IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 7666 of 2016

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SEJALBEN TEJASBHAI CHOVATIYA....Applicant(s)
Versus
STATE OF GUJARAT....Respondent(s)

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Appearance:
MR K S CHANDRANI, ADVOCATE for the Applicant(s) No. 1
MR RONAK RAVAL, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS JUSTICE SONIA GOKANI**

Date : 20/10/2016

ORAL ORDER

1. Leave to amend to join the husband as respondent No.2 is permitted. To be carried out forthwith.

2. At the outset, it is to be mentioned that in this petition, challenge is made to the order dated 6.9.2016 passed by the learned Judge, Family Court below Exh.88 in Criminal Miscellaneous Application No.346 of 2013, attempts were made by the Court to see that the parties can reach to any kind of settlement. However, as the same could not be worked out, both the sides have been heard extensively. The petitioner is the wife, who is married to respondent No.2.

3. The petitioner is married to respondent No.2 on

20.11.2008 and a son is begotten out of the said wedlock on 21.12.2010. It is the say of the petitioner that after the birth of the son, the husband got shifted at Jetpur and started residing in a rented premise. He had once again started residing with joint family at Rajkot. The petitioner urged that she was deserted in August, 2012 and thereafter she made an application under section 125 of the Criminal Procedure Code by preferring Criminal Miscellaneous Application No.346 of 2013 for herself and her son.

4. The trial Court, on an application Exh.88 under sections 195 and 340 of the Code of Criminal Procedure preferred by respondent No.2 on 13.5.2016, recorded the evidence on both the sides and directed the Registrar of Family Court to file an application before the Pradyuman Nagar police station under sections 191,192 and 193 of the Indian Penal Code.

5. After staying the said order for a period of 30 days, the dissatisfied wife is before this Court with various averments and following reliefs:-

"(10) The petitioner on the aforesaid premises, prays before Your Lordships that:
(A) Your Lordships may kindly be pleased to quash and set aside the Order impugned Dt.6/09/2016 passed by the learned Judge Family Court, Rajkot below Ex-88 in Cri.M.A.No.346 of 2013.
(B) Pending admission, hearing and final disposal of present application, Your Lordships may kindly be pleased to stay the implementation, execution and compliance of the Order Dt. 6/09/2016 passed by the learned Judge Family Court, Rajkot below Exh-88 in Cri.M.A.No.346 of 2013.
(C) Your Lordships may kindly be pleased to pass such other and further relief as may be deemed just and proper in favour of the petitioners, in the interest of justice."

6. Learned advocate Chandrani appearing for the petitioner has urged that even if there is any perjury, the petitioner need not be prosecuted. He has urged that Court below was in error in appreciating the evidence, specifically the income tax return to conclude that the petitioner had suppressed her true income. It is not the case of the petitioner that she was serving and was drawing the salary. Her income tax returns have been managed by her father and it is not unusual for family members to have the income tax returns from the business of family. It is further his say that the lady is a graduate.

However, she would not know about any return being filed by the father nor would she be aware of the income of the family members and of hers in absence of any work that she was performing. It is not the case of the other side that she was serving and getting the salary from the account of Kirit Traders owned by her father.

7. He further has urged that the order passed by the learned Judge is contrary to the provision of sections 195 and 340 of the Indian Penal Code and, therefore, also the same deserves to be quashed.

8. Learned advocate appearing for respondent No.2 has urged that it is very rare that the Court would go out of the way to hold that perjury has been committed and, in the instant case, it is quite obvious from the record that she had not revealed the fact that she is given permanent alimony of the sum of Rs.4,00,000/- so also all her income is shown under the Income-Tax Act.

9. Learned Additional Public Prosecutor for respondent No.1 has urged this Court not to

interfere. According to him, the Court has in detail given the reasonings for initiating the proceedings against the present petitioner.

10. Admittedly, this order has arisen on account of the affidavit given by the petitioner, wherein she declared herself a house-wife having no source of income. However, she has admitted in her cross-examination that she has obtained Rs.4 lakhs from her previous husband at the time of taking divorce from him.

11. An application came to be moved before the Family Court, Ahmedabad by the husband that though she is earning a salary of Rs.40,000/- from business, she has mentioned in her affidavit that she is a house wife and has no source of income. The earlier application came to be disposed of on the ground that the evidence was not recorded.

12. Later on, when similar application came to be moved, the Court had questioned as to whether the applicant had produced false evidence on oath and vide order dated 23.5.2016 directed that the

same would be decided at the time of deciding the main application.

13. Another application came to be moved being Criminal Revision Application No.429 of 2016 before this Court, which was withdrawn on 10.8.2016. Thereafter, an application was moved before the Family Court, Rajkot to take action against the petitioner under sections 195 read with section 340 of the Code of Criminal Procedure committing an offence under sections 191, 192 and 193 of the Indian Penal Code. The Court below held in affirmation, which has aggrieved the petitioner for ventilating the grievance in this petition memo.

14. This Court notices that the Court has elaborately discussed the law and applied the said law to the facts to hold that the petitioner has not stated the correct facts on oath. She has stated that she was doing house-hold work and has no source of income while her income is Rs.40,000/- per month from the business. She has of course, revealed that she has received sum of

Rs. 4 lakhs from the earlier marriage. With regard to the income tax returns, she is found to have given false evidence. With regard to the fixed deposit and the amount that has been credited in her FDR, she stated that she has no knowledge with regard to her accounts in Central Bank of India and Rajkot Co-operative Bank. The husband also examined the witness, who was Inspector in the Income-Tax Department, wherein she submitted her personal income and her income-tax returns have been brought on the record to indicate that from the year 2011-12 she has income from business at Rs.1,48,251/-. The business profit was worth Rs.1,84,251/-. The Court has given the details from Income-Tax returns of her income of every assessment year. Senior Manager of Central Bank of India of Rajkot also has given the details that total of Rs. 17 lakhs, which are deposited in the name of the petitioner that towards the fixed deposit receipt, which she has not disclosed. The Court on noticing that she was getting sufficient income from the fixed deposit receipt and yet has

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not admitted in the evidence produced by her stating that she has no source of income, had directed the initiation of the prosecution under section 195 read with section 340 of the Code of Criminal Procedure.

15. The Apex Court in the case of ***Pritish vs. State of Maharashtra*** reported in **2002(1) SCC 253** was considering section 340 of the Code of Criminal Procedure to hold that the hub of this provision is formation of an opinion by the court(before which proceedings were to be held) that it is expedient in the interest of justice that an inquiry should be made into an offence which appears to have been committed. In order to form such opinion the Court is empowered to hold a preliminary inquiry. It is not peremptory that such preliminary inquiry should be held. Even without such preliminary inquiry the Court can form such an opinion when it appears to the Court that an offence has been committed in relation to a proceeding in that Court. It is important to notice that even when the Court forms such an opinion, it is not mandatory that the court

should make a complaint. This sub-section has conferred a power in the Court to do so. It does not mean that the Court should, as a matter of course, make a complaint. But once the Court decides to do so, then the Court should make a finding to the effect that on the fact situation it is expedient in the interest of justice that the offence should further be probed into. If the Court finds it necessary to conduct a preliminary inquiry to reach such a finding it is always open to the Court to do so, though absence of any such preliminary inquiry would not vitiate a finding reached by the Court regarding its opinion. The purpose of preliminary inquiry, even if the Court opts to conduct it, is only to decide whether it is expedient in the interest of justice to inquire into the offence which appears to have been committed.

16. Likewise, in the decision rendered by the Apex Court in the case of ***Iqbal Singh Marwah and another vs. Meenakshi Marwah and another*** reported in **(2005) 4 SCC 370,** it has been emphasized that even when there is a case of

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forgery noticed by the Court and the Court forms the opinion that unless it is expedient in the interest of justice to prosecute a person, the Court is not to do it in a referred manner. The expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by the offence, but having regard to the effect or impact of that offence upon administration of justice. The Court also held that bar under section 195(1)(b)(ii) that no Court shall take cognizance of any such offence except on the complaint in writing of such matter. It also held that the bar would be attracted only when the offences enumerated in section 195(1)(b)(ii) have been committed with respect to a document, after it has been produced or given in evidence in a proceeding in any Court. If said offence is committed or given in evidence in Court, no complaint by Court would be necessary and a private complaint would be maintainable.

17. The only aspect that needs to be considered by this Court is as to whether it is expedient in

the interest of justice that such prosecution would be necessary. This expediency, as held by Apex Court, is not weighing the magnitude of the injury suffered by the person affected by it but having regard to the effect or impact that the offence would have on administration of justice and considering the factual scenario, the Court has formed a preliminary opinion to hold that it is a case of perjury.

18. As can be noticed from the chronology of events and the evidence that has been adduced before the Court concerned, it is certain that the injury which could have been sustained by the other side has not resulted on account of this alleged falsehood because respondent No.2 could find out at an appropriate time the details which he has furnished before the Court. So far as its impact on the administration of justice is concerned, this Court has no reason to interfere as often it is found that the litigants coming before the Court chose to speak blatant lies and do so with complete impudence.

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19. Laws which are otherwise in favour of the distressed wife when are sought to be misused by declaring completely incorrect facts and also by suppressing the material aspect, the trial Court at the time of considering the case found that the impact on the administration of justice would make it expedient for it to direct the prosecution.

20. This Court finds no justification in interfering with the order. Even otherwise, the petitioner is going to get all the opportunities to defend her case effectively. It is also, therefore, necessary for this Court not to elaborate further on the merits of the matter.

21. Petition stands disposed of with above directions.

(MS SONIA GOKANI, J.)

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