

**IN THE COURT OF JUDICIAL MAGISTRATE (FIRST CLASS),  
15TH COURT, MAZGAON, MUMBAI.**

**C. C. No. 1830/Misc/2023**

**ORDER BELOW APPLICATION EXHIBIT – 1**

1] This is an application filed by the applicant for initiating proceeding under section 340 of Code of Criminal Procedure r/w. 191, 193, 199 and 209 of Indian Penal Code against non-applicant. Perused the written notes of argument of applicant filed at Exh.6. Also heard Learned counsel for the applicant.

2] The brief facts of the application in brief are that, the non applicant is wife of the applicant. The non applicant has filed a domestic violence complaint bearing No. 11/DV/2023 against the applicant to seek reliefs under the Protection of Women from Domestic Violence Act, 2005. According to applicant, the said DV complaint is filed afterthought as a counter blast to the applicant's divorce petition pending before the Hon'ble Family Court, Bandra and other civil suits filed by the applicant. In said DV proceeding, the non applicant filed an application seeking interim maintenance for herself and minor daughter in March 2023. She has filed similar application before the Hon'ble Family Court, Bandra but in her application of domestic violence, she denied on oath of filing any previous application regarding the same.

3] It is further stated that, the non applicant has filed her affidavit of Assets and Liabilities in respect of the interim maintenance application in DV proceeding after five months of filing original application. It is contention of

applicant that, on perusal of the said affidavit, it appears incomplete, false, fabricated and with deliberate omission of significant facts in order to mislead the court. Affidavit of disclosure filed by the non applicant prima facie reveals that contents therein are false and fabricated and it is full of lies, concealment of various income and assets and deliberate omissions of material facts in order to mislead the Court. This is done with sole intention of taking advantage of her false submissions for personal unjust gains and harassment to the applicant. The non applicant has mislead the Court and committed perjury by blatantly concealing material information and lying about other facts that demonstrate that she is financially strong, independent working person with assets worth more than Rs.45 Crores, shareholdings and directorships in various entities worth more than Rs.50 Crores and additional monthly income of more than Rs.10 Lacs.

4] It is further stated that, the non applicant has made false statements regarding her educational qualification, bank accounts, business, income and self employment and other income of the non applicant , monthly expenses, personal information, details in respect of legal proceedings, maintenance being paid, medical details of dependent family members, details of the children of the parties and information with respect to the income, assets and liabilities of the other spouse i.e husband. The applicant has described all above alleged false statements in detail in paragraph no. 5A to 5L, 6, 7, 8, 9, 10, 11, 12, 13 and 14 of the application.

5] It is further stated that, the non applicant is guilty of the act of the perjury by intentionally making false statements on oath with an oblique motive to misguide and mislead the court with a view to extort money. The

non applicant is using Court of Law as a tool. It is further stated that, the non-applicant has committed an offence of perjury for grabbing gainful order and so an enquiry under section 340 Cr.PC. is necessary. Therefore, by way of this application, the applicant prayed to record finding under section 340 of Code of Criminal Procedure against non applicant and initiate appropriate proceeding against non applicant and stay the DV proceeding bearing No. 11/DV/2023 and to initiate contempt proceeding.

6] Before proceeding for further discussion, it is necessary to mention here that, the non-applicant has filed one Writ Petition bearing No.4018/2023 before the Hon'ble Bombay High Court seeking relief for residence order . The said Writ Petition came to be decided on 10/01/2024 and the Hon'ble Bombay High Court was pleased to pass order that the application proposed to be filed for residence order by the non-applicant in DV proceeding may be decided by the trial court along with this application under section 340 of the Cr.PC. on merits and in accordance with Law. It was also directed to make an endeavour to decide the applications as expeditiously as possible. In view of said directions, the present application was heard alongwith application for residence order filed by non-applicant at Exh. 31 in the DV proceeding.

7] Perused the record and documents filed by applicant in support of the application. The applicant has filed various documents in support of the application, Certificate under section 65-B of the Indian Evidence Act at Exh.7 and Index of judgments at Exh.5. I have carefully gone through the case laws relied by applicant. Out of said case laws, in following case laws, there is variance in the facts and circumstances, so in my humble and respectful

opinion, the ratio laid down in them is not applicable to facts and circumstances of the present case :-

- i] **Dalip Singh Vs. State of UP and others, (2010) 2 SCC 114,**
- ii] **Kishore Samrite V/s. State of UP and others, (2013)2 SCC 398.**
- iii] **Ramjas Foundation and another Vs. Union of India, (2010) 14 SCC 38,**
- iv] **Amar Singh Vs. Union of India and others, (2011) 7 SCC 69,**
- v] **Damanreet Kaur Vs. Indermeet Juneja and another, 2012 SCC OnLine Del 2811,**
- vi] **Gurbinder Singh Vs. Manjit Kaur, 2010 SCC OnLine Del 273,**
- vii] **Niharika Ghosh Vs. Shankar Ghosh, 2023 SCC OnLine Del 5624**

8] In respect of initiating proceeding under section 340 of the Cr.P.C, the Ld. Counsel for applicant has mainly relied upon the case of **Rajnish Vs. Neha and another (2021) 2 Supreme Court Cases 324**, in which the Hon'ble Supreme Court has given various guidelines regarding format of Affidavit of Disclosure of Assets and Liabilities to be filed in maintenance proceedings, consequences of failure to file said affidavit, action to be taken for false statements and misrepresentations if any etc. in paragraph no. 72 of the judgment. The guideline at serial no. 72.8(h) states that, “ *The pleadings made in the applications for maintenance and replies filed should be responsible pleadings. If false statements and misrepresentations are made, the court may consider initiation of proceeding under section 340 Cr.P.C. and for contempt of Court.*”

9] Thus, it is clear that, by relying upon above mentioned guideline, the applicant has filed present application against non-applicant for initiating proceeding under section 340 of the Code of Criminal Procedure on the

allegations of making false statements and filing false affidavit. As this application is filed under section 340 of Code of Criminal Procedure, so it is necessary to peruse Section 340 of Code of Criminal Procedure :-

**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 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 for 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.*

10] The Ld. Counsel for applicant has relied upon the case of **James Kunjwal Vs. State of Uttarkhand and another, 2024 SCC Online Sc 1943**, in which the Hon'ble Supreme Court has held regarding requirements for section 340 of the Code of Criminal Procedure that,

*“What we may conclude from a perusal of the above-noticed judicial pronouncements is that :-*

*(i) The Court should be of the prima facie opinion that there exists sufficient and reasonable ground to initiate proceedings against the person who has allegedly made a false statement(s);*

*(ii) Such proceedings should be initiated when doing the same is “expedient in the interests of justice to punish the delinquent” and not merely because of inaccuracy in statements that may be innocent/immaterial;*

*(iii) There should be “deliberate falsehood on a matter of substance”;*

*(iv) The Court should be satisfied that there is a reasonable foundation for the charge, with distinct evidence and not mere suspicion;*

- (v) *Proceedings should be initiated in exceptional circumstances, for instance, when a party has perjured themselves to beneficial orders from the Court.”*

11] In addition to it, I rely upon the case of **Santosh Chandrashekhar Shetty Vs. Ameeta Santosh Shetty, 2019 Law Suit (Bom) 92** in which the Hon'ble Bombay High has held that,

*“27. The law laid down by the Apex Court on section 340 of Cr.P.C. in the aforesaid decisions can be summarised as under :-*

- A] The Court is not bound to make a complaint regarding commission of offence and the said course will be adopted only if the Court is of the opinion that it is expedient in the interests of justice to do so and not in every case;*
- B] Before ordering filing of complaint, the Court may hold a preliminary enquiry. But it is not necessary to hold preliminary enquiry in every case and when the Court is otherwise in a position to form an opinion which is a condition precedent for initiating action under section 340, the Court may dispense with the enquiry;*
- C] Even if the Court comes to the conclusion that prima facie, a case of commission of offence is made out, it is not necessary in every case to direct filing of a complaint. The Court cannot direct filing of a complaint unless on the basis of material on record it is of the opinion that it is expedient in the interests of justice to direct filing of a complaint. As held by the Constitution Bench of the Apex Court in the case of Iqbal Singh (supra), expediency will normally be judged by the Court by weighing not the magnitude*

*of injury suffered by the person affected by the alleged offence but having regard to the effect or impact of such commission of offence has upon the administration of justice.*

*D] As observed in paragraph 24 of the decision of the Constitution Bench in the case of Iqbal Singh, normally a direction for filing of a complaint is not made during the pendency of proceedings and that is done at the stage when proceeding is concluded and final judgment is rendered.”*

12] Thus, from the contents of section 340 of the Cr.P.C. and the parameters laid down in above two case laws of ***James -Vs- State of Uttarakhand and Dr.Santosh -Vs- Mrs.Ameeta cited supra***, in my respectful opinion, it can be said that, normally a direction for filing of a complaint is not made during the pendency of proceeding and that is done at the stage when proceeding is concluded and final judgment is rendered. Even if the Court comes to the conclusion that prima facie, a case of commission of offence is made out, it is not necessary in every case to direct filing of a complaint. The Court cannot direct filing of a complaint unless on the basis of material on record, it is of the opinion that it is expedient in the interests of justice to direct filing of a complaint. Said expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by the alleged offence but having regard to the effect or impact of such commission of offence has upon the administration of justice.

13] In the present case in hand, this application is filed in regard to alleged filing of false affidavit by non applicant of disclosure of assets and liabilities and alleged false statements made by her in the DV proceeding



which is pending. The applicant is seeking initiation of proceeding under section 340 of Cr.P.C. on the basis of affidavit of disclosure filed by the non-applicant in DV proceeding in support of her application for grant of interim reliefs. The issue involved in the DV proceeding is as regards the alleged domestic violence upon non-applicant, right of the non applicant to claim maintenance and various other reliefs and the quantum of maintenance. The issue regarding income of the applicant, the issue regarding entitlement of non applicant for getting maintenance and other reliefs and the issue of the extent of the assets will have to be gone into the DV proceeding at the time of final hearing. Said DV proceeding was at the stage of hearing on interim applications when present proceeding came to be filed. The material filed in DV proceeding is in the form of statements in the complaint, interim applications, affidavit of assets and liabilities and documents filed by non-applicant in said case and denial to said statements, affidavit and documents by the applicant in said case. Yet the trial is to commence and evidence is to be lead by both parties in DV proceeding. So merely on the basis of affidavit of disclosure and documents relied by applicant, it cannot be ascertained even prima facie that false statements and disclosures were made by the non-applicant. No doubt, giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but prosecution for perjury should be ordered when it is considered in the interest of justice to punish the delinquent and there is strong material to proceed. The Ld. Counsel for applicant has tried to show by way of written notes at Exh.6 what are the alleged false statements and documents filed in DV proceeding but it is not sufficient to form an opinion that in the interest of justice, it is expedient to initiate a proceeding.

14] Considering the above discussion, in my view, the perjury application is premature as the main DV proceeding is pending for adjudication. It should have been filed after conclusion of trial and at the stage of final argument so that there should be sufficient material to come to a conclusion whether any preliminary enquiry is needed or not or any opinion can be made that in the interest of justice, it is expedient to initiate a proceeding. Hence, in my view, at this stage, this application is not required to be proceeded. In the result and in the interest of justice, I pass following order :-

**ORDER**

1) The application will be heard and decided after conclusion of trial and at the stage of final arguments in DV proceeding bearing number 11/DV/2023 Poonam Agarwal Vs. Anuraag Agarwal pending before this Court. Till then, the proceeding shall not proceed further.

2) When DV proceeding bearing number 11/DV/2023 Poonam Agarwal Vs. Anuraag Agarwal pending before this Court will reach to a stage of final arguments, the present proceeding shall be kept for hearing afresh and for passing appropriate orders thereon.

**(S. D. Panjwani)**

Judicial Magistrate (First Class),  
15<sup>th</sup> Court, Mazgaon, Mumbai.

Date :- 19.09.2024