

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR No. 2593 of 2014 (O&M)

Date of decision : 1.10.2018

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Jyoti

.....Petitioner

vs.

State of Haryana

.....Respondent

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Vikas Kumar, Advocate for the petitioner.

Mr. Neeraj Poswal, Assistant Advocate General,
Haryana.

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H. S. Madaan, J.

This revision petition is directed against observations made in judgment dated 2.7.2014 passed by Additional Sessions Judge, Special Court, Sonapat, for issuance of show cause notice to petitioner Jyoti for initiating proceedings under Section 344 Cr.P.C.

Briefly stated, facts of the case are that accused Amarpal faced trial by Additional Sessions Judge, Special Court, Sonapat, for offences under Sections 498-A/34, 406/34, 376 IPC, read with Sections 511 and 506 IPC, and vide judgment dated 2.7.2014, he was acquitted of the charge.

Complainant Jyoti had lodged FIR in question on the

allegations that she was married with Dharambir s/o accused Amarpal on 11.12.2012. At that time, her parents had given dowry beyond their capacity. Her husband was still studying and was not doing any job. Soon after her marriage, the complainant was harassed and maltreated by her father-in-law Amarpal, as well as her mother-in-law and sisters-in-law, in connection with demand of dowry. She was even given beatings. She was turned out of the matrimonial house, retaining her *istridhan* articles. The complainant had submitted a written complaint to the police on the basis of which formal FIR under Sections 498-A, 406 and 506 IPC was recorded. Investigation in the case started, during the course of which, complainant expressed her desire to return to the matrimonial home and furnished an affidavit that no action should be taken against her in-laws family. A cancellation report was prepared on 31.5.2013. On 27.11.2013 the complainant again submitted a complaint to SHO Kharkhoda, that after settlement was arrived at between the parties and she had returned to the matrimonial home, only 5 days thereafter, her in-laws again started harassing her on account of demand of dowry and on 18.6.2013 when she was sleeping alone in her room and her husband, mother-in-law and sisters-in-law had gone to Khatu Shyam, then her father-in-law Amarpal knocked at the door of her room; the time was about 11-12 P.M. The complainant opened the door. Finding that intention of the accused was not good, she scolded him and the accused left her room. On 19.6.2013 at about 12.00 night, when the prosecutrix was taking rest in her room, then accused suddenly came there and started outraging her modesty. The complainant pleaded

with him not to do so, but he did not listen and rather attempted to commit rape upon her, by removing clothes of complainant and his own pyjama. The complainant pushed him by giving kicks due to which he fell down on a side and the complainant managed to run out of the room. Thereafter, the accused also slipped away. He returned home in the evening and felt sorry for his behaviour, pleading the complainant not to disclose the incident to anybody. But the complainant narrated the entire incident to her husband, mother-in-law and sisters-in-law, when they came back from Khatu Shyam on 20.6.2013. But they extended threats to her and also gave beatings to her. On the basis of that complaint offence under Section 376 IPC read with Section 511 IPC was added.

Statement of the complainant was got recorded under Section 164 Cr.P.C. before the Magistrate. The accused was arrested in this case on 27.11.2013. The complainant, as well as accused were got medically examined.

Dharambir accused was arrested. After completion of investigation, Amarpal accused was challaned and sent up to face trial, whereas challan against his co-accused Dharambir who was found to be a juvenile, was presented before Juvenile Justice Board, Sonapat.

On presentation of challan copies of documents relied upon therein were supplied to the accused free of cost, as provided under Section 207 Cr.P.C. Then the case was committed to the court of Sessions. The accused was charge sheeted for the offence under Sections 498-A/34, 406/34, 376 read with Sections 511 and 506 IPC,

to which he pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined as many as 12 witnesses, namely, PW-1 Constable Kavita, PW-2 complainant -prosecutrix, PW-3 Rajbala, mother of the prosecutrix, PW-4 Satish Kumar, cousin brother of the prosecutrix, PW-5 Sh. Ashutosh, Judicial Magistrate Ist Class, Sonipat, PW-6 Inderpal, Draftsman, PW-7 ASI Daya Nand, PW-8 Shyam Sunder, PW-9 Dr. Bijender Hooda, PW-10, Inspector Somveer, PW-11 Constable Naresh, PW-12 P/SI Naveen. Whereas two witnesses had been given up. With that the prosecution evidence got concluded, after tendering certain documents.

Statement of the accused was recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against the accused were put to him, but he denied the allegations, pleading innocence. The accused did not adduce any defence evidence.

After hearing arguments, the trial Court acquitted the accused of the charges framed against him. In the judgment in paragraphs 13, 14 and 15, conduct and testimony of the complainant have been discussed. For ready reference, they are being reproduced as under:-

“13. Before parting with the judgment; I deem it necessary to refer again to the testimony and conduct of prosecutrix. She took a U-turn and did not implicate the accused in the subject offences in

her sworn deposition. She admitted her signatures on Ex. PW2/ A and Ex. PW2/B but denied making the same and stated that police had obtained her signatures on blank papers. With regard to her statement Ex.PW2/C as recorded under section 164 Cr.P.C., she stated that same had been made under the threat of SI Naveen and HC Ashok. She however stated that she did not make any complaint of the said police officials to their superior officers. It is quite common nowadays that witnesses while supporting the prosecution version at the investigating stage of the case by giving a version there, take a complete U-turn at the trial by not supporting the prosecution, thereby making the case to fall for want of evidence. This practice has become a menace in the criminal judicial system. The Hon'ble Apex Court had dealt with this practice very heavily in case of '**Zahira Habibulla Sheikh (1) Vs. State of Gujarat 2004 (4) SCC 158**' by making following observations:

" Serious questions arise as to the role' played by witnesses who change their versions more frequently, than chameleons. Zahira's role in the whole case is an eye-opener for all concerned with the administration of criminal justice. As highlighted at the threshold, the criminal justice

system is likely to be affected if persons like Zahira are to be left unpunished. "

The Hon'ble Supreme Court held, Zahira guilty of perjury and sentenced her to undergo simple imprisonment for one year and to pay a fine of Rs. 50,000/-, in case of default of payment of fine within two months, she was ordered to further undergo imprisonment of one year.

15. The provisions of section 344 have been enacted in the Code of Criminal Procedure to further arm the court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession and to eradicate the evil of perjury. For exercising the power under section 344 Cr.P.C., the court at the time of delivery of judgment or final order must at the first instance express the opinion to the effect that the witness before it has either intentionally given false evidence or fabricated evidence. The second condition is that the court must come to the conclusion that in the interest of justice, the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness. The third condition is that before commencing the summary trial for punishment, the witness must

be given reasonable opportunity of showing cause why she/he should not be so punished. All these conditions are mandatory. The object of the provision is to deal with the evil of perjury in a summary way. In Mahila Vinod Kumar's case (Supra), the Hon'ble Apex Court further observed that section 344 should be used effectively and frequently to stop the menace of perjury which has bearing on alarming rise. The trial court can not be mute spectator to the statement of these witnesses when the witnesses are intentionally giving false evidence. Action should be taken under the relevant provisions of law against such witnesses, so that the administration of criminal Justice does not suffer. Similar observations were made by our Hon'ble High Court in case titled as Krishan and others Vs. State of Haryana, 2005(2) RCR (Criminal) 109 wherein the law was set into motion on the registration of the FIR by PW-8 At the trial, this witness supported the case of the prosecution. His cross examination was deferred and when cross-examined subsequently, he resiled from his statement on the basis of which FIR Was registered.”

Paragraph 17 is also quite relevant and is being

reproduced as under:-

“17. Now, coming back to this case. In the present case, the prosecutrix took a somersault in the course of her statement which was recorded in the court by stating that she did not move complaint Ex.PW2/A and Ex.PW2/B to the police and made statement Ex. PW2/C under the pressure of the police officials. It is, however, clear from the testimony of PW -5 Shri Ashutosh, Judicial Magistrate Ist Class, Sonipat, that he had ensured that the prosecutrix was making a voluntary statement. She stated that SI Naveen and HC Ashok threatened her to give such statement. However, there is nothing on record to show that she had reported this fact to the higher police authorities or made any complaint in this regard. There is nothing on record to show as to why these police officials would falsely implicate the accused unless it was the version of complainant/prosecutrix. Thus, placing reliance upon the above stated authorities, it is held that prosecutrix PW-2 had tendered a false and fabricated evidence against the accused with an intention that such evidence shall be used in the proceedings. It is in the interest of justice that PW-2 prosecutrix should

be punished summarily by this court for the offence which she appears/happened to have committed. Therefore, it is directed that cognizance of offence in terms of section 344 Cr.P.C. be taken against her for the purpose of eradication of evil of . perjury as well as notice to PW -2 prosecutrix for showing cause as to why. she should not be punished is ordered to be issued. Separate proceedings in this regard are ordered to be initiated accordingly. Ahlmad is directed to place a copy of this judgment on the file concerned for initiating separate proceedings under section 344 Cr.P.C. After due compliance file be consigned to records.”

Feeling aggrieved by such observations and issuance of notice under Section 344 Cr.P.C., the complainant has preferred the present revision petition, which is being opposed by the State counsel.

I have heard learned counsel for the petitioner, learned State counsel, besides going through the record.

Section 344 Cr.P.C. deals with summary procedure for trial for giving false evidence. For ready reference, the same is reproduced below:-

“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.”

Here in the present case, though the complainant is not shown to have supported the case of prosecution, but while directing issuance of notice under Section 344 Cr.P.C. , the trial Court has not recorded any satisfaction that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, false evidence. Unless, it was so done, notice under Section 344 Cr.P.C. could not have possibly being issued to the complainant. Merely resiling from earlier statement, does not call for

action being taken under Section 344 Cr.P.C.

It being so, the revision petition calls for acceptance and portion of the judgment with regard to issuance of notice to the petitioner for initiation of proceedings under Section 344 Cr.P.C. is found to be untenable and against the law. Therefore, the same is set aside by way of acceptance of the revision petition.

1.10.2018
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No