

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

**CRM No.M-38698 of 2015 (O&M)
Date of Decision: March 28, 2016**

Manoj Soni and others

.... Petitioners

vs.

State of Punjab and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Sunil Chadha, Senior Advocate with
Mr. Rahul Bhargava, Advocate for the petitioners.

Mr. Navdeep Singh, DAG, Punjab.

- 1. Whether Reporters of Local Newspapers 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?*

Kuldip Singh J.(Oral)

Impugned in the present petition filed under Section 482 Cr.P.C. is the directions contained in judgment dated 30.10.2015 (Annexure P-1) as well as in the short order of an even date i.e. 30.10.2015 (Annexure P-2) passed by learned Addl. Sessions Judge, Fazilka, whereby the FIR has been ordered to be registered against the present petitioners for the offence of perjury, for giving false evidence in the Court.

Brief facts of the case are that one Manoj Saini (petitioner No.1 herein) made a complaint to the police alleging that on 28.07.2014, he was assaulted by accused Surinder Kumar @ Surinderi. In the said assault, Dr. Rakesh Kumar as well as Dr. Saurav were injured with knife blow by the said assailant. Two other

persons were accompanied with the said assailant. According to the complainant, he could identify the said assailant. However, only Surinder Kumar @ Surinderi was challaned. The trial was conducted before the learned Addl. Sessions Judge, Fazilka.

It comes out that during trial, Manoj Soni, complainant as well as two injured, namely Dr. Rakesh Kumar and Dr. Sourav turned hostile and did not support the prosecution case. However, it comes out that the statements of remaining petitioners, namely Dr. Shally Singh W/o Dr. Saurav, Dr. Paramjit Singh, Anju Soni wife of Manoj Soni, Dr. H.K. Wadhwa and Dr. Shagan Lal Bhargav @ Dr. Chhagan Lal Bhargava were recorded under Section 161 Cr.P.C. They were cited as witnesses. During trial they also turned hostile with the result that learned Addl. Sessions Judge, Fazilka acquitted the accused of offence punishable under Section 307, 324 and 354-A IPC. However, at the same time, the following directions were issued in the impugned judgment:

“-- In view of the above discussion as discussed above in detail, since the complainant and the eye witnesses have completely reversed the stand taken by them and the Govt. Machinery has been used unnecessarily on the basis of false allegations levelled by the complainant and the other eye witnesses, while getting their statements recorded under Section 161 Cr.P.C., as such, the complainant and the eye witnesses, who have turned hostile during the trial of the present case needs to be prosecuted for committing the offence of perjury. Statements of the complainant and the

eye witnesses along with their earlier statements recorded under Section 161 Cr.P.C. are ordered to be separated and their photostat copies be sent to the police station concerned for registration of F.I.R. against them, under relevant sections and for starting criminal proceedings against them, under intimation to this court.--”

The petitioners are aggrieved of the said direction contained in the said judgment.

I have heard learned counsel for the parties and have also carefully gone through the case file.

It comes out that as per the judgment, the complainant, two injured and other eye witnesses committed the offence of perjury by giving false evidence before the Court. In this case, only Manoj Soni signed the complaint whereas the statements of other witnesses i.e. petitioner Nos.2 to 8 were recorded under Section 161 Cr.P.C. Now, the question would arise as to whether the learned Addl. Sessions Judge, Fazilka was justified in ordering the registration of the FIR?

The reply is in negative. According to learned Addl. Sessions Judge, Fazilka, the offence of perjury was committed, which is punishable under Section 193 IPC. For this purpose, the procedure is laid down under Section 195 Cr.P.C. and Section 340 Cr.P.C. The aforesaid sections are reproduced as under:

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, 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 section 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 of some other Court to which that Court is subordinate

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall

be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed

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 interest 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 for 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.

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

Section 340 Cr.P.C. makes it clear that for making the complaint as laid down under Section 195 Cr.P.C., the Court has to form opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195 Cr.P.C., 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.

In the present case, no such findings were recorded in the judgment. Further, the preliminary inquiry as required under Section 340 Cr.P.C., was not conducted. It is only after the said preliminary inquiry that the complaint can be made in writing by that Court as provided under Section 195(1) (b) or by such officer of the Court as that Court may authorize in writing in this behalf. Such complaint can also be made by some other Court to which that Court is subordinate.

Learned Addl. Sessions Judge, Fazilka had another option under Section 344 Cr.P.C. to conduct the summary trial for giving false evidence. Section 344 Cr.P.C. is reproduced as under:

"344. Summary procedure for trial for giving false evidence.

(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court

of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or willfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under subsection (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that subsection has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of

the trial shall abide by the results of the appeal or application for revision.”

In this case, no such summary proceedings for trial were conducted. The purpose of inquiry, apparently, is to find out as to whether the accused had committed the offence or not. In case, the complainant makes statement in writing and signed the same, the position is different. In case of statement recorded under Section 161 Cr.P.C., it is not required to be signed. The Court has to come to the findings that such statements were voluntarily made and correctly recorded and not recorded by the police itself without reading over the same to the concerned witness.

In the present case, the names of some of the petitioners are not even recorded in the FIR as witnesses, who are alleged to be present at the spot. Therefore, it would be questionable whether they made any statement to the police as recorded in the challan or not?

It being so, the strange procedure followed by the trial court in ordering the registration of the FIR against the petitioners without taking into consideration the procedure as laid down under Section 340 read with Section 195 Cr.P.C., is patently illegal.

As such, the present petition is allowed. The direction issued by the learned Addl. Sessions Judge, Fazilka in the judgment dated 30.10.2015 for registration of the FIR against the present petitioners is set aside along with consequential proceedings.

March 28, 2016
sarita

(KULDIP SINGH)
JUDGE