

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)**

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

IA No. GA 10 of 2023

CSOS 1 of 2017

Prochy N. Mehta & Anr.

Versus

Noshir Tankariwala & Ors.

Mr. Phiroze Edulji
Ms. Samira Grewal

.....For the applicant.

Mr. R. K. Khanna
Mr. Aman Khemka

.....For the defendant nos. 2 & 3.

Mr. Dhurba Ghosh
Mr. Anirban Kar

....For the plaintiff.

Hearing Concluded On : 16.05.2023

Judgment on : 22.06.2023

Krishna Rao, J.:

1. The applicant, "Parsi Zoroastrian Association, Calcutta" has filed the present application for initiation of proceeding under Section 340 of the

Code of Criminal Procedure against the plaintiffs for commission of offence under Section 193/209 of the Indian Penal Code.

2. Mr. Phiroze Edulji, learned Advocate representing the applicant submits that the applicant had initially filed an application being G.A. No. 8 of 2023 praying for dismissal of the suit as the plaintiff has not taken any steps for recording the death of defendant No.1 and substitution of the legal heirs of the defendant no.1.
3. Mr. Phiroze Edulji submits that after receipt of the copy of G.A. 8 of 2023, the plaintiffs have filed an application being G.A. No.9 of 2023 for recording the death of defendant no.1 and substitution of the legal heirs of the defendant No.1.
4. Mr. Edulji submits that the plaintiffs have also filed affidavit in opposition in connection with G.A. No. 8 of 2023 in which the plaintiffs have made false and misleading claim in paragraph 3 (xi) which reads as follows:

“The plaintiffs have made enquiries after receiving the said petition and ascertained that the defendant No.1 namely Noshir Tankariwala, one of the Trustee of Late Erward Dhunjeebhoy Bryamjee Mehta’s Zoroastrian Anjuman Atash Adaran died on 5th September, 2020.”
5. Mr. Edulji submits that after the demise of defendant No.1 on 5th September, 2020, the Parsi Zoroastrian community held an online memorial service for him on 14th September, 2020 where both the plaintiff No.1 and her husband spoke on the said occasion.

6. Mr. Edulji further submits that on 12th September, 2020 another online memorial service was held and the said event was streamed live on youtube wherein it is proved that the plaintiffs were present on the said memorial service through on online.
7. Mr. Edulji submits that the averments made by the plaintiffs that only after the receipt of the copy of G.A. 8 of 2023, the plaintiffs having enquired about the death of the defendant No.1 is total misleading and false statement.
8. Mr. Edulji submits that the plaintiffs have made false statement on affidavit before this Court and thus the plaintiffs have committed an offence under Section 193/209 of the Indian Penal Code.
9. Mr. Edulji had relied upon the following decisions in support of his case:
 - a. *(2002) 1 SCC 253 (Pritish -vs- State Bank of Maharashtra & Others).*
 - b. *(2005) 4 SCC 370 (Iqbal Singh Marwah & Another -vs- Meenakshi Marwah and Another).*
 - c. *(2010) 15 SCC 290 (Sharad Pawar -vs- Jagmohan Dalmiya & Others).*
 - d. *2022 SCC Online SC 1240 (State of Punjab -vs- Jasbir Singh).*
10. *Per contra*, Mr. Dhruva Ghosh, learned Senior Advocate representing the respondents submits that no order can be passed in the present application under Section 340 of the Code of Criminal Procedure for initiation of proceeding against the plaintiffs.

- 11.** Mr. Ghosh submits that the plaintiffs have filed an application being G.A. 9 of 2023 for deleting the name of the defendant no.1 and bringing the name of two new elected trustees in place of the defendant No.1.
- 12.** Mr. Ghosh submits that the application filed by the applicant for dismissal of the suit as abated being G.A. 8 of 2023 was dismissed by this Court and the application filed by the plaintiffs being G.A. 9 of 2023 was allowed by deleting the name of defendant No.1 and to bring on record the name of the two new elected trustees in place of defendant No.1.
- 13.** Mr. Ghosh submits that this Court has allowed the application of the plaintiffs on the basis of the law provided under Order I Rule 10 (3) of the Code Civil Procedure and not on the basis of the averments made in the affidavit in opposition.
- 14.** Mr. Ghosh submits that on the basis of the statement, the plaintiff has not obtained any relief from this Court and thus no proceeding under Section 340 of the Code of Criminal Procedure can be initiated.
- 15.** Heard the learned counsel for the respective parties, perused the materials on record and the judgement relied by the counsel for the petitioner.
- 16.** Section 340 of the Code of Criminal Procedure reads as follows:

“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 interests 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 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.

(4) In this section, " Court" has the same meaning as in section 195.”

17. The Supreme Court in the case of **K.T.M.S. Mohd. Vs. Union of India**

reported in (1992) 3 SCC 178 has held as under:-

*"35. In this context, reference may be made to Section 340 of the Code of Criminal Procedure under Chapter XXVI under the heading "Provisions as to Offences Affecting the Administration of Justice". This section confers an inherent power on a court to make a complaint in respect of an offence 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, if that court is of opinion that it is expedient in the interest of justice that an enquiry should be made into an offence referred to in clause (b) of subsection (1) of Section 195 and authorises such court to hold preliminary enquiry as it thinks necessary and then make a complaint thereof in writing after recording a finding to that effect as contemplated under sub-section (1) of Section 340. The words "in or in relation to a proceeding in that court" show that the court which can take action under this section is only the court operating within the definition of Section 195(3) before which or in relation to whose proceeding the offence has been committed. There is a word of caution inbuilt in that provision itself that the action to be taken should be expedient in the interest of justice. Therefore, it is incumbent that the power given by Section 340 of the Code should be used with utmost care and after due consideration. The scope of Section 340(1) which corresponds to Section 476(1) of the old Code was examined by this Court in *K. Karunakaran v. T.V. Eachara Warriar* and in that decision, it has observed:*

"At an enquiry held by the Court under Section 340(1), Cr.P.C., irrespective of the result of the main case, the only question is whether a prima facie case is made out which, if unrebutted, may have a reasonable likelihood to establish the specified offence and whether it is also expedient in the interest of justice to take such action...."

The two per-conditions are that the materials produced before the High Court make out a prima facie case for a complaint and secondly that it is expedient in the interest of justice to permit the prosecution under Section 193 IPC."

36. The above provisions of Section 340 of the Code of Criminal Procedure are alluded only for the purpose of showing that necessary care and caution are to be taken

before initiating a criminal proceeding for perjury against the deponent of contradictory statements in a judicial proceeding."

18. The Supreme Court in the case of ***Pankaj Chaudhary reported in (2019) 11 SCC 575*** has held as under:-

"49. There are two preconditions for initiating proceedings under Section 340 Cr.P.C.:

(i) materials produced before the court must make out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 Cr.P.C., and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence."

19. Observing that the Court has to be satisfied as to the prima facie case for a complaint for the purpose of inquiry into an offence under Section 195(1)(b) Cr.P.C. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 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 the judicial proceedings. Even after the above position has emerged also, still the Court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred to in Section 340(1) Cr.P.C., having regard to the overall factual matrix as well as the probable consequences of such

a prosecution. The Court must be satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

20. In the process of formation of opinion by the Court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the Court to hold a preliminary inquiry though it is not mandatory. In case, the Court is otherwise in a position to form such an opinion, that it appears to the Court that an offence as referred to under Section 340 of Cr.P.C has been committed, the Court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course.

21. *Iqbal Singh Marwah v. Meenakshi Marwah*, a Constitution Bench of the Hon'ble Apex Court has gone into the scope of Section 340 Cr.P.C, Para 23 deals with the relevant consideration:

"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(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.”

22. It has been consistently held by the Court that prosecution for perjury be sanctioned by the courts only in those cases where perjury appears to be deliberate and that prosecution ought to be ordered where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement. In **Chajoo Ram v. Radhey Shyam**, the Hon’ble Apex Court held as under:

“The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that

it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial: it does not reflect the requisite judicial deliberation...."

23. Thus, it is clear that before taking action under Section 340 of Cr.P.C., the Court is required to see as to whether:-

"(i) materials produced before the court makes out a prima facie case for a complaint for the purpose of inquiry into an offence referred to in clause (b)(i) of sub-section (1) of Section 195 Cr.P.C., and

(ii) it is expedient in the interests of justice that an inquiry should be made into the alleged offence."

24. The main contention of the applicants that the plaintiffs have made a false averment on affidavit in the affidavit in opposition filed by the plaintiffs in connection with G.A. 8 of 2023. It was the contention of the applicants that the plaintiffs had the knowledge about the death of defendant No.1 and the plaintiffs have attended the online memorial service held on 12th September, 2020 as well as the on 14th September, 2020 but in the affidavit, the plaintiffs have stated that after only receipt of the copy of G.A. 8 of 2023, the plaintiffs have enquired about the death of the defendant No.1.

25. After the application filed by the applicant being G.A. 8 of 2023, the plaintiffs have filed an application being G.A. 9 of 2023 for recording the death of defendant no.1 and bringing on record, the two new trustees elected after the death of defendant no.1. Both the applications that is G.A. 8 of 2023 and G.A. 9 of 2023 were taken up together and the application

filed by the applicant being G.A. No. 2023 was dismissed and the application filed by the plaintiffs being G.A No. 9 of 2023 was allowed by recording the death of defendant No.1 and bringing the name of the new two elected trustees on record.

26. The applicants have filed the application being G.A. 8 of 2023 which was dismissed on merit and the application filed by the plaintiffs being G.A. 9 of 2023 which was allowed on the basis of the provisions of Order 1, Rule 10 (3) of the Code of Civil Procedure, 1908 and not on the basis of the averments made by the plaintiffs with regard to the knowledge of the death of the defendant no.1.

27. It is settled law that mere fact that a person has made contradictory statement in a judicial proceeding is not by itself always sufficient to justify the prosecution under Sections 199 and 200 of the Indian Penal Code but it must be shown that the defendant has intentionally given a false statement in any stage of judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of judicial proceedings. Even after the above position has emerged also, still the Court has to form an opinion that it is expedient in the interest of justice to initiate an inquiry into the offences of false evidence and offences against the public justice as referred in Section 340 (1) of Cr.P.C, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. The Court must be satisfied that such an inquiry is required in the interest of justice and appropriate in the facts of the case.

28. In view of the above, this Court do not think the materials brought on record are sufficiently adequate to justify the conclusion that it is expedient in the interest of justice to file a complaint.

29. G.A. No. 10 of 2023 is thus **dismissed.**

(Krishna Rao, J.)