

7th APRIL, 2021

APPLICATION UNDER SECTION 340 OF THE CODE OF CRIMINAL PROCEDURE:- THE LAW AND ELEMENTS OF THE PROVISION.

Chapter XXVI of The Code of Criminal Procedure, 1963, lists the provisions as to offences affecting the administration of justice.

Section 340 provides for the procedure for offences enumerated under section 195(1)(b). It states that when an offence under section 195(1)(b) is made, the court may, either on an application or otherwise direct a preliminary inquiry to be made if in its opinion it would be required and expedient in the interest of justice.

After such preliminary inquiry is made, the Court may, as it thinks necessary, make orders or take actions to the following effect:

- a. Recording a finding that can be reached to on the basis of the preliminary inquiry;
- b. Making a complaint against such offence in writing;
- c. Sending the complaint to Magistrate of first-class having jurisdiction;
- d. Taking sufficient security for appearance of the accused before such Magistrate or if the alleged offence is non-bailable sending the accused in custody to such Magistrate;
- e. Requiring any person to compulsorily appear and give evidence before such Magistrate.

Sub-section (2) states that the powers conferred on a court under sub-section (1) may be exercised by the court which such former court (referred to in the provision) is subordinate to. Such power may be exercised when the court under sub-section (1) has neither made a complaint under such sub-section nor rejected an application for making of such complaint.

Moideen Rowthen vs. Miyassa Pulavar (1927) 51 Mad 777 held that sub-section (2) shall only be applicable when the subordinate court has neither made a complaint suo motu nor rejected an application by a party for making such complaint.

Sub-section (3) clarifies that any complaint made under this section shall be signed by an officer of the court appointed for such purpose when the

court making the complaint is a High Court and in any other case, by the presiding officer or such officer as may be authorized in writing in this behalf.

Sub-section 4 further clarifies that a court under this section shall have the same meaning as in Section 195.

To understand the position and importance of section 340, it is required to comprehend the provision as laid down in section 195 of the CrPC.

Since section 340 specifically lays down the procedure for cases mentioned under section 195(1)(b), the concerned section is dealt with below:

Section 195(1)(b) of the CrPC states that no court shall take cognizance of:

1. Any offence punishable under sections 193, 194, 195, 196, 199, 200, 211, 228 (false evidence, false statement, false personation and fraudulent removal of or claim over property) of the Indian Penal Code, 1860 (IPC), when the same has been alleged to be committed in or in relation to any proceeding of the Court;
2. Any offence described under section 463 (Forgery), 471 (Using a forged document), 475 and 476 (Counterfeiting device or mark) of the IPC when the offence under such sections is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court;
3. Any criminal conspiracy to commit, attempt to commit or abet any offence specified in sub clause (i) or (ii) above;

except on the complaint in writing by that Court or any officer authorized on the behalf of that court or any court to which the court in the provision is subordinate to.

Section 340 and section 195 must be given a harmonious construction and are meant to be read together. However, section 340 must have no application to the offences laid down under sub-section (a) of section 195(1) as held in *Rit Lal Khatway vs. State of Bihar* 2007 CrLJ 593 (596).

The general rule of law is that any person having knowledge of an offence being committed may



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make a complaint of the same even if such person is not personally affected by the offence and it shall be a valid complaint for the purpose of further action being taken and procedure being followed. However, to ensure that personal vengeance is not made a means for instituting complaints against public servants and courts alleging delay or improper action being taken in administration of justice, section 195 states that courts shall not take cognizance of complaints made by private persons in relation to the offences as laid down in such section except when such complaint has been made/authorized by that court in writing. .

Section 195(1) in essence is an exception to the general rule stated above.

Section 195 lays down the rule for cognizance to be followed by a court in matters of certain offences relating to a proceeding in any court. It states that in such cases, the complaint may only be made through the sanction of a court. However, it does not clarify or enumerate the procedure to be followed by a court for making such complaint. Section 340 comes to aid in such circumstances.

Thus, section 340 read with section 195(1)(b) enumerates that when an offence is alleged to have been committed in relation to a court, the sanction of such court must be obtained and the court may make a complaint under section 340(1)(b) after a preliminary inquiry is conducted at the discretion of the court.

The “offence committed in relation to a court” shall mean the offences mentioned under section 195(1)(b) in relation to any document produced or given in evidence in court during the time when such document or evidence was in the legal custody of the court, thus affecting administration of justice.

After the court ascertains that any of the above offences may have been committed, it may take action as required under section 340 either on an application made under such section or otherwise of justice.

In *Purnachandra Datta vs. Dhalu* (1930) 58 Cal 374 and *Geej Raj vs. State of Rajasthan* 1982 CrLJ 2079 (Raj), it was held that holding a preliminary inquiry under section 340 is optional and rests upon the discretion of the court.

It is not mandatory for a court to direct a preliminary inquiry to be made in all cases before starting prosecution.

In *Iqbal Singh Marwah vs. Minakshi Marwah* (2005) 4 SCC 370, the Supreme Court was of the view that a complaint under section 340 must be made only if required in the interest of justice and such requirement shall be judged not on the injury that may have been caused but the effect of such offence on the administration of justice.

Pritish vs. State of Maharashtra (2002) 1 SCC 253 clarified that the preliminary inquiry is not meant to decide the guilt or innocence of the parties before the court but merely to envisage whether it would be expedient in the interest of justice to institute a complaint against the offences alleged.

The discretion granted to the court under section 340 must be applied with care and caution and the ‘opinion’ regarding direction of preliminary inquiry or making a complaint, must be formed on the basis of the facts of the case.