

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

(Sr.No.258)

CRM-M-21191-2016 (O&M)
Date of Decision:-May 02, 2017

Sukhwinder Singh

.....Petitioner

V/S

Superintendent of Police, Chandigarh

.....Respondent

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present : Mr. P.M. Anand, Advocate, for the petitioner.

Mr. Gautam Dutt, Standing counsel for U.T.

A.B. Chaudhari, J. (Oral)

Rule.

Heard forthwith.

Heard learned counsel for the rival parties.

The petitioner, a witness in a criminal trial No.RCCHG2008A0012 dated 22.04.2008 registered under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 has been proceeded against by the trial Court upon filing of complaint under Section 195 Cr.P.C. for perjury. Accordingly, the proceedings have been registered as COMP 6393/1.2.11 in the Court of Shri Karanvir Singh Maju, JMIC, Chandigarh. The accused in the said criminal trial before the Special Judge dealing with the anti corruption cases, was convicted in the said trial in which the petitioner is said to have committed perjury. The accused filed appeal in this Court vide appeal No.CRA-S-2284-SB-2010. The appeal has been admitted for final hearing.

Learned counsel for the petitioner submits that the trial for perjury cannot go ahead in view of the bar contained in Section 344(4) of Cr.P.C.

Per contra, learned counsel for CBI opposed the petition and submitted that the petitioner had not made any application as such in terms

of Section 344(4) of Cr.P.C. but had merely filed a reply with the trial Court. The petitioner ought to have applied for stay of the trial in terms of the aforesaid provision. Insofar as the provision of law is concerned, he has nothing to say.

It is strange to note that the petitioner did not raise the argument about the operation of Section 344(4) Cr.P.C. before the courts below. It is also significant to note that both the courts also did not notice the said provision. Be that as it may, I do not think it necessary to remand the proceedings on this ground as it would be a waste of time. The question being a pure question of Law, I proceed to decide the petition.

Having heard learned counsel for the rival parties and keeping in mind the facts narrated above by me, it is necessary to quote Section 344 of Cr.P.C. in entirety, which reads thus:-

Section 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 wilfully 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 sub- section (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 sub-section 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.*”

Perusal of sub Section 4 of Section 344 of Cr.P.C. in particular shows that the trial Court shall stay further proceedings in the trial relating

to perjury against the witness until disposal of the appeal. That is the mandate of law. The object of providing of sub Section 4 is obviously; namely that the appellate Court may or may not confirm the finding of conviction of the appellant or regarding perjury allegedly committed by the witness. Therefore, unless the finding of perjury attains finality, the cart cannot be put before the horse.

Looking to the object of the aforesaid sub Section 4, I think the following order is inevitable:-

ORDER

1. CRM-M-21191-2016 is partly allowed.
2. The criminal trial No.COMP 6393/1.2.11 in the Court of Judicial Magistrate 1st Class, Chandigarh shall stand stayed in terms of sub Section 4 of Section 344 Cr.P.C. till the decision of criminal appeal No.CRA-S-2284-SB-2010.
3. Liberty to revive the proceedings as and when CRA-S-2284-SB-2010 appeal is decided.

May 02, 2017

pankaj

(A.B. CHAUDHARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No