

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

**CRA-S-1002-2021 (O&M)  
Date of Decision: January 28, 2022**

Ruksina

...Petitioner

Versus

State of Haryana

...Respondent

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

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Present: - Mr.Balraj Gujjar, Advocate  
for the petitioner.

Mr.Vishal Malik, DAG, Haryana.

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**HARINDER SINGH SIDHU, J.**

The complainant – victim in case FIR No.403 dated 27.09.2019 under Sections 376, 452, 201 and 506 of the Indian Penal Code, Police Station Ferozepur Jhirka, District Nuh, has filed the present appeal challenging the judgment dated 27.07.2021 passed by Additional Sessions Judge, Fast Track Court for trial of rape cases, Nuh to the extent that in view of the fact that the complainant having not supported the prosecution case, the Court has directed that cognizance of the offence in terms of Section 344 of the Code of Criminal Procedure be taken against the appellant – complainant/victim separately.

The FIR was registered on the statement of the appellant/complainant that on 14.07.2019 accused Abbas who was her relative had come to their house and stayed there. When she went in the room for food, then accused caught her and on gun point committed rape with her and also taken photos of kissing her on his mobile.

The accused was arrested on 28.09.2019. During investigation, country-made pistol was recovered. He suffered disclosure statement and demarcated the place of occurrence. After completion of investigation, challan was filed and the accused was charge-sheeted for the offence under Section 376, 452, 201 and 506 IPC and Section 25 of the Arms Act.

During trial, the victim/appellant and her husband did not support the prosecution case. Resultantly, the accused was acquitted. The Trial Court ordered initiation of proceedings under Section 344 CrPC against the victim/appellant for making false statement before the Court.

Challenging the order of the Trial Court, Ld. Counsel for the appellant has argued that the necessary satisfaction before initiating proceedings under Section 344 CrPC, has not been recorded by the Trial Court, as required under the Code.

I have heard Ld. Counsel for the appellant and gone through the paper-book of the case. There appears no merit in the argument raised on behalf of the appellant.

Section 344 of the Code of Criminal Procedure reads as follows:

*“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.”*

While appearing in the witness box, PW1 Bijender Singh Reader to District Magistrate, Nuh proved the sanctioned order of the FIR and also identified the signatures of the then Additional Deputy Commissioner, Nuh. PW2 ASI Kailash Singh proved the endorsement and examination report of the recovered country made pistol. PW3 Sub Inspector Hari Singh proved the report under Section 173 CrPC against the accused. PW4 Dr.Priyanka Goyal, Medical Officer, who medico-legally examined the victim, proved her report. However, PW5 – the

and who could narrate the real story before the Trial Court, did not support the prosecution case. The appellant while appearing before the Trial Court stated on oath that nothing wrong happened with her and that the complaint (Ex.P5 given to the Police) was due to some misunderstanding. PW5 and PW6 were declared hostile.

It was in the above facts and circumstances that the Trial Court observed that the prosecution witnesses have behaved in a manner to circumvent the proceedings with an ulterior motive to help the accused. The two material witnesses i.e., the victim and Aamin had not supported the prosecution case. The Court also took notice of the fact that it was very common now-a-days that witnesses, while supporting the prosecution version at the investigation stage of the case take a complete U-turn at the trial by not supporting the prosecution, thereby leading to acquittal of the accused for want of evidence. It observed that this practice had become a menace in the criminal judicial system.

The Hon'ble Supreme Court in **Mahila Vinod Kumari vs. State of Madhya Pradesh, (2008(8 SCC 34** while dealing with the essential ingredients for invocation of Section 344 Cr.P.C. and its object, has observed as under:-

*“8. In the present case, on the basis of the allegations made by the petitioner, two persons were arrested and had to face trial and suffered the ignominy of being involved in a serious offence like rape. Their acquittal, may, to a certain extent, have washed away the stigma, but that is not enough. The purpose of enacting Section 344 CrPC corresponding to Section 479-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as “the old Code”) appears to be 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. The object of the legislature underlying enactment of the provision is that the evil of perjury and fabrication of evidence has to be eradicated and can be better achieved now as it is open to courts to take recourse to Section 340(1) (corresponding to Section 476 of the Old Code) in cases in which they have failed to take action under Section 344 CrPC.*

*9. This section introduces an additional alternative procedure to punish perjury by the very court before which it is committed in place of old Section 479-A which did not have the desired effect to eradicate the evils of perjury. The salient features of this new provision are:*

*(1) Special powers have been conferred on two specified courts, namely, the Court of Session and Magistrate of the First Class, to take cognizance of an offence of perjury committed by a witness in a proceeding before it instead of filing a complaint before a Magistrate and try and punish the offender by following the procedure of summary trials. For summary trial, see Chapter 21.*

*(2) This power is to be exercised after having the matter considered by the court only at the time of delivery of the judgment or final order.*

*(3) The offender shall be given a reasonable opportunity of showing cause before he is punished.*

*(4) The maximum sentence that may be imposed is 3 months' imprisonment or a fine up to Rs.500 or both.*

*(5) The order of the court is appealable (vide Section 351).*

*(6) The procedure in this section is an alternative to one under Sections 340-343. The court has been given an option to proceed to punish summarily under this section or to resort to ordinary procedure by way of complaint*

*under Section 340 so that, as for instance, where the court is of the opinion that perjury committed is likely to raise complicated questions or deserves more severe punishment than that permitted under this section or the case is otherwise of such a nature or for some reasons considered to be such that the case should be disposed of under the ordinary procedure which would be more appropriate, the court may choose to do so [vide sub-section (3)].*

*(7) Further proceedings of any trial initiated under this section shall be stayed and thus, any sentence imposed shall also not be executed until the disposal of an appeal or revision against the judgment or order in the main proceedings in which the witness gave perjured evidence or fabricated false evidence [vide sub-section (4)].*

*10. For exercising the powers under the section the court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such 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. And the third condition is that before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions are mandatory. (See Narayanswami v. State of Maharashtra [(1971) 2 SCC 182 : 1971 SCC (Cri) 507].)*

*11. The object of the provision is to deal with the evil of perjury in a summary way.*

*12. The evil of perjury has assumed alarming proportions (sic proportions) in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts*

*to use the provision more effectively and frequently than it is presently done.”*

In view of the above there appears to be no infirmity in the impugned order of the learned Trial Court.

Appeal is dismissed.

January 28, 2022

(HARINDER SINGH SIDHU)  
JUDGE

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|-----------------------------|----------|
| Whether Speaking / Reasoned | Yes      |
| Whether Reportable          | Yes / No |