, MUVATTUPUZHA.
- ANNEXURE A4 CERTIFIED COPY OF THE PROOF AFFIDAVIT AND DEPOSITION OF PW1 IN M.C 109/2015 BEFORE THE FAMILY COURT, MUVATTUPUZHA
- ANNEXURE A5 PHOTOCOPY OF THE TYPE WRITTEN VERSION OF THE DEPOSITION OF PW1 IN M.C 109/2015 BEFORE FAMILY COURT, MUVATTUPUZHA DATED 2.03.2016
- ANNEXURE A6 PHOTOCOPY OF THE TYPE WRITTEN VERSION OF THE DEPOSITION OF RW1 IN M.C 109/2015 BEFORE THE FAMILY COURT, MUVATTUPUZHA DATED 2.03.2016
- ANNEXURE A7 CERTIFIED COPY OF THE MUSTER ROLL