

(2017) 02 MP CK 0177
In the Madhya Pradesh High Court
Case No : 2386-2003

SHEIKH AZEEZ ALIAS UAMA QURISHI	Vs	APPELLANT
UNION OF INDIA		RESPONDENT

Date of Decision : 21-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 193](#), [Section 341\(1\)](#), [Section 195](#), [Section 340](#) - Cognizance of offences by Courts of Session - Appeal - Prose

Citation : (2017) 02 MP CK 0177

Hon'ble Judges : Sujoy Paul

Bench : Division Bench

Judgement

1. This Misc.Appeal filed under section 341(1) of the Cr.P.C,1973 is directed against the order dated 30.8.1999 passed by IInd A.D.J, Burhanpur in Civil Suit No.18-A/99.

2. In short, the relevant facts are that the plaintiff/ respondent filed a civil suit against father of present appellant for specific performance of contract. During the pendency of the suit, Shri Hiralal Pandey expired and his legal representatives were brought on record. During the course of proceedings, the appellant entered the witness-box and deposed his statement on 13.7.1999 (Annexure A-1). The court below delivered the judgment and in para-13 of it opined that the appellant had made a false statement and, therefore, it was ordered to register a complaint for his prosecution for an offence under section 193 of the IPC.

3. Aggrieved, the appellant filed this appeal by contending that the impugned order is not in consonance with the requirement of section 340 of the Cr.P.C. The learned court below nowhere expressed its opinion that the ingredients of section 195 Cr.P.C were attracted nor expressed the view that it is expedient in the interest of justice to hold such inquiry or take any such action. The bone of

contention of Shri Hussain is that in absence of satisfying the aforesaid requirements, the impugned order is bad in law. Reliance is placed on the judgment of Supreme Court in the case of Mahila Vinod Kumari Vs. State of M.P.- (2008) 8 SCC 34 and recent order of this court in Cr.A.No.2109/2014 decided on 02.09.2016 (Ramouti Bai Vs. State of M.P. and another).

4. Nobody appeared for the respondent despite service of notice.

5. I have heard learned counsel for the appellant at length and perused the record.

6. In para-13 of the judgment, the court below opined that the appellant herein had taken a diametrically opposite stand in his deposition. His statement is absolutely false and it was made in order to mislead the court. In this view of the matter and in the interest of justice, the court below opined that it is necessary to invoke section 340 of Cr.P.C.

7. The core issue is whether necessary ingredients for invoking the power under section 340 Cr.P.C were satisfied and whether the court below has exercised its powers in accordance with law.

8. This Court in Ramouti Bai (supra) considered this aspect in extenso. After considering the judgment of Supreme Court in Mahilal Vinod Kumar Vs. State of M.P.-AIR 2008 SC-2965 and Mohammad Ibrahim Vs. B.Rama Rao- AIR 1976 SC 1822, this court opined that two principles can be culled out with regard to invocation of power under section 340 Cr.P.C. These are; (a) The power under section 340 Cr.P.C may be exercised by the court either upon an application made to it in this behalf or suo motu , (b) The court must form an opinion that any offence referred to in clause (b) of sub section (1) of section 195 IPC 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, (c) The court must also form an opinion that it is expedient in the interest of justice that an inquiry should be made in such offence, (d) For the purpose of forming aforesaid opinion, the court may hold a preliminary inquiry, though holding such preliminary inquiry is not mandatory and; (e) Where the court is of the opinion that an offence in clause (b) of sub-section (1) of section 195 has been committed and it is expedient in the interest of justice that an inquiry should be made into such offence, it shall record finding to that effect before making a complaint in writing and sending it to Magistrate of First Class having jurisdiction.

9. If the impugned judgment is tested on the anvil of said test, it will be clear that the court below has not given any finding that section 195 Cr.PC was attracted in the present case. The court below has also not given any finding that it is expedient in the interest of justice that an inquiry should be made regarding such offence.

10. In view of the aforesaid legal flaw in the impugned judgment (para-13), the

said para 13 and consequential order dated 30.8.1999 cannot be permitted to stand. Resultantly, the present appeal succeeds. Para-13 of the impugned judgment and the consequential order dated 30.8.1996 so far as it directs prosecution of the appellant for an offence under section 193 are quashed.

11. Appeal is allowed.