

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 584 OF 1998

Prashant Gopalrao Chandane
Age 28 years, Occ.: Business
Hsg. Society, Chandane Nagar,
R/o. Plot No. 36, Bhim Vijay,
Near Ruikar Colony,
Kolhapur

...Appellant

Versus

The State of Maharashtra
(At the instance of Anti-Corruption
Bureau - Kolhapur)

...Respondent

Mr.Subir Sarkar - Advocate for the Appellant.

Mr.S.R.Agarkar - APP for the Respondent-State.

CORAM : S. M. MODAK, J.

DATE : 15th DECEMBER, 2023

JUDGMENT :-

1. Heard learned Advocate for the Appellant/convicted Accused who is *de-facto* Complainant in case under the provisions of the Prevention of Corruption Act, 1988 ["PC Act"] and learned APP.

2. If an Accused is acquitted on account of lapses in investigation and lacunae in the evidence, Court cannot be blamed. However, when case results into acquittal due to ignorance of the Judicial Officer, it pains us. Similar thing has

happened in this case. On one hand, by accepting the defence raised by the original Accused, trial Court acquitted Accused but on same evidence, convicted the Complainant.

3. In fact, this Appellant was instrumental in launching the prosecution under the provision of Section 7 and Section 13(1) (d) read with Section 13(2) of the PC Act against one Dattajirao Vasantrao Patil and Special Case No. 2 of 1993 was initiated in Court of Special Judge - Kolhapur. However, when the question of giving evidence had arisen, this Appellant has cleverly supported the case of the prosecution while giving examination-in-chief. However, when he was cross-examined by Accused Dattajirao V. Patil, he deposed that in fact he owes the amount to the Accused and whatever amount he has parted away on the date of the trap on 15th May 1992 was not towards the illegal gratification, but it was towards repayment of the loan.

4. When the trial Court appreciated the evidence in the said case, it has given benefit of doubt to said Dattajirao Patil. It is for the various reasons including the present Appellant and the panch witnesses not supporting the prosecution witness and defects in sanction. The said Accused was acquitted *vide* judgment dated 5th January, 1998. It is placed on record. However, while acquitting the Accused, the trial Court on 05th

January, 1998 was pleased to issue show cause notice to the present Appellant by calling his explanation as to why he should not be punished under Section 193 of the Indian Penal Code, 1860 [“IPC”].

5. Show cause notice was issued on 7th January, 1998. When the present Appellant gave an explanation to the show cause notice, the trial Court as per order dated 12th May 1998 has directed the Appellant to appear before him on 5th June 1998 for the purpose of explaining particulars of the offence punishable as per Section 344(1) of the Code of Criminal Procedure [“Cr.P.C.”]. (at page No. 20 of the paper book). The particulars were explained on 17th June, 1998 (at page No.7). Thereafter, after hearing both the sides, the trial Court was satisfied that wilfully and deliberately, the present Applicant has given false evidence and accordingly convicted him on 17th June 1998 for simple imprisonment for one month and fine of Rs.250/-. Punishment is prescribed under Section 344 of Cr.P.C.. The correctness of the said judgment is challenged by way of this Appeal.

Submissions

6. I have heard learned Advocate Shri.Sarkar for the Appellant and learned APP. Learned Advocate Shri.Sarkar

invited my attention to the evidence given by this Appellant and findings of the trial Court. Mr.Sarkar relied upon the following two judgments :-

- a) Sanjay S/o Baburao Gitte Vs. The State of Maharashtra¹
- b) Shri Manikrao s/o Shivram Wagh Vs. The State of Maharashtra².

7. Whereas, according to the learned APP, when the Complainant was knowing that he owes the amount to Mr.Patil, then why he has approached Anti Corruption Bureau and why he led them to organize the trap and persuaded them to conduct investigation and to file charge-sheet. According to him, this is an afterthought to help the Accused and decision of the trial Court does not require interference.

Judgments

8. It is true that in the case of **Sanjay Gitte** (*supra*), the learned Single Judge of this Court has also dealt with similar controversy. While acquitting the Accused for matrimonial offence, the learned Sessions Judge held that the Appellant therein was witness No.2. During cross-examination, he has resiled from his statement. This Court observed that merely because of inconsistencies in evidence given in the judicial

1 Criminal Appeal No. 307 of 2016 : 5th May, 2017 : Bombay High Court (Bench at Aurangabad)

2 Criminal Appeal No. 699 of 2006 : 16th February, 2019 : Bombay High Court (Bench at Nagpur)

proceedings, it will not amount to committing an offence of giving false evidence. Accordingly, the conviction recorded under Section 344 of the Code was set aside.

9. Whereas, similar controversy has also arisen in case of **Shri Manikrao S/o Shivram Wagh** (*supra*). Therein, the Complainant was de-facto Complainant and he has resiled from his statement and trial Court issued him notice and convicted him for the punishment laid down under Section 344 of Cr.P.C. This case also involves offence under Prevention of Corruption Act. The ingredient of '*wilfully/intentionally*' giving false evidence was not proved. In that case, the trial Court while dealing with the evidence of such Complainant considered the reasons offered by de-facto Complainant-Accused for the payment of the money. On one hand, the Complainant described the money towards illegal gratification but during cross-examination, he offered an explanation that it is by way of incurring expenses for laying water pipeline. (Para No.21). Accordingly, conviction was set aside.

10. In this Appeal, it needs to be examined whether the ingredient of '*wilfully/intentionally giving false evidence*' is proved or not and whether the trial Court has fulfilled the requirements of Section 344 of Cr.P.C. There is a need to restate the law again.

Provisions of law

11. It is true that anyone can set the criminal law into motion, but there are certain exceptions. One such exception is provided in Section 195 of the Code. The relevant clause is clause (b) to Sub-section (1) to Section 195 of the Code. If this is an occasion, what is the procedure to be followed is also laid down in the Code. They are :-

- a) One is under the provisions of Section 340 of the Code
- b) Second is under Section 344 of the Code.

These provisions are included under the Chapter XXVI “*PROVISIONS AS TO OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE*”. Both these provisions empower the Court dealing with judicial proceedings to initiate an action against the delinquent for giving of false evidence. Even though, these provisions deal with same subject, there are differences. Many a time, there is confusion while resorting to a particular provision. The differences can be summarized as follows :-

Sr.No.	Section 344	Section 340
1.	Summary Procedure	Detailed Procedure
2.	Power can be exercised only at the time of delivering the judgment	Power can be exercised at any point

3.	The law has to be set in motion by the concerned Court	The law can be set in motion by the concerned Court on its own or on the application
4.	The process under this section is initiated by the Judge and it culminates with the order passed by him	Under this section one judge initiates action whereas it is tried by another Judge
5.	This section contains provision for initiation of action, for passing final order and it also prescribes the punishment.	Under this Section punishment is not prescribed
6.	The Judge has to consider the materials already on record.	The Judge may consider other material.

12. These are some of the differences in between the two provisions. Let us presume that Courts dealing with such contingencies may consider the above differences while deciding which mode is to be followed. Now coming to the provisions of Section 344 of Cr.P.C., we may find that two conditions are to be fulfilled :-

- a) If the witness knowingly or wilfully gave false evidence or has fabricated false evidence.
- b) If the Court is satisfied that it is necessary and expedient in the interest of the justice that the witness should be tried summarily.

However such power can be exercised only at the time of

delivery of the judgment or finally disposing the judicial proceedings.

13. Learned Advocate Shri.Sarkar is right in his submission that provisions of Section 344 of the Code is complete code in itself that is to say it lays down :-

- a) when that power can be exercised;
- b) at what stage;
- c) what are the prerequisites and
- d) prescribes what will be punishment.

14. So in this case, we have to ascertain :-

- a) Whether the Complainant willfully or intentionally or deliberately gave false evidence;
- b) Whether it was necessary or expedient in the interest of the justice to try the witness summarily.

The emphasis is on arriving at satisfaction by the concerned Court. Such satisfaction has to be arrived at, first while initiating action and secondly, while taking the final call. Now, what will be the material for arriving at a satisfaction. It may consist of evidence given by the concerned witness, necessary documents.

15. It is also true that the observations of the trial Court about the conduct of that perjurer, in the acquittal judgment is also material. It is no doubt true that the question for taking

action under Section 344 of the Code will arrive only when particular witness has resiled from his earlier statement. In each and every case, such action is not warranted.

Facts

16. It is true that the present Appellant was contractor who has executed the work for Municipal Corporation of Kolhapur and one Dattajirao Patil who was working as an Assistant Engineer in the Corporation was involved in the process of preparing the bill. When he demanded illegal gratification for Rs.3,000/-, the present Appellant lodged the complaint with Anti Corruption Bureau on 14th May 1992 and then trap was laid and original Accused was found accepting the amount of Rs. 1,500/-.

17. While giving evidence, when he was cross-examined, two documents were put to him on behalf of the Accused. It consists of two chits. The relevant portion finds place in para no. 11. The present Appellant gave following answers :--

“My residential house is surrounded with other houses. There are 7 members in my family. The accused asked me to pay Rs. 3,000/-. He was speaking in angry tone. I replied to him that whenever I will pay the same to the accused. I undertook to make the payment within two days of such amount which I able to raise. I do not remember as to whether I borrowed an amount of Rs. 3,000 from the accused”.

The documents at Exhibits - 38 and 39 were shown to me.

He answered :--

“the paper now shown to me is in my handwriting and it bears my signature. The same is at Exh. 38. In that chit I had made mention of financial condition of myself at that time. The another chit now shown to me bears my signature. It is at exh. 39. It is in my handwriting wherein it has been stated that I will make the arrangement and I will make the arrangement of Rs. 1,500/-. Both these chits are addressed to the accused. I went to accused on 15/5/1992 to pay the amount”.

Judgment of acquittal

18. While appreciating the evidence, the trial Court has given two reasons. Trial Court observed :--

“As such in view of the fact that both the witnesses have turned hostile. The fact that accused accepted the amount of Rs. 1,500/- by way of bribe could not be established while dealing with point no. 1. I have already observed that the demand made by the accused of the amount of Rs. 3,000/- appears to be improbable for the reason that the only amount which was due at the time was Rs. 2,391.28/- and for that purpose nobody would have made the demand of Rs. 3,000/- or for that matter the Complainant would not have agreed to pay that amount.” (para no. 33)

19. On the point of nature of transaction in between the present Appellant and the original Accused, trial Court

observed :--

“In those circumstances also it will have to be said that there must be some other transactions between the accused and the complainant. In view of that transaction the complainant would have agreed to pay the amount to the accused. The possibility that because the accused was persistently making the demand of his own amount, complainant had got annoyed and would have made the report also cannot be ruled out.” (para no. 33)

20. It is not disputed that prosecution has not challenged this judgment of the acquittal. In fact, when the trial Court appreciated this evidence, trial Court has accepted the probable reason for the transaction for Rs.1,500/- on one hand. Whereas, on the other hand, prosecution has claimed that Rs.1,500/- was paid to the Complainant by way of illegal gratification.

21. Whereas, Accused has treated that Complainant offered Rs.1,500/- towards repayment of loan taken by him. On one hand, trial Court finds improbability in the prosecution version, on the other hand, trial Court considered the nature of the transaction treated by the Accused as false.

22. So, trial Court has not concluded that this was an attempt made by the Accused to win over the Complainant or Complainant resiled from his version in order to help the

Accused from clutches of the law.

23. Section 344 of Cr.P.C., requires satisfaction to be arrived at by the Court. The satisfaction should be about giving false evidence. When the trial Court itself has not observed that the Complainant has given false evidence, it is not proper for the trial Court to initiate action and to try him summarily as per Section 344 of the Code. Because, on one hand you cannot acquit the Accused by considering the explanation as probable and on other hand, on the same evidence you can convict the Complainant for the punishment laid down under Section 344 of the Code.

24. It is no doubt true that when the Complainant has accepted the theory put up by the Accused about handing over the money by the Complainant, the Complainant has accepted it and has not stated any word before the Anti-Corruption Bureau. So, under what circumstances this Complainant has initiated an action under the provisions of Prevention of Corruption Act is a question.

25. If really there is a transaction in between them for payment of the money, then why he has approached the Anti-Corruption Bureau. For that, there is no explanation offered by the present Appellant. When he has given reply to show cause notice, the only explanation offered that he was under

presumption that money demanded by the Accused was towards the bribe. It cannot be accepted from the person like him because he is a Contractor and action by Anti-Corruption Bureau does not involve single day action but it consists of various events.

26. On that aspect, I am not with the Appellant. However, I am inclined to set aside the conviction due to lack of satisfaction arrived at by the trial Court in the judgment of acquittal. I have already said that in the judgment acquitting the original Accused, the trial Court has never observed that the Complainant gave false evidence. If it is not so, action is unwarranted and conviction cannot be sustained. One should not do haste in taking action. The intention behind taking action is certainly laudable. But, then while appreciating the materials, learned trial Judge ought to have observed that this was an attempt to win over the Complainant. This has not happened. So, I have no alternative but to set aside the conviction.

27. The Appeal deserves to be allowed. Hence order :-

ORDER

- (i) Appeal is allowed.
- (ii) Conviction of the Appellant under Section 344 of Cr.P.C., dated 17th June, 1998 in Criminal Misc. Application No. 53 of 1998 by the Court of Sessions

Judge, Kolhapur is set aside.

(iii) Fine paid, if any, be returned to the Appellant.

[S. M. MODAK, J.]