



2025:DHC:1801



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% *Date of decision: 12th March, 2025*

+ **CRL.M.C. 249/2025**

Om Saran Gupta
S/o Late Sh. Sita Ram Gupta
D-1/12, Goyal Complex, Badarpur Border,
South-East Delhi, New Delhi-110044 ...Petitioner
Through: Mr. Ashish Gupta, Advocate.

versus

Nishi @ Nishi Jaidka
Ex-wife of Sh. Jitender Jaidka
R/o 265, LIG Flat, Pocket-3, Paschim Puri,
West Delhi, New Delhi-110063 ...Respondent
Though: Counsel for Respondent (appearance
not given)

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

1. The Petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*hereinafter referred to as 'B.N.S.S.'*) has been filed on behalf of Petitioner, Mr. Om Saran Gupta, for setting-aside the Order dated 12.09.2024 in Criminal Revision No. 330/2024 under Section 379 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) whereby the Order dated 23.02.2024, passed by the learned Metropolitan



Magistrate dismissing the Application under Section 195 read with Section 340 of Cr.P.C., has been upheld.

2. Briefly stated, the Petitioner had been acquitted of the offence under Section 138 of the Negotiable Instrument Act, 1881 (*hereinafter referred to as 'N.I. Act'*) in Complaint Case No. 8807/2016 filed against him by the Respondent, Ms. Nishi Jain, *vide* Judgment and Order dated 20.07.2020, passed by the learned Metropolitan Magistrate.

3. The Petitioner then filed an Application under Section 195 of Cr.P.C. read with Section 340 of Cr.P.C. on the ground of the Respondent having deliberately and deceptively filed a false Affidavit of evidence, Ex.CW-1/A, and tampered and forged Acknowledgment Card ('A.D. Card'), Ex.CW-1/6, in the judicial proceedings under Section 138 of the N.I. Act, filed against him by the Respondent/Complainant, Ms. Nishi Jain.

4. It is explained that the Complainant/Respondent, in support of her Complaint under Section 138 of the N.I. Act, allegedly served the Petitioner, a practising Advocate, with the Notice under Section 138 of the N.I. Act, in proof of which she filed the AD card, with his forged signatures. The Petitioner was shocked to see that though Legal Notice had never been served upon him through the Registered Cover, but apparently the Registered Post along with the A.D. Card had been returned undelivered to the Complainant, who manipulated the Acknowledgment Card by forging the signatures of the Petitioner and presenting it in the Petition under Section 138 NI Act alleging that the Legal Notice has been duly served upon the Petitioner. Without a Legal Notice having been served upon the Petitioner, the Complaint under Section 138 of the N.I. Act, itself was not maintainable.



5. To ascertain the factum of Service of Notice through registered Post, the Petitioner through RTI, has obtained a Reply dated 10.11.2014 from Central Public Information Officer-cum-Senior Superintendent Post Office, Delhi, wherein it is stated that the Legal Notice sent through the Speed Post and Registered Speed Post with Acknowledgment (AD) which were sent to the correct address of the Petitioner, were returned back to the sender (Complainant). It is therefore, clearly evident that no Legal Notice was delivered to the Petitioner and the Acknowledgment Card with forged signatures of the Petitioner, was filed in the Complaint under Section 138 of the N.I. Act.

6. The Application under Section 195 of Cr.P.C. read with Section 340 of Cr.P.C. thus, was filed by the Petitioner which was dismissed by the Ld. MM *vide* Order dated 23.02.2024 which was challenged before the Id. ASJ who upheld the Order of Ld. MM.

7. It is submitted that the dismissal of the Application under Section 195 read with Section 340 of Cr.P.C., by the learned Metropolitan Magistrate observing that the administration of justice was not affected in any manner, is a travesty of the Justice Delivery System, in view of the observations of the Apex Court in Sachida Nand Singh and Others vs. State of Bihar and Others 1998 (2) SCC 493 and Iqbal Singh Marwah vs. Meenakshi Marwah and Others, 2005 INSC 129. Likewise, the dismissal of his Revision by the learned ASJ, is also not sustainable.

8. It is claimed that the Affidavit had been filed by the Respondent, that contained false statements on oath. Disregarding the proper standards not only undermines the principles of justice but also raises significant concerns



about accountability within the judicial system. The RTI Reply clearly shows that the Legal Notice was not served upon the Petitioner and thereby the Acknowledgment Card was submitted with fabricated signatures of the Petitioner. Without the service of Legal Notice, the Complaint under Section 138 of the N.I. Act itself was not maintainable and thus, the filing of the Complaint under Section 138 of the N.I. Act, which has ultimately resulted in acquittal of the Petitioner, is nothing but abuse duly justifying initiation of prosecution under Section 195(1)(b)(i) & (ii) read with Section 340 of Cr.P.C.

9. Therefore, the observations of learned ASJ that there was no evidence to indicate that the Respondent had committed any forgery of the document in the judicial proceeding, is a shocking perception and contradictory to Narendra Kumar Srivastava vs. State of Bihar (2019) wherein the Apex Court enunciated that prosecution under Section 195 Cr.P.C. could be initiated only by the sanction of the court if perjury appears to be deliberate and conscious.

10. In the present case, an offence of perjury had been committed deliberately and consciously and therefore, the dismissal of the Application under Section 340 Cr.P.C., is not warranted.

11. It is further submitted that the petitioner intends to file separate complaint under Sections 419, 420 and 120B of the *Indian Penal Code, 1860* (hereinafter referred to as 'IPC') against the Respondent for impersonating her identity as Ms. Nishi Gupta when her real name is Ms. Nishi Jaidka and for hatching a conspiracy to portray herself as the wife of the petitioner.



12. It is, therefore, submitted that the impugned Order of learned ASJ and upholding the Order of learned Metropolitan Magistrate of dismissal of the Application under Section 340 of Cr.P.C., be set-aside and the learned Trial Court be directed to make a Complaint for the offences committed under Section 193, 199, 209 and 471 of the IPC by the Respondent in connection with the judicial proceedings in the Court.

13. Reliance has been placed on Kensington Income Tax Comm'rs (C.A.), (1917) 1 KB 486, wherein it was observed that an applicant who does not come with candid facts and “*clean breast*” cannot hold a writ of the court with “*soiled hands*”. Suppression or concealment of material facts, is not an advocacy. If the applicant does not disclose all the material facts fairly and truly and states them in a distorted manner and misleads the court, the court has inherent power to protect itself and to prevent an abuse of its process to discharge the *rule nisi* and refuse to proceed further with the examination of the case on merits.

14. Likewise, reference is made to the case of Dhananjay Sharma vs. State of Haryana and Others, (1995) 3 SCC 757, in which it was observed by the Apex Court that filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the concerned persons were punished.

15. **Submissions heard and the record perused.**

16. The Petitioner was an Advocate representing the Respondent in litigation with her husband, Mr. Jitender Jaidka. They became close and subsequently, the Respondent started claiming herself to be the wife of the Petitioner, which led to further litigation *inter se* them. Eventually, the Suit filed by the Plaintiff for restraining the Defendant from addressing herself as



the wife of the Petitioner, was decreed in favour of the Petitioner.

17. During this period, the Respondent asserted that some jewellery worth Rs.40 Lacs was taken by the Petitioner, for which he had issued a cheque, which on presentation, got dishonoured. In regard to the service of Legal Notice under Section 138 of the N.I. Act was concerned, it was observed that even if the plea of the Petitioner is accepted that the legal Notice was not served, then too, even the filing of the Complaint under Section 138 of the N.I. Act was sufficient compliance of the requirement under Section 138 of the N.I. Act. However, on merits, it was held that there is no legally recoverable debt proved by the Respondent. The Complaint under Section 138 of the N.I. Act, was consequently, dismissed.

18. Even though the Complaint under Section 138 of the N.I. Act filed against the Petitioner, met with a dismissal, but the Petitioner thereafter filed the Application under Section 195 of Cr.P.C. read with Section 340 Cr.P.C. The grounds for seeking action for perjury by Respondent was on two accounts; *firstly* that the Acknowledgement Card relied upon by the Respondent, to prove service of Legal Notice had the forged signatures of the Respondent and *secondly*, that the Complainant was impersonating herself as Ms. Nishi Gupta when in fact her name was Ms. Nishi Jaidka.

19. Before embarking on the merits, it would be pertinent to *note* that the object of Section 340 of Cr.P.C., is to preserve the purity of the administration of justice and to allow the parties to adduce evidence in support of the certain documents without being compelled or intimidated to proceed with the judicial process, as has been held in the case of Surjit Singh and Others vs. Balbir Singh 1996 AIR 1592.



20. In the light of this object of Section 340 Cr.P.C. the averments of the petitioner may now be considered. The first assertion is about the Acknowledgement Card being forged, to falsely claim the service of Legal Notice. Insofar as this assertion is concerned, acknowledgement card was not the turning point against the Petitioner; rather the learned Metropolitan Magistrate has not relied on the A.D. Card, but has independently concluded that even if it is accepted that the Legal notice was not served through AD card, but service of the Complaint under Section 138 NI Act itself was sufficient to meet the pre-requisite of service of Legal Notice. Ld. MM did not rely on the AD card to assume service; rather accepted the contention of the Petitioner that the Service of Legal Notice may not have been effected through registered post. The Petitioner was not prejudiced in any manner and therefore, the learned Metropolitan Magistrate was justified in not taking note of the alleged forged A.D. Card, to initiate proceedings under Section 340 Cr.P.C.

21. Another significant aspect is to ascertain when the documents were allegedly manipulated and forged. Apex Court in the Case of Sachida Nand Singh and Others (supra) and Iqbal Singh Marwah (supra), has explained that Section 195(1)(b)(ii) Cr.P.C. Section 340 of Cr.P.C. is confined to offences which are committed in respect of documents which are tampered after they have been filed in the Court. This section would be attracted only when the offences enumerated in the said provisions, have been committed with respect to a document after it has been produced or given in evidence in the proceedings in any Court i.e. during the time the document was in *custodia legis*.



22. In the present case, what the Petitioner is claiming is that the documents (AD Card) were allegedly forged prior to filing them in the Court and not after the documents had been filed in the Court. Thus, the jurisdiction under Section 340 of Cr.P.C., has been rightly denied to be invoked.

23. The other grievance of the Petitioner is of the Respondent representing herself as Ms. Nishi Gupta when *in fact* her name is Ms. Nishi Jaidka. The record itself reveals that the Complainant/Respondent was earlier married to Mr. Jitender Jaidka and the Petitioner *herein* had been her counsel in the litigation with her ex-husband.

24. Furthermore, the Complainant was claiming to have got married to the Petitioner, Mr. Om Saran Gupta and consequently mentioning of her name as Ms. Nishi Gupta, cannot be faulted. The Petitioner may have now got a decree restraining her from addressing herself as wife of the Petitioner but till such time, it cannot be said that she committed any forgery or impersonation by describing her sir-name as 'Gupta'.

25. There may be a case of writing a surname, which may not be correct accordingly to the Petitioner, but the identity of the Respondent was never in dispute. She, whatever be the name with which she addressed herself, was the same person. Therefore, to claim that there was impersonation by the Respondent merely because she used a particular surname which was not acceptable to the Petitioner, would not make it a case of impersonation.

26. Pertinently, the Petitioner and respondent had developed a relationship which eventually got sour, resulting in multiple interse disputes of which this present Petition was an off shoot.



27. In the case of Chandra Shashi vs. Anil Kumar Verma, (1995) 1 SCC 421, it was observed that the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State.

28. The Courts infact, have an obligation to ensure that the polluters of judicial firmament are well taken care of to maintain the sublimity of court's environment; so also to enable the administration of justice fairly and to the satisfaction of all concerned. However, it is also the settled proposition of law that the proceedings under Section 340 of Cr.P.C. cannot be used to settle personal scores, but is only in such cases where the Court machinery has been blatantly misused, that the extreme step of taking cognizance of the offence under Section 340 of Cr.P.C. is mandated.

29. In light of the aforesaid discussion, it is held that the learned Metropolitan Magistrate has rightly dismissed the Application under Section 195 read with Section 340 of Cr.P.C. *vide* Order dated 23.02.2024 and it has been rightly upheld by the learned ASJ *vide* impugned Order dated 12.09.2024.

30. There is no merit in the present Petition, which is hereby dismissed. The Petition along with pending Application(s) is disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MARCH, 12 2025/RS