

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

CRR No.430 of 2014 (O&M)

Date of decision: September 23, 2016

Paramjit Kaur

.....Petitioner

Versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ashok Bhardwaj, Advocate, for the petitioner.
Mr. Sidakmeet Sandhu, Assistant Advocate General, Punjab.

RAJESH BINDAL, J

The petitioner having been convicted for commission of offence under Section 193 IPC and sentenced to undergo rigorous imprisonment for a period of two months, has filed the present petition impugning the order of the learned court below.

Learned counsel for the petitioner has raised a brief argument that the dispute in which the petitioner had appeared as a witness has already been settled and disposed of. For trial of offence committed under Section 193 IPC, procedure for warrant case had to be followed, whereas in the case in hand, the learned court below merely issued show cause notice to the petitioner and considering her reply, passed the order of conviction under Section 193 IPC and sentenced her. The procedure adopted is contrary to the settled principle of law. In support of his argument, reliance was placed upon judgment of this Court in Jaskaran vs. State of Haryana, 2008 (3) RCR (Criminal) 125.

On the other hand, learned counsel for the respondent while not

disputing the proposition of law, admitted the fact that the accused were acquitted finally, as the matter in dispute was settled between the parties.

Heard learned counsel for the parties and perused the paper book.

In the case in hand, the petitioner was a witness in the case, where her son was a victim. It was alleged that she had changed her statement before the Court. A show cause notice dated 1.11.2013 was served upon her. Her stand was that to end the litigation, a compromise was effected and as a consequence, she made statement before the court.

Learned counsel for the petitioner further claimed that the petitioner is more than 60 years of age. Her son having expired, she is taking care of her grand daughter, as her daughter-in-law has gone back to her parental home.

The learned court below after issuing show cause notice to the petitioner and considering her reply, convicted her for commission of offence under Section 193 IPC and sentenced to undergo rigorous imprisonment for a period of two months.

The issue as to what procedure is to be followed for trial for offence committed under Section 193 IPC was dealt with by this Court in Jaskaran's case (supra), wherein it was opined that the procedure to be followed for offence committed under Section 193 IPC is not summary in nature. Section 193 IPC requires that the concerned person should have been charged after holding enquiry under Section 340 Cr.P.C. For trial of offence under Section 193 IPC, no notice can be issued, only charges could be framed. In case proper procedure is not followed, grave injustice is caused to the party concerned. The conviction was set aside and the matter was not remitted back. Relevant paras thereof are extracted below:-

“3. The approach adopted by the trial Judge in no way can be appreciated. Power to punish under Section 344 Criminal Procedure Code and Section 193 Indian Penal Code are distinct. Separate procedure for trial of both has been specified. Section 344 Criminal Procedure Code call for summary trial, whereas under Section 193 Indian Penal Code offender is to tried as warrant case. Petitioner was to be tried under Section 344 Criminal Procedure Code in summary procedure, Section 193 Indian Penal Code requires that the petitioner should have been charged after holding an inquiry under Section 340 Criminal Procedure Code for trial of offence under Section 193 Indian Penal Code no notice can be issued, only charge could be framed. Section 344 Criminal Procedure Code vests powers in the courts to summarily try and punish the accused. It is for this reason that Section 344 Criminal Procedure Code prescribes sentence also. But in the present case, conviction has been recorded under Section 193 Indian Penal Code read with Section 344 Criminal Procedure Code, which in no way can be sustained. Either learned Special Judge should have convicted the petitioner under Section 344 Criminal Procedure Code and ought not to have invoked Section 193 Indian Penal Code. Once, the Judge opted to try the petitioner for the offence under Section 193 Indian Penal Code, it was incumbent upon him to hold an inquiry under Section 340 Criminal Procedure Code and then to frame a charge and try the offender for a warrant case as minimum sentence prescribed under Section 193 Indian Penal

Code is three years.

4. I am of the considered view that a grave prejudice has been caused to the petitioner as he has not been made to understand whether he has been tried under Section 344 Criminal Procedure Code or under Section 193 Indian Penal Code. As already stated, conjunction of Section 193 Indian Penal Code and Section 344 Criminal Procedure Code was not permissible.”

In the case in hand, only show cause notice was issued to the petitioner and she was convicted under Section 193 IPC without framing any charges or following the procedure as laid down in law.

For the reasons mentioned above, the impugned order of conviction and sentence under Section 193 IPC, is set aside.

Considering the facts of the case in hand, where the petitioner is more than 60 years old lady, her son, in whose case, she had appeared as a witness, has expired and she having the responsibility to take care of her grand daughter, as her daughter-in-law has gone to her parental home, I do not find it appropriate to remit the matter back.

The petition is disposed of accordingly.

(RAJESH BINDAL)
JUDGE

September 23, 2016
sharmila

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No