

MHRG170005572024



ORDER BELOW EXH. 27 IN
SPECIAL MARRIAGE PETITION NO. 9/2024

01. This is an application filed by the petitioner under Section 340 of the Code of Criminal Procedure for preliminary inquiry in respect of offences referred in Section 195 of the Code of Criminal Procedure.

02. The respondent filed her say at Exh.30 and strongly opposed the application.

03. Perused the application, say and record of the case. Heard both sides. Following points arise for my determination and my findings on each of them with reason thereon are as under :

Sr. No.	POINTS	FINDINGS
1.	Whether petitioner has made out case for initiating preliminary inquiry under Section 340 of the Cr.P.C.?	.. No.
2.	What Order?	..As per final order.

REASONS

POINT NO.1 :-

04. The petitioner submitted that the respondent has made false statement in assets and liabilities affidavit filed

before this Court. In written argument (Exh.32) Ld. Advocate for the petitioner submitted that as per clause 10 of affidavit of assets and liabilities filed by the respondent, she is earning Rs.92,000/-per month. Her monthly expenditure is Rs.75,000/- as mentioned in clause 11 of the affidavit. Ld. Advocate further submitted that the statements in assets and liabilities affidavit and interim maintenance application are in conflict with each other. The respondent has suppressed the fact that the petitioner paid monthly maintenance since August 2022 till date. Therefore, petitioner prayed for preliminary inquiry in respect of act of perjury committed by the respondent.

05. Per contra, the respondent contended that, the averment in the application are baseless and denied in toto. In income and expenditure affidavit there is no column in respect of maintenance paid to the respondent. There is no any maintenance order in favour of the respondent. The application is vague in nature. Hence, prayed for rejection of the application.

06. On perusal of record of the case it appears that, the petitioner has filed this case for dissolution of marriage under Section 27 of the Special Marriage Act. The respondent appeared and filed interim maintenance application under

Section 36 of the Special Marriage Act at Exh.17. Respondent also filed assets and liabilities affidavit at Exh.26. In the assets and liabilities affidavit monthly income of the respondent is mentioned as Rs.92,000/- and monthly expenditure is mentioned as Rs.75,500/- in column No.11. However, the total expenditure is mentioned as Rs.92,000/- in column No.60.

07. In Amarsangh Nathaji V/s. Hardik Harshalbhai Patel, reported in (2017) 1 SCC 113, the Hon'ble Supreme Court held that,

“The mere fact that the person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Section 199 and 200 of the Indian Penal Code, but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of judicial proceedings.”

08. In Thomman vs 2nd Addl. Sessions Judge And Ors. reported in 1994CRILJ48, the Hon'ble Kerala High Court held that,

“No doubt, what, the appellant said before the magistrate and what he deposed before the Sessions Court are diametrically opposite to each other. At least, one of them

must, therefore, be necessarily false. According to the appellant, what he told the magistrate was false. It is not the law that every false testimony should be put through the procedure prescribed in Section 340 of the Code. To attract the procedure, the person concerned should have intentionally given false evidence for the purpose of being used in a judicial procedure and the court should have been of opinion that it was expedient in the interest of justice to take action against him.”

09. In the present case it is not the case of the petitioner that the respondent has intentionally given false evidence or fabricated false evidence. The application of the petitioner is general and vague in nature. There is no any specific contention regarding perjurious act of the respondent. Contradictory statement and omission to mention amount paid by the petitioner to respondent are not sufficient ground for inquiry. The interim maintenance application of the respondent will be decided on merit. In the light of the ratio laid down by the Hon'ble Supreme Court and Hon'ble Kerala High Court in above case laws, merely taking contrary statement is not sufficient. Prima facie, there is no material on record for initiating the proceeding under Section 340 of the Cr.P.C. for the offences referred in Section 195 of the Cr.P.C.

Therefore, I answer point No.1 in the negative and I proceed to pass following order-

ORDER

- 1 Application Exh.27 is rejected.

Panvel,
Dated :- 13/02/2025

(S.R. Chavan)
District Judge- 4
Panvel-Raigad