IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 9850 of 2023
With
CIVIL APPLICATION (FOR AMENDMENT) NO. 1 of 2025
In R/SPECIAL CIVIL APPLICATION NO. 9850 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE MAULIK J.SHELAT

==========

Approved for Reporting	Yes	No

==========

NILKANTH TRIVEDI
Versus
CHAMPABEN BABARBHAI PARMAR & ORS.

==========

Appearance:
MR V M TRIVEDI(947) for the Petitioner(s) No. 1
DELETED for the Respondent(s) No. 1
MR PARV C MEHTA(10800) for the Respondent(s) No. 2,3,4,5,6,7
NOTICE SERVED for the Respondent(s) No. 9

==========

CORAM:**HONOURABLE MR. JUSTICE MAULIK J.SHELAT**

Date : 01/07/2025

ORAL JUDGMENT

1. Heard learned Advocate Mr. Vikram M. Trivedi appearing for the petitioner and learned Advocate Mr. Parv C. Mehta appearing for the respondents.

2. At the outset, learned Advocate Mr. Vikram Trivedi appearing for the petitioner seeks permission to delete respondent No.9

from the array of the present writ application. Permission as sought for is granted. Respondent No. 9 i.e. Vikram Trivedi is deleted from the writ application. The necessary amendment be carried out in the cause title of the writ application.

3. The present writ application is filed under Article 226 of the Constitution of India challenging the order passed by the Principal Civil Judge, Kheda, which as such cannot be maintained under Article 226 of the Constitution of India. There is a direct and clear pronouncement of the Honourable Supreme Court of India on this issue that any order passed by civil court to be challenged before this Court by way of writ application then it cannot be filed under Article 226 of the Constitution of India.

4. It is by now well-settled principle that any order passed by civil court is not amenable to the writ jurisdiction of this Court under Article 226 of the Constitution of India. Nevertheless, this Court having supervisory power under Article 227 of the Constitution of India can entertain such an application under Article 227 of the Constitution of India.

5. It would be profitable to refer and rely upon the decision of Honourable Supreme Court of India in the case of **Radhey Shyam & Anr. vs Chhabi Nath & Ors., reported in 2015 (5) SCC 423**, wherein, in para 27, it was held thus:-

> ***"Thus, we are of the view that judicial orders of civil courts are not amenable to a writ of certiorari under Article 226. We are also in agreement with the view of the referring Bench that a writ of mandamus does not lie against a private person not discharging any public duty. Scope of Article 227 is different from Article 226."***
>
> *(emphasis supplied)*

Thus, in view of the aforesaid, the present writ application needs to be treated as filed under Article 227 of the Constitution of India.

6. The present application is filed seeking the following reliefs:

> *"11. Therefore, petitioner humbly prays that this Hon'ble Court may kindly be pleased to issue a writ of mandamus, a writ of certiorari, or any other writ, order or direction to;*
>
> *A. Call for R & P of CMA 555/2018 and LAQ no. 2/2015 from the Court of the Principal Civil Judge (SD) Kheda at Nadiad and peruse;*
>
> *B. Quash and set aside judgement and order dated 23.3.2023 at Annexture - E and allow the application CMA 555/2018 with enhanced sum of compensation - as loss of interest and harassment has continued beyond the year 2018 to 2023, in the interest of justice.*
>
> *C. Cost/fine of Rupees 30 lakhs (or any higher amount) may kindly be imposed on the respondents No. 1 to 8 for their crime u/s. 191, 192, 193, 199, 200 and 209 of IPC and out of the said amount a cost/compensation of rupees 75 lakhs may kindly be paid to the present petitioner and rest of the sum may be directed to be deposited in the dated State Legal-Aid Committee of this Hon'ble High Court in the interest of Justice.;*
>
> *D. Such other and further reliefs as this Hon'ble Court may deem fit may kindly be granted in the interest of justice.*

E. And further cost of this petition may also kindly be imposed as deem fit by the Hon'ble Court, in the interest of justice."

7. The parties will be referred to as per their original positions before the Trial Court.

8. Short Facts:

8.1. The petitioner herein appears to have filed an application being Civil Misc. Application No. 459 of 2018 under Section-340(1) of the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C") before the Principal Senior Civil Judge, Kheda, against the respondents herein for sanction and making of complaint against them for committing serious offence of perjury by deliberately and intentionally filing false affidavit in the form of written statement and examination-in-chief, whereby misused the court process.

8.2. It further appears that pending such application, the impugned application under section 342 of Cr.P.C came to be filed by the petitioner being CMA No. 555 of 2018 in that CMA No. 459 of 2018, seeking the following relief:

"A. All four applications - CMA No. 459 of 2018, CMA No. 460 of 2018 and presently unnumbered two applications may kindly be placed for hearing on 10/1/2019 and these Applications u/s 340 and 342 of CrPC may kindly be Granted;

B. Cost/fine of Rupees 10 lakhs (or any higher amount) for their crime may kindly be imposed upon present Opponents and out of the said

amount a cost/compensation of rupees 5.64 lakhs may kindly be paid to the present Applicant no.1 on behalf of both the Applicants;

C. And Balance of Cost may be directed to be deposited in Nazir office or in any manner in which Administration of Public Justice may be compensated in the interest of justice.

D. Such other and further reliefs as this Hon'ble Court may deem fit may kindly be granted in the interest of justice."

8.3. The petitioner has filed the impugned application whereby he requested the Civil Court to grant his application being CMA No. 459 of 2018 and so also asked for costs and compensation of Rs.10,00,000/- from the respondents. There are certain serious allegations levelled against the presiding judge by the petitioner, which can be culled out from bare reading of paragraph-14 of the impugned application wherein the petitioner has stated as under:

"14. The applications, if so preferred Sec. 340 (2), it will give impression that

- *This Hon'ble Principal Civil Judge (S.D.) Kheda at Nadiad - is avoiding the hearing and decision to protect the Administration of justice and to curb "evil of perjury" which is its fundamental duty as a Judge.*
- *This Hon'ble Principal Civil Judge (S.D.) Kheda at Nadiad is not competent to read or understand the decisions of the Hon'ble Apex Court - in spite of the decision is presented and read over before it.*
- *This Hon'ble Principal Civil Judge (S.D.) Kheda at Nadiad has*

scant respect to the judgement of the Hon'ble Supreme Court of India and does not stop to take evasive recourse to deal with such application.

- *The Hon'ble Principal Civil Judge (S.D.) Kheda at Nadiad - by avoiding its own work which it ought to have done in time - is needlessly burdening the Hon'ble High Court to discharge this work."*

8.4. The Civil Court appears to have allowed CMA No. 459 of 2018 vide its order dated 23rd March, 2023, passed under Section-340 of the Cr.P.C. whereby directed the Registrar concerned to file complaint against the respondents herein for the offences punishable under Sections-191, 192, 193, 199, 200, and 209 of the Indian Penal Code (hereinafter referred to as "IPC).

8.5. The Civil Court vide its impugned order dated 23rd March, 2023, has rejected the impugned application being CMA No. 555 of 2018 by observing that the petitioner is not entitled for any costs/compensation inasmuch as mere registration of complaint against the respondents would not entitle the petitioner to claim costs/compensation.

8.6. It may be noted here that while allowing CMA No. 459 of 2018, thereby the Civil Court directed the Registrar to file complaint against the respondents, such order was passed without hearing the respondents, as the Civil Court having

observed in concluding part of para-4 that while passing order to file the complaint against the respondents under said provisions of the IPC, it would not require any opportunity of hearing to be given to the respondents. So, CMA No. 459 of 2018 came to be allowed without hearing respondents and for which, Civil Court appears to have relied upon decision of **Honourable Supreme Court of India in a case of Pritish V/s State of Maharashtra reported in (2002) 1 SCC 253, Jagjit Singh v/s State of Punjab reported in AIR 2000 SC 2017 and M.S. Ahlawat v/s State of Haryana reported in (2000) 1 SCC 278**.

8.7. The petitioner, being aggrieved by the rejection of his application being CMA No. 555 of 2018 filed under section 342 of Cr.P.C, has preferred the present application to challenge such rejection by way of the present writ application.

9. Submissions on behalf of the petitioner:

9.1. Learned Advocate Mr. Trivedi would submit that Civil Court has committed serious error in law by rejecting the impugned application filed by the petitioner by overlooking the provisions of Section-342 of the Cr.P.C.

9.2. Learned Advocate Mr. Trivedi would further submit that once the Civil Court has ordered to file complaint against the

respondents under Section-340 of the Cr.P.C., the Civil Court having empowered to impose costs, was required to pass an order of costs/compensation against the respondents irrespective of the outcome of such complaint which is now registered against the respondents.

9.3. Learned Advocate Mr. Trivedi would further submit that the Civil Court has erroneously observed that mere registration of complaint against the respondents against various sections of the IPC would not ipso facto entitled the petitioner to claim costs/compensation as prayed for in the impugned application. It is submitted that the Civil Court has completely lost sight of Section-342 of the Cr.P.C. while making such observations.

9.4. Learned Advocate Mr. Trivedi would further submit that when prima facie, the respondents are found guilty of committing perjury and the Civil Court having satisfied with what is stated by the petitioner in his application being CMA No. 459 of 2018, it ought to have ordered costs/compensation thereby the petitioner could have been compensated for the loss and costs to him.

9.5. To buttress his argument, he has relied upon the following decisions:

(a) 2007 (3) SCC 545 Alok;

(b) 2008 SC 1077 S.K. Dua;

(c) 1999 (9) GLH 382-Reparation- damages in crime;

(d) 2010 (1) SCC 417 Amarjeet Singh;

(e) AIR 1940 BOMBAY 131: Bhagwandas Narandas;

(f) 2003(8) SCC 648 South Eastern;

(g) 2013 (2) SCC 398 Kishor Samrite -False;

(h) 2011(8) SCC 249 Ram-Devi;

(i) 2016 (11) SCC 484 Msser Holding-Cost;

(j) 2010 (3) GLH 647 Vinod Sheth-;

(k) 2018 HC-PU.J. -Cost;

(l) SCA 9514 2013 10% Pardiwala J.;

(m) 2010 (10) SCC 687 - Jee Vee;

(n) 2004 (2) SCC 783 Karnataka Rare earth-Restitution.

9.6. Making the above submissions, learned advocate Mr. Trivedi for the petitioner prayed that the writ application be allowed.

10. Submissions on behalf of the respondents:

11. Learned Advocate Mr. Parv C. Mehta appearing for the contesting respondents would submit that the prayers made in the impugned application being CMA No. 555 of 2018 are not only misconceived but not maintainable at law. Thereby, the civil court has not committed any error, much less any gross error of law, while rejecting the impugned application.

12. Learned Advocate Mr. Mehta would further submit that the

petitioner has completely misconstrued Section-342 of the Cr.P.C. and as such, not entitled for any costs/compensation.

13. Learned Advocate Mr. Mehta would further submit that the petitioner has already pressurized the civil court, which can be confirmed from bare reading of the impugned application and without giving any opportunity of hearing to the respondents, the Civil Court has considered the application of the petitioner being CMA No. 459 of 2018 and thereby directed the Registrar to file complaint against the respondents. It is submitted that mere registration of complaint against the respondents would not amount to proving guilt of the respondents as trial of such complaint is yet to proceed. At the time of the trial, if the respondents are not found guilty, the petitioner would not be entitled to any costs/compensation.

14. Learned Advocate Mr. Mehta would further submit that the Civil Court has given cogent and sufficient reasons for not accepting prayer of the petitioner as regards to costs/compensation and in the absence of any provision of law which would entitle the petitioner to claim and get costs/compensation, the rejection of the impugned application cannot be found fault with.

14.1. Making the above submissions, learned Advocate Mr. Mehta

for the respondents prayed for the dismissal of the present application.

15. No other submissions are being made by any of learned advocates for the parties.

16. Heard learned advocates appearing for the respective parties at length.

POINT FOR DETERMINATION

17. Can the petitioner be entitled to receive costs and/or compensation under section 342 of the Cr.P.C. from the respondents on the registration of complaint under Section-340(1) of the Cr.P.C. ordered by civil court against the respondents, on basis of the application filed by petitioner?

ANALYSIS

18. The facts narrated hereinabove are not much in dispute. The entire basis of claiming costs/compensation by the petitioner is on the strength that once the civil court directed the Registrar to file complaint against the respondents under various sections of the IPC which was ordered as per Section-340(1) of the Cr.P.C., on the basis of his application, the petitioner is automatically entitled to receive costs/compensation and having not paid, the Civil Court has committed an error in law.

19. There is a basic fallacy and complete misreading of the provisions of law by the petitioner while asking for costs and compensation by placing reliance upon Section-342 of the Cr.P.C.

20. To better understand the controversy involved in the matter, the relevant provisions, i.e. Sections-195, 340 and 342 of the Cr.P.C., are required to be taken note of, which read as under:

> ***"Section-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-*
>
> *(a) [(i) of any offence punishable under sections 172, 173, 174 and 175 to 187 (both inclusive) of the Indian Penal Code, 1860, or]*
>
> *(ii) of any abetment of, attempt to commit, such offence, or*
>
> *(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;*
>
> *(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or*
>
> *(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, or*
>
> *(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), [except*

on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].

(2) Where a complaint has been made by a public servant under clause (a) of sub section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), 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 this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

*"**Section-340. Procedure in cases mentioned in Section-195** :-*

(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice 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 a proceeding in that Court, 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 for 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 Section-195.

(3) A complaint made under this section shall be signed,-

(a) where the Court making the 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 or by such officer of the Court as the Court may authorise in writing in this behalf.]

(4) In this section, "Court" has the same meaning as in Section-195."

*"**Section-342. Power to order Court** :-*

Any Court dealing with an application made to it for filing a complaint under Section-340 or an appeal under Section-341, shall have power to make such order as to costs as may be just."

21. Section-340 of the Cr.P.C. gives power to the court to make an inquiry into any offence referred to in clause (b) of sub-

section (1) of Section-195 of the Cr.P.C. Such inquiry can be either initiated on receipt of application made before the court or otherwise (suo moto). On completion of such preliminary inquiry, if court comes to the preliminary finding that various offences which are enumerated in clause (b) of sub-section (1) of Section-195 are germane, the court can order to file complaint against accused. Whereas, if on completion of such preliminary inquiry, the court comes to the conclusion that no such offence is made out and application filed by complainant/applicant is false and/or frivolous, the court can reject it with cost.

22. Section-342 of the Cr.P.C. would empower Court to order costs while dealing with an application made to it for filing a complaint under Section-340 or an appeal under Section-341, as the case may be. The plain reading of Section-342 of the Cr.P.C. would indicate that in a case where court finds application made before it for filing the complaint as per Section-340 is false and frivolous and the complainant/applicant has consumed time of the Court in such false application, in that eventuality, the Court can order costs to the applicant.

23. So far as the case on hand is concerned, the application filed by the petitioner under Section-340 of the Cr.P.C. before the

Civil Court is accepted, thereby the Registrar of the Court is directed to file complaint against respondents for the offences punishable under Sections-191, 192, 193, 199, 200, and 209 of the IPC. When the court found the application filed by the petitioner being CMA No. 459 of 2018 is not false and frivolous and on preliminary inquiry has found substance in such application, it ordered to file complaint against respondents. Thus, the question of passing of any order to pay costs to petitioner by respondents would not arise.

24. There is a complete misreading and misconception on the part of the petitioner in construing Section-342 of the Cr.P.C. in a manner that once his application under Section-340(1) of the Cr.P.C. is accepted by the court, he would automatically be entitled to receive costs/compensation. The object and purpose of Section-342 of the Cr.P.C. is to empower the Court to order costs in a case where application made to it for filing complaint under Section-340 is found to be false and frivolous.

25. One cannot lost sight of the fact that when the court concerned holds an inquiry at the instance of complainant/applicant who filed an application wherein no audience was given to offender/accused (i.e. the respondents herein in present case), then the question of passing any

order of costs to be paid by the respondents to petitioner would not arise and as such it sounds illogical and so also violation of principles of natural justice. There would never been an intention of parliament while legislating any provision especially a penal one that without giving any opportunity of hearing to person concern (accused), such person would held liable to pay cost/compensation once having found prima facie guilty of perjury, as Court order for filing complaint as per section 340 of Cr.P.C..

26. According to my view as well, the Civil Court has correctly observed in its impugned order that mere filing of complaint does not prove the guilt of the accused (respondents). Until and unless, the charges levelled against the respondents herein are not proved against them in such complaint, the question of granting any costs/compensation would not arise.

27. It would also not be out of place to mention here that in the criminal justice system, the court is governed by the rule of procedure as set out in the Criminal Procedure Code and when there is an express provision to order payment of compensation incorporated in the Cr.P.C., the court cannot award compensation dehors such provision. As per Section-357 of the Cr.P.C., the court is empowered to order payment of compensation in a case where the court imposes a

sentence upon the accused having found him guilty for the offence for which the accused was tried. Thus, the question of granting compensation to any victim of crime would arise when the accused found guilty but not otherwise. It is settled that accused presumed to be innocent until proven guilty.

28. When the entire basis of making claim of costs and compensation by filing an application under Section-342 of the Cr.P.C. is found to be erroneous and having not maintainable, at this stage, further deliberation on the aspect of costs/compensation would not be required at all. Therefore, the decisions which are placed reliance upon by learned Advocate Mr. Trivedi are not required to be considered and accordingly, not dealt with.

29. Before parting, I would like to observe that the petitioner had tried to browbeat the Civil Court by making unwarranted and uncalled for allegations levelled against the Civil Court which can be seen by plain reading of impugned application, more particularly relevant portion of paragraph-14 of the impugned application which is reproduced hereinabove.

30. This Court would not allow any litigant to make such irresponsible allegation against Court, rather denigrate such behaviour of the applicants of impugned application, one of which appears to be practicing lawyer. If applicants have any

serious grievance against working of the Civil Court, there are other avenues available to applicants to ventilate their grievances, but surely such allegations are not at all permissible in the form of any such application to be filed in judicial proceedings. Thus, the applicants/petitioner are hereby warn that in the future, such mistakes should not be repeated by them. Otherwise, if it will be noticed by this Court, appropriate action will be taken against them in accordance with law including imposing heavy cost.

CONCLUSION

31. The petitioner is not entitled for any costs and compensation under Section-342 of the Cr.P.C. merely on the ground that complaint under Section-340(1) of the Cr.P.C. is ordered by the civil court to be registered against the respondents.

32. Section-342 of the Cr.P.C. empowers Court to order costs in a case where an application made to it for filing a complaint under Section-340 or an appeal under Section-341 of the Cr.P.C. is found to be false and frivolous. No costs / compensation can be ordered by the court in favour of applicant/complainant against accused on mere registration of complaint against accused while exercising its power under Section-340 (1) of the Cr.P.C.

33. Thus, the upshot of the aforesaid observations, discussions

and reasons would leads to only one conclusion that writ application lacks merit, in turn, requires to be rejected, which is hereby rejected. Notice is discharged. No order as to costs.

(MAULIK J.SHELAT,J)

Nilesh

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: PARMAR NILESHKUMAR R(HCD0068), ENGLISH STENOGRAPHER GRADE TWO CLASS TWO, at High Court of Gujarat on 15/07/2025 17:28:55