



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 233 OF 2006

1. Damodar S/o Tukaram Tandale
Age: 44 years, Occu.: Service,
R/o. Gramsevak Colony, Beed,
Tq. & Dist. Beed.
2. Dinkar S/o Tukaram Tandale,
Age: 35 years, Occu.: Agri.,
R/o. Wanjarwadi, Tq. & Dist. Beed. ... Appellants

Versus

The State of Maharashtra ... Respondent

.....
Mr. R.N. Dhorde, Senior Advocate a/w Mr. S.S. Dudhane, Advocate
i/b V.R. Dhorde, Advocate for Appellants
Mr. C.V. Bhadane, APP for Respondent – State
.....

CORAM : ABHAY S. WAGHWASE, J.
RESERVED ON : 12 FEBRUARY 2025
PRONOUNCED ON : 20 FEBRUARY 2025

JUDGMENT :-

1. Both appellants assail judgment and order passed by the learned Vth Adhoc Additional Sessions Judge, Beed in Misc. Criminal Application No.18 of 2005, holding them guilty for offence under Section 344 of the Criminal Procedure Code.

2. Learned senior counsel took this Court through the papers and submitted that, present appellant no.1 had instituted report resulting in the registration of crime, and further resulting into Sessions Case No.72 of 2004. That, present appellants were witnesses in the said Sessions Case. That, appellant No.1 was the government employee and appellant No.2 was his brother. That, on the date of evidence, appellant No.1 was constraint to attend administrative training, and as such, he did not get notice or information about any evidence in the trial Court dated 09.09.2004, and hence, he could not attend the Court. That, there was no deliberate avoidance. That, moreover, accused Amol Khade, against whom present appellant no.1 had lodged report, had also filed complaint against the present appellant no.1 which resulted into institution of RCC No. 223 of 2003. However, in both cases, there was settlement between the parties. That, further appellants testified in the Court. That, they had no intention to give false evidence. Further, learned trial Court issued notice under Section 344 of the Code of Criminal Procedure and without considering the reply therein, it has been concluded that there is willful and knowingly giving false evidence, and they are held guilty and also sentenced.

3. Learned senior counsel further pointed out that, there is no independent assessment of material, no consideration of say/answer given by appellants to the show cause notice in proper perspective, and directly provisions under Section 344 of the Code of Criminal Procedure are invoked, which are to be exercised rarely and in exceptional case and only when it is expedient. Therefore, learned senior counsel seeks indulgence for setting aside the impugned judgment by allowing the appeal.

4. In answer to the above, learned APP supported the impugned judgment and order by pointing out that appellant No.1 himself had set law into motion. He and his brother were expected to cooperate with the prosecution, however they retracted and rather favoured the accused which amounts to giving false evidence. That, required ingredients were available and after following due procedure like issuance of show cause notice, seeking explanation, and not finding it satisfactory, learned trial Court has passed the order. That, there is no infirmity, and therefore, learned APP prays to dismiss the appeal.

5. Heard. Perused the papers. Apparently, conviction is for commission of offence under Section 344 of the Code of Criminal Procedure. Before advertng to the facts of the case and to the

impugned order, it would be appropriate to re-produce the provisions of Section 344 of the Code of Criminal Procedure, which are as under:

“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.”

6. On going through the papers, it is emerging that, Sessions Case No.72 of 2004 was conducted for commission of offence under Session 395 r/w 397 of the Indian Penal Code on report by the present appellant. After framing charge, trial was conducted, wherein prosecution witnesses were examined and documentary evidence like complaint, medical certificate, C.A. report, Panhanama, etc. were also taken into consideration, and after hearing both the sides, learned trial Court acquitted all four accused therein by its judgment and order dated 18.12.2004.

7. It seems that after the said judgment, learned trial Court has put appellants to notice and sought their say as to why action should not be taken against them for commission of offence under Section 344 of Criminal Procedure Code.

In response to the same, witnesses i.e. present appellants Damodar and Dinkar, tendered their say, which is at Exhibit-7/C. The translated version of the say is re-produce as under:

“1) That is, respondent No. 1 is a resident of Beed and is employed in the Education Department as the Head of the center, and respondent No. 2 is a resident of Vanjarwadi, Taluka Beed, and is a farmer by profession and a police inspector. Respondents 1 and 2 are peace-loving and law-abiding citizens.

2) That is, on the date 26.05.2003 in the night Baburao Khade and others assaulted Respondent No.1, so he had filed a complaint against them in the Beed City Police Station. Respondent No.1 was admitted to the district hospital for 7 or 8 days due to a serious head injury.

3) That is, Respondent No.1 had to go to Ambejogai during the period of 9th and 10th September 2004 due to his per-scheduled administrative training. And due to this, Respondent No.1 could not get the notice/information regarding giving evidence in the Hon'ble Court on 09.09.2004 and hence could not be present in the Hon'ble Court on the above date. Respondent No.1's non-appearance before the Hon'ble Court on the above date was due to necessity and lack of notice and the said act was not done deliberately and this applicant had no intention of being absent from the Hon'ble Court or taking up the time of the Hon'ble Court.

4) It is said that after Respondent No.1 registered a complaint against the above accused at Police Station Beed, the accused Amol Baburao Khade filed a complaint against Respondent No.1 and Sudhakar Tambe, Prashant Tandale, Tukaram Sanap in relation to Crime Reg. No. 150/03 and based on that, a case was filed against Respondent No.1 and others in the court of Chief Judicial Magistrate Beed as RCC 223/03. In the present case, there was a compromise between the complainant Amol Khade and Respondent No.1 and others, and since there was no evidence against the Respondent No.1 in a crime that was not eligible for compromise, respondent No.1 was acquitted by the Chief Judicial Magistrate.

5) *That, the testimony of the present respondents No. 1 and 2 has been given orally in the Hon'ble Court. At the time of the present testimony/oral testimony, the respondent had no intention to give false testimony in the Hon'ble Court and to prepare any false and fabricated evidence before the Hon'ble Court. Respondent No.1 had suffered serious head injuries due to the assault. Due to which he was admitted to the District Hospital for medical treatment for 7-8 days and due to which his mental and physical condition was not good and he was mentally disturbed. The respondent had no intention and intention to register a false case against the accused. Also, there was no intention and mentality to give false testimony in the Hon'ble Court to save the accused.*

6) *That is, in the present case the respondent had no intention to remain absent and to give false testimony in the Hon'ble Court to save the accused. The respondent No. 2 is always co-operative and law abiding person and he has respect and respectful towards the Hon'ble Court.*

7) *That is t was never the intention of the respondent to be in contempt of the Hon'ble Court by not appearing in the court in the present case. And the respondents have always taken care that the Hon'ble Court is not in contempt. Without prejudice to the above statement, the respondent states that if it is found that this Hon'ble Court has been in contempt due to the conduct of the respondents, then the respondent humbly apologizes to the Hon'ble Court.*

8) *That the respondent No.2, has answered all the questions asked to him during the cross-examination and in the said cross-examination he did not give any answer inconsistent with the complaint/respondent nor was any indicative question asked before declaring him a hostile. From that it was not found that the respondent was giving inconsistent answers to his complaint and despite this, the government party has conducted a cross-examination*

without declaring him as hostile. Respondents No.1 and 2 are law abiding persons and they have respect and respectful towards the Hon'ble Court. He made no attempt to give false testimony in court. It would be in the interest of justice to dismiss the present application against the respondent.

Hence prayed for,

The Misc. Criminal Application No. 18/2005 against the Respondent Nos. 1 & 2 is to be rejected.”

8. On appreciating the above say, learned trial Judge seems to have passed judgment in Misc. Criminal Application No.18 of 2005 recording guilt of present appellants under Section 344 of the Code of Criminal Procedure, holding that there is deliberate false deposition. That, knowingly and intentionally false evidence has been tendered, and therefore, they are liable for the action, and hence, they are held guilty by the judgment and order dated 07.03.2006.

9. On re-appreciating the papers and on going through the judgment and order passed by the learned trial Judge in Sessions Case No.72 of 2004 as well as on going through the impugned order passed in Misc. Criminal Application No.18 of 2005, it is clearly emerging that there is no independent appreciation of the aspect, as to whether the deposition was intentional and given willingly. Learned trial Court was expected to consider the say to the show cause notice and explanation for initial non availability and about matter to be amicably settled between the parties.

Even otherwise, on going through the judgment passed in Sessions Case No.72 of 2004, learned trial Judge has appreciated the evidence of in all twelve witnesses, but only appellants are singled out and made to face proceedings.

10. In paragraph 33, learned trial Court has held that except police officials and medical expert, none of the witnesses have supported the prosecution. In paragraph 34, learned trial Court has held that after taking into account the evidence of police officer, who has reduced the FIR in writing, as well as PW-2 and PW-3, these witnesses are deposing falsely to save accused persons, and finally, in paragraph 35, learned trial Court, has observed that, taking into consideration the cumulative effect of the entire evidence, the prosecution has miserably failed to prove the charges and thereby acquitted the accused. However, again in paragraph 37, learned trial Court has observed that, there is growing tendency amongst witnesses to falsely depose in the Court, and in the same paragraph, it has been further observed that, it is necessary to issue notice under Section 344 of the Code of Criminal Procedure for taking action. These observations clearly indicate that in the judgment of the Sessions Case itself, learned trial Court has become judgmental and already formed an opinion that accused has given false evidence. Thereafter, learned trial Court seems to have issued notice, sought say, but further failed to appreciate the say given by the appellants,

and further failed in recording specifically that it is expedient in the interest of justice as there is deliberate, willingly and knowingly adducing false evidence. Independent finding to this extent is not recorded in the impugned judgment, as stated above, in Sessions Case No. 72 of 2004 itself. Learned trial Court seems to have formed an opinion that offence under Section 344 gets attracted. Other witnesses are apparently spared of any action.

11. In ***Santokh Singh V. Izhar Hussain, (1973) 2 SCC 406***, the ratio on this aspect is settled. The relevant portion of the said judgment is borrowed and quoted as under :

"Every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Two frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely, that the court should direct prosecution."

12. Relying on the same, and in view of discussion in the foregoing paragraphs, here, as learned trial court has, before conducting summary proceedings, itself seems to be predetermined to hold witnesses guilty, interference is required by allowing the appeal. Accordingly, I proceed to pass following order :

ORDER

- (i) Criminal Appeal stands allowed.
- (ii) The conviction awarded to appellants Damodar Tukaram Tandale and Dinkar Tukaram Tandale in Misc. Criminal Application No.18 of 2005 by the Vth Adhoc Additional Sessions Judge, Beed on 07.03.2006 for offence punishable under Section 344 of the Code of Criminal Procedure, stands quashed and set aside.
- (iii) The appellants stands acquitted of the offence punishable under Section 344 of the Code of Criminal Procedure.
- (iv) Bail bonds of the appellants, if any, stand cancelled.
- (v) The fine amount deposited, if any, be refunded to the appellants after the statutory period.

(**ABHAY S. WAGHWASE**)
JUDGE