

Vittappan Vs. State

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Court : Kerala

Decided On : Apr-09-1987

Reported in : 1987CriLJ1994

Judge : S. Padmanabhan, J.

Appellant : Vittappan

Respondent : State

Judgement :

S. Padmanabhan, J.

1. P.W. 1 in Sessions Case No. 72 of 1986 on the file of the Additional Sessions Judge, Parur is the appellant. In that case the accused was convicted and sentenced for murder by judgment dt/- 22-1-1987. Appellant was also the first informant in that case and Ext. PI is. the first information statement given by him and recorded by P.W. 14 in the Sessions case. The prosecutor filed CrI. M.P. 7 of 1987 before the Additional Sessions Judge under Section 340 of the Cr. P.C. (hereinafter referred to as 'the Code') to prosecute the appellant for giving false evidence. By order dt/- 2-2-1987 the Additional Sessions Judge allowed that petition and ordered the appellant to be prosecuted for having committed an offence as defined under Section 191 and made punishable under Section 193 of the I.P.C. Accordingly the Additional Sessions Judge filed a complaint and the Judicial First Class Magistrate, Parur took cognizance for an offence punishable

under Section 193, I.P.C. The appeal is directed against that order.

2. Section 191 of the I.P.C. reads :

Whoever being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

xx xx xx xx xxThe ingredients of the first part of the Section is evidently satisfied in this case. The only question is whether he made any statement which is false, and which he either knew or believed to be false or did not believe to be true.

3. Accused in the Sessions case is a close relation of the appellant and the charge against the accused was that he murdered his child aged 15 months by throwing it in water. Appellant was not an occurrence witness though he gave Ext. PI first information. In the first information statement he expressed a suspicion that the accused might have committed the offence. But in the box he disowned having given such a version in Ext. PI. In his evidence as P.W. 1 there were some other variations also from Ext. PI. The Sessions Judge has not come to any conclusion that any particular portion of the evidence given as P.W. 1 was false or that P.W. 1 either knew or believed it to be false or did not believe it to be true. In the opinion of the Sessions Judge:

So far as Section 340 of the Cr. P.C. is concerned what this Court has to find out is only as to whether an enquiry should be made and that too in the interest of justice regarding the alleged offence of giving false evidence. this Court is not expressing any opinion on the alleged offence itself.

Finally the Judge said:-

Considering all these aspects of the case, I am of opinion that interest of justice demands an enquiry as to the question as to whether P.W. 1 has committed the offence of giving false evidence in court.

4. It is said that the complaint was thereafter filed on the allegation that either the statements in Ext. PI or those as P.W. 1 must be false and therefore the appellant must be proceeded against. Ext. PI cannot satisfy the requirements of Section 191 of the Indian Penal Code even if some of the statements contained therein are proved to be false to the knowledge or belief of the appellant or that he did not believe them to be true. While ' giving Ext. PI P.W. 1 was not legally bound by an oath or by an express provision of law to state the truth and he was also not bound by law to make a declaration upon any subject. It is only an information given under Section 154 of the Code regarding commission of a cognizable offence intended to set the law in motion. Though the maker has to sign the statement which is recorded, the Session does not even say that the statement should be true to the maker's knowledge or belief or that it should be given on oath. Even a telephone information regarding commission of a cognizable offence by unknown persons could form first information under Section 154. In contradistinction with Section 154, the statement given under Section 161, though not to be signed by the maker, must be true because Section 161(2) says 'shall be bound to answer truly". First information statement is only the information on which the concerned police officer has to start the investigation to find out the truth and collect the materials. It can be given on hearsay information also. A wrong first information statement purposely made for initiating action may be of consequence under some other provision for example in an action for malicious prosecution, but it is not penal under Section 193 on the basis of Section 191. Therefore the falsity of any statement in Ext. PI cannot be the basis of prosecution. The Sessions Judge was not able to come to the conclusion whether the falsity was in Ext. PI or in the evidence given as P.W. 1. The basis of the conclusion is only the discrepancies between Ext. PI and the evidence as P.W. 1. Going by the reasoning of the Sessions Judge the falsity can be in Ext. P1 itself and if so the evidence as, P.W. 1 can be true also. In that event also there is no question of prosecution under Section 193.-

5. As already stated P.W. 1 is not an occurrence witness. Ext. PI and his evidence as P.W. 1 had no bearing at all in deciding the guilt or innocence of the accused. That aspect had to rest on other items of evidence. The evidence of the appellant as P.W. 1 discussed in the judgment, the reasonings in the impugned order and

the impact of the evidence of P.W. 1 in the decision of the case, all indicate that his evidence had really no bearing in deciding the guilt or innocence of the accused. The main discrepancy in his evidence is that he refused to admit the fact that he suspected the accused and said so in Ext. P1. Even if he said so in Ext. P1 it is possible that he might have got over that suspicion by some later information or knowledge. Prosecution and conviction could only be on the falsity of the statements given as P.W. 1. There is no finding by the Sessions Judge that any statement given as P.W. 1 was false within the meaning of Section 191.

6. Section 340 prescribes the procedure in cases mentioned under Section 195 of the Code and an offence under Section 193, I.P.C. comes within it. Under Section 195(1)(b) of the Code cognizance of such an offence could be taken only on the complaint of the court or the court to which it is subordinate. Section 340 corresponds to Section 476(1) of the old Code. The opinion expressed by the Sessions Judge regarding the requirements of Section 340 of the 'Code does not appear to be correct. The Sessions Judge is of the view that what Section 340 expects from the court is only an opinion that an enquiry is necessary in the interest of justice and if such an opinion is formed a complaint could be filed. That may be why the Sessions Judge said that he is not expressing any opinion on the alleged offence. By 'enquiry' what the Sessions Judge understood was trial by the Magistrate on the complaint filed by the court. But the enquiry contemplated in Section 340 is an enquiry by the prosecuting court itself and it is regarding the offence which appears to have been committed in or in relation to the proceeding in that Court. It is in such an enquiry that the court has to enter a finding regarding the offence which appears to have been committed. Such an enquiry itself need be conducted only if the court is of opinion that it is expedient in the interests of justice to do so. That means in all cases when it appears to the court that an offence is committed it need not conduct an enquiry for the purpose of taking a decision whether or not a complaint has to be filed. Even if an offence appears to have been committed the enquiry, the consequent finding and the complaint need be only in cases where it is expedient to do so in the interest of justice. Recording a finding by the court regarding commission of the offence is therefore a condition precedent to the prosecution.

7. The provision to record a finding is not merely directory, but is mandatory *Munuswamy Naidu v. Emperor AIR 1928 Mad 783 : 29 Cri LJ 732*. When the section requires a certain thing to be done it is not open to the court to say that it is optional to do it or not. Failure to record a finding is not a curable irregularity but it is an illegality. Though the courts are expected to be zealous in putting down perjury to the extent possible, it is not every case of perjury that should form the subject of the enquiry contemplated in Section 340. Expediency in the interest of justice should be the criterion. Otherwise there could be almost as many prosecutions as the number of witnesses examined because in the evidence of almost each and every witness an element of untruth could be found. Prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. To start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material will defeat its very purpose. Some inaccuracy in the statement which may be innocent or immaterial may not justify a prosecution as expedient in the interest of justice. There must be prima facie case of deliberate falsehood on a matter of substance and the court must be satisfied that there is reasonable foundation for the charge. *Chajoo Ram v. Radhey Shyam : 1971 CriLJ1096* .

8. The provisions of Section 340 are more or less procedural. Before directing a complaint to be lodged the court must form an opinion on being satisfied and come to the conclusion on such satisfaction that the person charged has intentionally given false evidence and that for the eradication of the evils of perjury and in the interest of justice it is expedient that he should be prosecuted. The opinion must be formed at the time or before delivering the judgment. It may also be advantageous to consider whether there was mens rea in giving the false evidence. If there is any doubt in the mind of the court in respect of the bona fides of the defence of the person exercise of the power may not be justified. *Bibhuti Bhusan Basu v. Corporation of Calcutta, 1982 Cri LJ 909 (Cal)*.

9. Perjury is a concomitant of a court of law, the question always being one of degree. Even though every act of perjury is strictly an offence, it need not necessarily follow that on that account every perjurer should be charged. Every

incorrect or false statement does not make it incumbent on the court to order prosecution. In this particular case these principles were not at all considered or followed by the Sessions Judge before deciding to launch the prosecution. Even though P.W. 1 said that as between Ext. PI and the version given before court it is the version given before court that is true, the Sessions Judge discarded the same on the ground that P.W. 14 has correctly recorded the statement. Whether P.W. 14 has correctly recorded or not is not the question. The question is only whether the evidence given as P.W. 1 is false or not and whether it was deliberately said to affect the decision of the case.

10. A court directing prosecution for perjury is not vindicating the grievance of any party. The action is mainly to safeguard the prestige and the dignity of the court and to maintain the confidence of the people in the efficiency of the judicial process. What the court is mainly interested in is seeing that administration of justice and dignity of the court is not flouted. The Sessions Judge did not specifically find on which aspect the appellant gave false evidence and whether that evidence was purposely made or whether it had any real impact on the decision of the case. In fact he did not even consider whether any perjury was committed. This is evident when he refused to express any opinion on that aspect and said that what he is concerned under Section 340 is only to see whether an enquiry is necessary or not. The only opinion formed by him for filing the complaint is that interest of justice demands an enquiry as to whether the appellant committed the offence of giving false evidence in court. I am of opinion that the Sessions Judge has not complied with the mandatory provisions of Section 340 of the Code and filed the complaint after passing the impugned order without the requisite satisfaction and without understanding the legal provision correctly. In fact the materials make it clear that this is not a fit case where it was expedient in the interest of justice to have an enquiry under Section 340 of the Code much less a prosecution. The impugned order and consequently the complaint must go.

The Criminal Appeal is allowed and the impugned order is set aside. That means the criminal complaint is also without proper authority and it must also go.