

(1991) 10 MP CK 0006
In the Madhya Pradesh High Court
Case No : C.A. No. 983 of 1985

Dwarka Prasad and Others

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 24-10-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 344, 479, 479A

Citation : (1992) CriLJ 2027 : (1991) 2 MPJR 353 : (1992) 3 RCR(Criminal) 652

Hon'ble Judges : P.N.S. Chouhan, J

Bench : Single Bench

Advocate : S.L. Kochar, for the Appellant; Ku. Neena Khera, for the Respondent

Final Decision : Allowed

Judgement

P.N. S. Chouhan, J.

Halakram and three others were tried on charge of murder and allied offences in Sessions Trial No. 8/81 by Additional Sessions Judge, Seoni, who while acquitting the accused vide judgment dated 30-3-1981 considered an application filed by the Govt. Advocate u/s 344 Criminal P.C. and directed appellants' prosecution for perjury on the ground that their exculpatory evidence during the trial being contradictory to their incriminating statements recorded u/s 164 Cr. P.C. they had given false evidence either in the trial or before the magistrate who recorded their statement u/s 164, Criminal P.C. Accordingly, they were summarily tried u/s 344, Criminal P.C. in Misc. Criminal Case No. 3/85 and on conviction sentenced to 3 months R.I. each which is under challenge in this appeal.

The impugned finding is assailed on the ground that u/s 344, Criminal P.C. the judge was obliged to have come to a finding that the evidence given before him was false and that the same was given deliberately and intentionally by the appellants. Reliance was placed on the following placitum of Pydi Lakshmanan Vs. Duppala Krishnamurthy,

The complaint of the Court, if it is submitted u/s 479-A must necessarily mention

which of the two contradictory statements is false. These words have been used by the Legislature obviously to guard the interests of the accused so that he may not be prejudiced in his defence. It may be noted that these words were not used either in Section 476 or Section 479, Cr. P.C. and when they are used in Section 479-A, Cr. P.C. it only means that the Legislature has introduced those words with a purpose.

The judge was further obliged to have come to the conclusion that for the eradication of the evils of perjury and in the interest of justice, it was expedient that the witness should be prosecuted for the offence which appeared to have been committed by him. In support of this argument, Mohammad Ibrahim Vs. B. Rama Rao, was cited wherein it has been held at page 1386 (of Cri LJ):

Under Section 479-A, Cr. P.C. not only is it necessary that the court must form the opinion that the witness had intentionally given false evidence, but it is further necessary that the court must come to the conclusion that for the eradication of the evils of perjury and in the interests of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him.

Thus, it is clear that recording of opinion that the witness gave false evidence intentionally and that it was necessary to prosecute him are essential ingredients of Section 344, Cr. P.C. and in absence of such opinion being recorded the court does not get jurisdiction to launch the prosecution. Since these infirmities are conspicuous in this case, the impugned conviction deserves to be set aside.

The learned counsel highlighted that the show cause notices issued to the appellants do not set out the gist of the offence against which they were called upon to show cause and this infirmity resulted in material prejudice to the appellants entitling them to an acquittal. Infirmity in the show cause notice will have no decisive impact on the trial because the appellants did appear in response thereto and gave their version which was not found satisfactory and the trial followed in which the appellants had full opportunity to defend themselves. As such it cannot be inferred that had the ingredients of the offence been fully given in the notice, they could have said something which would have persuaded the Court to drop the proceedings. In such circumstances the grievance of material prejudice having been caused due to defect in the show cause notices cannot be said to be well founded.

It was then argued that the particulars of offence explained to the appellants are incomplete as the same do not indicate which of the two contradictory statements was considered false which substantially prejudiced the defence and vitiated the trial. As observed above, this infirmity rendered appellants' prosecution u/s 344, Cr.P.C., itself unsustainable and therefore their convictions must necessarily be set aside.

In view of the foregoing, it is not necessary to discuss as to whether as contended by appellants' learned counsel, the recording of statements u/s 164,

Cr.P.C. does not amount to judicial proceedings.

In result, the appeal is allowed. Appellants' conviction u/s 344, Cr.P.C. and sentence of 3 months R.I. each are hereby set aside and they are acquitted. Appellants are on bail and their bail bonds are cancelled.