

Sunder Singh Vs. State

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Court : Delhi

Decided On : Jul-01-1996

Reported in : 63(1996)DLT452; 1996(38)DRJ213

Judge : S.K. Mahajan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 344; [Indian Penal Code \(IPC\), 1860](#) - Sections 193

Appeal No. : Criminal Appeal No. 104 of 1981

Appellant : Sunder Singh

Respondent : State

Advocate for Pet/Ap. : Sandeep Sethi and; H.J.S. Ahluwalia, Advs

Judgement :

S.K. Mahajan, J.

(1) The appellant, Sunder Singh, has been convicted for his having allegedly committed perjury by knowingly making contradictory and unreconcilable statements at two stages in courts and was accordingly sentenced to two months rigorous imprisonment. The appellant has preferred appeal against the impugned judgment of the trial court.

(2) One Randhir Singh, while working as a clerk in the Hackney Carriage, Department of the Municipal Corporation of Delhi, had allegedly committed an offence punishable under Section 161 of the Indian Penal Code and also under Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. The appellant was a member of the trap-party which was formed to trap the said Randhir Singh while accepting bribe as prior information had allegedly been received by the CBI. After the arrest of the said Randhir Singh, statement of the appellant was recorded under Section 164 of the Criminal Procedure Code by the Metropolitan Magistrate on 26th February, 1980. In his statement under Section 164, it was stated by the appellant:-

'THAT when he again came after filling a form, I was standing behind Ashok Kumar. There was no other person in the queue at that time. Ashok Kumar asked, 'How much money he should pay'? Randhir Singh told him that he should know as only two days back he had come to ask about the same. Randhir Singh told him to pay Rs.210.00 . At this, Ashok Kumar said that he had only Rs.200.00 with him, so, he should reduce the amount. At this, Randhir Singh said that the amount cannot be reduced. Ashok Kumar then handed over those two currency notes to Randhir Singh. Randhir Singh held those currency notes in his right hand and pressing them he ensured that they were two currency notes and put them in his right hand outside pocket.'

(3) However, while appealing as a witness on oath in the trial court, he changed his statement and stated that when he went in the queue where Ashok Kumar was standing he saw that something was given by him from the window to the clerk sitting there but he did not hear any conversation Between the two, nor could he definitely say as to what had been passed on by Ashok Kumar to the clerk sitting at the counter. He further stated that he did not see with his own eyes as to what was done with the current

notes by Ashok Kumar. He also stated that he did not hear himself any conversation between Randhir Singh and Ashok Kumar. On his having made this statement, he was declared hostile and in his cross-examination he stated that his statement was recorded before the Magistrate, but he had not disclosed true facts

as he was under pressure of Cbi, but he thought that he should speak the truth before the trial court as in his view the Judge was in the place of God.

(4) By Judgment dated 28th February, 1981, the Special Judge who had tried the offence under Section 5 of the Prevention and corruption Act read with Section 161 Ipc acquitted Randhir Singh as the charge against him was not proved. The Special Judge, in his judgment, held that the trap party was biased inasmuch as the father-in-law of the complainant was a member of the raiding party. The court did not believe the version of the complainant Ashok Kumar and, therefore, held that the case against the accused had not been proved and the charges were not proved. However, while acquitting Randhir Singh, the Special Judge observed that the appellant, Sunder Singh, had behaved in a most uncertain manner inasmuch as he made a statement under Section 164 before the Magistrate, when he was brought before him, which was totally contradictory to the statement which he had made on oath during the trial of the case before the Special Judge. The Special Judge was, therefore, of the opinion that the appellant had perjured himself willfully and knowingly and in the interest of public and in the interest of eradication of evil of perjury and in the interest of justice, it was expedient that he should be tried summarily by the court under Section 344 of the Criminal Procedure Code for having committed an offence under Section 193 IPC.

(5) Notice was issued to the appellant, Sunder Singh, to show cause why he should not be punished for the perjury committed in the case Cc No.8/80 State v. Randhir Singh, Fir No. RC-4/80. No written reply to the show-cause notice was filed by the appellant. However, it was stated by him that he did not give any false statement knowingly; that his statement before the Magistrate under Section 164, Criminal Procedure Code was made under pressure of the Cbi officials as he had been warned that if he did not speak as per their wishes, he would lose his job; the Cbi officials had come to him twice or thrice with that warning and during the trial of the case he had made the correct statement.

(6) The Explanationn of the appellant was not found satisfactory by the Court and it was held that the accused by giving contradictory and unreconcilable statements at two stages has perjured himself knowingly and was, accordingly,

convicted for his having committed an offence under Section 193 Indian Penal Code and was sentenced to rigorous imprisonment for two months. Being aggrieved by this order, the appellant has filed this appeal.

(7) To appreciate the respective arguments of the parties, it will be useful to look to the scope of Section 193 Indian Penal Code as well as Section 344 of the Criminal Procedure Code. Section 193 Indian Penal Code reads as under:-

'PUNISHMENT for false evidence - Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.'

(8) Section 344 of the Criminal Procedure Code reads as under:-

'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 proceedings, 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 trial. (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.'

(9) The contention of Mr.Sethi, learned counsel for the appellant, is that to satisfy the ingredients of Section 344, Criminal Procedure Code, it was necessary that before any proceedings can be initiated against a person, the court must give a finding as to which of the two contradictory statements given by the witness was false and unless such a finding was given, no action can be taken against the said person for his having allegedly made contradictory statements. The trial court in this case, while issuing the show-cause notice to the appellant as to why he should not be tried summarily under Section 344, of the Code for his having committed an offence under Section 193 Ipc has held that 'his statement was false either before the Magistrate or was false before me. Both the statements cannot be true and both were made on oath. Thus the witness has perjured himself willingly and knowingly.' No definite finding has been given by the court as to which of the two statements made by the witness were false.

(10) In Balbir Singh v. State 1976 Cr.L.J 1784 it was held that to prosecute a witness for perjury under Section 479A, Criminal Procedure Code, the court must record its opinion whether the witness had acted intentionally, and secondly' it must also identify and determine the stage of judicial proceeding in which the witness committed it. It was held that the Trial Judge must record a judicial opinion on the question whether the statement made by the witness before the Magistrate was false or the statement made during the trial of the case was false, and in case no such opinion has been recorded by the Trial Judge, it will not be expedient in the interest of justice that there should be prosecution of the witness.

(11) I am in full agreement with the view taken by the Allahabad High Court in Balbir Singh v. State. In the present case, the learned Special Judge has not

recorded any findings as to which of the two statements made by the appellant was false and in the absence of such a finding, it was not expedient for the court to proceed against the appellant for his having committed perjury.

(12) Even assuming that the statement made by the appellant before the Magistrate under Section 164 of the Code of Criminal Procedure was false even then, the contention of Mr. Sethi is, it will not be expedient for the Court to proceed against the appellant for his having committed perjury. The contention of Mr. Sethi is that the statement must have been made by the accused for being used in the proceedings. In the present case, the appellant was not aware that the statement made before the Magistrate was to be used in the proceedings, particularly when the statement had been recorded by the Magistrate in his chamber in the presence of the Cbi officials, and secondly, the appellant having on his own volition made a truthful statement during the trial of the case, it should not go against him nor it would be expedient to punish him for an offence alleged to have been committed under Section 193 IPC.

(13) The Division Bench of the Bombay High Court in *Ningappa Ramappa v. Emperor* Air 1941 Bom 408 has held that the court must be satisfied that it is expedient in the interest of justice that an inquiry was required to be made into the offence referred to in Section 195 which included offences under Section 193 Indian Penal Code. Where a person has resoled in the Sessions trial from a statement under Section 164 of the Criminal Procedure Code, it is absolutely essential that the court should make its mind whether it was the statement before the Magistrate under Section 164 or the statement subsequently made in Court which was false. If the statement in court was false, then in the interest of justice, there should be a prosecution. However, if statement under Section 164 was false, it will not be expedient, in the interest of justice, to prosecute the witness. No doubt, a man making a statement on oath before the Magistrate under Section 164 should speak the truth; but if he docs not, the least he can do is to tell the truth when he subsequently go into the wilness box. To prosecute a man who has resoled from a false statement made under Section 164 is to encourage him in the belief that it pays to tell a lie and slick to it. It is far better that a man should escape punishment for having made a false statement under Section 164 that he should

be induced to believe that it is to his interest, however false statements may have been, to adhere to it, and thereby save himself from prosecution.

(14) The court while acquitting Randhir Singh has not believed the statement of the complainant himself on whose complaint the trap-party was formed. The court had also held that the complaint appears to have been lodged at the behest of the father-in-law of the complainant who happened to be an inspector in the Cbi and was a member of the trap-party. Certain other doubts had also been raised by the Court about the manner in which the investigation was carried out. The statement of the appellant would not have affected the result of the trial in which the perjury has been allegedly committed. The Explanationn given by the appellant for his having made a wrong statement under Section 164 of the Code is that he was under pressure of CBI. It cannot be said that the Explanationn given by the appellant was not plausible. The complainant was the son-in-law of the inspector of the Cbi and the appellant states that he was under threat from Cbi that in case he did not make statement according to their wishes, he will lose his job. The appellant was not occupying very high office and it is possible that he had succumbed to the pressure of the Cbi to make the statement under Section 164 before the Magistrate. It, thereforee, cannot be ruled out that the statement which had been given by him before the Magistrate under Section 164 was not intentional. To constitute an offence under Section 193 Indian Penal Code and for initiating proceedings under Section 344 Criminal Procedure Code, it is not only necessary that the witness had intentionally given false evidence but in the interest of justice it is also expedient that he should be prosecuted for the offence which appears to have been committed by him.

(15) As already held by me, it is not too late for the witness to make amends to speak the truth during the trial of the case and in case plausible Explanationn is given for his having made false statement under Section 164 before the Magistrate, in my opinion, it will not be expedient nor it will be in the interest of justice to prosecute the witness.

(16) For all these reasons and because of the fact that the alleged perjury of the appellant would not have very much affected the result of the trial in which it is

alleged to have been committed, it was neither expedient nor in the interest of justice to initiate proceedings against the appellant. The appeal is, therefore, allowed and the order of the trial court dated 28th February, 1981 convicting the appellant for his having allegedly committed an offence under Section 193 Indian Penal Code is set aside.

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