

CRM-M-35655-2014 (O&M)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-35655-2014 (O&M).
Decided on: August 17, 2015.**

Leelu Ram @ Rajinder

.. Petitioner(s)

VERSUS

State of Haryana

.. Respondent(s)

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CORAM: HON'BLE MR.JUSTICE M.M.S.BEDI

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**PRESENT Mr.R.N.Singal, Advocate,
for the petitioner.**

Mr.D.R.Singla, DAG., Haryana.

M.M.S. BEDI, J. (ORAL)

The petitioner has challenged the proceedings under Section 344 Cr.P.C., initiated against him by issuing notice by the Additional Sessions Judge, Gurgaon vide order dated 25.4.2014 and subsequent proceedings i.e., notice of accusation dated 27.5.2014 and order dated 27.5.2014, imposing penalty under Section 344 Cr.P.C.

Brief facts relevant for the decision of present petition are that 4 persons Ravi and others were tried in an FIR No.367 dated 1.9.2013 under Section 395 of the Indian Penal Code registered at Police Station, Pataudi, Gurgaon. The petitioner was one of the prosecution witnesses. When the petitioner appeared as a witness as PW.1, he stated that he does not know anything about the

CRM-M-35655-2014 (O&M)

case, as such, he was declared hostile and was permitted to be cross-examined. In the same manner, other witnesses also turned hostile and did not corroborate their statements made under Section 161 Cr.P.C. As the petitioner did not depose in accordance with his alleged statement under Section 161 Cr.P.C., the trial Court while acquitting the accused observed that the witness has knowingly and intentionally made false statement by taking a somersault over his earlier statement before the police and thus harmed the cause of administration of justice by helping the accused to go scot free. Thus proceedings under Section 344 Cr.P.C., were started against the petitioner.

Learned counsel for the petitioner has contended that notice cannot be issued under Section 344 Cr.P.C. as Court cannot arrive at a conclusion on the basis of statement under Section 161 Cr.P.C. as the said statement is not evidence. It is always open to the Court concerned after giving reasonable opportunity to show cause to exonerate a person whom the notice has been issued. It is further argued that the service of notice of accusation under Section 344 Cr.P.C. And the order imposing penalty upon the petitioner are not sustainable in the eyes of law.

I have heard the learned counsel for the petitioner and gone through the facts and circumstances of the present case.

It appears that the trial Court has formed an opinion that the witness, while appearing in the Court as PW.1, has not stuck

CRM-M-35655-2014 (O&M)

to his statement made to the police by stating that he does not know anything about the case and that the said PW has intentionally and willfully given a false evidence with intention that the said evidence will be used in the trial to help the accused. The trial Court has opted to take action under Section 344 Cr.P.C., with a presumption that the statement given by the petitioner under Section 161 Cr.P.C., was false evidence given by him with an intention that such evidence would be used in the legal proceedings. It is settled principle of law that statements under Section 161 Cr.P.C. are not to be considered as evidence and Section 162 Cr.P.C. prohibits the use of said unsigned statement for any purpose during the course of any enquiry or trial pertaining to any offence except that the said statements can be used for contradicting the witness in the manner provided by Section 145 of the Indian Evidence Act.

As per the scope of Section 344 Cr.P.C. in order to make a person liable for false evidence he should have given a statement on oath regarding the facts on which his statement was based and then denied those facts on oath on subsequent occasion. If both the statements become irreconcilable, there is scope for forming an opinion for initiation of prosecution. Since allegation against the petitioner is that he had not substantiated his earlier statement recorded under Section 161 Cr.P.C., while appearing as PW.1, the pre-condition for initiation of proceedings under Section 344 Cr.P.C., being not satisfied the launching of prosecution under

CRM-M-35655-2014 (O&M)

Section 344 Cr.P.C., against the petitioner is vitiated.

The petition is allowed. Order dated 25.4.2014 passed by the learned Additional Sessions Judge, Gurgaon, initiating proceedings under Section 344 Cr.P.C., against the petitioner and subsequent proceedings i.e., notice of accusation dated 27.5.2014 and order dated 27.5.2014, imposing penalty under Section 344 Cr.P.C., are hereby set aside.

(M.M.S.BEDI)
JUDGE

August 17, 2015.
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