

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Appeal No. 1104 of 2000**

Mahesh Chandrapure, son of late Baliram, aged 29 years, councillor in Municipal Corporation Bilaspur, Resident of Magarpara, Bilaspur, Tah. & Distt. Bilaspur (M.P.) (Now State of C.G.)

---- Appellant

Versus

State of Madhya Pradesh through Station House Officer of P.S. City Kotwali, Bilaspur (M.P.) (Now State of C.G.)

---- Respondent

For Appellant : Mr. Rajeev Shrivastava, Advocate
For Respondent/State : Mr. Raghvendra Verma, Govt. Advocate.

Hon'ble Shri Gautam Chourdiya, J

Judgment On Board

11/06/2020

(1) This appeal arises out of the judgment of conviction and order of sentence dated 16th March, 2000 passed by Sessions Judge, Bilaspur in Special Criminal Case No. 2/98, convicting the accused/appellant for the offence punishable under Section 344 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) and sentencing him to pay fine of Rs. 400/-, in default of payment of fine, to undergo simple imprisonment of one month.

(2) Case of the prosecution, in brief, is that in Sessions Trial No. 220/97, present appellant- Mahendra Chandrapure lodged FIR No. 140/97 at Civil Line Police Station, Bilaspur vide Ex. P/1 alleging therein that Shailendra Mahar has committed murder of his wife – Suman Mahar as informed by accused- Shailendra Mahar on 26.03.1997 and the said FIR was signed by the present appellant. On the basis of aforesaid FIR (Ex.P-1), Investigating Agency investigated the matter and filed chargesheet against Shailendra Mahar (husband of the deceased- Suman Mahar) under Section 302 of IPC.

(3) During the course of investigation, name of 17 witnesses including the present appellant had been mentioned in the charge-sheet in the said Sessions Trial No. 220/97. During trial, all material witnesses have turned hostile and not supported the case of the prosecution and, therefore, learned Sessions Judge vide its judgment dated 02.04.1998 passed in Sessions Trial No. 220/97 acquitted accused- Shailendra Mahar of the charge under Section 302 of IPC. In the said judgment, learned Sessions Judge in paragraph 9 of its judgment recorded a finding that though FIR (Ex.P-1) was lodged by the present appellant but he stated in his evidence that he only signed the FIR (Ex.P-1) on the request of Thana Incharge, Civil Lines Police Station and contents of the FIR (Ex.P-1) were not recorded / written in his presence. On the basis of the aforesaid statement of present appellant, learned Sessions Judge held that the present appellant had intentionally and knowingly given false evidence in the case in order to protect or save accused – Shailendra Mahar, therefore, it was necessary that he should be tried summarily under Section 344 of the

Code of Criminal Procedure. Thus, Sessions Judge by its judgment dated 2.4.1998 ordered for summary trial under Section 344 of Cr. P. C against the appellant.

(4) Summary proceedings tried against the present accused/appellant being special case No. 2/97 was explained to him, which he denied specifically and prayed for trial.

(5) The prosecution examined Israr Khan (PW-1) as prosecution witness and Shri Hemant Kumar (Witness No.1) as court witness. Statement of the accused was recorded under Section 313 of Cr. P. C. in which defence has been taken by him that he being a councillor (*Parshad*) of the area went to the Police Station alongwith accused-Shailendra Mahar where near about 200- 250 people were present but he did not lodge report of Ex. P/1 and only signed the same at the instance of the Station House Officer. One defence witness namely Ratanlal Rajak was also examined on behalf of the accused/appellant.

(6) Learned Trial Court after considering the material available on record by the impugned Judgment convicted and sentenced the accused/appellant as mentioned above.

(7) Learned counsel for the accused/appellant submits that only on the basis of the fact that the accused/appellant signed the FIR (Ex.P-1), learned Sessions Judge formed an opinion to initiate a proceeding under Section 344 of the Cr.P.C. against the appellant, which is bad and unsustainable in law as neither there is any *mens rea* nor any intention of the present appellant to protect the accused of that Session trial. He also submits that accused in Sessions Trial No. 220/97 was acquitted of the charges as the prosecution failed to prove its case

beyond all reasonable doubt. The prosecution case is based on only circumstantial evidence and learned Sessions Court has recorded a finding that the prosecution case utterly failed to prove his case as there is no material on record which can prove the involvement of the accused -Shailendra Mahar in the crime in question i.e. murder of his wife and acquitted the accused namely Shailendra Mahar. He further submits that in the instant case, only evidence of Ishrar Khan (PW01) was adduced by the prosecution in which he stated that on the basis of information given by the accused/appellant, he lodged FIR (Ex. P/1) and the facts mentioned in the FIR were written as stated by the present accused at the time of lodging the FIR. He also submits that there is no evidence adduced by the prosecution to prove the fact that the present appellant has given any false or fabricated statement while judicial proceeding was going on nor any *mens rea* proved by the prosecution to the effect that the appellant knowingly or intentionally gave false evidence in the case and, therefore, learned Sessions Court is absolutely unjustified in convicting and sentencing the present accused/appellant as mentioned above.

(8) On the other hand, learned counsel for the State while supporting the impugned order and opposing the submission made by counsel for the appellant would submit that FIR (Ex.P-1) was duly signed by the present accused/appellant and the FIR (Ex.P-1) was lodged on the basis of version given by the accused/appellant at the time of lodging of the FIR and, therefore, the Sessions Court is absolutely justified in convicting the accused/appellant under Section 344 of the Code, which does not call for any interference.

(9) I have heard learned counsel appearing for the parties and perused the record of court below including impugned order.

(10) At this stage, it would be appropriate to notice the provisions contained in Section 344 of the Code, which reads thus:-

“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 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,”.

(11) From a careful reading of the aforesaid provision, it is apparent that an opinion has to be formed to the effect that the witness has given false evidence; satisfaction has to be recorded that it is necessary and expedient in the interest of justice that the witness should be tried summarily. The purpose of this provision is to create a restraint on the witness from stating falsehood in Court. No witness should foster the idea and nourish the hope that he can tender false evidence in a court of law and escape. In the temple of justice one is expected to speak the truth; that is the mandate of the law, command

of ethically and edict of conscience. The majesty of law condemns statements based on falsehood. On erroneous assumption, one may state with regard to a particular situation in his own individualistic manner, but deliberate and conscious act of stating falsehood in a court of law is deplorable and reprehensible.

(12) It is not disputed by the appellant that he made his signature on blank form of FIR (Ex.P-1) and thereafter the police has written the FIR (P-1) and, thus, he has no knowledge about the contents of the FIR. Ratan Lal Rajak (DW-1), who was examined on behalf of the appellant in summary proceeding, has supported the contention made by the appellant stating that at the time of lodging of FIR (Ex.P-1), present appellant – Mahesh Chandrapure, some other persons and accused -Shailendra Mahar were present at the police Station and present appellant –Mahesh Chandrapure informed the police official that someone murdered the wife of appellant/accused- Shailendra Mahar, in response to which, police official said that you (present appellant Mahesh Chandrapure) signed the blank form of the FIR (Ex.P-1) and thereafter after making signature on the blank form of FIR, they returned from the police Station.

(13) Looking to the evidence of present appellant and other witnesses in main Sessions Trial i.e. Sessions Trial No. 220/97, it is clear that all the material witnesses have not supported the case of prosecution and turned hostile; and no motive was proved to commit murder of wife of the accused- Shailendra Mahar. From the beginning present appellant, in the judicial proceeding before Sessions Court has been contending that he informed the police official that someone murdered the wife of

the accused- Shailendra Mahar and at the time of lodging of FIR (Ex.P-1) he made his signature on the blank form of the FIR (Ex.P-1) and then the police had written the FIR (Ex.P-1) and the said version of the appellant has also been supported by the defence witness namely Ratanlal Rajak examined as DW-1. Except this, there is no evidence on record to prove the fact that present appellant had intentionally and knowingly given false evidence in the case and learned Sessions Court merely on the basis of the fact that present appellant made signature on the FIR (Ex.P-1), recorded a finding that since he made a false and fabricated statement before the trial Court, therefore, he is liable to be convicted under Section 344 of the Code. The High Court of Orissa while dealing with the identical issue in the matter of T. Bhagi Patra Vs. State of Orissa reported in 1996 Cri. LJ 2423 observed as under:

9. Formation of an opinion is not the end of the matter. The court is also required to record satisfaction 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. It is not that in every case, the prosecution has to be launched. The court has a duty to use its judicial discretion. Direction to proceed under Section 344 of the Code cannot be in a routine manner. Direction in a mechanical and cryptic manner is not in the interest of justice. The Court has to use the discretion in a judicious manner. In this regard the apex Court in Santokh Singh V. Izhar Hussain, A. I. R. 1973 S. C. 2190, Expressed as follows:-

“ Every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of

expediency. The Court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Two frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely, that the court should direct prosecution.”

10... Keeping the aforesaid principles in view, the order passed in the present case is to be tested. In the instant case, the informant was examined as p.w. 6 and he has categorically denied the execution of the F.I.R. or the Zimanama. He also stated that no goat of his was ever removed from his possession. The record indicates that the informant has signed his deposition in Oriya, whereas the F.I. R., bears his L.T. I.. The learned Magistrate has not taken any other L.T.I. of the informant to compare with the L.T. I. in the F.I.R.. In the absence of any other material, the formation of opinion in an extremely cryptic manner is not appropriate. The recording of satisfaction also suffers from similar infirmity. The Magistrate has not indicated with regard to the expediency or interest of justice in proper perspective. The discretion used by the Magistrate to launch the prosecution has not been properly exercised. The approach of the Magistrate being entirely erroneous, the impugned order is unsustainable. *Ex. Ptoprio motu* direction of the Court is unjustified.

(14) In view of the aforesaid discussion, it is crystal clear that the concept of Section 344 of the Code is not attracted into the present case, inasmuch as the basic ingredient of “false evidence” has not been satisfied in the present case.

(15) Consequently, I conclude and hold that conviction & Sentence of the appellant under Section 344 of Cr. P. C. is not justified. As a consequence thereof, the impugned judgment of conviction & order of

sentence passed in Special Criminal Case No. 2/98 is set aside. The appellant is acquitted of the above charge. The appellant is reported to be on bail, therefore, his bail bonds shall remain in force for a period of six months from today in terms of provisions of Section 437A of Cr.P.C.

Sd/-

(Gautam Chourdiya)

Judge