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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RSA 94/2019 & CM APPL. 31213/2022**

RAKESH KUMAR SHARMA Appellant

Through: Ms.K. Kiran, Adv.

versus

MOTHER DAIRY FRUIT & VEGETABLES PVT LTD

..... Respondent

Through: Mr.Raj Birbal, Sr. Adv. with
Ms. Raavi Birbal, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

19.07.2022

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CM APPL. 31213/2022 in RSA 94/2019

1. This is an application under Section 340 of the Code of Criminal Procedure, 1973 (Cr.P.C.) moved in RSA 94/2019, which is presently pending before this Court.

2. The application, moved by the petitioner, seeks initiation of criminal proceedings against the respondent under Section 340 Cr.PC for committing perjury. According to the averments in the application, the following assertions, contained in ground (iv) in the counter affidavit filed by the respondent in response to RSA 94/2019, are perjurious:

“Further, the provisions of Article 311 of Constitution of India cannot be extended to regulate his condition of service.

Neither the Defendant No.2 nor the defendant No.3 is a statutory body regulated by Act of Parliament or any statutory rules or regulations, the conditions of service of the Appellant were not governed by any statutory terms and conditions, the employment of appellant with the respondent has been purely on contractual in nature and the Appellant did not acquire any status and he cannot seek the relief of declaration. Further, the respondent did not concede that it is a government/State. It is also relevant to mention that the Trial court has held while responding to issue No.3 in the judgment dated 05.12.2011 it has been conceded that defendant no.2 is a State/government. It is submitted that the appointment of the appellant was in Mother Dairy and not be defendant no.2 i.e. National Dairy Development Board. Without prejudice to other submissions it is submitted that a seven Judge Bench of the Apex Court in ***Pradeep Kumar Biswas V. India Institute of Chemical Biology & Others***¹ held that while examining such an issue i.e. whether an establishment is government or not, the court must bear in mind whether in the light of the cumulative facts as established, the body is financially, functionally and administratively, don mated by, or is under the control of the Government. Such control must be particular to the body in question, and must be pervasive.

None of the factors are existing for the respondent in the present case. The above statement has been filed on record in this Hon'ble Court with an affidavit by the Respondent.”

3. Ms. Kiran, learned Counsel for the petitioner, submits that the afore-extracted assertions, contained in the counter affidavit of the respondents, expose them to the rigour of Section 340 Cr.P.C., as they are contrary to the findings entered by a coordinate Bench of this Court in its decision in ***Mother Dairy Fruit & Vegetable Pvt. Ltd. v. Hatim Ali & Anr***².

4. A bare reading of the decision in ***Mother Dairy Fruit &***

¹ (2002) 5 SCC 111

² (2015) 217 DLT 470

Vegetable Pvt. Ltd² reveals that the present application is thoroughly misplaced.

5. The coordinate Bench, in *Mother Dairy Fruit & Vegetable Pvt. Ltd²*, was concerned with whether the respondent is a “public authority” within the meaning of Section 2(h) of the Right to Information Act, 2005 (“the RTI Act”), which defines “public authority” thus:

“(h) "public authority" means any authority or body or institution of self-government established or constituted –

- (a) by or under the Constitution;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,

and includes any –

- (i) body owned, controlled or substantially financed;
- (ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government;”

6. The present case, admittedly, does not deal with the RTI Act. The definition of “public authority” as contained in Section 2(h) of the RTI Act has no application or relevance, whatsoever, in the present case, which is in the nature of a service dispute between the petitioner

and the respondent.

7. As such, even if the respondent *were* to have averred, in its counter affidavit, that it was not a “public authority”, that could not have constituted a basis for the petitioner to invoke Section 340 of Cr.P.C., predicated on the judgment of the coordinate Bench of this Court in *Mother Dairy Fruit & Vegetable Pvt. Ltd.*² as that case dealt with the concept of “public authority” under the RTI Act, which is both distinct and distinctive, and which has no application to the present case.

8. Having said that, a reading of the allegedly perjurious passage from the reply of the respondent, filed in response to RSA 94/2019, reveals that the respondent has not, at any point in the said passage, averred whether it is, or is not, a “public authority”. Indeed, the issue of whether the respondent is a “public authority” may not even arise for consideration in the present case, as that is a concept endemic to the RTI Act.

9. As such, it cannot be said that the allegedly perjurious passage from the counter affidavit filed by the respondent in response to the RSA 94/2019 is in any manner perjurious, as would justify recourse to Section 340 Cr.P.C., to initiate action against the respondent thereunder.

10. This application is thoroughly misplaced and is dismissed.

11. This Court has, on earlier occasions, critically commented on the propensity of the civil litigants to invoke Section 340 of the Cr.P.C. in civil matters. Unjustified invocation of Section 340 Cr.P.C. is, *prima facie*, coercive in nature and is intended to intimidate the opposite party by having criminal proceedings dangling over it.

12. As such, this application would invite costs.

13. The application is accordingly dismissed with costs of ₹ 5,000/- to be paid by way of a crossed cheque favouring the “Delhi High Court Staff Welfare Fund”.

14. Costs be deposited within a period of two weeks from today.

C. HARI SHANKAR, J.

JULY 19, 2022

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