

**IN THE HIGH COURT OF JAMMU & KASHMIR AND  
LADAKH AT SRINAGAR**

**AA No.04/2022  
CM No.4127/2022**

**ROSHAN LAL TICKOO** ...Petitioner(s)

Through: Mr. Sakal Bhushan, Sr. Advocate, with  
Mr. Rahul Sharma, Advocate.

Vs.

**PREDIMANT KRISHAN TICKOO** ...Respondent(s)

Through: Mr. Z. A. Qureshi, Sr. Adv. with  
Mr. Amandeep Singh, Mr. Subash Bhat & Mr.  
Farhat Zia Sohrawardy, Advocates.

**CORAM:HON'BLE MR. JUSTICE SANJAY DHAR,JUDGE**

**ORDER(ORAL)**  
**02.08.2024**

**AA No.04/2022**

1. Through the medium of present petition under Section 9 of the Arbitration & Conciliation Act, 1996, the petitioner has sought the following reliefs:

*"i) A Receiver be appointed for 18 no. of tankers detailed whereof are mentioned in the application.*

*ii) The Respondent be restrained from transferring the transportation carriage charges being received by the partnership concern from Bharat Petroleum Corporation Limited, to the account of the persons to whom the Respondent has sold the vehicles.*

*iii) Appoint an independent Firm for conducting forensic auditing of M/s Shayam Lall & Co*

*(partnership concern) from financial years 2016-17 onwards till date.*

*iv) The Respondent be restrained from entering into any kind of agreement or sale or executing of any document with regard to the assets of the partnership concern."*

2. During the pendency of this petition, the Arbitral Tribunal stands appointed and the parties have, admittedly, submitted to the jurisdiction of the Arbitral Tribunal.

3. Learned counsel for the petitioner has submitted that the petitioner has already invoked the jurisdiction of the Arbitral Tribunal under Section 17 of the Arbitration & Conciliation Act for grant of interim reliefs which have been prayed in the instant petition, therefore, the instant petition has been rendered infructuous.

4. The aforesaid position has not been disputed by the learned Senior Counsel appearing for the respondents.

5. In view of the above, the present petition has been rendered infructuous and the same is, accordingly, disposed of along with connected CM(s).

6. Disposed of as above.

**CM No.4127/2022**

1. This is an application filed by the respondent under Section 340 of the Cr. P. C seeking initiation of appropriate criminal proceedings against the petitioner/non-applicant.

2. In the application it has been submitted that the petitioner has, in his petition under Section 9 of the Arbitration & Conciliation Act, made false statements at para Nos.6 to 8. The relevant portions of the aforesaid paras have been reproduced in the application and the same are extracted below:

".....The estimate losses as per the audit conducted on account of unauthorized sale of 18 (Tanker lorries) done unilaterally by the respondent and without consent or the knowledge of the Applicant....."

".....Of late, it was noticed by the Applicant that there is a decline in the profits of the partnership concern. Multiple audits were conducted by the Partnership concern Auditor as well as independent Auditors from New Delhi. After completing a thorough financial audit, the Auditors have submitted their reports, which indicate that the partnership concern has suffered huge losses due to unethical and disorderly running of the partnership concern by the Respondent, which includes illegal sale of 18 oil tankers."

"It is essential to state here that sale amount of the said vehicles has not been deposited in the account of the Partnership concern and the same remains unaccounted for moreover, the sale of these vehicles has been at rates which are well below the market value of the vehicles of this kind the Respondent in an illegal and unauthorized manner has been transferring the carriage charges received to that of the account of the persons to whom, the Respondent has sold the vehicles."

".....the respondent has also entered into partnership without the consent of the Applicant with respect to running of retail outlet at Chattabal, Srinagar."

".....The Respondent has also sold a plot of land owned by the Partnership concern at Channi Himmat, Jammu unilaterally and without the

consent of the respondent for a sale amount of Rs. 16 lacs only in the year 2010."

3. It is the claim of the applicant/respondent that the afore-quoted assertions made by the petitioner/non-applicant in his petition under Section 9 of Arbitration & Conciliation Act are palpably false to the knowledge of the petitioner and, as such, he has committed the offence of perjury. It has been submitted that the non-applicant is required to be prosecuted in accordance with the procedure prescribed in Section 195 of the Cr. P. C and for the said purpose, a preliminary enquiry has to be conducted in accordance with the procedure prescribed under Section 340 of the Cr. P. C

4. Reply to the application stands filed by the petitioner/non-applicant, in which he has categorically denied the allegations made by the respondents in the aforesaid application.

5. I have heard learned counsel for the parties and perused record of the case.

6. Learned counsel for the petitioner/non-applicant has contended that unless veracity of the allegations made in the petition, which are termed as false by the respondents, is determined by some forum, the present application cannot be considered and, as such, the same is premature.

7. *Per contra*, learned Senior Counsel for the respondent/applicant has submitted that even at this stage the veracity of the contentions of

the respondent/applicant can be gone into by holding a preliminary enquiry in terms of Section 340 of the Cr. P. C.

8. In order to determine the merits of the rival submissions, it would be apt to refer to the provisions contained in Section 340 of Cr. P. C, which read as under:

**“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 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 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 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.*

9. From a perusal of the aforesaid provision, it is clear that before initiating an enquiry into any offence referred to in clause (b) of sub-section (1) of Section 195 of the Cr. P. C, the Court has to frame an opinion that it is expedient in the interests of justice to do so, whereafter the Court has to record a finding to that effect and make a complaint thereof in writing. The same has to be sent to the Magistrate of 1<sup>st</sup> Class having the jurisdiction.

10. Clause (b) of sub-section (1) of Section 195 of the Cr. P. C makes a reference to the offences punishable under Section 193 to 196, 199, 200, 205 to 2011 and 228 of IPC when such offences are alleged to have been committed in or in relation to any proceedings in any court. The aforesaid offences fall under Chapter (XI) of the Indian Penal Code which relate to false evidence and offences against public justice. Thus, it is important for a Court to frame an opinion that it is expedient in the interests of justice to hold an enquiry with regard to commission of aforesaid offences if the same appear to have been committed in relation to a proceeding in a Court.

11. The Supreme Court in the case of **Rugmini Ammal by LR's v. V. Narayana Reddiar**, (2007) 12 SCC 611, while dealing with the aforesaid aspect of the matter has held as under:

*“normally, a direction for filing of a complaint is not made during the pendency of the proceeding before the Court and this is done at the stage when the proceeding is concluded and the final judgment is rendered”. It was also held that as per language of Section 340 of the Cr.P.C., the Court is not bound to make a complaint as the Section is conditioned by the words "Court is of the opinion that it is expedient in the interests of justice". The said words were held to show that such a course would be adopted only if the interest of justice requires and not in every case. It was further held that this expediency would 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 was further held that even where the forged document or forgery may cause a very serious or substantial injury to a person but where such document is just a piece of evidence, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice is minimal, the Court may not consider it expedient in the interest of justice to make a complaint.”*

12. In **Punjab Tractors Ltd. vs. International Tractors Ltd.**, 167 (2010) DLT 490, Delhi High Court while interpreting the provisions of Section 340 of the Cr. P. C, observed as under:

*“18. In my opinion, an application under Section 340 of the Cr.P.C ought to be normally considered at the time of final decision of the case only and not at the interim stage as the defendants/applicant have pressed in the present case. It is the settled legal position that the said provision cannot be resorted to, to satisfy a private grudge of the litigant. In fact the very genesis of this provision is to prevent complaints being filed of offences having being committed in relation to the court proceedings; it was felt that if such complaints are permitted to be filed, the same may be used to force the other party into giving up its claim/defence or to dissuade witnesses from appearing before the courts under threat of criminal prosecution. It was held as far back as in Rewashankar Moolchand Vs. Emperor AIR 1940 Nagpur 72 that proceedings under Section 340 Cr.P.C should not be resorted to when the criminal case is calculated to hamper fair trial of issue in the civil court before which the matter would probably go on for longer. This court also in M/s Jindal Polyester Ltd. Vs. Rahul Jaura 124 (2005) DLT 613 and in Kuldeep Kapoor Vs. Susanta Sengupta 126 (2006) DLT 149 has held that applications under Section 340 of the Cr.P.C should be dealt with at the final stage only and not at the interim stage. I also find a*

*consistency of view in this regard in the other High Courts. The law is that a prosecution for perjury should not be ordered by the court before the close of the proceedings in the case in which false evidence is given. It is highly wrong for a court to take action under the said provision against a witness or a party for giving false evidence when trial is underway."*

13. From the analysis of the legal position on the subject, it is clear that preliminary enquiry under Section 340 of the Cr. P. C can be directed only if in the opinion of the Court, it is expedient in the interests of justice to do so when it appears that the offence of perjury in relation to court proceedings has been committed. Thus, two conditions are necessary for initiating proceedings under Section 340 of the Cr. P. C, first that the offence of perjury in relation to court proceedings should appear to have been committed and secondly, in the opinion of the court it should be expedient in the interests of justice to hold such preliminary enquiry.

14. Coming to the present case, the respondents/applicants have alleged that the petitioner/non-applicant has made false statements in his petition which relate to estimated losses as per the audit conducted on account of unauthorized sale of 18 tanker lorries, decline in profits of the partnership firm, non-deposit of sale amount of the vehicles in the account of the partnership firm, respondent having entered into partnership without consent of the petitioner and sale of plot of land by respondent/applicant owned by the partnership firm at Channi Himmat, Jammu, unilaterally. The veracity of all these allegations is a matter in issue before the Arbitral Tribunal. It is, therefore, yet to be determined



as to whether the aforesaid allegations made by the petitioner in his petition under Section 9 of the Act are false.

15. It is not a case where the petitioner is stated to have made any contradictory statements in his pleadings but it is a case where he has made certain allegations, the veracity of which is yet to be determined. Had it been a case of contradictory stands having been taken by the petitioner in his pleadings, perhaps this Court would have been justified in holding a preliminary enquiry in terms of Section 340 of Cr. P. C at this stage itself but because the veracity of the allegations made by the petitioner in his petition, which according to the respondent/applicant are false, is yet to be determined and there is no material on record to suggest that the same are, prima facie, false, this Court feels that the prayer of the respondents/applicants for initiating preliminary enquiry under Section 340 of the Cr. P. C cannot be considered at this stage. The same has to await the determination of the aforesaid issues by the Arbitral Tribunal.

16. In view of the above, the consideration of the present application is deferred and the same is adjourned *sine die* with liberty to the respondent/applicant to revive the same after the Arbitral Tribunal makes its award.

**(Sanjay Dhar)**  
**Judge**

**Srinagar**  
02.08.2024  
"Bhat Altaf-Secy"

*Whether the order is reportable: Yes/No*