

A brief note on Section-340 CrPC: by Rakesh Kumar Singh

We are required to note that the proceedings under the Section-340 CrPC are not meant for individualistic vendetta. It is for the court to decide as to whether the circumstances require any action or not even in cases where fault has been brought to the notice of court. Expression “*court is of opinion that it is expedient in the interests of justice*” appearing in Section-340 CrPC clearly indicates to the obvious.

Statutory backing:

Hon'ble High Court of Delhi has given statutory recognition to the above concept by framing a rule in this respect which was published vide **Notification No.-127/Rules/DHC dated 14.03.2011**. As such, we have to follow the rule as the same is binding.

When to invoke the power:

Hon'ble High Court of Delhi in **Sanjeev Kumar Mittal vs State** dated 18.11.2010 has clarified the position by observing as under:

“The gravity of the offence, the substantiality of the offenders, the calculated manner in which the offence appears to have been committed and pernicious influence such conduct will have in the working of the Courts and the very faith of the common man in Courts and the system of the administration of justice, all have been reckoned in arriving at a conclusion that action under Section 340 is fully justified.”

Even False averments in pleadings are sufficient to attract Chapter XI of the Indian Penal Code even if the person has not appeared in the witness box (vide **Sanjeev Kumar Mittal vs State** dated 18.11.2010).

However, a mere contradictory statement given by a witness in the court proceeding cannot be sufficient to invoke the powers so conferred on the court (Supreme Court in **Amarsang Nathaji As Himself vs Hardik Harshadbhai Patel** dated 23.11.2016).

Necessity of inquiry:

Section-340 CrPC provides for an inquiry to be made before any complaint thereunder is filed by the court. The court will normally hold such inquiry but the section nowhere says that it is of a mandatory character. If the court is otherwise able to form an opinion about the necessity, it can certainly dispense with the inquiry (Supreme Court in **Amarsang Nathaji As Himself vs Hardik Harshadbhai Patel** dated 23.11.2016).

Exact bar for cognizance:

Constitution Bench of Hon'ble Supreme Court in **Iqbal Singh Marwah vs Meenakshi Marwah** (2005) 4 SCC 370, clarified that the bar of Section-195 CrPC would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court. It is therefore clear that if an offence of forgery has already been committed in respect of a document and there after the said document is produced before the Court, Section-195 CrPC would not bar an independent prosecution and as such, there will be no need to consider the matter u/s-340 CrPC.

In terms of the judgment of Hon'ble Supreme Court in **CBI vs M. Shivamani** dated 01.08.2017, if High Court directs for investigation and charge-sheet is filed, bar of Section-195 CrPC will not be attracted even if the offence pertains to any of the provisions relatable thereto as the High Court would not be out of administrative superiority of the public servant against whom the offence was committed.

Opposite party's right to be heard:

Hon'ble Supreme Court in **Prithish v. State of Maharashtra**, (2002) 1 SCC 253 has clarified that there is no necessity to issue notice to and hear the person against whom prosecution is sought to be launched.

Police Investigation:

Concept of "preliminary inquiry" envisaged under Section-340 CrPC includes in its fold a power given to the court to order investigation by the state agency. (vide **Sanjeev Kumar Mittal vs State** dated 18.11.2010). However, in **Neeraj Sharma vs State** dated 06.04.2009 Hon'ble High

Court of Delhi held that FIR could not be directed to be registered while exercising powers under Section-340 CrPC.

Appellate Authority:

In terms of Section-341/195(4) CrPC, appeal from any order passed under Section-340 either declining to direct or directing any action will lie before the superior court to which an appeal **ordinarily** lies against order passed by such court of first instance. The expression “ordinarily” gains significance. Therefore, if any special arrangement has been made for hearing regular appeal by any specified authority, the said specified authority will not be treated as entitled to hear the appeal u/s-341 CrPC.

Correct stage of consideration:

On 02.09.2014 in **Vishal Kapoor vs Sonal Kapoor**, Division Bench of Hon'ble High Court of Delhi has held that application under Section-340 CrPC should normally be decided at the final stage of the main case.

Nature of proceedings on filing of complaint:

In view of Section-343 CrPC, procedure for trial upon a complaint should be same as of police report. (Vide **Mohan Lal Jatia vs RG Supreme Court of India** dated 12.08.2010 decided by Hon'ble High Court of Delhi). This position has been clarified recently by the Hon'ble Supreme Court itself in **Amarsang Nathaji As Himself vs Hardik Harshadbhai Patel** dated 23.11.2016 wherein it observed that the process of trial is the same as provided in Section-238-243 CrPC.

Plea Bargaining for such offences:

Though there is no bar in respect of those offences to be dealt with under Chapter-21A related to plea bargaining, it would be desirable if such offences are treated as having been excluded from the said Chapter. The reason apart from the fact that the same will seriously prejudice the administration of justice as the offence itself was committed against the administration of justice, the case falls neither under clause-(a) nor under clause-(b) of Section-265A(1) CrPC. Reason is obvious. No report u/s-173 is forwarded by SHO as required in clause-(a). And no proceeding is conducted u/s-200 as Section-343 overrides Chapter-XV which contains Section-200.

Additional comment:

Incidentally, I have to say that the case of **Mohan Lal Jatia (supra)** is a glaring example. Somewhere in 1986 due to ongoing CBI investigation, the Hon'ble Supreme Court thought it fit to wait for the result before passing any order under Section-340 CrPC and eventually in the year 1994 passed the order and in the same year complaint was lodged. In the year 2000, accused sought quashing of proceeding which was rejected in the year 2004. Again accused challenged certain order in the year 2010 and the petition was dismissed with costs of Rs.1,00,000/-. Till 2010, even charge was not framed. However, in the year 2013 charge was framed and the same was again challenged by the accused but this time High Court asked the accused to deposit Rs.5 lacs as condition for entertaining the petition finding the same as prima facie a misuse of law. This direction was challenged before Hon'ble Supreme Court which was rejected. Then accused instead of depositing Rs.5 lacs withdrew his petition on 09.05.2014 with submission that he wanted to move supreme court through appropriate petition. Interestingly, however, he challenged the said order which recorded the withdrawal but on 20.05.2014 withdrew even the same. However, the accused persons clearly succeeded in their effort to gain time and delay the already delayed matter.

Conclusion:

Though in each and every case, courts should not invoke its power to file complaint for offences committed against administration of justice, the grave and serious cases should not be left and the courts should mandatorily initiate appropriate proceedings and file complaints. The Magisterial courts to whom the complaint is filed must proceed in expeditious manner by taking cognizance and by following the trial procedure available for cases instituted on police report and should try to conclude the trial within a short span of time with a view to restore faith of common people in the judicial administration.
