



Civil Proceeding No. 488 of 2018 refusing to entertain the petition of the appellant essentially U/S. 379 of the BNSS.

2. In the course of hearing, Mr. Basudev Pujari, learned counsel for the appellant by taking this Court through the impugned order submits that although the application of the appellant discloses some materials to take action against the respondent in terms of provision of Sec. 379 of BNSS, but fact remains that the learned trial Court by the impugned order has in fact not heard the appellant on the point and rather he has passed an order by observing inter alia that “the petition for initiation of criminal proceeding without authentic particular deserves no positive consideration, as such the same stands rejected”. It is further submitted that the respondent-husband has deliberately and maliciously made false statement and suppressed facts in his disclosure affidavits filed before the learned trial Court and in such disclosure affidavit, the respondent has made a claim



as if he is the only son of his father Nrushinga Charan Pati, but he has got a brother namely, Biswanath Pati who is working in a reputed company and earning Rs.3 lakhs per month and respondent-husband has also lied by stating that his father has left practice and depends on him for his maintenance, but his father N.C.Pati being an reputed Advocate has never left practice. It is also submitted by Mr.B.Pujari that the father of the respondent has landed properties and a two storeyed building in his native place and another two storeyed building in CDA, Cuttack, besides some landed properties in his name, but the respondent has intentionally withheld such facts in the disclosure affidavits as well as in evidence and thereby liable to be prosecuted for perjury in an action U/S. 340 of the CrPC, but the learned trial Court ignoring aforesaid facts has erroneously dismissed the application of the appellant to proceed against the respondent in terms of Sec. 340 of the CrPC.



3. In view of the aforesaid challenge by the appellant, this Court right now embark upon the petition filed by the appellant to see as to whether any action is required U/S. 379 of BNSS, but before doing that this Court considers it proper to refer to the provisions of Sec. 379 of BNSS which reads as under:

"379. Procedure in cases mentioned in Section 215.- (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 215, 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 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.



(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 215.

(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 215".

On a comparative study of the provisions of law as expounded above vis-à-vis the averments taken by the appellant in her petition for initiation of a proceeding against the respondent U/S 379 of BNSS, this Court does not find any cogent material to proceed against the OP in terms of Sec. 379 of BNSS since according to the appellant, the respondent has made misrepresentation by suppressing facts viz. incorrect answer has been given at point No. 6 to Column No.'A'



of the disclosure affidavits, so also the respondent concealing the fact of having a younger brother namely, Biswanath Pati who is earning Rs.3 lakhs monthly, but these are being question of facts needs to be established in the hearing and no opinion thereon can be framed to proceed against the respondent in terms of Sec. 349 of BNSS. Further, it was also alleged in such petition that the application U/S. 125 of the CrPC was dismissed for default, but the petition was restored on 04.10.2023 and the affidavit has been sworn by the maker of the affidavit sometime around 02.04.2024. It is also a fact that in his petition for initiation of proceeding against the respondent U/S 379 of BNSS, the appellant has raised some disputed questions which need to be adjudicated in the trial, but the provision U/S. 379 of BNSS makes it abundantly clear that the Court in which such an application has been filed to take action against a person has been conferred with discretion to proceed against such person, but the Court is not bound to proceed in the matter on the



complaint of a private person and the learned trial Court in the impugned order has rightly held that the petition for initiation of criminal proceedings being without authentic particular deserves no positive consideration.

4. Be that as it may, the learned counsel for the appellant has, however, contended that if there is an application for initiation of a criminal proceeding in the nature of 379 of BNSS, the Court has to hold a preliminary enquiry and the learned counsel for the appellant in order to buttress his such submission has relied upon the decision in ***State of Punjab Vrs. Jasbir Singh; 2022 SCC Online SC 1240*** wherein the Apex Court has called upon to answer a reference of the following two 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?"

"(ii) What is the scope and ambit of such preliminary inquiry?"



In answering the first question in above reference **in negative**, the Apex Court has taken note of the paragraph-23 of the Constitutional Bench decision in ***Iqbal Singh Marwah Vrs. Meenakshi Marwah; (2005) 4 SCC 370***, with approval. For clarity, the paragraph-23 of the aforesaid judgment in ***Iqbal Singh Marwah(supra)*** is extracted hereunder;-

*" In view of the language used in Section 340 Cr.P.C. **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 interest 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 (i) (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 of 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.**"*

5. On a cumulative analysis of the position of law as referred to above and settled by the Apex Court in **Jasbir Singh** and **Iqbal Singh Marwah(supra)**, it appears that Sec. 379 of BNSS does not mandate a preliminary enquiry, so also such a course may not be required to be adopted in every cases. However, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that enquiry should be made into any of the offence referred to in Sec. 215(1)(b) of the BNSS. However, it is not in all and every case, the Court has to exercise the jurisdiction of Sec.379 of BNSS, unless there is an expediency in the interest of justice in the opinion of the Court. In this case, this Court does not



feel such expediency in the matter because the dispute between the parties is relating to a matrimonial discord in which there is allegation and counter allegation, but the petition stated to be filed U/S.340 of CrPC by the appellant-petitioner does not persuade this Court to direct to conduct an preliminary enquiry or to direct for institution of complaint against the respondent in this case.

6. In the result, the CRLA stands dismissed.

(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 25th day of February, 2025/kishore*

Signature Not Verified

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