

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Civil Writ Petition No. 8541/2025

Uttam Chand Jain S/o Late Shanti Lal Jain, Aged About 61 Years,
R/o B-80, First Floor, Mangal Marg, Bapu Nagar, Jaipur,
Rajasthan - 302018

-----Petitioner/Defendant No.1/Applicant

Versus

Anil Jain S/o Late Shanti Lal Jain, Aged About 54 Years, R/o 227,
Nemi Sagar Colony, Queens Road, Jaipur (Raj.)-302021

-----Respondent/Plaintiff/Non-Applicant

For Petitioner(s)	:	Mr. Naman Maheshwari
For Respondent(s)	:	Mr. Veyankatesh Garg with Ms. Pranjal Mundhra Ms. Saumya Mangal Ms. Disha Jain.

HON'BLE MR. JUSTICE BIPIN GUPTA

Judgment

Date of hearing and conclusion of arguments	12.02.2026
Date on which the judgment was reserved	12.02.2026
Whether the full judgment or only the operative part is pronounced	Full Judgment
Date of pronouncement	26.02.2026

1. The present writ petition has been filed aggrieved by the inordinate delay in deciding the application filed by the defendant-petitioner bearing No. Civil Misc (C) Application No. 10/2021, in Civil Suit No. 485/2018, pending before learned Additional District and Sessions Judge No. 2, Jaipur District, Jaipur, under Section 340 read with 195 Code of Criminal Procedure, 1973 (hereinafter referred to as the "CrPC") against the plaintiff-respondent.

2. Shorn of the facts, two separate civil suits bearing Nos. 485/2018 and 189/2018 under Order 7 Rule 1 CPC were preferred

by plaintiff-respondent, seeking declaration, possession and temporary injunction with respect to the separate portion of property situated at C-30, Adarsh Nagar, Raja Park, Jaipur.

3. In Civil Suit No.485/2018, the defendant-petitioner preferred an application dated 01.03.2021, under Section 340 read with Section 195 CrPC against the plaintiff-respondent on account of serious contradictions and false evidence being tendered by him in the testimony and cross-examination. On the said application, a reply was also filed by the respondent.

4. However, the learned Trial Court had on several occasions ordered to put up the said application along with the main civil suit but the same is not being heard and has been kept in abeyance for a period of more than four years and had not decided the same till date.

5. Thereafter, on 21.09.2023, defendant No.3 Pooran Chand Jeswani in Civil Suit No.189/2018, also preferred an application under Section 340 CrPC along with an application under Section 151 CPC to separately hear the application under Section 340 CrPC and dispose the same as expeditiously as possible.

6. Aggrieved by the inordinate and unexplained delay in deciding the application preferred by the defendant-petitioner under Section 340 CrPC, the present writ petition has been filed.

7. Learned counsel for the petitioner submitted that the learned Trial Court has kept the application under Section 340 CrPC read with Section 195 CrPC, 1973, pending adjudication for last four years without any plausible reason and merely on the premise that the same shall be heard along with the main civil suit. However, the learned Trial Court even after repeated requests and

formal applications has not conducted hearing on the said application.

8. Learned counsel for the petitioner submitted that there were serious contradictions and false evidences, tendered by the respondent in the present suit which could have gravely impact the adjudication of the present suit. Furthermore, a person whose case is based on falsehood has no right to approach the Court and cannot be heard on merits and has to be rejected at the threshold.

9. Learned counsel for the petitioner further submitted that it is a settled position of law that an application under Section 340 CrPC must be decided first before adjudicating the main suit proceedings as in cases where the pleadings are based on falsehood, the very foundation of litigation would stand vitiated.

10. Learned counsel for the petitioner lastly submitted that the mandate provided under Section 340 CrPC stands unequivocal i.e. in cases where there is *prima facie* evidence of perjury, the Court is expected to conduct inquiry and decide the application prior to adjudication of the suit. Thus, the approach of learned Trial Court in not deciding the application filed under Section 340 CrPC warrants interference and thus, the present writ petition may kindly be allowed.

11. Learned counsel for the petitioner relied upon the following judgments to buttress his arguments:

(i) ***M.S. Sheriff & Anr. vs State of Madras & Anr.***;
(1954) 1 SCC 524.

(ii) ***Abhishek Dubey vs Archana Tiwari*** ; Criminal
Revision Petition No. 944/2019 (decided on 15.10.2019)
{High Court of Dehli}.

(iii) ***Syed Nazim Husain vs Additional Principal Judge Family Court & Anr.***; Writ Petition No.(M/S) of 2002 (decided on 09.01.2003) {High Court of Allahabad, Bench Lucknow}.

(iv) ***Shri Surendra Vishwanath Mishra vs State of Maharashtra***; Criminal Writ Petition No. 735/2018 (decided on 18.02.2019) {High Court of Bombay}.

(v) ***Union of India vs Mr. Haresh V. Milani & Anr.***; Civil Application No. 2939/2017 in Writ Petition No. 14039/2017 (decided on 26.04.2018) {High Court of Bombay}.

12. Per contra, learned counsel for the respondents submitted that the present application under Section 340 read with Section 195 CrPC is not maintainable as the same has been filed with *mala fide* intention to pressurize the respondents and to convert a civil/property dispute into criminal proceedings. Furthermore, initiation of proceedings under Section 340 CrPC requires proof of deliberate and conscious falsehood. The applicant has failed to demonstrate a *prima facie* case of deliberate falsehood which could affect the administration of justice.

13. Learned counsel for respondent further submitted that the decision as to when an application under Section 340 CrPC should be heard is purely procedural and within the discretion of the learned Trial Court. The prosecution for perjury should be ordered only in glaring cases of deliberate falsehood and the Court must exercise great caution and mere contradictions in evidence do not justify initiation of proceedings under Section 340 CrPC.

14. Learned counsel for the respondents submitted that there is no statutory mandate under Section 340 CrPC that such an application must be decided before final adjudication of the suit. The learned Trial Court is fully empowered to consider the application along with the final arguments or at any stage it considers as appropriate.

15. Learned counsel for the respondent, lastly, submitted that the learned Trial Court has thus rightly ordered that the application be considered along with the main suit in order to avoid multiplicity of proceedings and to ensure that there is complete appreciation of evidence before adjudicating the application under Section 340 CrPC. He, therefore, prayed that the writ petition is liable to dismissed.

16. Learned counsel for the respondents has relied upon the following the judgments to support his arguments:

(i) ***K.T.M.S. Mohd. & Anr. vs Union of India***; (1992)

3 SCC 178.

(ii) ***Iqbal Singh Marwah and Anr. vs Meenakshi***

Marwah & Anr.; (2005) 4 SCC 370.

(iii) ***Vishal Kapoor vs Sonal Kapoor***; 2014 SCC

OnLine Del 4484.

(iv) ***Rugmini Ammal (Dead) by Lrs. Vs V. Narayana***

Reddiar & Ors.; (2007) 12 SCC 611.

(v) ***Sangram Sadashiv Suryavanshi vs State of***

Maharashtra; 2024 INSC 899.

17. Heard learned counsel for both the parties and perused the material available before the Court.

18. The grievance of the petitioner is essentially founded on the alleged inordinate delay in adjudication of the application preferred under Section 340 read with Section 195 CrPC and the contention that such application ought to have been decided prior to the final disposal of the civil suit. It is further urged that the pleadings and testimony of the plaintiff-respondent are based on falsehood and, therefore, the very foundation of the suit stands vitiated.

19. The scope and ambit of Section 340 read with Section 195 CrPC is no longer *res integra*. In ***Iqbal Singh Marwah v. Meenakshi Marwah***; 2005 (4) SCC 370, the Constitution Bench of Hon'ble Supreme Court has authoritatively held that the use of the expression "*the Court is of opinion that it is expedient in the interests of justice*" makes it abundantly clear that initiation of proceedings under Section 340 CrPC is discretionary and not mandatory. The Court is not bound to make a complaint in every case and the discretion is to be exercised only when it is expedient in the interests of justice to do so. It was held that the expediency has to be ascertained on the basis of the impact which is caused upon administration of justice. The relevant paragraph of ***Iqbal Singh Marwah*** (supra) is reproduced as under:

"23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1) (b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests 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(1)(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 remediless. Any interpretation which leads to a situation where a victim of a crime is rendered remediless, has to be discarded.

24. There is another consideration which has to be kept in mind. Sub-section (1) of Section 340 Cr.P.C. contemplates holding of a preliminary enquiry. 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. Section 341 provides for an appeal against an order directing filing of the complaint. The hearing and ultimate decision of the appeal is bound to take time. Section 343(2) confers a discretion upon a Court trying the complaint to adjourn the hearing of the case if it is brought to its notice that an appeal is pending against the decision

arrived at in the judicial proceeding out of which the matter has arisen. In view of these provisions, the complaint case may not proceed at all for decades specially in matters arising out of civil suits where decisions are challenged in successive appellate fora which are time consuming. It is also to be noticed that there is no provision of appeal against an order passed under Section 343(2), whereby hearing of the case is adjourned until the decision of the appeal. These provisions show that, in reality, the procedure prescribed for filing a complaint by the Court is such that it may not fructify in the actual trial of the offender for an unusually long period. Delay in prosecution of a guilty person comes to his advantage as witnesses become reluctant to give evidence and the evidence gets lost. This important consideration dissuades us from accepting the broad interpretation sought to be placed upon clause (b)(ii). "

(Emphasis Supplied)

20. In the present case, the learned Trial Court has chosen to consider the application under Section 340 CrPC along with the main suit. No statutory mandate has been pointed out requiring the learned Trial Court to decide such an application prior to final adjudication of the suit. Therefore, the stage at which such an application is to be considered falls within the domain of judicial discretion of the Trial Court. The decision to examine the said application along with the final adjudication, in order to avoid piecemeal consideration and to ensure complete appreciation of evidence, cannot be termed delay in deciding the application under section 340 CrPC.

21. Furthermore, in the present case, the allegations levelled by the petitioner pertain to contradictions and alleged false

statements made during testimony in a pending civil suit concerning immovable property. Whether such contradictions are material, deliberate and of such nature as to warrant prosecution for perjury can appropriately be assessed by the learned Trial Court upon comprehensive appreciation of the evidence on record. The mere pendency of the application under Section 340 CrPC for consideration along with the main suit does not, by itself, amount to delay in deciding the application under Section 340 CrPC.

22. Thus, this Court is of the firm opinion that the decision to consider the application along with the final adjudication cannot be said to suffer from jurisdictional error, perversity or patent illegality warranting interference under Article 227 of the Constitution of India. In view of the settled legal position and in absence of any manifest arbitrariness in the impugned course adopted by the learned Trial Court, this Court is not inclined to exercise its supervisory jurisdiction.

23. Accordingly, the present writ petition stands dismissed.

24. All pending applications stand disposed of.

(BIPIN GUPTA),J

Sudha/