

MHAH060015982023



**Criminal M.A. No. 371/2023**

Triveni Naik

Vs.

Tejas Naik & ors

**COMMON ORDER BELOW EXH-46 & 47**

The present application is filed on behalf of the applicant under Section 215 and 379 of Bharatiya Nagarik Suraksha Sanhita, 2023 (under Section 340 & 195 of old Criminal Procedure Code, 1973), (hereinafter referred as BNSS and Cr.P.C. for the sake of brevity).

2. It is submitted on behalf of the applicant that, the present petition is filed under the provisions of Domestic Violence Act, 2005. Wherein the interim maintenance application was filed. In view of guidelines issued by the Hon'ble Apex Court in case of ***Rajnish Vs. Neha***, the applicant has filed her affidavit of assets and liabilities below Exh.21. Even the respondent No.2 has filed his affidavit of assets and liabilities below Exh.22. In the said affidavit of respondent No.2 with intent to conceal his actual salary and name of his employer company shown false salary and name of company. Thereafter, the application Exh.5 of the applicant was allowed. The applicant had called upon the respondent No.2 to produce the record of his salary. At that time the respondent No.2 has filed on record the account statements of his salary account maintained at HDFC Bank, Branch Chakan. However, with intent to cheat and conceal his original income, he intentionally prepared false document of account statement and filed in the court. Thereafter, the applicant had called the certified account extract of the concern bank. Accordingly, the

concern bank manager has produced the same on record. Perusal of both statements it clears that, the account statement filed by the respondent No.2 is false and forged. In such circumstances the respondent No.2 has made contempt of the court by not following the guidelines in case of *Rajnish Vs. Neha*.

3. It is further submitted that, the respondent No.2 has prepared false account extract of his account bearing No.50100226808421 and filed the said in the present matter. In the said affidavit the respondent No.2 on oath has stated that, he is working in Presigen Tech Solution Company and getting salary of Rs.30,000/- per month. In fact the respondent No.2 is working in Liber India Pvt. Ltd. company at Pune and getting salary of Rs.58,000/- to Rs.76,000/- per month. It is reflecting in the bank account statement produced by the concern bank manager. Therefore, it requires to make inquiry in regard to said fact with HDFC bank, Branch Chakan, HDFC bank, Branch Shrirampur and Liber India Ltd. Pune. As such requested to allow the application and initiate action in view of Section 215 and 379 of Bharatiya Nagarik Suraksha Sanhita, 2023.

4. Heard learned advocate Shri.K.B.Tambe appearing for the applicant. Heard learned advocate Shri.N.G.Khandagale appearing for the Respondent No.2. Perused all documents produced on the record by both the parties.

5. Following point arise for my determination. I have recorded my finding and reasons thereon as under.

<u>POINT</u>	<u>FINDING</u>
1. Whether it is expedient to take action under Section 379 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ?	No.

### REASONS

6. Heard both sides at length. Perused record of the case. The applicant has come with twofold grounds by way of this application. One of them is that, the respondent No.2 with intent to conceal his original salary and name of employer, he has prepared false account statement of his bank account maintained with HDFC Bank, Branch Chakan and filed before the Court. Secondly, the respondent No.2 vide filing of his affidavit of assets and liabilities as per directions of the Hon'ble Apex court in case of ***Rajnish Vs. Neha*** made false statement of his salary and name of the employer. In this background she has prayed to initiate inquiry under Section 379 of BNSS.

7. So far as, the first ground of filing false account extract by the respondent is concern the constitution bench of hon'ble Apex Court in case of ***Iqbal Singh Marwa and Anr Vs. Meenakshi Marwa and Anr.*** reported in AIR 2005 SC 2119, the Hon'ble Court has dealt with the said issue and held that, '*Section 195(1)(b)(ii) of Code of Criminal Procedure, 1973 would attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in proceeding in any court i.e. during the time when the document was in custodia legis.*' It means to attract the offence punishable under Section 195 the Act forgery should be made when the document was

in custodia legis, it means it is on the record of the matter in Court. In the case in hand applicant came with the case that, the respondent No.2 has prepared false account statement and filed in the court. In such circumstances the act of preparing false document has been committed prior to filing the said document in the Court. In such situation in view of the aforesaid ratio laid down by the Hon'ble Apex Court so far as the first ground of the applicant is concern the provisions of Section 195 would not attract.

8. The second ground raised by the applicant is that, the respondent no.2 has filed his false affidavit at Exh.22, stating his false income and salary. It is argued on behalf of applicant that, in view of directions of judgment in case of ***Rajnish Vs. Neha*** the respondent No.2 is filed affidavit supra. He was required to disclosed his actual salary and name of employer, however, he has made false statement in regard to said salary and his employer with intent to cheat. In support of his submission he has relied upon judgment in case of ***State of Punjab Vs. Jasbir Singh***, in *Criminal appeal No. 335/2020* of the Hon'ble Apex Court, wherein the hon'ble Apex Court has dealt with the issue, *whether Section 340 of Cr.P.C.* mandates a preliminary inquiry and an opportunity of hearing to be given to the accused before a complaint is made under Section 195 of the Code by the Court. Second issue was what is the scope and ambit of such preliminary inquiry. The Hon'ble Apex Court after referring the judgment in case of ***Pritish V. State of Maharashtra, 2002 Cri.L.J.548, Iqbal Singh Marwa Vs. Meenakshi Marwa and Sharad Pawar Vs. Jagmohan Dalmiya and Anr.*** has observed that, both the judgment in Pritish's case and the constitution bench

judgment in Iqbal Marwa's case supra have not been noted in order passed in Sharad Pawar's case supra and answered the first question in negative. In so far as the second question is concern the scope and ambit of such preliminary inquiry also stand resolved in terms of the constitution bench judgment of this court in the Iqbal Singh Marwa's case.

9. After going through the aforesaid ratio it reveals that, it is not mandatory to give an opportunity of hearing to the other side prior to initiating inquiry under Section 340 of Cr.P.C.. The scope and ambit of the initiating the said inquiry has been dealt with by the Apex Court in case of *Iqbal Singh Marwa's* case which has been reiterated by the Hon'ble Apex Court in the aforesaid case relied upon by the applicant. In the case *Iqbal Singh Marwa* (supra) the Hon'ble Apex Court while dealing with the scope and ambit of Section 340 of Cr.P.C. observed as under,

*" 18. 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( I ) ( 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. The broad view of clause (b )(ii), as canvassed by learned counsel for the appellants, would render the victim of such forgery or forged document remedyless. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded.*

10. I have minutely gone through the aforesaid observations of Hon'ble Court. In the second ground the applicant came with the specific allegations that, the respondent No.2 has made false statement in regard to his 'salary and employer' in his affidavit filed in view of directions Hon'ble Apex Court in case of **Rajnish Vs. Neha**. In the case supra the Hon'ble Apex Court has directed to file the affidavit of assets and liabilities in prescribed formate in all maintenance proceeding pending in the Court. Upon careful reading

of the said decision it is clear that, mandate is to direct filing of affidavit of disclosures at the stage deciding the application for interim maintenance. It means the said affidavit is requires to be filed at the stage granting of interim maintenance. Thus, it is having effect only at the stage of deciding interim application and the final relief can be adjudged on the detail evidence adduced by the parties during their evidence their income.

11. It is gathered from the judgment of *Iqbal Singh Marwa's* case that, the expediency of initiating enquiry 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. 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. The parties in the case in hand is having every opportunity to adduce the voluminous evidence in regard to their income. The effect of disputed affidavit is having minimal effect on the administration of justice to decide the quantum of the maintenance at the final hearing. In such circumstances considering the ratio laid down by the Hon'ble Apex Court in case supra, the affidavit filed by the respondent No.2 for hearing of the interim maintenance is having minimal effect over the administration of the justice to deal with the matter.

12. Further, reading of said provision makes it clear that the hub of this provision is formation of an opinion by the court that it is

expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the court can form such an opinion when it appears to the court that an offence has been committed in relation to a proceeding in that court. It is important to notice that even when the court forms such an opinion it is not mandatory that the court should make a complaint. This sub-section has conferred a power on the court to do so. It does not mean that the court should, as a matter of course, make a complaint.

13. Thus, I am of the opinion that, in a peculiar facts of the case the Court is not expected to initiate the criminal action. Thus, I answer to the point No.1 in negative and accordingly pass following order-

### **ORDER**

1. Application Exh.46 and Exh.47 are rejected.
2. Both parties to bear their own costs.

Date :- 25/10/2024.  
Place :- Shirampur.

(A. S. Kambale)  
Judicial Magistrate First Class,  
(Court No.2) Shirampur,  
Dist. Ahmednagar

**-: CERTIFICATE :-**

“ I affirms that the contents of this P.D.F. file Order are same word to word, as per original Order. ”

Name of Stenographer	: S.S.Satpute (Grade-3)
Name of the Court	: Judicial Magistrate First Class (Court No.2), Shrirampur.
Date of Order	: 25.10.2024
Order signed by presiding officer on	: 25.10.2024
Order uploaded on	: 25.10.2024