

THE HON'BLE SMT JUSTICE T. RAJANI

CRIMINAL APPEAL No.664 of 2007

JUDGMENT:

This appeal is preferred by the appellant, against the order of the III Additional Chief Metropolitan Magistrate, Vijayawada taking cognizance of the complaint against the accused, who is P.W.1 in CC.No.10 of 2001 and issuing summons dated 18.04.2007 in CC.No.1348 of 2006 for the offence punishable under Sections 193 and 211 of the Indian Penal Code.

2. The facts of the case, briefly, are as follows:

The complaint under Section 340 of the Criminal Procedure Code was filed by the Special Judge for SPE & ACB Cases, Vijayawada with the following facts:

On 27.06.1998, a report was given by P.W.1 in CC.No.10 of 2001, that he was the proprietor of Jubilee wine shop and he filed a petition on 15.05.1998 to the Superintendent of Excise, Krishna District through A.O.1, to cancel his licence and to withdraw the licence fee, as his liquor business was running at loss and on that the Superintendent cancelled his licence and instructed him to surrender the original licence of the shop and other records, through A.O.1. On 27.06.1998, A.O.1 called him to attend his office through P.W.10 and when P.W.1 attended before him, A.O.1 demanded an amount of Rs.25,000/- for returning the licence fee, demand draft and bank guarantee, on which P.W.1 expressed his inability. On that, A.O.1 reduced his demand of bribe to Rs.10,000/- and instructed P.W.1 to

pay the demanded bribe amount either to him or to one of Sub-Inspectors and to take back the required papers.

Such being the report, while giving evidence before the Court, P.W.1 did not stick to his version in the report. His statement was recorded under Section 164 Cr.P.C also. The Court, in the judgment in CC.No.10 of 2001, while acquitting the accused therein, directed that a complaint shall be made to the Metropolitan Magistrate or Magistrate of First Class having jurisdiction against P.W.1 for committing the offence under Sections 193 and 211 IPC by exercising powers under Section 340 Cr.P.C.

3. The Court below, based on the complaint, took cognizance of the case, against which this appeal is preferred on the following grounds:

The Court below erred in taking cognizance of the complaint; it should have seen that there is no variation in the 164 Cr.P.C statement of the accused examined as P.W.1 in CC.No.10 of 2001 and the evidence given in the Court; it failed to see that the accused, even in his statement recorded under Section 164 Cr.P.C, did not speak about any demand by the accused and about payment of money; it ought to have noticed that according to him, he submitted the application for return of DD's and bank guarantee and for cancellation of licence; it failed to see that the accused in CC.No.10 of 2001 never met him later and they were not present in spite of repeated visits by the accused herein; it should have noticed that there was neither demand nor acceptance as per the version in 164 Cr.P.C; it should have seen that giving of report to ACB and later resiling on the said

report, does not amount to any offence of perjury and it should have been seen that when A.O.1 in CC.No.10 of 2001 is benefited, there is no question of causing any injury to the accused in that CC. Based on the above, the appellant seeks this Court to set aside the order of cognizance.

4. Heard the learned counsel for the appellant and the learned Public Prosecutor appearing for the respondent.

5. Now the point that has to be decided is whether there is any perjury that is made out against the accused.

POINT:

6. The 164 Cr.P.C. statement of the accused reads that he decided to do liquor business and he obtained a licence on 03.09.1998. But since his business was not prosperous, he sought for cancellation of licence with the Superintendent of Excise, Krishna District and he made an application in that regard. He was roaming around the office and he was being informed that SI and CI were not there. He went to the Syndicate office and informed the absence of excise officials and asked for return of his amount. He represented the same to M.D. C. Ramesh. He advised that if he makes a complaint in the ACB office, his amount would be returned and saying so, the said Ramesh accompanied him to ACB office. On 27.06.2018, he made him sign the complaint and he handed over the complaint to DSP, ACB. He reiterated that the said Ramesh told him that only if he makes such complaint, his amount would be returned. The DSP, ACB asked him to come to the office on 29.06.1998 and as such he went there by

starting at 8 AM. On the way, they met Raja Raghavendra Rao and Ramesh asked him also to get into the car, who also got into their car. After going to the ACB office, he requested the DSP to see that his amount is returned. Then, Ramesh gave Rs.10,000/- to the DSP, ACB, which were tainted and used in the trap proceedings.

7. The aforesaid being his 164 statement, the evidence of the accused before the Court is also on the same lines. The Court below seems to have taken note of the facts mentioned in the report given by the accused-P.W.1 and arrived at a conclusion that the appellant committed the offence of perjury.

8. The law is well settled that the FIR is not a substantive piece of evidence. The value of the FIR is explained by the Supreme Court in *HASIB v. STATE OF BIHAR*¹ as under:

“... The principal object of the first information report from the point of the informant is to set the criminal law in motion and from the point of view of the investigating authorities is to obtain information about the alleged criminal activity so as to be able to take suitable steps for tracing and brining to book the guilty party. The first information report, we may point out, does not constitute substantive evidences though it importance as conveying the earliest information regarding the occurrence cannot be doubted. It can, however, only be used as a previous statement for the purpose of either corroborating its maker under Section 157 of the Indian Evidence Act or for contradicting him under Section 145 of that Act ...”

The complaint spells that there is a variation in the evidence of the accused herein and his 164 statement, which is not correct.

¹ AIR 1972 SC 283

Considering such variation and considering that since 164 statement, is a statement given in the judicial proceeding, prosecution under section 193 and 211 of IPC, was ordered. But, since no variation is found between the 164 statement and the evidence of the accused – P.W.1 before the Court below, this Court is of the opinion that no offence is made out against the appellant with regard to perjury.

In the result, the criminal appeal is allowed. As a sequel, the miscellaneous applications, if any pending, shall stand closed.

October 4, 2018
DSK

T. RAJANI, J

