

218

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

CRR No.3372 of 2013

Date of Decision: 12.08.2015

Ranjit Singh Batth

.....Petitioner

Vs

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. P.S. Ahluwalia, Advocate
for the petitioner.

Mr. Varun Sharma, A.A.G., Punjab.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed chargesheet and order framing charge dated 14.08.2013 passed by Chief Judicial Magistrate, Mohali.

[2]. The facts which ultimately led to the institution of complaint are that FIR No.9 dated 22.05.2006 was registered under Section 7/13(ii) of P.C. Act, Police Station Vigilance Bureau, Flying Squade, Mohali against Bawa Singh, Manmohan Singh and Gurvinder Singh. The accused faced trial in the said case. During the trial, petitioner being complainant deposed as PW-1 along with shadow witness- PW-3. Trial Court acquitted the accused.

[3]. Trial Court opted to prosecute petitioner for the offence under Sections 193 and 211 IPC on the ground that petitioner had made false statement Ex.PA to the Investigating Officer in respect of demand of bribe made by the accused. It was held that either the statement made by petitioner to the Police is false or the statement made by him before the Court is false. Therefore, it would be expedient in the interest of justice to prosecute petitioner for the offences under Sections 193 and 211 IPC. The operative prosecution observations made by the trial Court is reproduced hereasunder:-

“However, it is made out that the complainant Ranjit Singh Bath made a false statement Ex.PA to the Investigating Officer regarding demand of bribe by the accused. Thereafter he put his signatures on the memos regarding hand cash, file cover and polythene wash etc. for getting the accused prosecuted in this case. Either the statement made by the complainant to the police Ex.PA is false, or statement made by him before the Court is false. Both the statements are diametrically opposite to each other. Under these circumstances, it would be expedient in the interest of justice to prosecute the complainant under Section 211, 193 of the IPC. There is no necessity of conducting any enquiry under Section 340 Cr.P.C. As already mentioned above, both the versions given by the complainant are so contradictory that both the statements cannot be true. Therefore, a separate complaint against the complainant is being presented before the Court of learned Chief Judicial Magistrate, SAS Nagar Mohali.”

[4]. Thereafter the present criminal complaint came to be filed

through authorised representative of the Court namely Rajiv Sharma. Petitioner was summoned to face trial vide order dated 06.09.2012 for the offences under Sections 193 and 211 IPC. Order of charge was passed and accordingly petitioner was charged for the offences under Sections 193 and 211 IPC.

[5]. Learned counsel for the petitioner has submitted that for proceeding with the charge of perjury, it is imperative that both the statements should have been made on oath. Petitioner is liable for the offence of perjury only in the event if statement Ex.PA was also made on oath. Statement to Police and to the Court are alleged to be contradictory and diametrically opposite to each other. Statement to Police Ex.PA was not made on oath. However statement made before the Court was on oath, therefore, one of the statement being not on oath is not a subjective piece of evidence, which at the best could have been used as a corroborative evidence. In such a situation, offence of perjury is not attracted, rather the Police could have proceeded in terms of Section 182 IPC.

[6]. On the aforesaid principle, learned counsel relied upon **AIR 1973 (SC) 2190, Santokh Singh v. Izhar Hussain and another** to contend that every incorrect and false statement does not make it incumbent upon the Court to order prosecution. Judicial discretion has to be exercised in the light of relevant circumstances which determines question of expediency. It has to be in the larger interest of administration of justice and not on the basis of whims and fancies of private person.

[7]. Learned counsel for the petitioner further cited **1996(2) Crimes 439, (Orissa), T. Bhagi Patra v. State of Orissa** to contend that FIR is not a statement on oath in Court, therefore, prosecution under Section 344 Cr.P.C., is not permissible. Para 8 of the judgement is necessary to be highlighted. The same is reproduced hereasunder:-

*“8. The order of the Magistrate is also not sustainable as the concept of “false evidence” in the instant case is not attracted. The informant was examined as P.W.6 and he denied the execution of the FIR or the Zimanama. He also stated that no goat of his was ever removed from his possession. There is no material on record to show that his evidence was false, inasmuch as, there is no other statement on the oath to have a clear opinion that the witness gave false evidence. **The lodging of an FIR before the police cannot be treated as a statement on oath. It is not a statement in a judicial proceeding. An FIR or a complaint cannot be the basis to arrive at the conclusion that the witness has given false evidence as the same would run contrary to the language used in Section 344 of the Code, comparison between the FIR, or lodging of the FIR, and the statement on oath in Court cannot form the foundation for launching prosecution under Section 344 of the Code. It is requisite, may, essential, that is order to make a person liable for false evidence, he should have made a statement on oath regarding the facts on which his statement was based and then deny those facts on oath on subsequent occasion. The earlier statement regarding a set of facts must be on oath and his subsequent statement also must be on oath. If both the***

*statements become irreconcilable there is scope of forming an opinion for initiation of the prosecution. In this regard, the decision in **Emperor v. Bankatram Lachiram, 1904(1) Criminal Law Journal, 390**, may be profitably quoted:-*

“It is a well-known rule of law, applied by eminent judges to case of perjury arising out of contradictory statements that the Court dealing with them should not convict unless fully satisfied that the statements are from every point of view irreconcilable; and if the contradiction consists in two statements opposed to each other, as to matters of inference or opinion on which a man may take one view at one time and a contrary view at another, there can be no perjury unless he has, on oath, stated facts on which is first statement was based and then denied these facts on oath on a subsequent occasion.

(Emphasis supplied)

Scrutinized by these parameters, it is crystal clear that the FIR not being a piece of evidence on oath in a judicial proceeding, the concept of giving false evidence in terms of Section 344 of the Code is not attracted.”

[8]. Learned counsel further relied upon **2013(2) ALT (Crl.) 113, (Andhra Pradesh) Malayanauru Anantha Anandacharyulu @ Narayanacharyulu v. State of A.P.** wherein **T. Bhagi Patra's case** (supra) was also relied to hold that FIR is not a piece of evidence on oath in a judicial proceedings, therefore, concept of giving false evidence in terms of Section 344 Cr.P.C., is not attracted.

[9]. In **1993(1) RCR (Crl.) 227, Ismail Khan v. State** the Court

observed that the earlier statements and subsequent statements of accused are opposed to each other and could not be re-conciled. If earlier statement was not on oath, then offences of perjury is not made out. In order to constitute offence of perjury both the statements should be on oath.

[10]. On the first ground, learned counsel for the petitioner relied upon **CRR No.895 of 2012, Ajit Singh v. State of Punjab** decided on 01.05.2013 to submit that proceedings under Section 344 Cr.P.C., could not be initiated against petitioner as the statement recorded during investigation was not on oath. Second argument for challenging the impugned order and chargesheet is that procedure of taking cognizance by the Magistrate is applicable if the case was instituted on Police report. The order framing charge would reveal that the same has been passed on the basis of pre-charge evidence and, therefore, apparently the Court has proceeded by treating the case to be based on complaint. In this way mandatory provisions in terms of Section 343(1) Cr.P.C., has been flouted. A case based on Police report has no such stage of pre-charge evidence. There is inherent and fundamental defect in initiation of proceedings from the very inception of framing charge. For ready reference Section 343 Cr.P.C., is also reproduced hereasunder:-

“343. Procedure of Magistrate taking cognizance.

(1) A Magistrate to whom a complaint is made under section 340 or section 341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report.

(2) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage, adjourn the hearing of the case until such appeal is decided.”

[11]. If second ground is tested vis-a-vis requirement of aforesaid provision of law, it would come to fore that the order dated 14.08.2013 passed by Chief Judicial Magistrate, Mohali (Annexure P-2) shows the case involving pre-charge evidence. Offence under Section 211 IPC if read in the context of aforesaid background is also not attracted as the PWs have been disbelieved on merits.

[12]. In view of aforesaid analysis, I conclude and hold that launching of prosecution in terms of Section 344 Cr.P.C., against the petitioner is not justified. Continuation of such proceedings against the petitioner is neither in the interest nor expediency of justice.

[13]. Accordingly, impugned order dated 14.08.2013 passed by Chief Judicial Magistrate, Mohali and chargesheet framing charge against petitioner are hereby quashed.

August 12, 2015
Atik

(RAJ MOHAN SINGH)
JUDGE