



CRM-M-32764-2018 (O&M)

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

CRM-M-32764-2018 (O&M)

Date of Decision: 18.09.2024

MUNFIDA

...Petitioner

V/S

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Safraj Hussain, Advocate
for the petitioner.

Mr. Vikas Bhardwaj, AAG Haryana.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of Kalandra dated 26.09.2017 (Annexure P-3) under Section 182 IPC pending in the Court of Additional Chief Judicial Magistrate, Nuh, District Nuh.

2. Succinctly, facts of the case are that the present petitioner lodged an FIR bearing No.48 dated 14.05.2016 under Sections 323, 376, 498-A read with Section 34 of IPC at Women Police Station, Nuh, wherein it was alleged by her that on 11.05.2016, accused Shahid committed rape upon her while she was feeding cattle. It was further alleged by the petitioner that when she raised hue and cry about the same, her husband Rafik came and started beating her without inquiring about the matter. She was dragged inside the house where she was beaten by her husband along with another accused namely Rishal. The accused persons tried to kill her and also demanded a car from her family members. It was also alleged by the petitioner that she fell unconscious due to the beating meted out her and was taken to a hospital where she regained her consciousness on 12.05.2016. Thereafter, the petitioner was medico-legally examined and her

Statement under Section 164 Cr.P.C. was recorded. After following due



procedure and completing investigation, police report was filed against the accused persons. Consequently, charge under Section 376 IPC was framed against accused Sahid, whereas, Rishal and Rafik were charge-sheeted for commission of offences punishable under Sections 323 IPC, to which all of them pleaded not guilty and claimed trial.

3. Trial ensued therefrom but the petitioner did not support the prosecution case leading to the acquittal of the accused persons, including her husband. Subsequently, the learned trial Court issued a notice to the petitioner under Section 344 Cr.P.C. for giving false evidence to which she pleaded guilty and did not claim trial. SHO, Women Police Station, Nuh was also directed to initiate proceedings under Section 182 IPC against the petitioner for lodging a false complaint and giving false information to the police. Thereafter, on the same day, she was convicted and sentenced under Section 344 Cr.P.C. to till rising of the Court along with a fine of Rs.500/-. The petitioner remained in the Court for the entire day, thereby, completing her sentence under Section 344 Cr.P.C. and also deposited the fine levied on her. However, the proceedings initiated under Section 182 IPC are pending against the petitioner, wherein, the impugned Kalandra has been presented. Aggrieved, the petitioner has approached this Court by way of the present petition.

4. Learned counsel for the petitioner *inter alia* contends that perusal of judgment dated 31.05.2017 (Annexure P-1) clearly indicates that petitioner was convicted under Section 344 of Cr.P.C. and at the same time a direction was also issued to the Station House Officer of the jurisdictional Police Station to initiate proceedings under Section 182 IPC against the petitioner. As such, the impugned order suffers from incurable illegality as it amounts to double jeopardy as once the petitioner had been convicted under Section 344 Cr.P.C., simultaneous proceedings under Section 182 of IPC ought not to have been initiated. To



buttress his arguments, he has placed reliance on the judgment dated 17.02.1998 rendered by a Co-ordinate Bench of this Court in ***Sukhvinder Singh Vs. State of Haryana, 1998(3) RCR(Crl.) 222.***

5. Per contra, learned State counsel opposes the prayer made by the petitioner on the ground that the FIR(supra) was registered on the complaint made by the petitioner. However, when she appeared as a prosecution witness, she has not supported the case of the prosecution and the learned Public Prosecutor has declared her hostile. As such, the learned trial Court has rightly issued directions to the jurisdictional Police to initiate proceedings under Section 182 IPC. Further submitted that the facts in the judgment relied upon by learned counsel for the petitioner are distinguishable from the facts of the present case as in that case the proceedings under Section 182 IPC were initiated by the jurisdictional police, whereas, in the present case the directions were issued by learned trial Court in the light of the facts that petitioner has resiled from the case set up by her against the accused.

6. Having heard the learned counsel for the parties and after perusing the record, this Court does not find force in the arguments advanced by learned counsel for the petitioner. It transpires that the petitioner had moved a complaint (Ex.PW4/A) on 14.05.2016 before the concerned police wherein serious allegations were levelled against her husband as well as two other persons. Entire criminal machinery was set into motion which resulted in a trial. However, during her examination as a prosecution witness (PW4), she refrained from supporting the prosecution and deposed as under: -

“Stated that on 11.05.2016, nothing has happened to me. Accused present in the Court did not do any wrong with me”

7. Furthermore, the petitioner who was declared hostile and cross-examined by learned Public Prosecutor upon assent of the learned trial Court,



stated on oath that she had heard and seen the complaint (Ex.PW4/A) but denied making any such statement before the concerned police. In addition, the allegations levelled by the petitioner against the accused persons were denied despite their seriousness. She also accused the jurisdictional police of taking her signatures on a blank paper. Above all, when the petitioner was confronted with her statement recorded under Section 164 Cr.P.C. (Ex.PW4/B), she admitted making the statement but deposed that she suffered the same under duress. However, the official witnesses examined by the prosecution, i.e., HC Sarita (PW2) and Constable Amit (PW3), categorically deposed regarding sending duly sealed parcels containing vaginal swabs and pubic hair of the petitioner to FSL, Bhondsi, showing willingness on her part.

8. At this juncture, it is pertinent to discuss the following statutory provisions for proper adjudication of the present case: -

182 IPC: False information, with intent to cause public servant to use his lawful power to the injury of another person

Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause such public servant:

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

344 Cr.P.C. 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.

In the case of **Mahila Vinod Kumari v. State of Madhya Pradesh, 2008(4) RCR(Criminal) 368**, the Hon'ble Supreme Court while discussing the purview of Section 344 Cr.P.C., held as follows: -

“7. 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 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 Ch. 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 month's 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 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 chose 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)].”

Pertinently, a two-Judge Bench of the Hon’ble Supreme Court rendered a judgement in the case of **Ram Dhan v. State of U.P., 2012(2) R.C.R. (Criminal) 751**, where above-mentioned statutory provisions were discussed



“8. Be that as it may, the charge-sheet has been filed under sections 177, 181, 182, 195 and 420 Indian Penal Code. Section 177 Indian Penal Code deals with an offence furnishing false information. Section 181 Indian Penal Code deals with false statement on oath. Section 182 Indian Penal Code deals with false information with intent to cause public servant to use his lawful power to the injury of another person. Section 195 Indian Penal Code deals with giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.

*9. At least the provisions of Sections 177 and 182 deal with the cases totally outside the court. Therefore, the question of attracting the provisions of sections 195 and 340 Criminal Procedure Code does not arise. Section 195 Indian Penal Code makes fabrication of false evidence punishable. It is not necessary that fabrication of false evidence takes place only inside the court as it can also be fabricated outside the court though has been used in the court. Therefore, it may also not attract the provisions of Section 195 Criminal Procedure Code (See: **Sachida Nand Singh & Anr. v. State of Bihar & Anr., 1998(1) RCR (Criminal) 823 (SC) : (1998)2 SCC 493.**)”*

9. A conjoint reading of the above-mentioned observations clearly establishes that case of the petitioner is not plagued by the doctrine of double jeopardy since the offences committed are distinguishable in character as enunciated in the case of **Ram Dhan (supra)**. Not only did the petitioner perjure herself before the learned trial Court but also lodged a false and frivolous complaint before the jurisdictional police with intent to lead them to causing harm or annoyance to the accused persons. Furthermore, the judgement relied upon the learned counsel for the petitioner does not come to his rescue since it is distinguished on facts from the case at hand. In view of the aforesaid

discussion as well as statutory provisions mentioned below, this Court is of the considered opinion that no interference is warranted by this Court qua the



Kalandra dated 26.09.2017 (Annexure P-3).

10. Falsely implicating a person, especially in cases pertaining to sexual offences, has far reaching consequences not just on the person named but also his family members. Mere implication is sometimes sufficient to destroy the social standing of a person and his family notwithstanding that he is acquitted later on. Therefore, it becomes incumbent upon the Courts to keep such malignant practices in check before they scale up to epidemic proportions.

11. As an upshot of the above, the present petition is hereby dismissed.

12. Pending miscellaneous applications, if any, shall stand disposed of accordingly.

18.09.2024
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No