

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

CRA-S-1500-2023
Date of Decision: 17.07.2023

Anil Kumar

....Appellant

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Udit Jain, Advocate, for the appellant.

HARNARESH SINGH GILL, J.

The appellant lays challenge to the initiation of the proceedings against him under Section 193 of the Indian Penal Code, in terms of the complaint made by the learned Additional Sessions Judge, Hisar on 20.1.2017, now registered as COMI/30/2017 – Court on its own motion Vs. Anil Kumar.

Learned counsel for the appellant would vehemently argue that the initiation of the said proceedings is not tenable in the eyes of law as the provisions of Section 193 IPC are only applicable in terms of the evidence and documents given in the Court and not in respect of the statement made before the Police. It is further submitted that the statement made before the police is not admissible in terms of the provisions of the Indian Evidence Act.

It is further argued by the learned counsel that he did not name the accused in his statement made before the police under Section 161 Cr.P.C. and therefore, mere denial to

identify the accused in the Court, would not attract any proceedings, much less the proceedings in question.

While referring to the judgment dated 17.11.2017 passed by the learned Additional Sessions Judge, Hisar, learned counsel would submit that all the accused in FIR No.107 dated 21.02.2016 registered under Sections 148, 427, 436, 395, 450, 149 IPC at Police Station City Hansi, out of which the proceedings under appeal, were initiated, stand acquitted of the charges framed against them. It is, thus, submitted that once the prosecution version did not find any favour with the learned Additional Sessions Judge, the statement given by the appellant in the Court, ought not attract any penal liability.

Reliance is placed upon the judgment of the Hon'ble Supreme Court in Omkar Namedo Jadhao and others Vs. Second Additional Sessions Judge, Buldana and others, Law Finder Doc ID # 77687.

It is yet further submitted that before initiating the proceedings in question, the appellant was not afforded any opportunity of hearing and the same is in contravention of the judgment of the Hon'ble Apex Court in R.S. Sujatha Vs. State of Karnataka and others, Law Finder Doc Id# 233552.

I have heard the learned counsel for the appellant and have also gone through the case file.

FIR No.107 dated 21.02.2016 under Sections 148, 427, 436, 395, 450, 149 IPC at Police Station City Hansi, was registered on the basis of the statement made by the appellant.

It was alleged by the appellant-complainant therein that the

accused had attacked on his School, broken the furniture; took away with them the currency notes of Rs.55,700/- and had also snatched a gold chain of one Sunita Rani. In the said proceedings, charges were framed against all the four accused. The appellant appeared as PW1 in the Court, but had turned hostile. Learned Additional Sessions Judge, vide order dated 20.1.2017, filed a complaint against the appellant, by, inter-alia, observing as under:-

“8. It is pertinent to mention here that during the pendency of the case titled as State Vs. Radhey Shyam, prosecution has filed an application under Section 340 Cr.P.C. read with Section 195(1)(b) Cr.P.C. for initiating proceedings against complainant PW1 Anil Kumar (present accused) as he did not support the prosecution version and resiled from his previous statement. On the aforesaid application, separate order was passed by the undersigned today itself i.e. 20.01.2017, copy of which is attached herewith and it is held that it is a fit case where it is expedient in the interest of justice that the above accused Anil Kumar, be put on trial for giving false evidence to control the menace of hoodwinking the criminal justice system by such unscrupulous persons.

9. Therefore, this complaint by the Court as contemplated by Section 195(1) Cr.P.C. as given in Section 340 Cr.P.C. and sub-section (1) and (2) is being filed and it is requested that cognizance against the above accused be taken as per the provisions of Section 343 Cr.P.C. by treating it as State case instituted as a police report to be conducted by the Public Prosecutor. Hence, this complaint. It is, therefore, prayed that the accused named above be summoned and be punished as per law.”

It is a case where the appellant being the complainant, did not support the prosecution case and rather turned hostile. The Court concerned making the complaint under Section 193 IPC has taken into consideration, in detail, the conduct of the appellant. Therefore, the appellant cannot

justify him turning hostile and putting the entire criminal justice dispensation at his whims and fancies.

A perusal of the judgment dated 17.11.2017 passed by the learned Additional Sessions Judge, Hisar, whereby all the accused of FIR No. 107 dated 21.02.2016, aforesaid, stood acquitted, would show that the accused therein have been granted benefit of doubt and their acquittal is not on merits. The appellant's conduct in turning hostile and resiling from the prosecution case, is one of the factors for the acquittal of the accused.

In State Tr. P.S. Lodhi Colony, New Delhi Vs. Sanjeev Nanda, (2012)8 SCC 450, the Hon'ble Supreme Court, has held as under:-

“86. Witness turning hostile is a major disturbing factor faced by the criminal courts in India. Reasons are many for the witnesses turning hostile, but of late, we see, especially in high profile cases, there is a regularity in the witnesses turning hostile, either due to monetary consideration or by other tempting offers which undermine the entire criminal justice system and people carry the impression that the mighty and powerful can always get away from the clutches of law thereby, eroding people's faith in the system. This court in State of U.P. v. Ramesh Mishra and Anr., 1997(1) RCR (Criminal) 55 : [AIR 1996 Supreme Court 2766] held that it is equally settled law that the evidence of hostile witness could not be totally rejected, if spoken in favour of the prosecution or the accused, but it can be subjected to closest scrutiny and that portion of the evidence which is consistent with the case of the prosecution or defence may be accepted. In K. Anbazhagan v. Superintendent of Police and Anr., [AIR 2004 Supreme Court 524], this Court held that if a court finds that in the process the credit of the witness has

not been completely shaken, he may after reading and considering the evidence of the witness as a whole with due caution, accept, in the light of the evidence on the record that part of his testimony which it finds to be creditworthy and act upon it. This is exactly what was done in the instant case by both the trial court and the High Court and they found the accused guilty.”

87. We cannot, however, close our eyes to the disturbing fact in the instant case where even the injured witness, who was present on the spot, turned hostile. This Court in Sidhartha Vashisht @ Manu Sharma v. State (NCT of Delhi), 2010(2) RCR (Criminal) 692 and in Zahira Habibullah Shaikh v. State of Gujarat, 2006(2) RCR (Criminal) 448 had highlighted the glaring defects in the system like non-recording of the statements correctly by the police and the retraction of the statements by the prosecution witness due to intimidation, inducement and other methods of manipulation. Courts, however, cannot shut their eyes to the reality. If a witness becomes hostile to subvert the judicial process, the Courts shall not stand as a mute spectator and every effort should be made to bring home the truth. Criminal judicial system cannot be overturned by those gullible witnesses who act under pressure, inducement or intimidation. Further, Section 193 of the Indian Penal Code imposes punishment for giving false evidence but is seldom invoked.”

The judgment relied upon by the learned counsel for the appellant in R.S. Sujatha’s case (supra), would be of no help to the appellant as the appellant would have ample opportunity to face the trial and lead his evidence in the proceedings pending before the Court concerned.

Still further, the judgment in Omkar Namdeo Jadhao’s case (supra) is also not applicable to the facts of the present case. In the instant case, the appellant had resiled from his previous statement and turned hostile. Therefore, it is not a

simplicitor case of the statement under Section 161 Cr.P.C.
recorded before the Police.

No other point has been urged.

In view of the above, finding no merit in the present
appeal, the same is hereby dismissed.

17.07.2023
ds

(HARNARESH SINGH GILL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No