

CRA No. 197 SB of 2010 (O&M) 1 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA No. 197 SB of 2010 (O&M)

Date of decision: 25-1-2010

Sunny BhumblaAppellant Vs

ShashiRespondent CORAM:- HON'BLE MR. JUSTICE HARBANS LAL

Present: Shri K.S.Boparai, Advocate, for the appellant. HARBANS LAL, J.

This appeal is directed against the order dated 5.12.2008 Annexure P-1 passed by the court of learned Civil Judge (Senior Division) Saheed Bhagat Singh Nagar vide which he allowed the petition moved under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights leaving the parties to bear their own costs and rejected the application moved under Section 195/340 Cr.P.C.

I have heard the learned counsel for the appellant, besides perusing the record with due care and circumspection. The learned counsel for the appellant has submitted with great eloquence that after the respondent admitted in her cross-examination about her employment, salary and inheritance of the landed property, she again placed on record another affidavit dated 27.8.2008 solemnly affirming therein that she had inadvertently not mentioned about the source of income as well as employment in the earlier affidavit dated 14.8.2008. Thereafter the appellant moved an application under Section 195 of Cr.P.C. for initiating proceedings against the respondent for submitting a false affidavit CRA No. 197 SB of 2010 (O&M) 2 before the learned trial Court, in order to get more maintenance from the appellant. The learned trial Court had assured the appellant that his said application shall be decided alongwith the main case. While deciding the main petition, in paragraph No. 13 of the judgment it has been observed that "in support of her claim for interim maintenance under Section 24 of the Hindu Marriage Act, the respondent/applicant had made certain assertions, which were found to be totally false and the same had apparently been done by her in a deliberate manner. Consequently even an application for initiating suitable proceedings against her on account of her having submitted a false affidavit was also filed by the petitioner on 3.9.2008. Thereafter, the respondent did not press her claim for interim maintenance, but the same did not absolve her of the liability of the aforesaid lapse. This court, however, does not wish to initiate any such proceedings against the respondent with the hope that sooner or later, the parties may be in a position to resolve their dispute or else this young couple may adopt such other means so that they can part their ways in a peaceful manner and therefore, with a view to avoid undue complication of the matrimonial dispute, no action on account of submitting of the above false affidavit etc. is being initiated against the respondent."

It is further argued that the learned trial Court has overlooked the fact that the respondent has used the false affidavit in the judicial proceedings. Therefore, all the ingredients of the offences of cheating, forging and perjury etc. are made out and consequently, the order passed by the learned trial Court in not initiating the proceedings under Section 195 read with Section 340 Cr.P.C. is illegal.

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A careful perusal of the observations rendered by the learned trial Court in paragraph No. 13 of the impugned judgment would reveal that there is not even a shred of reference to the application moved under Section 195 read with Section 340 Cr.P.C. This apart, no specific reasons have been apportioned for not initiating the action on the basis of the alleged affidavit. The said application having been moved under the provisions of the Code of Criminal Procedure was required to be disposed of separately. It was not desirable on the part of

the learned trial Court to decide the said application in a slip shod manner by making mere passing reference to the alleged affidavit. In the application moved under Section 340 of the Cr.P.C. if the Court deems fit, the inquiry has to be held whereas in the present one, the impugned order is absolutely silent as to whether or not inquiry was held. There is specific procedure which is to be followed while disposing of an application moved under Section 340 of the Criminal Procedure Code. Section 340 of the Criminal Procedure Code reads as under:-

"340.Procedure in cases mentioned in Sec.195--(1) When, upon an application made to it in this behalf or otherwise any Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to to in cl (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to to a proceeding in that Court, or as the case may be, in respect of of a document produced or given in evidence in a proceeding in that Court, CRA No. 197 SB of 2010 (O&M) 4 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 Sec.195.

(3) A complaint made under this section shall be signed (a) where the Court making 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, and

(4) In this section, "Court" has the same meaning as in CRA No. 197 SB of 2010 (O&M) 5 Sec.195."

A glance through the impugned order would reveal that the learned trial Court has given a go by to the provisions of Section 340 Cr.P.C. The approach adopted by the learned trial Court is unwholesome and is depreciable. The impugned order is absolutely silent as to whether the application has been dismissed or allowed, if so for which reasons. In consequence of the preceding discussion the trial Court is directed to decide the application under discussion in accordance with law. This appeal stands disposed of accordingly.

(HARBANS LAL)

JUDGE

January 25, 2010

RSK

NOTE: Whether to be referred to the Reporter or not? Yes/No