



2026:AHC:51669

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL APPEAL No. - 72 of 2026**

Shiva Kant Dubey

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

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Counsel for Appellant(s)	:	Shiva Kant Dubey
Counsel for Respondent(s)	:	G.A., Sanjiv Kumar Pandey

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**Court No. - 91**

**HON'BLE RAJ BEER SINGH, J.**

1. This appeal has been preferred under Section - 380 Bharatiya Nagarik Suraksha Sanhita (*hereinafter referred to as 'BNSS'*) against order dated 28.10.2025, passed by learned Additional Principal Judge, Family Court No.4, Prayagraj in Criminal Misc. Application No. 71 of 2025 (Shivakant Dubey Vs. Smt. Shikha Dubey (Pandey)), under Section - 379 BNSS, whereby the application filed by appellant under Section - 340 Cr.P.C. / 379 BNSS, has been rejected.

2. This appeal is being decided finally at the stage of admission itself.

3. Heard learned counsel for the appellant, learned counsel for the respondent No.2 and learned A.G.A. for the State.

4. Learned counsel for the appellant submitted that the impugned order is against facts and law and thus liable to be set aside. Appellant is husband of respondent No.2. The respondent No.2 has filed a case under Section - 125 Cr.P.C. and in those proceedings she has mentioned the income of appellant as Rs. 80,000/- per month in the affidavit. She has not filed any evidence to support the alleged income. In fact, the monthly income of appellant is Rs. 11,000/- per month. The respondent No.2 has made false averments in the affidavit. At another place she has mentioned the income

of appellant as Rs. 1,25,000/- per month. It was submitted that as the respondent No.2 has made false statement in the affidavit thus, a case under Section - 211, 213, 222, 232 BNS was made out but the learned Family Court has rejected the application of appellant in an arbitrary manner. Referring to facts of the matter, it was submitted that impugned order is liable to be quashed.

5. Learned counsel for the respondent No.2 has opposed the appeal and submitted that there is no illegality or perversity in the impugned order. It was stated that appellant is an advocate having quite long standing and he has concealed his income from agriculture as well as his rental income. It was submitted that merely because the respondent No.2 has mentioned income of appellant as Rs. 80,000/- per month, it was no ground to initiate proceedings under Section - 340 Cr.P.C.. The income of appellant is to be decided by the Family Court on the basis of evidence of the parties. The appellant is adopting delaying tactics to avoid payment of interim maintenance. The case is pending before the Family Court concerned. It was submitted that there is no illegality or perversity in the impugned order.

6. I have considered rival submissions and perused the record.

7. Before proceeding further, it would be apt to refer the provisions of the section - 340 Cr.P.C., which reads reads as under :-

"340. (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 subsection (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 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 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.

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

8. A perusal of section 340 Cr.P.C. shows that these provisions are applicable in respect of such cases which are covered by section 195(1)(b) Cr.P.C.. Section 195(1)(b) reads as under :-

"195(1) No Court shall take cognizance -

(b)(i) of any offence punishable under any of the following sections 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."

9. The object of Section - 340 Cr.P.C. / 379 BNSS is to provide a safeguard against frivolous and vexatious prosecution. For taking action under section 340 Cr.P.C. / 379 BNSS, the Court has to form an opinion that it is expedient in the interest of justice that an inquiry should be made for an offence referred to in section 195(1)(b) Cr.P.C., which appears to have been committed or in relation to a proceeding in that Court. In case of *Dr S. P. Kohli V The High Court Punjab and Haryana*, reported in AIR 1978 SC 1753, the Hon'ble Apex Court held that prosecution for perjury should be sanctioned by Courts only in those cases where it appears to be deliberate and conscious and the conviction is reasonably probable or likely. It is also well recognized that there must be a prima facie of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge.

10. In **Chajoo Ram v. Radhey Shyam and another** AIR 1971 SC 1367, the court held:

"7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable

foundation for the charge. "

**11. In MANU/PH/0330/1985 [Jaswinder Singh v. Smt. Paramjit Kaur]**

, the Court held:

"4. As is plain from the aforesaid stances adopted by the parties, they are out for personal vendetta. It is a settled principle of law that courts never become tools at the hands of the parties to satisfy private vendetta or to take up cudgels on behalf of one party and punish the other. The primary object to take proceedings under Section 340 of the Code of Criminal Procedure, in instituting a complaint for giving false evidence, is to curb the evil of perjury and to keep the flow of proceedings in courts unsullied and pure. It is only in a rare case, when the Court comes to the conclusion that if the complaint is filed conviction is more or less a certainty, that it chooses to become a complainant. In such like contentious issues, when the wife can again indulge in proving that the husband was wrong and she was right, it is not expedient for this Court to enter into the fact and become a complainant at the behest of the husband-petitioner. Thus, I am of the considered view that it is not expedient to pursue the matter any further at the instance of the parties."

12. It is thus clear that in every inquiry under section 340 CrPC / 379 BNSS, the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section 340 CrPC is conditioned by the words "court is of opinion that it is expedient in the interests of justice". In fact such a course has to be adopted only if the interest of justice requires and not in every case. 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 would be pertinent to mention that the Courts never become tools at the hands of the parties to satisfy private vendetta to take up cudgels on behalf of one party and punish the other.

13. In the instant matter, it appears that the respondent No.2 has filed a

case under Section - 125 Cr.P.C. vide Case No. 201 of 2018 against appellant. In those proceedings, the appellant has filed an application under Section - 379 BNSS, alleging that in the affidavit the respondent No.2 has mentioned income of appellant as Rs. 80,000/- per month but the same is wholly false and in fact the income of appellant is Rs. 11,000/- per month. It may be observed that the income of the appellant is to be decided by the Family Court on the basis of evidence of the parties. The matter is still pending before the Family Court and thus, veracity of the statement made in the affidavit of respondent No.2 is yet to be considered by the Family Court. It is common knowledge that in such proceedings like under Section - 125 Cr.P.C., generally claimant / wife exaggerate the income of her husband in order to claim maintenance but it does not mean that such a statement on the part of wife warrants action under Section - 340 Cr.P.C.. As stated earlier complaint under Section - 340 Cr.P.C. / 379 BNSS for offence mentioned under Section - 195(1)(b) Cr.P.C. has to be made where Court finds such an action expedient in the interest of justice. In the instant matter, considering facts of the matter, it cannot be said that there was any expediency in the interest of justice to make any complaint under Section - 340 Cr.P.C.. The application of the appellant filed under Section - 379 BNSS was rejected by a reasoned order. No material illegality or perversity could be shown in the impugned order. The appeal lacks merit and thus liable to be dismissed.

14. Accordingly, the appeal is hereby **dismissed**.

**(Raj Beer Singh,J.)**

**March 13, 2026**

S Rawat