

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

2026:PHHC:122064



CRA-S-422-SB-2018 (O&M)

Ajit Rai and others
...Appellants

Versus

State of Haryana
...Respondent

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	25.08.2026
2	The date when the judgment is pronounced	01.09.2026
3	The date when the judgment is uploaded on the website	02.09.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R. S. Cheema, Senior Advocate with
Ms. Tanu Bedi, Advocate,
Mr. Satish Sharma, Advocate,
Mr. Prince Bharol, Advocate and
Ms. Vibhuti Manchanda, Advocate
for appellants No. 1 to 7.

Appellant No. 8 has died.

Mr. Ashok Kumar Khubbar, Addl. A.G., Haryana.

MANISHA BATRA, J.

1. The present appeal has been filed by the appellants against the order dated 12.09.2017, passed by the Court of learned Sessions Judge, Kaithal in connection with case arising out of FIR No.31 dated 28.03.2015, registered under Section 307 IPC and Section 25 of the Arms Act, 1959 at Police Station Dhand, District Kaithal, whereby direction was given to treat

the said order as a complaint filed under Section 340 Cr.P.C. with a further direction to proceed against the appellants for commission of offences punishable under Sections 166, 167, 195, 196, 211, 220, 346, 465 and 471 IPC. The appellants are police officials who were posted at different places in the State of Haryana.

2. The facts giving rise to the present appeal are that an FIR bearing No.31 dated 28.03.2015 was registered at Police Station Dhand, District Kaithal, under Section 307 IPC and Section 25 of the Arms Act. The FIR was registered on the statement of Dei Ram in relation to a firing incident which had taken place at a marriage function in village Ahun on 27.03.2015. During investigation, the police collected material from the place of occurrence and recorded statements of the witnesses. The investigation was thereafter transferred to CIA Staff-I, Kaithal on 29.03.2015. According to the police version, on 31.03.2015 accused Shivam alias Saurabh and Gaurav alias Sonu were produced before the police by Tej Pal, former Sarpanch of the village. They were arrested and brought to Police Station Dhand. DDR No.35 dated 31.03.2015 at 7:30 p.m. was recorded and thereafter both were taken to CIA Staff, Kaithal for further interrogation.

3. In the meantime, a habeas corpus petition, being Criminal Writ Petition No.511 of 2015, was filed before this Court on 31.03.2015 seeking release of Gaurav. A Warrant Officer was appointed by this Court to visit CIA Staff, Kaithal and locate the alleged detainee. The Warrant Officer reached CIA Staff, Kaithal at about 9:30 p.m. on 31.03.2015. He found the two accused inside the CIA premises. The report records that there was no entry in the Roznamcha regarding their presence there. The Warrant Officer

consequently got the two persons released from the CIA Staff. The said writ petition was ultimately disposed of by this Court as having become infructuous. The criminal case, however, proceeded before the learned Sessions Judge, Kaithal. During the trial, the prosecution witnesses did not support the prosecution case in material particulars. The complainant and the injured witnesses did not identify the accused as the persons who had caused the injuries. The learned Sessions Judge, therefore, acquitted the accused vide judgment dated 22.04.2016. However, while acquitting the accused, the learned Sessions Judge noticed serious discrepancies regarding their arrest and custody. It was noticed that the arrest memos were available as part of the police report but no corresponding entry regarding their arrest was found in the Daily Diary Register of CIA Staff, Kaithal. The learned Judge also noticed that the accused had allegedly been arrested on 31.03.2015, taken to CIA Staff on the same day and yet were found there by the Warrant Officer without the relevant entry in the Roznamcha. The learned Sessions Judge accordingly directed that a preliminary inquiry under Section 340 Cr.P.C. be conducted to examine whether the FIR produced in evidence was ante-dated, whether the accused had actually been formally arrested on 31.03.2015 and whether, after their formal arrest, they had been lawfully taken from Police Station Dhand to CIA Staff, Kaithal. The police file, relevant Daily Diary Registers, arrest memos, statements of police witnesses and the report of the Warrant Officer were directed to be summoned for the purpose of the inquiry.

4. The proceedings under Section 340 Cr.P.C. thereafter continued before the learned Sessions Judge. The record was summoned and the matter was repeatedly adjourned for arguments. The report of the Warrant Officer and

the relevant police records were considered. The learned Public Prosecutor was also heard. Upon consideration of the material, the learned Sessions Judge, vide order dated 12.09.2017, recorded that the Daily Diary entry at Police Station Dhand showed the alleged arrest of the accused on 31.03.2015, whereas there was no corresponding entry regarding their presence at CIA Staff, Kaithal. The learned Judge noticed the evidence of the police witnesses, the report of the Warrant Officer and the police records and observed that the material disclosed a prima facie case of preparation and production of false or forged documents before the Court. The learned Sessions Judge further noticed that the case had already been transferred to CIA Staff on 29.03.2015, but DDR No.35 dated 31.03.2015 was subsequently recorded at Police Station Dhand regarding the arrest of the accused and their proposed movement to CIA Staff. The learned Judge considered these circumstances suspicious and recorded that there seemed to be a case of fabrication of evidence intending thereby to cause the accused to be convicted under Sections 307 and 324 of IPC read with Section 25 of the Arms Act and that there appeared to be a prima facie case for offences under Sections 166, 167, 195, 196, 211, 220, 346, 465 and 471 IPC and also Section 120-B IPC. The order dated 12.09.2017 was directed to be treated as a complaint and was forwarded to the learned Chief Judicial Magistrate, Kaithal.

5. Aggrieved against the aforesaid action, the appellants initially approached this Court by filing a petition bearing **CRM-M-43146-2018**. The said petition was dismissed as withdrawn with liberty to the appellants to avail the remedy under Section 341 Cr.P.C. The present appeal has thereafter been filed.

6. It is argued by learned Senior Counsel for the appellants the impugned order dated 12.09.2017, which itself is ordered to be treated as a complaint, is not at all sustainable in the eyes of law and is liable to be set aside as while passing this order, the learned Sessions Judge proceeded against the appellants under Section 340 Cr.P.C. without recording any necessary satisfaction that it was expedient in the interest of justice to prosecute them. Learned counsel referred to the judgment of acquittal dated 22.04.2016 and argued that the prosecution witnesses had themselves not supported the prosecution case. The complainant and the injured witnesses had not identified the accused and had stated before the Court that the accused had not fired at them. It is also argued that the learned Sessions Judge, instead of examining why the witnesses had resiled from their earlier statements, proceeded on the assumption that the police had fabricated the evidence. The Roznamcha of CIA Staff could not lead to a conclusion that the FIR was ante-dated or that the arrest memos were fabricated. There was a specific DDR No.35 dated 31.03.2015 recorded at Police Station Dhand showing the arrest of the accused. The police had consistently maintained that the accused were arrested according to law and were thereafter taken to CIA Staff for investigation.

7. It is further argued that this Court, while disposing of the aforementioned habeas corpus petition, had not taken any action against the appellants and had merely disposed of the petition as having become infructuous. The report of the Warrant Officer, therefore, could not by itself constitute sufficient material for initiating proceedings against the appellants under Section 340 Cr.P.C. It is lastly argued that the preliminary inquiry

ordered on 22.04.2016 was confined to three questions, i.e., whether the FIR was ante-dated, whether the accused were formally arrested on 31.03.2015 and whether they were lawfully taken from Police Station Dhand to CIA Staff. However, the learned Sessions Judge, while passing the order dated 12.09.2017, did not properly answer these three questions and instead relied mainly upon the report of the Warrant Officer. With these broad submissions, it is urged that the appeal deserves to be accepted and the impugned order dated 12.09.2017 along with proceeding initiated under Section 340 Cr.P.C. including all the subsequent proceedings are liable to be quashed. To fortify his arguments, learned Senior Counsel has relied upon *M.S. Sherief v. State of Madras*, AIR 1954 SC 397; *K. Karunakaran v. T.V. Eachara Warriar*, AIR 1978 SC 290; *Pritish v. State of Maharashtra & Ors.*, (2002) 1 SCC 253; *Chajoo Ram v. Radhey Shyam*, AIR 1971 SC 1367; *Dr. S.P. Kohli v. High Court Punjab and Haryana*, AIR 1978 SC 1753; *Hargobind & Ors. v. State of Haryana*, AIR 1979 SC 1760 and *Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr.*, (2005) 4 SCC 370.

8. On the other hand, learned State counsel, while relying upon the status report, has submitted that the circumstances emanating from the record did not make out any case of fabrication of evidence on the part of the appellants since the accused were acquitted on account of material witnesses having been turned hostile.

9. Having heard the arguments advanced by learned counsel for the parties at length and on going through the material placed on record, this Court is of the considered opinion that the first and foremost question, which is required to be considered, is as to whether on the material available before

the learned Sessions Judge, the requirement for invoking the provisions of Section 340 Cr.P.C. were satisfied and secondly; as to whether the order dated 12.09.2017, passed by the learned Sessions Judge, could itself be ordered to be treated as complaint and thirdly; if the same itself could be treated as complaint, as to whether such complaint could be legally made against the appellants. Before advertng to the facts of the case, it would be appropriate to consider the provisions of Sections 195 and 340 of Cr.P.C., which are relevant for the purpose and are reproduced below:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(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 authorize in writing in this behalf, or of some other Court to which that Court is subordinate.]

340. Procedure in cases mentioned in section 195.—(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of Justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (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 or by such officer of the Court as the Court may authorise in writing in this behalf.

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

10. Section 195(1) Cr.P.C. creates a restriction upon the Court taking cognizance of certain specified offences except upon a complaint in writing of the concerned Court or of a Court to which that Court is subordinate. Section 340 Cr.P.C. provides the procedure by which such a complaint may be made

by the Court. Thus, Section 340 is not an independent provision enabling a Court to direct prosecution for every offence which, in its opinion, may have been committed in connection with a judicial proceeding. The offence must first fall within the category referred to in Section 195(1)(b) Cr.P.C. and the Court must further form the opinion that **it is expedient in the interests of justice to make a complaint.**

11. The Constitution Bench of the Hon'ble Supreme Court in *Iqbal Singh Marwah's case (supra)*, while examining the scope of Sections 195 and 340 Cr.P.C., has explained that Section 195 is an exception to the general power of a Magistrate to take cognizance of an offence and that the procedure for making a complaint by the Court is contained in Section 340 Cr.P.C. The Constitution Bench has further held that the Court is not bound to make a complaint merely because an offence referred to in Section 195(1)(b) appears to have been committed. The provision is conditioned by the requirement that the Court should be of the opinion that it is expedient in the interests of justice to do so. Such expediency has to be judged not merely by the injury caused to an individual but by considering the effect or impact of the alleged offence upon the administration of justice. Similarly, in *Pritish's case (supra)*, the Hon'ble Supreme Court has held that the power under Section 340 Cr.P.C. is not to be exercised merely because the Court notices that an offence appears to have been committed. The Court has to form an opinion that it is expedient in the interest of justice to make a complaint in respect of such offence. The preliminary inquiry, where considered necessary, is only intended to assist the Court in arriving at such opinion and is not meant to determine the guilt of the person against whom proceedings are proposed. Thus, even where some

irregularity or prima facie offence is noticed, the Court must independently consider whether setting the criminal law in motion would serve the interests of justice.

12. Reference can also be made to ***Chajoo Ram's case (supra)***, wherein the Hon'ble Supreme Court has held that prosecution for perjury should be initiated only where the alleged falsehood is deliberate and conscious, there is a prima facie case of deliberate falsehood on a matter of substance and there is a reasonable foundation for the charge. It was cautioned that prosecution should not be launched merely on inconclusive or doubtful material or for an inaccuracy which may be innocent or immaterial. Reliance can also be placed upon ***Dr. S.P. Kohli's case (supra)***, wherein the Hon'ble Supreme Court emphasised that prosecution for perjury should not be launched mechanically and that there should be a reasonable foundation for the proposed charge. Similar observations were made by Hon'ble Supreme Court in ***K. Karunakaran's case (supra)***.

13. Now coming to the facts of the present case, the learned Sessions Judge, while acquitting the accused in the main criminal case vide judgment dated 22.04.2016, primarily proceeded on the ground that the material prosecution witnesses had not supported the prosecution case. The complainant and the injured witnesses did not identify the accused as the persons who had fired upon them. The prosecution was unable to obtain any material from the witnesses during their cross-examination which could establish the involvement of the accused. Thus, the acquittal was not founded upon a finding that the FIR, arrest memos or other police documents had been fabricated. This aspect is important. The learned Sessions Judge did not record

a finding in the judgment of acquittal that the prosecution case had failed because the appellants had fabricated the arrest or custody record. The acquittal was on account of failure of the prosecution evidence to establish the guilt of the accused.

14. It is, therefore, necessary to examine the basis on which proceedings under Section 340 Cr.P.C. were initiated. The order dated 22.04.2016, passed by the learned Sessions Judge, noticed the report of the Warrant Officer and certain discrepancies concerning the arrest and custody of the accused. The learned Sessions Judge directed that an inquiry be made into three following questions:

- (i) whether the FIR produced in evidence was ante-dated;
- (ii) whether the accused were formally arrested on 31.03.2015;
- (iii) whether, after their formal arrest, they were taken from Police Station Dhand to CIA Staff, Kaithal in accordance with law.

The learned Sessions Judge observed at that stage that it was expedient in the interest of justice that an inquiry be made into an offence which appeared to have been committed. The fact that the learned Sessions Judge used the expression “expedient in the interest of justice” in the order dated 22.04.2016, however, cannot conclude the matter. The subsequent proceedings were required to result in a considered opinion, on the material collected during the inquiry, that the statutory requirements for making a complaint under Section 340 Cr.P.C. were satisfied.

15. The material relied upon by the learned Sessions Judge while

passing the order dated 12.09.2017 also, essentially consisted of the report of the Warrant Officer, the absence of a corresponding entry regarding the arrest/presence of the accused in the CIA Roznamcha and the statements of the concerned police officials. The learned Judge noticed that according to the police version the accused had been formally arrested at Police Station Dhand on 31.03.2015 and were thereafter taken to CIA Staff, whereas the Warrant Officer, on reaching CIA Staff at about 9:30 p.m. on the same day, found the two accused there and did not find a corresponding entry in the CIA record. These circumstances may certainly raise a doubt regarding the manner in which the arrest and subsequent custody of the accused were recorded. They may also justify an administrative or departmental examination of the conduct of the concerned police officials. However, the question before this Court is whether such circumstances, by themselves, satisfy the requirements of Section 340 Cr.P.C.? In the considered view of this Court, they do not.

16. The learned Sessions Judge has not identified with sufficient clarity any particular statement made on oath before the Court which was deliberately false, nor has the impugned order identified any particular document which was fabricated in the course of or in relation to the judicial proceeding and thereafter knowingly used for misleading the Court. The order proceeds substantially on the discrepancy in the police record and draws an inference that the documents might have been manipulated to show the arrest of the accused. There is a distinction between a circumstance which creates suspicion regarding the correctness of a police record and the establishment of a prima facie case of deliberate fabrication of evidence for the purpose of misleading a Court. The former may justify further inquiry into the conduct of

the officials and the latter is required before the extraordinary procedure contemplated by Sections 195 and 340 Cr.P.C. is set in motion.

17. The principle laid down in *Chajoo Ram's case (supra)*, wherein the Hon'ble Supreme Court has cautioned that the power to prosecute for perjury should be exercised with care and only where the alleged falsehood is deliberate and conscious and there is a reasonable foundation for the charge, is relevant in this regard. It was also observed in this case that the purpose of Section 340 is not to convert every discrepancy appearing in the evidence or record into a criminal prosecution.

18. There is yet another important aspect. While passing the impugned order, the learned Sessions Judge observed that it appeared to be a case of fabrication of evidence since no entry regarding arrest of the accused was found to be made in the daily diary register of CIA, Kaithal, which suggested that the FIR was ante-dated and the documents produced with challan report were manipulated. On this premise, the learned Sessions Judge further observed that a prima facie case for commission of offences punishable under Sections 166, 167, 195, 196, 211, 220, 346, 465 and 471 IPC was made out. It is relevant to mention at this juncture that Section 195(1)(b)(i) Cr.P.C. covers only offences punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 of IPC, whereas sub-section (b)(ii) of this Section deals with offence described in Section 463 IPC or punishable under section 471, Section 475 or section 476 of IPC, subject to the conditions mentioned therein. As such, the offences punishable under Sections 166, 167, 220 and 346 are obviously not the offences specified in Section 195(1)(b) of Cr.P.C. and are not covered under

the statutory scheme of either Section 195 or Section 340 of Cr.P.C. Likewise, the mere reference to Section 465 IPC does not by itself satisfy Section 195(1)(b)(ii), which refers to an offence described in Section 463 IPC or an offence punishable under Sections 471, 475 or 476 IPC. The learned Sessions Judge has not separately examined this statutory requirement. So far as the provisions of Section 195 and 196 of IPC, are concerned, Section 195 provides punishment for giving or fabricating false evidence, whereas, as per Section 196 IPC, whoever corruptly uses or admits to use as true or genuine evidence, any evidence which he knows to be false or fabricated, is liable for punishment. So far as Section 211 IPC is concerned, it provides punishment for a person who with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding. Offence of forgery punishable under Section 465 IPC pertains to making any false document or false electronic record or part of a document or electronic record with intent to cause damage or injury. However, while passing the impugned order, the learned Sessions Judge did not take into consideration the ingredients of aforementioned offences. The observations made by him in the impugned order do not make out any prima facie case for commission of aforementioned offence against the appellants.

19. The Constitution Bench of Hon'ble Supreme Court in ***Iqbal Singh Marwah's case (supra)*** has explained the scope of Section 195(1)(b)(ii) and held that the provision is attracted where the offence concerning the document is committed after the document has been produced or given in

evidence in Court, that is, while it is in the custody of the Court. The said pronouncement also makes it clear that the underlying object is to protect the purity of the administration of justice and that the Court is not required to make a complaint in every case merely because an offence appears to have been committed. In the present case, the allegation regarding the FIR, arrest memos and police records is essentially that the documents were prepared or manipulated during the investigation and were thereafter placed before the trial Court along with the police report. There is no finding that the alleged fabrication was committed after those documents had been produced in Court. This distinction assumes significance in view of the law laid down in ***Iqbal Singh Marwah's case (supra)***.

20. More importantly, even assuming that the allegations regarding manipulation of the police record are taken at their highest and the same are presumed to be correct for the purposes of the present appeal, the learned Sessions Judge was still required to consider the further statutory requirement i.e. whether it was expedient in the interests of justice to prosecute the appellants? This requirement cannot be treated as a mere formality. In ***Iqbal Singh Marwah's case (supra)***, the Constitution Bench specifically held that the Court has to consider the effect or impact of the alleged offence upon the administration of justice. The fact that an act may cause injury to an individual does not by itself make prosecution under Section 340 expedient.

21. In the present case, the connection between the alleged irregularities in the arrest/custody record and the administration of justice has not been demonstrated in the manner required by law. The accused in the main criminal case were acquitted because the material prosecution witnesses did

not support the prosecution case. There is no finding that the alleged manipulated arrest record or the alleged ante-dating of the FIR was relied upon by the Court for recording the acquittal or that the ultimate adjudication of the criminal case was affected by the alleged acts of the appellants. Moreso, there could not be any question of ante-dating of the FIR which already stood registered as on 29.03.2015 i.e. two days before the accused were detained illegally as alleged and if at all, there was ante-dating of any material, the same was DDR No.35 entered at Police Station Dhand on 31.03.2015, which was not considered at all for the purpose. However, this does not mean that the allegations regarding the conduct of the police officials are to be treated as correct or that such conduct, if ultimately established, would be insignificant. The question is different. Section 340 Cr.P.C. is not intended to punish every wrong or irregular act noticed by a Court. The Court has to be satisfied that the particular offence is one covered by Section 195(1)(b) and that, having regard to its effect upon the administration of justice, it is expedient to set the criminal law in motion. The learned Sessions Judge, therefore, was required to consider whether the alleged irregularity in the arrest and custody record, even if accepted, had such a direct and substantial bearing upon the administration of justice as to make prosecution of the appellants expedient in the interests of justice. The impugned order does not undertake this exercise. The observation in the order dated 22.04.2016 that it was expedient in the interest of justice to conduct an inquiry cannot substitute this consideration. At that stage, the Court was directing a preliminary inquiry into the circumstances. After the inquiry was completed and the complaint was ultimately directed to be made, the Court was required to examine the material collected during that inquiry

and arrive at the requisite satisfaction in accordance with Section 340 Cr.P.C. which has not been done.

22. It is also significant that a preliminary inquiry under Section 340 is not itself a finding of guilt. As held in *Pritish' case (supra)*, the purpose of such inquiry is only to enable the Court to decide whether the matter requires further inquiry by a criminal Court and whether it is expedient in the interests of justice to have such inquiry. In the present case, the learned Sessions Judge appears to have proceeded from the existence of discrepancies to the conclusion that there was fabrication of false evidence, without sufficiently identifying the precise false evidence or document, the manner in which the same constituted an offence covered by Section 195(1)(b) and the reason why prosecution was expedient in the interests of justice. The Court is conscious that police officers are expected to maintain accurate records concerning the arrest and custody of persons. Any deliberate manipulation of such records is a matter which may call for appropriate action in accordance with law. But the existence of a possible irregularity in the police record cannot, by itself, be equated with an offence warranting a complaint under Section 340 Cr.P.C.

23. The principles laid down in the aforecited judgments support and suggest a cautious approach. The Hon'ble Supreme Court has observed that launching prosecution too readily and too frequently on inconclusive or doubtful material defeats the very purpose of the provision. There should be a reasonable foundation for the charge and the alleged falsehood should be deliberate and conscious. The Court is required to look beyond the mere existence of an alleged offence and examine whether prosecution would serve the interests of administration of justice. The provision is discretionary and is

not intended to be invoked as a matter of course. Viewed from the perspective as discussed above, this Court is of the opinion that the impugned order cannot be sustained. The material relied upon by the learned Sessions Judge may have justified the expression of doubt regarding the arrest and custody of the accused and may even have justified further examination of the conduct of the concerned police officials. However, the material did not justify invoking the special procedure under Section 340 Cr.P.C. in the absence of a clear finding satisfying the statutory requirements of Section 195(1)(b) and Section 340 Cr.P.C. So far as the question as to whether order dated 12.09.2017 itself could be directed to be treated as complaint as ordered by the learned Sessions Judge is concerned, as per the provisions of Section 340 Cr.P.C., on being satisfied that it is expedient in the interest of justice to make an inquiry, the Court has to record a finding to that effect and then to make a complaint thereof in writing. The learned Sessions Judge instead of making a complaint in writing had passed the order for treating the impugned order itself as a complaint, which, in the considered opinion of this Court, was not proper procedure to be adopted.

24. Therefore, for the reasons recorded above, this Court finds that the learned Sessions Judge exceeded the permissible scope of Section 340 Cr.P.C. by directing prosecution without adequately satisfying the statutory requirements governing such a complaint. Consequently, the present appeal is allowed. The complaint/order dated 12.09.2017 passed by the learned Sessions Judge, Kaithal, whereby proceedings under Section 340 Cr.P.C. were directed to be initiated against the appellants, is set aside.

25. It is clarified that this Court is not recording any finding that the

allegations regarding the arrest, custody or preparation of police records are false. Nor is this Court expressing any opinion on whether any departmental or other action may otherwise be permissible in accordance with law. The only question being decided is whether the complaint dated 12.09.2017 could be sustained as a complaint under Section 340 Cr.P.C.

26. The pending application(s), if any, stand disposed of accordingly.

01.09.2026

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes