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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 3<sup>RD</sup> DAY OF AUGUST 2023 / 12TH SRAVANA, 1945

CRL.MC NO. 7307 OF 2019

AGAINST THE ORDER/JUDGMENT IN C.C.NO. 380/2018 OF  
JUDICIAL MAGISTRATE OF FIRST CLASS, PAYYOLI

**PETITIONER/ACCUSED:**

SAJITH.N.K  
AGED 39 YEARS, S/O. DAMODHARAN,  
KODAKKATTERI HOUSE, KONDAMBRA,  
IRITTY, KANNUR 670 703.

BY ADVS.  
P.C.ANIL KUMAR  
MANU.M.THOMAS

**RESPONDENTS/COMPLAINANT AND STATE:**

- 1 JISHABAI PUTHUKUDI  
D/O. PADMANABHAN,  
KATTOTTIL HOUSE, PALLIKKARA (PO),  
PAYYOLI, KOZHIKODE 683 565.
- 2 THE STATE OF KERALA,  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA,  
ERNAKULAM 682 031.

SMT S.REKHA SR.PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION  
ON 03.08.2023, THE COURT ON THE SAME DAY PASSED THE  
FOLLOWING:



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**“C.R.”****ORDER**Dated this the 3<sup>rd</sup> day of August, 2023

Can an aggrieved party directly file a private complaint under Section 200 of Cr.P.C. before the jurisdictional Magistrate in relation to offences enumerated in Clause (b) of Sub Section (1) of Section 195 of Cr.P.C.? This is the short question that falls for consideration in this Crl.M.C.

2. The petitioner claims to be the legally wedded husband of the respondent No.1, which is disputed by the latter. However, the fact that, they were in relationship is not in dispute. A crime was registered by the Payyoli Police Station as Crime No.390/2014 under Section 376(2)(n) of the IPC against the petitioner based on the complaint preferred by the respondent No.1. The allegation was that the petitioner committed rape on the respondent No.1 on false promise of marriage. After investigation, final report was filed and ultimately the petitioner was acquitted, as evident from Annexure 6 judgment. During the pendency of the above case, the petitioner filed original petition as O.P.No.259/2014 at the Family Court, Thalassery (for short, 'the Family Court') against the respondent No.1 for restitution of conjugal rights alleging that, she is his legally wedded wife. In the said proceedings, the petitioner filed Annexure 5 affidavit. In paragraph 3 of the affidavit, it was



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stated that the petitioner's marriage with the respondent No.1 was solemnized on 22/03/2009 at Perumalpuram Siva Temple, Kozhikode as per the custom prevailed in the Hindu Nambiar Community. Thereafter, the respondent No.1 filed Annexure 1 private complaint at the Judicial First-Class Magistrate Court, Payyoli (for short, 'the Magistrate court') alleging that Annexure 5 affidavit is a false one. It is also alleged in Annexure 1 that, two similar false affidavits had been filed by the petitioner in another two proceedings between the parties at the High Court and at the Sessions Court, Thalassery. However, those affidavits were not produced. According to the respondent No.1, the petitioner committed offences punishable under Sections 499, 196, 199, 200 and 209 of the I.P.C by filing false affidavit at the Court. The learned Magistrate conducted enquiry under Section 202 of Cr.P.C. Four witnesses were examined as PW's 1 to 4. Thereafter, the learned Magistrate took the case on file as C.C.No.380/2018 and issued process to the petitioner under Section 204 of Cr.P.C as per Annexure 2 order which is under challenge in this Crl.M.C.

3. I have heard, Sri.P.C.Anil Kumar, the learned counsel for the petitioner and Smt.S.Rekha, the learned Senior Public Prosecutor. Even though, notice has been served to the respondent No.1, there is no appearance.

4. As per Annexure 2 order, the learned Magistrate took cognizance of the offences under Sections 196, 199, 200 and 209



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of the IPC which fall under Clause (b) (i) of Sub Section (1) of Section 195 of Cr.P.C. Those offences relate to false evidence and offences against public justice. The learned counsel for the petitioner submitted that in relation to offences enumerated in Clause (b) of Sub Section (1) of Section 195 of Cr.P.C., a complaint can only be filed by the court concerned as provided in Section 340 of Cr.P.C. and there cannot be a private complaint by the aggrieved party. I find force in the said argument.

5. For easy reference, Sections 195 (1) (b) and 340 of Cr.P.C are extracted below.

***“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*

*(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 authorise in writing in this behalf, or of some other Court to which that court is subordinate.”*

***“340. Procedure in cases mentioned in section 195. (1) When,***



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*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 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-ailable 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 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.*

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

6. Section 195 creates a bar and Section 340 confers jurisdiction on the court to proceed for the offences mentioned in Clause (b) of Sub Section (1) of Section 195. These two sections are supplementary to each other. The one creates bar on the filing of the complaint and the other removes the bar and confers exclusive jurisdiction on the court to file the complaint after



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satisfying itself *prima facie* about the correctness of the offences said to have been committed and covered by Clause (b) of Sub Section (1) of Section 195. Therefore, both the sections must be read together. A conjoint reading of Sections 195 and 340 of Cr.P.C makes it clear that it is for the court alone to proceed against the party who committed the offence enumerated in Clause (b) of Sub Section (1) of Section 195. However, the action under Section 195 can be activated in terms of the procedure laid down under Section 340 by anybody on an application or by the court *suo motu*. In other words, when the concerned court does not initiate action as contemplated under Section 340 of Cr.P.C, the aggrieved party is not remediless. The aggrieved party can very well approach the court concerned with an application and alert the court to initiate proceedings under Section 340. [See ***Mohan v. State of Kerala*** (2005 (2) KLT 714), ***Ganapathi Swami v. Karthikeyan*** (2014 (4) KLT 905) and ***Radhakrishnan v. State of Kerala*** (2021 (3) KLT 130)]. However, such an application can only be filed at the court where false evidence was given or false claim was made. When such a complaint is filed, the court can after holding such preliminary enquiry, if any, as contemplated under Section 340 of Cr.P.C make a complaint thereof in writing at the jurisdictional Magistrate. It is open to the court to entertain an application under Section 340 even at the instance of a stranger to the proceedings during which the offence is alleged to have been



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committed and out of which the application arises. It is also not necessary that the application should be made during proceedings out of which it arises or immediately thereafter. Such an application by an aggrieved party is maintainable even after the termination of the proceedings. [See *Sreejith Premachandran v. Biju Ramesh and Another* (2021 (1) KLT OnLine 1060)]. Where the court acts under Section 340 and makes a complaint, it is the court and not the private party who moves the jurisdictional Magistrate court by an application for taking action, that is the complainant.

7. Here is a case where the respondent No.1 instead of approaching the court concerned (Family Court) where false evidence was given, straightaway approached the Magistrate Court with a private complaint under Section 200 of Cr.P.C. It is impermissible. A party who is aggrieved by the inaction on the part of the court, where offences enumerated in Clause (b) of Sub Section (1) of Section 195 Cr.P.C. was committed, in initiating action under Section 340 of Cr.P.C., can only move to such court with an application under Section 340(1). He cannot directly move the jurisdictional Magistrate Court with a private complaint under Section 200 of Cr.P.C. [See *K.A.Kuttiah v. The Federal Bank Ltd. and Others* (2006 KHC 715) and *Shaji Thomas v. State of Kerala and Another* (2014 KHC 2532)]. Hence, the court below was not justified in taking cognizance of the offences under Sections 196, 199, 200 and 209 of IPC based on Annexure 1 complaint. Thus,



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Annexure 2 order is not legally sustainable, and it is accordingly set aside. However, the respondent No.1 will be at liberty to file an application under Section 340(1) of Cr.P.C at the Family Court. If such an application is filed, the Family Court shall dispose of the same in accordance with law.

Crl.M.C. is allowed as above.

Sd/-

**DR. KAUSER EDAPPAGATH**

**JUDGE**

APA





**APPENDIX OF CRL.MC 7307/2019**

PETITIONER ANNEXURES

- ANNEXURE 1 TRUE COPY OF THE COMPLAINT DATED 29.8.16  
FILED BEFORE THE JFCM PAYYOLI.
- ANNEXURE 2 TRUE COPY OF THE ORDER IN CRL. M.P. NO.  
2365/16 JFCM PAYYOLI.
- ANNEXURE 3 TRUE COPY OF THE COMPLAINT FIELD BY THE  
PETITIONER BEFORE THE JFCM, MATTANNUR CMP  
NO. 2893/15.
- ANNEXURE 4 TRUE COPY OF THE REPORT OF THE SUB  
INSPECTOR OF POLICE, PAYYOLI POLICE  
STATION TO THE SUPERINTENDENT OF POLICE,  
KOZHIKDOE RURAL DATED 20.3.03.
- ANNEXURE 5 TRUE COPY OF THE AFFIDAVIT FILED BY THE  
PETITIONER IN OP NO. 259/14 OF FAMILY  
COURT, THALASSERY.