

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 728 OF 2017

Fareed Ahmed Qureshi ... **Applicant**

V/s.

1. The State of Maharashtra
2. Aarish Asgar Qureshi ... **Respondents**

Mr. Nilesh Ojha a/w Tanvi Kambli, a/w Ruchi Patil a/w Shashikala Chauhan a/w
Mr. Praful for the Applicant.
Mr. Ameet Palkar, APP for the Respondent No.1/State.

CORAM : A.S.GADKARI, J.
RESERVED ON : 21st FEBRUARY, 2018
PRONOUNCED ON : 07th MARCH, 2018

:JUDGMENT:

1. This is an application under Section 340 read with Section 195 of the Code of Criminal Procedure.

2. Heard the learned Counsel for the Applicant and the learned APP. Perused the record annexed to the application.

3. The Applicant is the first informant in C.R. No. 346 of 2017 dated 19.11.2017 under Sections 323, 376(B), 377, 406, 498 (A), 504 and 506 read with Section 34 of Indian Penal Code and also under Sections 3 and 4 of the Dowry Prohibition Act, 1961. The Applicant is the father of Mrs. Sana Aarish Qureshi. The marriage of Mrs. Sana was performed with the Respondent No.2 on

15.11.2015. The said marriage was an arranged marriage. That, in the marriage, the Applicant gave innumerable valuable gifts including expensive cars to the Respondent No.2 and his close relatives. The first information report was lodged in the premise that, soon after the said marriage, the Respondent No.2 and his family members demanded Rs.10 Crores from the Applicant and inflicted upon Mrs. Sana immense torture, harassment, physical and mental cruelty. It was also revealed to Mrs. Sana that Respondent No.2 was having illicit relations with his brother's wife. Mrs. Sana had also complained that, the Respondent No.2 committed an act as contemplated under Section 377 of the Indian Penal Code with her. That, due to the said cruelty caused by the Respondent No.2, Mrs. Sana was forced to leave her matrimonial house in December 2016. That, the present crime has been registered at the instance of the Applicant on 19.11.2017.

4 The Respondent No.2 along with other accused persons thereafter, preferred an application for anticipatory bail before the Sessions Court at Mumbai on 20.11.2017. In the said application, in paragraph No.8, the Respondent No.2 had categorically alleged that, it came to the light that, Mrs. Sana was having an affair with one Wasim Shaikh who resided at Mahim. That, the in-laws of the Respondent No.2 admitted that, they were aware with that relationship which had been going on prior to the marriage of the Respondent No.2 with Mrs. Sana, but as the said Wasim Shaikh belonged to another community, they did not approve the relationship and had forced Mrs. Sana to

marry with Respondent No.2. That the Investigating Officer filed her say dated 21.11.2017 to the said application and in paragraph No.4 of the grounds for opposing the application, has categorically stated that, the averments of the Respondents therein that, Mrs. Sana was having illicit relations with Mr. Wasim Shaikh was found to be not correct/false during the course of investigation.

5 The learned Counsel appearing for the Applicant submitted that, in view of the aforestated facts on record wherein the contention of the Respondent No.2 about the illicit relations of Mrs. Sana with Wasim Shaikh though have been found to be false in the investigation, the Respondent No.2 proceeded to continue to make the said allegation in his Anticipatory Bail Application No. 2074 of 2017 filed before this Court and in paragraph Nos. 8 and 11 of the said application has brazenly again repeated the said allegation. He further submitted that on the basis of the said absolutely false and highly defamatory statement, thereby misleading this Court, succeeded to get interim protection on 30.11.2017 in A.B.A. No. 2074 of 2017. He submitted that the averments/submissions made by the Respondent No.2 before this Court to that effect can be discerned from paragraph No.3 of the said Order dated 30.11.2017. He therefore, submitted that the Respondent by making blatantly false statement, which is contrary to the record has not only affirmed the said fact on oath, but has also made statement in that behalf before this Court and therefore, an offence as contemplated under Sections 193, 196, 199, 200 and 209 of the Indian Penal Code is made out. He

therefore, submitted that an inquiry under Section 340 of the Cr.P.C., be initiated against the Respondent for an offence referred to in Section 195(1)(b) of the Cr.P.C.

6 At this stage, a useful reference can be made to the decision rendered by the learned Single Judge of this Court in the case of *CTR Manufacturing Industries Limited V/s. Sergi Transformer Explosion Prevention & Ors.*, reported in 2013 ALL MR (1) 153, wherein it is held that, in a proceeding under Section 340 of the Cr.P.C. only a prima facie opinion is required to be reached by this Court and challenge is required to be established during trial.

7 Perusal of record indicates that during the course of investigation, the allegation made by the Respondent No.2 in paragraph No.8 in the Anticipatory Bail Application filed before the Trial Court that, Mrs. Sana was having an affair with one Wasim Shaikh has been found to be not true rather false and the Investigating Officer has filed a report dated 21.11.2017 to that effect in the said proceeding. It is to be noted here that the said report is filed in Judicial proceeding by the concerned Investigating Officer. That, despite there being a finding recorded by the Investigating Officer to the allegation made by the Respondent No.2, he continued to make such allegation even in ABA No. 2074 of 2017 before this Court and in paragraph Nos. 8 and 11 of the said application has again repeated the said statement/allegation. The record further indicates that at the time of grant of interim relief to the Respondent No.2, he continued to make

averments before this Court to that effect which is recorded in Paragraph 3 of Order dated 30.11.2017 passed in ABA No. 2074 of 2017. Thus, it prima facie appears to this Court that Respondent No.2 has made the said false statement in ABA No. 2074 of 2017.

8 In view of the above, a case for filing complaint under Section 340 read with Section 195(1)(b) of Cr.P.C. for making false statement before this Court, contrary to the record and for not disclosing true and correct facts is made out. This Court is of the prima facie opinion that an offence as contemplated under Sections 193, 196, 199, 200 and 209 of the Indian Penal Code appears to have been committed by the Respondent No.2 and it is expedient in the interest of justice that an inquiry be made into it by a Judicial Magistrate having jurisdiction.

9 In view thereof, the Registrar (Judicial-II) attached to this Court is, directed to draw and make appropriate complaint before the competent Court having jurisdiction for the offence mentioned in Section 195(1)(b) of the Cr.P.C. and to submit it before the Court of concerned Magistrate having jurisdiction.

10 The learned Magistrate to proceed further in the matter in accordance with law uninfluenced by the observations made by this Court hereinabove.

11 Application is accordingly, allowed in the aforesaid terms.

(A.S.GADKARI, J.)