

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

CRM(M) No. 87/2024 CrIM No. 229/2024

Farooq Ahmad Khan ...Petitioner(s)

Through: Mr. M. Y. Bhat, Sr. Advocate with
Mr. Sajid Ahmad Bhat, Advocate.

Vs.

Mahbooba Khan ...Respondent(s)

Through: Mr. Raja Rathore, Advocate with
Mr. Shah Rasool, Advocate.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

10.05.2024

(ORAL)

1. Through the medium of instant petition filed under Section 482 CrPC the petitioner herein has sought setting aside of order dated 30.01.2024 passed by the Court of 1st Additional Sessions Judge, Srinagar (for short the appellate Court) in case titled as "Farooq Ahmad Khan Vs. Mehbooba Khan".
2. Facts giving rise to the filing of instant petition would reveal that respondent herein instituted a complaint before the court of City Judge Srinagar, (for short the trial Court) under Section 12 of the Protection of Women from Domestic Violence Act, 2010 (for short the Act of 2010) praying therein the following reliefs: -
 - i). A protection order under section 18 of the Act in favour of the complainant prohibiting the accused persons from committing any kind of act of violence against the person of the complainant.
 - ii) A maintenance order under section 20(d) of the Act in favour of the complainant directing the accused No.1 to pay Rs.90,000/- as monthly maintenance.
 - iii) A residence order u/s 19(f) by way of directing the respondent No.1 to provide suitable separate accommodation to the complainant in the shared household to live with dignity and without any obstruction or in alternative direct him to pay Rs.10,000/- for the rental accommodation as per the status of the complainant.
3. During the pendency of the said complaint, petitioner herein being respondent therein, the said complainant filed an application under

Section 340 CrPC before the trial Court for taking appropriate action against the complainant/respondent herein for having committed the offence of perjury by filing a false affidavit on 09.06.2016 in support of the complaint spelling out alleged false facts claimed to have been pleaded by the complainant respondent herein in the complaint. The complainant respondent herein though did not file objection to the application yet, opposed the same.

4. The trial Court dismissed the application on 27.06.2022 holding that it does not seem to be expedient for the said Court to launch a prosecution of perjury against the complainant respondent herein as undertaking of such proceedings would put the complaint filed under the Act of 2010 by the complainant respondent herein at the backburner and in the process would result delay in its disposal, as such, dismissed the application.
5. Aggrieved of the said order dated 27.06.2022, the respondent/petitioner herein preferred an appeal before the appellate Court which appeal came to be disposed of in terms of order dated 30.01.2024 providing therein the said order that the trial Court committed wrong while dismissing the application as the trial Court ought to have deferred the consideration of the application and decided the same at the time of final disposal of the main case.
6. The petitioner herein has challenged the order dated 30.01.2024 supra to the extent that the appellate Court could not have provided that the consideration of the application be deferred till final disposal of the complaint filed by the complainant/respondent herein under the Act of 2010.

Heard counsel for the parties and perused the record.

7. Before advertent to the petition in hand, it would be appropriate and advantageous to refer to section 340 and 195 of the Code of Criminal Procedure being relevant herein which reads 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 interest 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 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."

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) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, or attempt to commit, such offence, or
(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;
(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.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinarily original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that –

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

A bare perusal of the aforesaid Sections reveal that the same provides a procedure for offence under Section 195(1)(b) which section is one of the exception to the general rule that any person can lodge a complaint of an offence and when an offence is committed in relation to a public servant [Section 195(1)(a)] the sanction of the public servant has to be first obtained and when the offence is in relation to a court [Section 195(1)(b)] the sanction of the court has to be obtained first.

It also emanates from the aforesaid sections that same are closely connected and in order to have a harmonious construction, the

said sections are to be read together. Under section 340 supra discretion has been given to a court which however, has to be exercised with great care and caution inasmuch as the object of the section is to provide a safeguard against frivolous or vexatious prosecution and the section can be invoked on an application made to a court or by it suo-moto and the words appearing in said section **“it is expedient in the interest of justice that an enquiry should be made”** are the key note to the said section and a prosecution under the said section can be launched only if it is expedient in the interest of justice and not on mere allegations or to settle personal score. Thus, before recommending action under section 340 supra, the court must be satisfied that the party sought to be proceeded against intentionally committed the offence.

The object of section 195 supra is to protect a person from being needlessly harassed by vexatious prosecution in retaliation. It is a check to protect an innocent person from criminal prosecution which may be actuated by ill will or malice with a further object to stop private person from obtaining sanction as a means of wreaking vengeance and to give a court full discretion in deciding whether any prosecution is necessary or not. Thus, there may be a case where false affidavit might have been filed or an offence under section 195(1)(b) might appear to have been committed, but, nevertheless, unless it is expedient in the interest of justice, in the opinion of a court that an enquiry should be made or a complaint should be directed to be filed, same cannot be done as otherwise time of the court which has been usefully devoted for dispensation of justice will be wasted on such an enquiries.

8. Keeping in mind the aforesaid provisions and principles of law and reverting back to the case in hand, record tends to show that the respondent herein admittedly instituted the complaint under section 12 of the Act of 2010 on 09.06.2016 and the said complaint has been contested vigorously by the petitioner herein being respondent therein the said complaint and indisputably did not allege the commission of offence of perjury by the respondent herein therein the said complaint for having sworn a false affidavit, be it pertaining to the grant of

maintenance to the respondent herein, a right of residence in the shared household or else the prohibition of committing of domestic violence by the petitioner herein against her. The petitioner herein being the respondent in the aforesaid complaint for the first time alleged the commission of offence of perjury by the respondent herein by invoking section 340 CrPC on 28.12.2021 although an application have had also been filed on 09.12.2020 by the petitioner herein for dismissal of the aforesaid complaint on the ground of limitation which application came to be dismissed by the trial court on 18.11.2021 whereafter the petitioner herein maintained the aforesaid application under section 340 CrPC on 28.12.2021 prima-facie suggesting the lack of *bona fide* on the part of the petitioner herein as in the normal course of events the petitioner herein was expecting to have sought prosecution of the respondent herein for the commission of alleged perjury at once immediately after the filing of the complaint under section 12 of the Act of 2010 by the respondent herein. The petitioner herein having failed qua grant of orders therein the said complaint by the trial court in favour of the respondent herein admittedly firstly sought dismissal of the complaint on 09.12.2020 by filing an application which application came to be dismissed on 18.11.2021 and thereafter immediately filed the application under section 340 CrPC on 28.12.2021 in order to defeat and frustrate the further prosecution of the complaint filed by the respondent herein inasmuch as to wreak vengeance against the petitioner herein and for the purpose invoked the power of the court enshrined in section 340 CrPC by trying to achieve indirectly his goals by using the trial court as an instrument thereof.

9. Although under section 340 CrPC no time limit has been fixed for initiating proceedings, but the delay of more than 05 years in the matter lost by the petitioner herein in invoking the provisions of section 340 CrPC cannot be overlooked or ignored.

A reference in this regard to the judgment passed by this court in case titled as “**Joginder Nath vs. Sham Lal**” reported in **JKLR 1976 page 307** would be relevant herein, wherein while dealing with the corresponding provision of Section 340 CrPC in the Code of

Criminal Procedure of the erstwhile State of Jammu and Kashmir being Section 476 CrPC, it came to be held that it is elementary that no court can allow the initiation or continuation of criminal proceedings against a citizen which have not been brought bona fide as the criminal courts are not meant to be used as a tool for satisfying for private grudge of a litigant and though a wide discretion is given to the court under section 476 CrPC, but such discretion has to be exercised with great care and caution.

10. For what has been observed, considered and analyzed hereinabove, the instant petition cannot but said to be yet another attempt made by the petitioner herein in furtherance of the application filed by him under section 340 CrPC before the trial court and then an appeal before the appellate court to forestall the prosecution and adjudication of the complaint filed by the respondent herein which cannot be permitted by this court while taking cognizance of the whole matter. Resultantly the petition is dismissed and consequently the application filed by the petitioner herein before the trial court under Section 340 CrPC shall as well be deemed to have been dismissed notwithstanding the order passed by the appellate court which too shall be deemed to have been set-aside.
11. Having regard to the conduct of the petitioner taken cognizance of in the preceding paras in the matter, this court deems it appropriate to saddle the petitioner with costs to the tune of Rs.50,000/- to be payable to the respondent herein within eight weeks from today.

(JAVED IQBAL WANI)
JUDGE

SRINAGAR

10.05.2024

Ishaq

Whether the order is speaking? Yes
Whether approved for reporting ? Yes

Note: *It is significant to note here that it came to the notice of this Court that an unsigned draft judgement/order dictated in the open court of the instant case came to be uploaded on the website of the High Court by the concerned stenographer inadvertently by mistake as per him on 15.05.2024 and thereafter removed therefrom on 24.05.2024 for which act of omission an in-house enquiry is underway. The said unsigned draft judgement/order, as such, shall be deemed to be non-existent ab-initio*

(JAVED IQBAL WANI)
JUDGE