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

Reserved on:- 25.02.2019.
Date of Decision:- 28.02.2019.

\+ W.P.(C) 8552/2017

AARUSHI GOYAL ..... Petitioner

Through Mr.Khagesh B.Jha with Ms.Shikha Sharma, Advs.

versus

CENTRAL BOARD OF SECONDARY EDUCATION ..... Respondent

Through None.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

JUDGMENT

REKHA PALLI, J

Review Petition No.432/2018

1. Vide the present petition, the petitioner seeks review of the order dated 09.02.2018 passed in *W.P.(C) No.8552/2017*, whereby this Court while directing the respondent/C.B.S.E. to supply the petitioner with copies of her revaluated answer-sheets in the subjects of Economics and English (Core), had rejected her prayer for a direction to the respondent to carry out a further re-evaluation of her aforesaid answer-sheets.

2. The facts emerging from the record that are necessary for the adjudication of the present petition are that the petitioner, a commerce student had appeared for her Class XII AISSCE examination conducted by the respondent/CBSE in March 2017. Aggrieved by the nature of the evaluation conducted by the respondent, on 13.09.2017, the petitioner had filed a civil writ petition bearing No.8552/2017 before this Court seeking directions to the respondent to re-evaluate her answer books in Economics

and English (Core) in a proper manner and to provide her with a copy of the said answer books after re-evaluation.

3. After hearing the learned counsel for the parties at length, this Court, on 09.02.2018, passed an order directing the respondent to provide the petitioner with a photocopy of her re-evaluated answer-sheets. However, with respect to the petitioner's prayer seeking a direction to the respondent to re-evaluate the answer-sheet in a proper manner, this Court had held the same to be misconceived in light of the fact that her answer-sheets had already been revaluated by academic experts and no ground was made out for any interference with the results thereof.

4. Being aggrieved by the order dated 09.02.2018 passed by this Court, the petitioner preferred an appeal being *LPA No. 253/2018*, which was disposed of vide order dated 07.05.2018, wherein the Division Bench after noticing that the petitioner's grievance was entirely factual and involved a re-appreciation of the factual material placed on record before this Court, permitted the petitioner to withdraw her appeal with liberty to approach this Bench with a review petition on the question of the correct totalling of the re-valued marks.

5. Pursuant to the order dated 07.05.2018, the petitioner who has been admittedly given copies of her re-evaluated answer sheets, has now filed the present petition seeking review of the order dated 09.02.2018 passed by this Court, challenging the overall accuracy and veracity of the re-evaluation conducted by the respondent.

6. Learned counsel for the petitioner submits that while the petitioner's marks were increased after the re-evaluation conducted pursuant to the orders of this Court, the said re-evaluation has not been effectuated

properly. He states that the re-evaluation lacks proper appreciation of the petitioner's answers based on merit and amounts to a mere replacement of marks. Learned counsel for the petitioner further submits that, contrary to the claims of the respondent and the observations of this court recorded in the order dated 09.02.2018, no subject experts were involved in the re-evaluating the answer books of the petitioner. In support of his contentions, the petitioner has in a tabular form explained her grievances regarding the results of the re-evaluation. For the sake of convenience, the aforesaid chart has been produced hereinbelow:

Q.No.	*Maximum Marks*	*Marks awarded after evaluation*	*Marks awarded after re-evaluation*	*Remarks*
Q-8	*3 marks*	*0*	*3*	*Satisfactory reevaluation*
Q-11	*4 marks*	*3*	*4*	*Satisfactory reevaluation*
Q-14	*6 marks*	*5*	*5*	*Satisfactory reevaluation*
Q-24	*4 marks*	*3*	*3*	*Satisfactory reevaluation*
Q-25	*4 marks*	*3*	*3*	*Satisfactory reevaluation*
Q-26	*4 marks*	*2*	*1*	*The answer was attempted partially at the last page and the answer and the formula are absolutely correct and same (200) as specified in the marking scheme. The petitioner is entitled for complete 4 marks.*

Q-28 (a,b,c)	*6 marks (2 marks for each part)*	*2*	*4*	*2 marks was allotted by the first examiner to part c, whereas the second examiner crossed part c whereas corrected part a & b and awarded 4 marks for the same, though the answer of all the three parts are exactly as per the marking scheme of CBSE. The petitioner is entitled for complete 6 marks.*

7. I have heard the learned counsel for the petitioner at length and perused the record. A bare perusal of the chart hereinabove in itself shows that the petitioner, after having obtained copies of the revaluated answer-sheets, is now aggrieved by the manner in which the revaluation has been done and has not at all raised the plea of a toalling error as had been contended by him before the Division Bench. Thus the grievance now raised before this Court is not regarding the totalling of marks, but regarding the manner of re-evaluation which, in my considered opinion, cannot be a ground for reviewing the order dated 09.02.2018. This Court had, while rejecting the petitioner's claim for a further re-evaluation, merely observed that a thorough re-evaluation had already been carried out by the respondent and had not at all examined the merits of the revaluation after opining that it did not have the requisite expertise to re-evaluate students' answer-sheets. In these circumstances, once this Court had not

examined the merits of the re-evaluation, the plea of alleged deficiencies regarding the manner of revaluation having come to the petitioner's knowledge after seeing her revaluated answer-sheets, cannot at all be a reason to review the order dated 09.02.2018 passed by this Court. The grounds taken by the petitioner do not at all fall within the scope of a review petition.

8. For the aforesaid reasons, the review petition being meritless, is dismissed.

CRL.M.A. 50734/2018 (u/s 340 (1) CrPC)

1. Vide the present application, which has been filed after the disposal of the writ petition, the petitioner seeks institution of proceedings under Section 340(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') against the respondent/CBSE, primarily on the ground that the respondent made false and misleading statements before this Court in its counter affidavit to the petitioner's writ petition, thereby committing an offence under Section 191 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC').

2. As noted hereinabove, the petitioner is a student who had appeared in the Class XII AISSCE examination conducted by the respondent/CBSE in March 2017. Being aggrieved by the evaluation of her answer-sheets in two subjects, i.e., English (Core) and Economics, she had approached this Court by way of the aforesaid writ petition, seeking directions to the respondent to properly re-evaluate her answer-sheets in said subjects and to provide her with a copy of her re-evaluated answer-sheets. In its counter affidavit to the petitioner's writ petition filed on 17.10.2017, the respondent

had relied on its re-evaluation policy to oppose the petitioner's prayer for supply of photocopies, by stating as under:

> *"i. Revaluation is done by the examiner, other than the original examiner who had examined the answer script earlier, by blocking the marks assigned by the original examiner.*
> *ii. The examiner, who revaluated the answer script, does not write marks on the original answer script but awards marks separately on an "award sheet". Hence, the marks given by the said examiner is not reflected on the answer scripts."*

3. This Court, however, did not find merit in the respondent's contention and consequently, vide its order dated 09.02.2018, directed it to provide the petitioner with copies of her revaluated answer-sheets. In compliance of the directions issued by this Court, the petitioner was provided with copies of her re-evaluated answer sheets in English (Core) and Economics, whereafter she has filed the present application seeking initiation of proceedings under Section 340(1) of the CrPC against the respondent as also a review petition in respect of the order dated 09.02.2018 passed by this Court.

4. The case as set out by the petitioner in the present application is that she discovered new and additional notations on the copies of her re-evaluated answer sheets, other than those which were there in the originally evaluated answer-sheets. Mr. Jha, learned counsel for the petitioner submits that a bare perusal of the re-evaluated answer-sheets shows that contrary to what was stated by the respondent in its counter affidavit filed before this Court, the marks allocated to the petitioner in the re-evaluation process, were noted directly on the same answer-sheet and not in a separate award-sheet. This, according to Mr. Jha, shows that the respondent's sworn

averment that its evaluation policy strictly directs an examiner to note the re-evaluated marks obtained by an examinee on a separate award-sheet instead of the same answer-sheet, is a deliberately false and misleading statement. It is on this ground that he prays that appropriate action be taken against the respondent under Section 340(1) of the CrPC for intentionally making false statements before this Court and committing an offence under Section 191 of the IPC. Mr Jha further submits that this is a fit case for ordering a preliminary enquiry into the false statements made by the respondent, so as to enable this Court to ascertain whether action under Section 340 of the CrPC is warranted against the respondent.

5. Before I deal with the submissions of the learned counsel for the petitioner, it would be appropriate to refer to a recent decision of the Supreme Court in ***Amarsang Nathaji v. Hardik Harshadbhai Patel & Ors [(2017) 1 SCC 113]***, wherein while considering the scope of an application made under Section 340 of the CrPC, the Apex Court observed as under:-

> *"6. The mere fact that a person has made a contradictory statement in a judicial proceeding is not by itself always sufficient to justify a prosecution under Sections 199 and 200 of the Indian Penal Code (45 of 1860) (hereinafter referred to as "the IPC"); but it must be shown that the defendant has intentionally given a false statement at any stage of the judicial proceedings or fabricated false evidence for the purpose of using the same at any stage of the judicial proceedings. Even after the above position has emerged also, still the court has to form an opinion that it is expedient in the interests of justice to initiate an inquiry into the offences of false evidence and offences against public justice and more specifically referred in Section 340(1) of the CrPC, having regard to the overall factual matrix as well as the probable consequences of such a prosecution. (See K.T.M.S. Mohd. and Another v. Union of India[1]). The court must be*

satisfied that such an inquiry is required in the interests of justice and appropriate in the facts of the case.

7. In the process of formation of opinion by the court that it is expedient in the interests of justice that an inquiry should be made into, the requirement should only be to have a prima facie satisfaction of the offence which appears to have been committed. It is open to the court to hold a preliminary inquiry though it is not mandatory. In case, the court is otherwise in a position to form such an opinion, that it appears to the court that an offence as referred to under Section 340 of the CrPC has been committed, the court may dispense with the preliminary inquiry. Even after forming an opinion as to the offence which appears to have been committed also, it is not mandatory that a complaint should be filed as a matter of course. [See Pritish v. State of Maharashtra and Others [(2002) 1 SCC 253]].

8. In Iqbal Singh Marwah and Another v. Meenakshi Marwah and another, a Constitution Bench of this Court has gone into the scope of Section 340 of the CrPC. Para 23 deals with the relevant consideration:

> *"23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). 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 is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint."

9. Having heard the learned counsel appearing on both sides and having gone through the impugned order and also having regard to the subsequent development whereby the parties have decided to amicably settle some of the disputes, we are of the view that the matter needs fresh consideration. We are also constrained to form such an opinion since it is fairly clear on a reading of the order that the court has not followed all the requirements under Section 340 of the CrPC as settled by this Court in the decisions referred to above regarding the formation of the opinion on the expediency to initiate an inquiry into any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of the IPC, when such an offence is alleged to have been committed in relation to any proceedings before the court. On forming such an opinion in respect of such an offence which appears to have been committed, the court has to take a further decision as to whether any complaint should be made or not.

10. No doubt, such an opinion can be formed even without conducting a preliminary inquiry, if the formation of opinion is

otherwise possible. And even after forming the opinion also, the court has to take a decision as to whether it is required, in the facts and circumstances of the case, to file the complaint. Only if the decision is in the affirmative, the court needs to make a complaint in writing and the complaint thus made in writing is then to be sent to a Magistrate of competent jurisdiction."

6. The above decision reiterates the well settled principle that action under Section 340 of the CrPC ought not to be taken just at the asking of an applicant and merely because some contradictory/false statement is found to have been made by a party. In fact, action under Section 340 of the CrPC should be initiated only if the court finds it expedient in the interest of justice to do so and any decision in this regard may, if the court feels necessary, be preceded by a preliminary enquiry. Whether the court finds it expedient or not, will depend on the totality of the circumstances of each case and, in fact, even if a false statement is found to be made, before ordering an enquiry or forwarding a complaint in that regard, the court has to examine if the same has caused any injury to the opposite party or has in any manner hampered with the administration of justice.

7. In the light of the aforesaid parameters, I may now examine the facts of the present case. The petitioner in her writ petition had sought a direction to the respondent to provide her with copies of her re-evaluated answer-sheets, which prayer was allowed by this Court vide its order dated 09.02.2018, despite the respondent's vehment objection on the ground that supplying copies of re-evaluated answer-sheets was contrary to their policy. The answer-sheets have indeed been supplied to the petitioner in compliance of the directions of this

Court, from which it appears that the petitioner learnt that there were some markings by the examiner who had re-evaluated the answer-sheets. The petitioner's entire case for instituting proceedings under Section 340 of the CrPC against the respondent, rests on an affidavit dated 17.10.2017 filed by the respondent categorically averring that that no notations are made on the answer-sheets at the time of re-evaluation. This statement of the respondent is admittedly contradicted when one peruses the petitioner's re-evaluated answer-sheets, which contain distinct markings within its body instead of on a separate award-sheet. The fact, however, remains that the petitioner's answer-sheets have been duly re-evaluated and were duly handed over to her in compliance with the directions of this Court and therefore, merely because the markings by the examiner were found to be on the answer-sheet itserlf which was not in consonance with the averments in the respondent's counter-affidavit, it cannot be said that any prejudice has been caused to the petitioner or the administration of justice has been hampered. Therefore, while taking judicial notice of the fact that the petitioner's re-evaluated marks have also been recorded in the answer-sheet itself and not merely on the separate award-sheet, as contended by the respondent in its counter-affidavit, I find that the allegedly wrong statement of the respondent in its counter-affidavit did not in any manner effect the decision of this Court in rejecting the petitioner's prayer for further re-evaluation. In the facts of the present case, once there is nothing to show that the alleged action of the respondent has in any manner interfered with the administration of justice, and therefore, it would not at all be

expedient to institute proceedings under Section 340(1) of the CrPC against the respondent.

8. For the aforementioned reasons, the application being meritless is dismissed.

(REKHA PALLI)
JUDGE

FEBRUARY 28, 2019
sr/r