

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3908 of 2014

Gouri Rabidas

-Vs-

The State of West Bengal & Anr.

For the Petitioner : Mr. Prosenjit Mukherjee

For the State : Mr. Avishek Sinha

For the Opposite Party no. 2 : Mr. Ayan Basu
Mr. Sumit Routh

Heard on : 18.09.2023, 22.09.2023, 12.12.2023.

Judgment on : 15.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner against the impugned order and judgment dated 24-09-2013 passed by the Learned Assistant Sessions Judge, Birbhum at Rampurhat in Summary Trial No. 1 of September, 2013 by convicting the petitioner for a simple imprisonment of one month and fine of Rs. 500/- arising out of Sessions Case No. 63 of 2011 and Sessions Trial No. 1 of September, 2011 and the impugned judgment and order dated 20-09-2014 passed by the Learned Additional Sessions

Judge, Rampurhat, Birbhum in connection with Criminal Appeal No. 5 of 2013 confirming the sentence passed in Summary Trial No. 1 of September, 2013 (Serial No. of the Case 1 of 2013) arising out of S.C. No. 63 of 2011.

2. Petitioner contended to have lodged a First Information Report before the Officer-in-Charge, Murarai Police Station on 23.03.2009 against the opposite party no. 2, Murarai Police on the basis of the written complaint started a Criminal Case against the opposite party no. 2 being Murarai Police Station Case No. 40 of 2009 dated 23-03-2009 and G.R. No. 201 of 2009 under Section 448/376 of the Indian Penal Code. After completion of the investigation Murarai Police submitted the charge sheet against the opposite party no. 2 under Section 448/376 of the Indian Penal Code and as the case to be exclusively triable by Code of Sessions, committed the same to the Learned Additional Session Judge, Rampurhat, Birbhum and the charges were framed on 08-09-2011.
3. Petitioner further stated on 11-03-2009 the petitioner along with her mother-in-law and one daughter of the elder brother-in-law and her two year old son were sleeping in the night in the balcony of said premises. The instant accused person, her husband and father-in-law of the petitioner went to attend the marriage ceremony of one relative. The accused person being the opposite party no. 2 was the relative of the petitioner, residing in the same premise but in a separate room. At about 11:45 hours in the night the opposite party no. 2 came to the aforementioned premises by motor cycle and when the opposite party no. 2 tied her mother-in-law with rope and

threatened not to raise voice or shout. Subsequently, the opposite party no. 2 forcefully took the petitioner inside the room and placed her on a bed and rapidly raped the petitioner against her will. The said incident was watched by said Puja Rabidas and subsequently the accused person went away. Everybody started to shout and due to the threat of the opposite party no. 2/accused, the petitioner could not lodge the complaint.

4. Petitioner further stated that the Learned Additional Sessions Judge transferred the same in the Court of Learned Assistant Session Judge, Rampurhat, Birbhum being Session Case No. 63 of 2011 and Sessions Trial No. 1 of September 2011. The trial started on 4th March, 2013 7 (seven) witnesses were examined including the petitioner and after considering the depositions and cross examination of the witnesses the Learned Assistant Sessions Judge held the P.W.-1, the petitioner to be liable to face the summary procedure for trial for giving false evidence under Section 344 of the Code of Criminal Procedure and in spite of being cautioned by the Court in the witness box on taking oath had knowingly and willfully given false evidence and also stated that the present case had been initiated only to harass the opposite party no. 2 accused person. Lastly the accused person had been acquitted of the charge under Section 342/376 of the Indian Penal Code.

5. Petitioner further stated that on the same day i.e. on 24-09-2013 the Learned Additional Sessions Judge, Rampurhat, Birbhum without giving any chance of reply to the alleged show cause and any scope of filing the plea to

the cognizance of the alleged offence and tried the petitioner summarily for giving false evidence and lodging false complaint against the opposite party no. 2. On the same day i.e. 24-09-2013 instantly the Summery Trial No. being Summery Trial No. 1 of September, 2013 was incorporated and after taking the examination under Section 313 of the Code of Criminal Procedure, the Learned Assistant Session Judge, Rampurhat, Birbhum was pleased to sentence the petitioner of simple imprisonment of one month and payment of fine of Rs. 500/- and on the same day i.e. 24-09-2013 the said Summary Proceeding was terminated.

6. Petitioner further submits that the Learned Assistant Sessions Judge, Rampurhat, Birbhum immediately after concluding the trial of Sessions Trial No. 1 of September, 2011 (Sessions Case No. 63 of 2011) i.e. immediately after passing the judgment on 24-09-2013 and without giving the offender i.e. the petitioner a reasonable opportunity of showing cause that why she should not be punished for such offence took the cognizance and tried the petitioner summarily and sentenced her for imprisonment of one month. Giving the offender a reasonable opportunity of showing cause had been a mandatory requirement under Section 344(1) of the Code of Criminal Procedure and there should be a summary trial as per the procedure prescribed for such summary trial. The Learned Assistant Sessions Judge, Rampurhat, Birbhum also did not follow the procedure of Summary Trial as per Section 263 of the Code of Criminal Procedure and without considering 263(f)&(g).

7. Challenging the impugned judgment and order of conviction in Summary Trial No. 1 of 2013 conducted under Section 263 of Code of Criminal Procedure an appeal being Criminal Appeal No. 5 of 2013 was preferred before the Learned Additional District Judge, Rampurhat, Birbhum. After considering the material on record the Learned Additional Sessions Judge, Rampurhat, Birbhum was pleased to dismiss the appeal and the order of sentenced dated 24-09-2013 was affirmed on 20-09-2014. Subsequently on 15-11-2014 the Learned Assistant Sessions Judge, Rampurhat, Birbhum please to issue the warrant of arrest against the petitioner.
8. Petitioner stated that both the Courts erred in law by not considering the facts that the Summary Trial under Section 263 Code of Criminal Procedure should be conducted by the concerned Magistrate not by the Learned Assistant Sessions Judge, Rampurhat, Birbhum. Both the courts neither expressed their satisfaction that for interest of justice the witness i.e. the petitioner should be tried summarily nor taken cognizance of the offence after giving the offender reasonable opportunity of showing cause why she should not be punished for such offence, try such offender summarily and sentenced her to imprisonment for one month.
9. Petitioner further submitted that that petitioner was rustic illiterate lady and during the cross examination she deposed that she filed the false case against the accused person and due to her ignorance she stated that she was prepared to face the consequences for filing false case against opposite party no.2. She also stated that she instituted this case for a trivial dispute

regarding land properties against the accused person. All these aforesaid statements or deposition was a consequence of her ignorance and fright. The deposition dated 08- 04-2013 was made due to the queries of the Court and not against the cross examination of the defence counsel.

10. Petitioner further submitted that other witnesses like Dhananjoy Rabidas (P.W.2), Chhabi Rabidas (P.W.4), Narayan Chandra Das (P.W.3) and Puja Rabidas (P.W.5) also did not support the prosecution case and corroborated the further cross examination of the petitioner dated 08-04-2013 and also other witnesses also did make out any case so that the petitioner could be prosecuted in summary trial.

11. Petitioner further submitted that in appeal the Learned Additional Sessions Judge, Rampurhat, Birbhum while considering the impugned judgment and order in summary trial dated 24-09- 2013 did not consider the date of report of complaint made on 24- 09-2013 and the judgment had been passed on the very day and for this reason alone this impugned judgment and order dated 24- 09-2013 should be quashed and set aside.

12. Learned Advocate for the petitioner submitted that –

- i. Under Section 344 (1) of the Code of Criminal Procedure for the interest of justice the witness should be tried summarily for giving or fabricating as the case may be false evidence, take contingency of the offence after giving the offender a reasonable opportunity of showing cause why she should not be punished for such offence, try such offender summarily and sentence him.

- ii. Under Section 263 of the Code of Criminal Procedure the plea of the accused and his examination was mandatory.
- iii. Without giving any opportunity of hearing and scope of taking plea and opportunity of showing the Learned Courts below were pleased to observe the plea of the accused Gouri Rabidas and examination under Section 313 Code of Criminal Procedure.
- iv. The petitioner lodged a First Information Report against the opposite party No.2 under Section 448/376 of the Indian Penal Code. Charge Sheet was filed and the charge was framed on 08.09.2011. During the trial seven witnesses were examined including the petitioner and after considering the deposition and cross examination of the petitioner Learned Assistant Sessions Judge by an order dated 24.09.2013 pleased to hold that P.W.11 being the petitioner/de-facto complainant is liable to face summary procedure for giving false evidence under Section 344 of Code of Criminal Procedure and by an judgment and order dated 24.09.2013 the Learned Judge had acquitted the opposite party No.2 from the charge under Section 342/376 of the Indian Penal Code. On the same day without giving any chance of reply to the alleged show cause and without giving any scope of filing any plea to the cognizance of alleged offence the Learned Trial Judge tried the petitioner summarily for giving false evidence and for lodging false complaint against the opposite party No.2.

- v. On the same day i.e. 24.09.2013 summary trial being Summary Trial No.1 of 2013 started after taking examination of the petitioner under Section 313 of Code of Criminal Procedure and on the same day by the judgment and order dated 24.09.2013 pleased to sentence the petitioner for simple imprisonment of one month and payment of fine of Rs.500 on the same day i.e. on 24.09.2013.
- vi. The Learned Sessions Judge has failed to appreciate that in terms of Section 344 of Code of Criminal Procedure the petitioner ought to have given reasonable opportunities of showing cause that why she should not be punished for such offence and before taking cognizance and conclusion of trial of the petitioner's summarily no reasonable opportunity of filing of show cause has been given to the petitioner which is absolutely in violation of mandatory requirement under Section 344(1) of Code of Criminal Procedure and without considering Section 263(f)(g) of Code of Criminal Procedure
- vii. Challenging the impugned order of conviction dated 24.09.2023 the petitioner preferred an appeal but the same has been dismissed.
- viii. In support of the petitioner's case petitioner begs to rely several reported judgments being **2004 Cri. LJ 1499** the Hon'ble Court pleased to observe in Paragraph No.15 that this power under Section 344 of Code of Criminal Procedure is to be exercised after having the matter considered by the Court only at the time of

delivery of judgments of final order and the offender has to be given reasonable opportunities to showing cause before he is punished.

- ix. In a reported judgment of **1992 Cri L.J. 2027** the petitioner begs to rely Paragraph No.5 of the instant judgment that in the show cause notice issued to the appellant do not set out the gist of the offence against which they were called upon to show cause and this infirmity resulted in material prejudice to the appellants entitled them to be an acquittal. Infirmity in show cause notice will have no decisive impact on the trial because the appellant did not appear in response thereto and gave their version which was not found satisfactory and the trial followed in which the appellants had full opportunity to defend themselves and as such it cannot be inferred that had the ingredients of the offence been fully given in the notice. They could have said something which would have persuaded the Court to drop the proceedings. In such circumstances the grievance of material prejudice have been caused due to defect in the show cause notices cannot be said to be well founded.
- x. In a reported decision reported in **2008 Cri. LJ 3867** reference to Paragraph No. 7 and 8. Paragraph No. 8 is as follows:-

“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 interests 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 Maharashtra - AIR 1971 SCC 1789)”

- xi. The petitioner also relied on a reported judgment being, **AIR 1971 SCC 1789.**
- xii. In a reported judgment being **1996 SCC Online Odisha 86** the Hon'ble High Court pleased to observe that opinion is required to be formed to that effect that a witness appearing in the proceeding has knowingly and willfully given false evidence. Here in the instant case the Learned Assistance Sessions Judge has not come to the conclusion and no perfect opinion has been formed to the effect that the petitioner has deliberately given false evidence. Mere giving any deposition in the cross examination such as “it is a fact that I would have not filed this case had I known that the matter would

extend this far. It is a fact that I have no acquisition against the accused person”.

“..... To quote:-

I have filed the false against the accused person. I am prepared to face the consequences for filing false case against the accused person. (the witness is warned that she can be prosecuted thus false case and deposing falsely.”

The alleged offence was committed under Section 344 of Code of Criminal Procedure on 08.04.2013 at the time of cross examination of the petitioner. But the Learned Assistance Sessions Judge in the impugned order dated 24.09.2013 was pleased to observe that the offence was committed on 04.03.2013 which was totally contrary to the records.

On 08.03.2013 at the time of cross examination the petitioner had allegedly admitted that she had filed a false case against the accused person but the accused person had been convicted on the basis of the commission of offence dated 04.03.2013 which was absolutely contrary to the records.

According to the Learned Assistance Sessions Judge the opinion for prosecution against the petitioner under Section 344 was formed in terms of the judgment and order dated 24.09.2013 and on the same day without referring same to the Learned Magistrate

on the same day i.e. 24.09.2013 convicted the petitioner under Section 344 of Code of Criminal Procedure for a period of one month.

- xiii. In terms of Section 260 Chapter XI of Code of Criminal Procedure only Magistrate has the power to initiate a summary trial. The petitioner has been convicted after initiating a summary trial under Section 263 of the Code of Criminal Procedure but in terms of the 263 of Code of Criminal Procedure only Magistrate has given the power to conclude the summary trial in such form as the State Government may direct the following particulars from (a) to (j). Here the Learned Assistant Sessions Judge without referring the matter to the Magistrate has himself initiated the summary trial against the petitioner under Section 263 of Code of Criminal Procedure which is absolutely illegal and bad in law and without jurisdiction.
- xiv. The Learned Assistance Sessions Judge is the complainant and the same Learned Assistance Sessions Judge has himself initiated the proceeding under Section 344 of Code of Criminal Procedure and convicted the petitioner for a period of one month.
- xv. In terms of the reported judgment passed in the Court of Judicature Andhra Pradesh at Hyderabad between Gottimukkala Surya Narayan Raju Versus State represented by Public Prosecutor, Vizianagaram, the show cause notice issued under Section 344 of Code of Criminal Procedure was under challenged and the

petitioner relying on Paragraph No.2 of the above mentioned judgment prays for quashing the impugned order of conviction on the ground that herein the instant case the petitioner was convicted by a judgment and order dated 24.09.2013 which is the day of complaint and taking cognizance and as such the impugned judgment and order is absolutely violation of natural justice.

xvi. In an another reported judgment reported in 1996 SCC Online Orissa 86 the Hon'ble High Court relying upon Paragraph No.5 and 11 pleased to held that an opinion has to be formed before giving conviction under Section 344 of the Code of Criminal Procedure.

13. The Ld. Advocate for the State submitted that the Ld Trial Court has followed the proceedings under Section 344 of the Cr.P.C and convicted the appellant accordingly. Section 344 of the Cr.P.C did not mention any time period for issuing show cause notice and its reply thereto. The proceedings under Section 344 of the Cr.P.C. is summarily triable and the Ld. Trial Court has complied with the same and the revision should be dismissed.

14. The Ld. Advocate for the opposite no. 2 conceded to the submissions of the Ld. Advocate to the State.

15. In the Order dated 24.09.13 in the Summary Trial No.1 of September 2013 inter alia stated the following:-

“ It manifests from the record at the time of delivery of judgement of final order disposing of Sessions Case No. 63/2011 that the complainant/P.W.1 Gouri Rabidas filed an F.I.R. before the officer incharge, Murarai P.S. on 23/3/09 alleging that on 11/3/09, when

her husband and father-in-law was not at home and she was sleeping in the varanda of her house with her mother-in-law Arati Rabidas and niece Puja Rabidas, Ananda Rabidas came into her house and tied Arati with a rope and forcibly took Gouri inside the room and subjected her to rape. The complainant further stated that Puja Rabidas was eye witness to the said incident. Pursuant to such complaint, Murarai P.S. Case No. 40/09 dated 23/3/09 U/Ss 448/376 of I.P.C. was instituted against the Ananda Rabidas and he had to obtain anticipatory bail from the Hon'ble High Court.

However, at the time of adducing her evidence on oath and after being cautioned by the Court, Gouri Rabidas categorically stated that she instituted the case against Ananda Rabidas due to a property related dispute and that Ananda Rabidas had not subjected her to rape. Considering the testimony of all the witnesses in Sessions Case No. 63/11, the accd. Ananda Rabidas has been acquitted from this case. Be that as it may, this court opines that the complainant, who also happens to be the P.W.1 in the aforesaid case, was legally bound by an express provision of law to speak the truth and has stated that she instituted a false case against Ananda Rabidas, having full knowledge and belief that the same is false.

Thus, this court is satisfied that it is necessary and expedient in the interest of justice that the witness Gouri Rabidas should be tried summarily for giving false evidence/ lodging false case and this court is denying cognizance of this offence and she is directed to show cause as to why she should not be punished for such offence.

The plea of the accd. Gouri Rabidas and her examination U/S 313 of Cr. P.C. by the court in the prescribed proforma is annexed herewith.

The finding

It appears from the record that Sessions Case ND. 63/11 as well as the materials on record, as well as the plea of Gouri Rabidas and

her examination by the court U/S 313 of Cr.P.C. that the accd. Gouri Rabidas has deliberately filed a false case against Ananda Rabidas and on oath, she has voluntarily stated before the court, while testifying before the court that she instituted the case against Ananda Rabidas due to dispute regarding landed properties. Considering the present position of the society and anxiousness of the Hon'ble Apex Court regarding atrocities on women, it is very relevant that women should not be allowed to use the courts as a machinery for blackmailing innocent persons. This court cannot turn a blind eye to such false complaint and be a puppet in the hands of such unscrupulous persons. The Legislator has made definite provision to prevent such malpractices and the same should be implemented by the courts in just and appropriate cases. This court gave reasonable opportunity to the accd. Gouri Rabidas at the time of her testimony as P.W.1 and is now setting the law in its own course.

Admitted facts need not be proved and there is absolutely no-doubt that Gouri Rabidas instituted false case, as admitted in her testimony itself and therefore, accd. Gouri Rabidas is found guilty U/S 344 of the Cr.P.C. for giving false evidence/lodging false case."

16. The examination of the accused under Section 313 of the Cr.P.C. on the September 24, 2013 is as follows:-

1. "You, as the plaintiff, alleged that Ananda Mohon Rabidas unlawfully detained your mother-in-law, forcibly took you inside the room, and subjected you to rape.

Ans: Yes, I have done.

2. When giving testimony in court, you stated that you have filed this case against Anand Rabidas regarding a land dispute. Could you elaborate on this matter?

Ans: Yes, I have said that.

3. *For this false testimony, we will file a case against you and the accused under Section 344 of the Indian Penal Code for giving false evidence. Do you have anything to say?*

Ans: I do not have anything to say.

4. *Will you oppose this allegation?*

Ans: I will not do anything, I am telling the truth.

5. *In this summary trial, I will prove you guilty under section 344 CrPC. What do you plead?*

Ans: You do whatever you want to do.”

17. Section 344 of the Code of Criminal Procedure, 1973 state as the 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.”

18. The provisions under section 344 of the Cr.P.C. empowered a Court of Sessions to express its opinion that the witness appearing in such proceedings had knowingly or willfully given false evidence. At the time of delivery of any such judgment or final order disposing of any judicial proceeding. In view of the entire intent of the aforesaid provision, reference to the magistrate to undergo the proceedings under Section 263 of the Cr.P.C. has not been mandatorily prescribed. The Court of Sessions to be precise, the Assistant Sessions Judge holding the Court of Sessions had been statutorily equipped to try the appellant summarily conforming to the procedure prescribed for summary trials.

19. The order dated 24.09.2013, in summary trial No. 1 of September 2013 manifests the procedures undergone by the Assistant Sessions Judge Bhirbhum as stated above. Show cause issued to the appellant and her plea was recorded in the prescribed form. The Appellant was examined under

Section 313 of the Cr.P.C. as stated above wherein the appellant had mentioned that she would not oppose the allegations as she was telling the truth and pleaded to the court to do whatever the court wanted to do.

20. In ***Balshiram Awate v Maharashtra***¹, it was held that this Section makes it clear that the power of the court to make a complaint under section 340 of the Cr.P.C. is not to be affected even if the court does not choose to take action under this section. The Trial Court could take action summarily under Section 344 of the Cr.P.C. and punish the perjurer then and there or it could hold an inquiry under Section 340(1) of the Cr.P.C. and decide whether a complaint should be filed.

21. In view of the above discussions, the instant criminal revisional application being CRR 3908 of 2014 is dismissed.

22. There is no order as to costs.

23. Lower Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.

24. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)

¹1978 Cr LJ 821 (Bom)