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ismail Khan Vs. the State

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Court : Karnataka

Decided On : Dec-17-1991

Reported in : 1992CriLJ3566; 1991(4)KarLJ262

Judge : M.M. Mirdhe, J.

Appeal No. : Criminal Petition No. 1669 of 1990 (Against the order passed by J.M.F.C. Shahapur, D/- 24-11-1990.)

Appellant : ismail Khan

Respondent : The State

Advocate for Def. : H. Kanthraj, Government Pleader

Advocate for Pet/Ap. : V.B. Patil, Adv.

Judgement :
ORDER

1. This Criminal Petition is filed by the petitioner under S. 482, Cr.P.C. against the order dated 24-11-1990 passed by the J.M.F.C. Shahapur, in C.C. No. 1215 of 1985.

2. I have heard the learned counsel for the petitioner and the learned Government Pleader fully and perused the record of the case.

3. The Shahapur Police filed charge sheet against five persons alleging that they have committed the offences punishable under Ss. 143 and 506, I.P.C. and also under S. 2 of the Karnataka Prevention of Incitement of Refuse or to Defer Payment of Tax Act, 1981. The learned Magistrate framed charges for the said offences against the accused in that case and all the accused pleaded not guilty to the charge and claimed to be tried. Thereafter the prosecution led its evidence and after hearing both sides the learned Magistrate acquitted the accused in that case under S. 248(1), Cr.P.C. for the offences alleged against them. While acquitting the accused in the said case, he also ordered the case to be registered against P.W. 1 Md. Ismail Khan, son of Md. Yaseen Khan, Village Accountant, Sagar, for the offence punishable under S. 193, IPC and he ordered for issue of show cause notice to the said P.W. 1 as to why he should not be punished for giving false evidence in the judicial proceedings.

4. The petitioner who is P.W. 1 in that case has filed this petition. He appeared before the J.M.F.C. Shahapur, in response to the show cause notice and filed his reply. The learned J.M.F.C. was not satisfied with the reply given to the show cause notice and he came to the conclusion that the petitioner should be tried for having committed the offence punishable under section 193, I.P.C. during the course of the trial in C.C. No. 307 of 1984 and he posted the case for recording the plea of the petitioner on 30-11-1990.

5. There is no complaint filed for the offence under section 193, IPC by the Court. In Chandrapal Singh v. Maharaj Singh, : 1982 CriLJ1731 it has been held by the Supreme Court as follows (at page 1734 (of Cri LJ)) :-

'The Rent Control Officer shall be deemed to be a civil court within the meaning of Sections 345 and 346 of Cr.P.C. 1973 and in view of sub-section (2) of S. 24 of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act, 1972, shall be a civil court for the purpose of S. 193, IPC. S. 195(3), Cr.P.C. provides that the expression 'Court' in S. 195(1)(b)(i) will include a Tribunal constituted by or under a Central Provincial or State Act if declared by that Act to be a Court for the purposes of the Section. S. 195(1)(b)(i) provides a pre-condition for taking cognizance of an offence under S. 193, IPC. viz., a complaint in writing of the

Court. In view of the specific provision made in sub-section (2) of S. 24 of the Rent Act that for the purposes of Sections 345 and 346, Cr.P.C. Rent Control Officer, assuming it to be a Tribunal as held by the High Court and not a Court, would be deemed to be a civil court and, therefore, for purposes of Sections 193 and 228, IPC a fortiori any proceeding before it would be a judicial proceeding within the meaning of S. 193, IPC. If, therefore, according to the complainant false evidence was given in a judicial proceeding before a civil court and the persons giving such false evidence have committed an offence under S. 193, IPC in or in relation to a proceeding before a Court, no Court can take cognizance of such offence except on a complaint in writing of that Court. The grievance in the instant case, is that a false affidavit was filed by the accused which was receivable as evidence in the allotment proceedings before the Rent Control Officer which as a Tribunal would be comprehended in the expression 'Court'. If false evidence in the form of affidavit filed by the accused was given before Rent Control Officer, a Civil Court for the purpose of S. 193, IPC. That being a judicial proceeding S. 195(i)(b)(i) would be attracted. For the purpose of S. 195(1)(b)(i) a complaint by the Court is a pre-condition for taking cognizance of such offence by any criminal court. If this pre-condition is not satisfied the Court will have no jurisdiction to take cognizance.' In the case, there is no complaint filed by the Court as such. Therefore, the learned Magistrate was not competent to take cognizance of the offence under S. 193, IPC and proceed to record the plea of the petitioner.

6. The Magistrate has got powers under S. 344, Cr.P.C. to take cognizance of the offence of giving false evidence in the proceedings before him and after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try the 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. The offence under S. 193, IPC is punishable with imprisonment for 7 years in maximum whereas the offence for which the person can be tried summarily by a Court under S. 344, Cr.P.C. is punishable in maximum with imprisonment for 3 months or fine which may extend to Rs. 500/- or with both. Looking to the punishment prescribed for the offence of giving false evidence contemplated under S. 344, Cr.P.C. it is clear that the offence for which a person can be summarily tried under S. 344, Cr.P.C. is not the

offence punishable under S. 193, IPC and if the Magistrate is to proceed under S. 344, Cr.P.C. against a person, no complaint will be necessary. But, in the instant case, the Magistrate has proceeded against the petitioner for the offence under S. 193, IPC. when there is no compliant by the Court itself.

7. Even if the Magistrate were to proceed summarily against the person under S. 322, Cr.P.C. for which no previous complaint is necessary, still the law requires that the show cause notice should be accompanied by the statement of the witnesses in regard to which the accused has, in the opinion of the Court perjured himself.

8. In Dr. S. P. Kohli v. The High Court of Punjab and Haryana, : 1978 CriLJ1804 , the Supreme Court has held as follows :-

'(C) Penal Code (45 of 1860), S. 193 - Perjury - Show cause notice - Contents of.

It is highly desirable and indeed very necessary that the portions of the witness's statement in regard to which the accused has, in the opinion of the Court, perjured himself, should be specifically set out in or form annexure to the notice issued to the accused so that he is in a position to furnish an adequate and proper reply in regard thereto and be able to meet the charge.'

In this case, it is not disputed that the show cause notice was not accompanied by the statement of the petitioner in respect of which the learned Magistrate has come to the conclusion that the petitioner had committed perjury.

9. The learned Magistrate has perused the complaint given by the accused and his deposition and then he came to the conclusion that the petitioner has committed perjury. It is necessary that in order to make a person liable for perjury, he should have made a statement on oath regarding the facts on which his statement was based and then deny those facts on oath on a subsequent occasion. His earlier statement regarding the facts must be on oath and his subsequent statement also must be on oath and if both the statements are opposed to each other and they cannot be reconciled, then a person may be liable to be proceeded against for perjury under S. 344, Cr.P.C. or under S. 193, IPC. An old judgment of the High

Court of Judicature at Bombay in Emperor v. Bankatram Lachiram 1904 Cri LJ Vol. 1, 390 is illuminating on this point. In the said judgment, Chandavarkar, J. has held as follows :-

'It is a well known rule of law, applied by eminent Judges, to case of perjury arising out of contradictory statements that the Court dealing with them should not convict unless fully satisfied that the statements are from every point of view irreconciliable; and if the contradiction consists in two statements opposed to each other, as to matters of inference or opinion on which a man may take one view at one time and a contrary view at another, there can be no perjury, unless he has, on oath, stated facts on which his first statement was based and then denied these facts on oath on a subsequent occasion.

It is the duty of the Court to see whether the statements can be reconciled or not. The accused in a criminal case is merely on the defensive and unless there is any positive admission of a fact by him, any omission on his part to explain what indeed can be explained without his explanation should not be pressed against him. His failure to reconcile contradictory statement is not fatal to his case.

The construction of two contradictory depositions, like the construction of every document, is a question of law, not of fact.

The Criminal Procedure Code gives the High Court the power to go into evidence in revision. As a matter of practice, however, it will not interfere in revision with findings of facts based upon appreciation of evidence, but it will interfere under special circumstances or where there is an error of law.'

As justice Aston differed with Justice Chandavarkar, the case was referred and on a reference Chief Justice Jenkins has held as follows :-

'Per Jenkins, C.J. - (on reference) - To convict an accused of giving false evidence it is necessary to show not only that he has made a statement which is false, but also that he either knew or believed it to be false or did not believe it to be true.

Where it is sought to establish the offence of perjury on contradictory statements, although the Court may believe that on the one or the other occasion, the prisoner

swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong and swear to the reverse without measuring to swear falsely either time.

The controlling power of the High Court in revision of criminal cases is a discretionary power, and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which very greatly. This discretion ought not to be crystallized as it would become in course of time by one Judge attempting to prescribe definite rules with a view to bind other Judges in the exercise of the discretion, which the Legislature has committed to them. This discretion, like all other Judicial discretions ought, as far as practicable, to be left untramelled and free, so as to be fairly exercised according to the exigencies of each case.'

10. In that case, it is held that in order to make a person liable for perjury, the earlier statement of the person must be on oath and his subsequent statements also must be on oath and it is not only necessary that he made a statement which is false, but also that he either knew or believed it to be false or did not believe it to be true. In Santokh Singh v. Izhar Hussain, : 1973 CriLJ1176 , the Supreme Court has held as follows :-

'Index Note - (B) Criminal P.C. S. 195(b) - Power of Court to direct prosecution for giving false evidence - Exercise of. - Brief Note :- (B) 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 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.'

In this case, the J.M.F.C. has only come to the conclusion on the basis of the previous complaint which is not made on oath by the petitioner. Therefore, the lower Court was not justified in proceeding against the petitioner under S. 344, Cr.P.C.

11. For the reasons discussed above. I proceed to pass the following order :-

The petition is allowed. The order of the Magistrate initiating proceedings against the petitioner under S. 193, IPC is hereby quashed.

12. Petition allowed.

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