NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.335 OF 2020

THE STATE OF PUNJAB ...APPELLANT

VERSUS

JASBIR SINGH …RESPONDENT

J U D G M E N T

—

MOHAN M. SHANTANAGOUDAR, J.

1. The judgment dated 22.01.2019 passed by the High Court of Punjab and Haryana at Chandigarh in CRM-M No. 24691/2009 (O&M), which quashed FIR No. 74 dated 13.4.2008 registered against the Respondent herein for the offences punishable under Sections 420, 467, 468 and 471 of the Indian Penal Code, 1860 ("IPC"), has been called into question in this appeal.

The First Information Report ("FIR") against the Respondent was registered under Sections 420, 467, 468 and

471 of the IPC on the allegation that he had forged and fabricated documents submitted in the course of legal proceedings before the Revenue Courts. The relevant facts for the purpose of the present appeal are as follows:

2.1 The Respondent's mother, Karamjit Kaur, had filed an application in Tehsil Patti, District Tarn Taran seeking transfer of the subject property in her name on the basis of possession. Vide order dated 28.06.2002, the Tehsildar (Sales) allowed this application, directing conveyance in favour of Karamjit Kaur. Meanwhile, in the year 2005, the Respondent filed a suit for declaration that the subject property was owned by him, which is still pending.

2.2 Later, in the year 2006, the Respondent filed an appeal against the order of the Tehsildar (Sales), claiming that such order was based on an incorrect finding that the application was filed only by his mother, while it had actually been made jointly.

2.3 Furthermore, in parallel mutation proceedings, the Respondent got the subject land mutated in his favour along with his two cousins. In appeal, the Sub-Divisional Magistrate-cum-Collector, Patti declared the mutation as contested, and

vide order dated 11.12.2006, mutation was sanctioned in favour of Tarjit Kaur, the elder sister-in-law of the Respondent. The appeal filed by the Respondent against such order was dismissed vide order dated 06.06.2007.

2.4 On 29.08.2007, the SDM-cum-Sales Commissioner, Patti set aside the order of the Tehsildar (Sales) dated 28.06.2002, directing that the transfer of land be entered jointly in the names of the Respondent and his mother. This was done on the basis of a report submitted by the Tehsildar, Patti stating that the initial application for transfer of land had been made jointly by these two persons. In appeal, the Deputy Commissioner-cum-Chief Sales Commissioner, Tarn Taran restored the initial order dated 28.06.2002 passed by the Tehsildar (Sales), noting that the Respondent had submitted forged and fabricated documents in connivance with the Tehsil staff in the appeal before the SDM-cum-Sales Commissioner. Thus, the order dated 29.08.2007 was set aside and a direction was issued to the Sub-Divisional Magistrate, Patti to immediately get an FIR registered against the Respondent.

2.5 In pursuance of the said order, the Sub-Divisional Magistrate, Patti addressed a communication dated 11.04.2008

to the SHO, Police Station, Patti on the basis of which the FIR in question was registered against the Respondent. The trial commenced after the filing of the chargesheet. During the trial, a petition was filed by the Respondent under Section 482 of the Code of Criminal Procedure, 1973 (“CrPC”) seeking quashing of the proceedings, which has been allowed vide the impugned order.

3. The High Court, while passing the impugned order, principally accepted the ground raised by the Respondent that the Deputy Commissioner-cum-Chief Sales Commissioner hearing the appeal had neither held an inquiry, nor had he directed the subordinate authority to hold any such inquiry against the accused, in terms of Section 340 read with Section 195 of the CrPC. Thus, it was held that the FIR was hit by these provisions, since it had been filed without any inquiry and without giving any opportunity to the Respondent to be heard, and was therefore liable to be quashed.

4. Heard learned Counsel for the parties.

5. Ms. Uttara Babbar, learned counsel appearing for the State has taken us through the material on record, and referred us to the provisions of Section 195 and Section 340 of the CrPC

to contend that it is not mandatory on the part of the Court to make a preliminary inquiry under Section 340 before filing a complaint under Section 195; the Court is not required to afford an opportunity of hearing to the person against whom a complaint is filed before the Magistrate for initiating prosecution proceedings; and that Section 340 does not indicate that such person has any right to participate in the preliminary inquiry. In support of these contentions, she relied upon the judgments in ***Pritish* v. *State of Maharashtra***, (2002) 1 SCC 253, decided by a three-Judge Bench of this Court, and of a two-Judge Bench in ***Amarsang Nathaji* v. *Hardik Harshadbhai Patel***, (2017) 1 SCC 113. Also drawing our attention to the another judgment decided by a three-Judge Bench of this Court in ***Sharad Pawar* v. *Jagmohan Dalmiya***, (2010) 15 SCC 290, she submitted that no dictum can be said to be have been laid down in the said judgment as it was passed *sub silentio*, having assigned no reasons to come to the conclusion that a preliminary inquiry is mandatory under Section 340, contrary to the dictum of ***Pritish*** (supra).

6. Per contra, learned counsel for the Respondent argued in support of the judgment of the High Court.

7. In view of the arguments advanced and the material on record, the only question to be considered in this matter is as under:

Whether the Court should have heard the Respondent and given him an opportunity to have a say in the matter before ordering prosecution under Section 195 of the CrPC?

8. In this regard, it is pertinent to note Section 195(1)(b)(ii) of the CrPC, which provides that no Court shall take cognizance of any offence mentioned therein, if committed in respect of a document produced or given in evidence in a proceeding in any Court:

> "**195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.**
> (1) No Court shall take cognizance-
> ...
> (b) ...(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court..."

9. We may also note that Section 195(3) of the CrPC clarifies that the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under

a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of the said section.

10. In the instant case, it is not in dispute that the Deputy Commissioner-cum-Chief Sales Commissioner, as well as the Sales Commissioner, Patti were discharging their duties as Revenue Courts. It is further not in dispute that the criminal proceedings instituted against the Respondent fell within the scope of Section 195(1)(b)(ii), as they pertained to offences under Sections 420, 467, 468 and 471 of the IPC. Essentially then, the controversy pertains to compliance with Section 340 of the CrPC, which lays down the procedure to be followed while making a complaint with respect to an offence as mentioned in Section 195. In this regard, it may be useful to note the wording of Section 340(1):

> "(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, 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—
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> (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."

(emphasis supplied)

11. A bare reading of Section 340 reveals that if the Court is of the opinion 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 proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and thereafter make a complaint thereof in writing. Upon a plain reading of this provision, it is clear that it is open for the Court to conduct (or not to conduct) a preliminary inquiry into the matter before lodging a complaint in respect of an offence mentioned in Section 195(1)(b).

Indeed, a three-Judge Bench of this Court in ***Pritish*** (supra) dealing with the question in consideration here, held that an opportunity to the would-be accused before the filing of

the complaint was not mandatory, and observed that the preliminary inquiry was itself not mandatory. The Court observed thus:

> "**9.** Reading of the sub-section makes it clear 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 on 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. It should again be remembered that the preliminary inquiry contemplated in the sub-section is not for finding whether any particular person is guilty or not. Far from that, 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.
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> **10.** "Inquiry" is defined in Section 2(*g*) of the Code as "every inquiry, other than a trial, conducted under

this Code by a Magistrate or court". It refers to the pre-trial inquiry, and in the present context it means the inquiry to be conducted by the Magistrate. Once the court which forms an opinion, whether it is after conducting the preliminary inquiry or not, that it is expedient in the interest of justice that an inquiry should be made into any offence the said court has to make a complaint in writing to the Magistrate of the First Class concerned. As the offences involved are all falling within the purview of "warrant case" [as defined in Section 2(*x*)] of the Code the Magistrate concerned has to follow the procedure prescribed in Chapter XIX of the Code. In this context we may point out that Section 343 of the Code specifies that the Magistrate to whom the complaint is made under Section 340 shall proceed to deal with the case as if it were instituted on a police report. That being the position, the Magistrate on receiving the complaint shall proceed under Section 238 to Section 243 of the Code.

11. Section 238 of the Code says that the Magistrate shall at the outset satisfy himself that copies of all the relevant documents have been supplied to the accused. Section 239 enjoins on the Magistrate to consider the complaint and the documents sent with it. He may also make such examination of the accused, as he thinks necessary. Then the Magistrate has to hear both the prosecution and the accused to consider whether the allegations against the accused are groundless. If he finds the allegations to be groundless he has to discharge the accused at that stage by recording his reasons thereof. Section 240 of the Code says that if the Magistrate is of opinion, in the aforesaid inquiry, that there is ground for presuming that the accused has committed the offence he has to frame a charge in writing against the accused. Such charge shall then be read and explained to the accused and he shall be asked whether he pleads guilty of the offence charged or not. If he pleads not guilty then the Magistrate has to proceed to conduct the trial. Until then the inquiry continues before the Magistrate.

12. Thus, the person against whom the complaint is made has a legal right to be heard whether he should be tried for the offence or not, but such a legal right is envisaged only when the Magistrate calls the accused to appear before him. The person concerned has then the right to participate in the pre-trial inquiry envisaged in Section 239 of the Code. It is open to him to satisfy the Magistrate that the allegations against him are groundless and that he is entitled to be discharged.

13. The scheme delineated above would clearly show that there is no statutory requirement to afford an opportunity of hearing to the persons against whom that court might file a complaint before the Magistrate for initiating prosecution proceedings. Learned counsel for the appellant contended that even if there is no specific statutory provision for affording such an opportunity during the preliminary inquiry stage, the fact that an appeal is provided in Section 341 of the Code, to any person aggrieved by the order, is indicative of his right to participate in such preliminary inquiry.

14. Section 341 of the Code confers a power on the party on whose application the court has decided or not decided to make a complaint, as well as the party against whom it is decided to make such complaint, to file an appeal to the court to which the former court is subordinate. But the mere fact that such an appeal is provided, it is not a premise for concluding that the court is under a legal obligation to afford an opportunity (to the persons against whom the complaint would be made) to be heard prior to making the complaint. There are other provisions in the Code for reaching conclusions whether a person should be arrayed as accused in criminal proceedings or not, but in most of those proceedings there is no legal obligation cast on the court or the authorities concerned, to afford an opportunity of hearing to the would-be accused. In any event the appellant has already availed of the opportunity of the provisions of Section 341 of the Code by filing the appeal before the High Court as stated earlier.

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> **18.** We are unable to agree with the said view of the learned Single Judge as the same was taken under the impression that a decision to order inquiry into the offence itself would prima facie amount to holding him, if not guilty, very near to a finding of his guilt. We have pointed out earlier that the purpose of conducting preliminary inquiry is not for that purpose at all. The would-be accused is not necessary for the court to decide the question of expediency in the interest of justice that an inquiry should be held. We have come across decisions of some other High Courts which held the view that the persons against whom proceedings were instituted have no such right to participate in the preliminary inquiry (vide *M. Muthuswamy* v. *Special Police Establishment* [1985 Cri LJ 420 (Mad)])."
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> (emphasis supplied)

12. However, in the subsequent decision in ***Sharad Pawar*** (supra), while dealing with a similar question, a three-Judge Bench of this Court did not take note of the dictum in ***Pritish*** (supra) and went on to observe as follows:

> "**7.** Having heard the learned Senior Counsel for both sides and after perusal of the record, we are of the considered view that before giving a direction to filed complaint against Defendants 1 to 6, it was necessary for the learned Single Judge to conduct a preliminary enquiry as contemplated under Section 340 CrPC and also to afford an opportunity of being heard to the defendants, which was admittedly not done.
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> **8.** We, therefore, in the interest of justice, allow these appeals, set aside the impugned order of the High Court passed in the application filed by Respondent 1-plaintiff under Section 340 CrPC and remit the matter to the learned Single Judge to

> decide the application under Section 340 CrPC afresh in accordance with law, and after affording reasonable opportunity of being heard to the defendants, against whom the learned Single Judge ordered enquiry."

13. Later, the judgment in ***Pritish*** (supra) came to be relied upon by a two-Judge Bench of this Court in ***Amarsang Nathaji*** (supra). While dealing with the propriety of the procedure adopted by the Court making a complaint under Section 340 of the Code, the Bench in ***Amarsang Nathaji*** observed as follows:

> "**7.** 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 CrPC 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. (See *Pritish* v. *State of Maharashtra* [*Pritish* v. *State of Maharashtra*, (2002) 1 SCC 253: 2002 SCC (Cri) 140].)

In the same decision, the Court also took note of the following observations made by a Constitution Bench of this

Court in ***Iqbal Singh Marwah* v. *Meenakshi Marwah***, (2005) 4 SCC 370 in relation to the scope of Section 340 of the CrPC:

> "**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."
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> (emphasis supplied)

Notably, however, the decision in ***Amarsang Nathaji*** did not take note of the contrary observations made in ***Sharad Pawar*** (supra).

14. In any event, given that the decision of the three-Judge Bench in ***Sharad Pawar*** (supra) did not assign any reason as to why it was departing from the opinion expressed by a Coordinate Bench in ***Pritish*** (supra) regarding the necessity of a preliminary inquiry under Section 340 of the CrPC, as also the observations made by a Constitution Bench of this Court in ***Iqbal Singh Marwah*** (supra), we find it necessary that the present matter be placed before a larger Bench for its consideration, particularly to answer the following questions:

> (i) Whether Section 340 of the Code of Criminal Procedure, 1973 mandates a preliminary inquiry and an opportunity of hearing to the would-be accused before a complaint is made under Section 195 of the Code by a Court?
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> (ii) What is the scope and ambit of such preliminary inquiry?

15. Accordingly, we direct the Registry to place the papers before the Hon'ble Chief Justice for appropriate orders.

.....J.
(ASHOK BHUSHAN)

.....J.
(MOHAN M. SHANTANAGOUDAR)

NEW DELHI
FEBRUARY 26, 2020