

[2022 LiveLaw \(SC\) 776](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SANJAY KISHAN KAUL; J., ABHAY S. OKA; J., VIKRAM NATH; J.
CRIMINAL APPEAL NO. 335/2020; SEPTEMBER 15, 2022
THE STATE OF PUNJAB versus JASBIR SINGH

Code of Criminal Procedure, 1973; Section 195, 340 - Whether Section 340 CrPC mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 CrPC by a Court - There is no question of opportunity of hearing in a scenario of this nature - Scope and ambit of such a preliminary inquiry. Referred to *Iqbal Singh Marwah vs. Meenakshi Marwah (2005) 4 SCC 370.*

Judgment and Order - An order is in the given factual scenario. The judgment lays down the principles of law. The scenario is that any order or judgment passed by this Court becomes a reportable exercise to create more volumes of reported cases! This thus has a possibility at times of causing some confusion on the legal principles prevalent.

For Appellant(s) Ms. Rooh-e-hina Dua, AOR Mr. Harshit Khanjuja, Adv. Mr. Kanishak Bunderwal, Adv. Ms. Ananya Sikri, Adv.

For Respondent(s) Mr. Sumeir Ahuja, Adv. Ms. Akansha Gulati, Adv. Mr. Deepak Samota, Adv. Mr. Shubham Bhalla, AOR

ORDER

The matter has been placed before a three Judges Bench arising from a reference made vide order dated 26.02.2020 seeking the following questions to be answered:

“(i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?

(ii) what is the scope and ambit of such preliminary inquiry?”

The impugned judgment of the High Court granting relief to the respondent while dealing with an aspect of forgery in a civil case is predicated on a reasoning that the FIR which was registered against the respondent-accused did not comply with the mandatory requirements of Section 340 read with Section 195 of the Cr.P.C.

The FIR had given rise to the provisions since it had been filed without any inquiry and without giving any opportunity to the respondent to be heard.

The two Judges Bench of this Court noticing the aforesaid aspect, in order dated 26.02.2020 referred to two judgments of this Court both of three Judges Bench as also to a Constitution Bench of this Court.

To put the aspect in the right perspective and in sequence, we may note that the first judgment of three Judges Bench was ***Pritish vs. State of Maharashtra & Ors.***¹

¹ (2002) 1 SCC 253

which noticed that the purpose of a preliminary inquiry under Section 340(1), Cr.P.C. was not to find whether a person is guilty or not but only to decide whether it was 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 offence should be further probed into.

The reference order is a conflicting view in ***Sharad Pawar vs. Jagmohan Dalmiya & Ors.***² to the extent that in para 7 while noticing the submissions of the counsels it was observed that it was necessary to conduct a preliminary inquiry as contemplated under Section 340 Cr.P.C. and “also to afford an opportunity of being heard to the defendants, which was admittedly not done.” The latter was stated to be contrary to the view in **Pritish’s** case (supra).

The reference order also simultaneously noted the observations in the Constitution Bench of this Court in ***Iqbal Singh Marwah vs. Meenakshi Marwah***³ which was post the judgment in **Pritish’s** case (supra) but prior to the judgment in **Sharad Pawar’s** case (supra). In this behalf the extracted portion in 23 of the judgment reads as under :

“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 interest 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 interests of justice that enquiry should be made into any of the offences referred to in [Section 195\(i\)\(b\)](#). 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 administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint.

Emphasis supplied”

On having considered the matter, it is our view that the Constitution Bench’s view would naturally prevails that makes the legal position quite abundantly clear. Not only that, if we may notice, what is reported in **Sharad Pawar’s** case (supra) is only an order and not a judgment. An order is in the given factual scenario. The judgment lays down the principles of law. The scenario is that any order or judgment passed by this Court becomes a reportable exercise to create more volumes of reported cases! This thus has a possibility at times of causing some confusion on the legal principles prevalent. The observations in the quoted paragraph extracted aforesaid apparently came out of the

² (2010) 15 SCC 290

³ (2005) 4 SCC 370

flow of the order rather than pronouncing any principles of law and that is why the Bench itself categorized what is observed as an order i.e, in the given factual scenario.

We have little doubt that there is no question of opportunity of hearing in a scenario of this nature and we say nothing else but that a law as enunciated by the Constitution Bench in **Iqbal Singh Marwah's** case (supra) is in line with what was observed in **Pritish's** case (supra).

Interestingly both the judgments in **Pritish's** case and the Constitution Bench judgment in **Iqbal Singh Marwah's** case (supra) have not been noted in order passed in **Sharad Pawar's** Case (supra). The answer thus to the first question raised would be in the negative.

Insofar as the second question is concerned, the scope and ambit of such a preliminary inquiry, also stands resolved in terms of the Constitution Bench judgment of this Court in the **Iqbal Singh Marwah's** case (supra) as referred to aforesaid.

The reference is answered accordingly.

The matter be placed before the regular Bench for consideration on merits.

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