
(1997) 12 SHI CK 0003
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 84 of 1993

Jagdish Singh and Gurdas Ram	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 17-12-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 252, 253, 254, 254(1)
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : (1998) 2 ShimLC 144

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : M.S. Chandel and H.K. Bhardwaj, in Criminal Appeal Nos. 84 and 85 of 1993, for the Appellant; V.K. Verma, Asstt. A.G., for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—The above-noted two appeals involving similar facts and question of law are being disposed of by this single judgment.

2. The Appellants have preferred the present appeals u/s 351, Code of Criminal Procedure, against the sentence imposed upon them by the learned Special Judge, Una, u/s 344, Code of Criminal Procedure, vide orders dated 29.6.1993.

3. One Gurdev Chand was facing trial for the offences under Sections 7 and 13 of the Prevention of Corruption Act, 1988, before the learned Special Judge, Una, being Corruption case N. 2 of 1990. The Appellants Gurdas Ram and Jagdish Singh appeared respectively as PW 4 and PW 6 in the said case. The accused Gurdev Chand, abovenamed, was convicted and sentenced by the learned Special Judge on 24.6.1993.

4. While convicting and sentencing the accused Gurdev Singh, the learned Special Judge, observed as under:

...In this case I have found that PW 4 Shri Gurdas Ram and PW6 Shri Jagdish Singh have deposed in Court on oath by making false statement amounting to

false evidence as recorded in the judgment. This Court is of the opinion that they have given false evidence knowingly and willfully with the intention that such evidence be used by this Court and this has been deliberately done by them to help the accused who happened to be their colleague and I am satisfied that it is necessary and expedient in the interest of justice that the said two persons be tried summarily for giving false evidence and I take cognizance of that offence. Notice be issued to the said persons to show cause as to why they should not be summarily tried and punished for the offence of giving false evidence in this Court as provided u/s 344, Code of Criminal Procedure for 29.6.1993...

5. In pursuance of the above order, a show-cause notice dated 25.6.1993 came to be issued to the two Appellants separately in the following terms:

Notice u/s 344 Code of Criminal Procedure

Whereas in the above-noted case, you while appearing as witness in that proceedings had knowingly or willfully given false evidence with the intention that such evidence should be used in that case.

You are hereby called upon to show cause on 29.6.1993 as to why should not be summarily tried and punished for the offence of giving false evidence in this Court as provided u/s 344 Code of Criminal Procedure It is expedient & in the interests of justice that an inquiry u/s 344 Code of Criminal Procedure is to be made into the said offence which appear to have been committed by you in the proceedings before this Court.

Given under my hand and the seal of this Court today the 25th day of June, 1993.

Sd/- Special Judge, Una

The notices were served on the two Appellants on 28.6.1993. They put in appearance before the learned Special Judge on 29.6.1993 when substance of accusation was put to them. Both the Appellants denied the accusation. They also denied having made any false statement in Court.

6. The learned Special Judge after recording the plea of the two Appellants on the same day vide two separate orders passed in Cr. Misc. Case No. 29/1983 State v. Gurdas Ram and Cr. Misc. Case No. 27/1983 State v. Jagdish Singh held the two Appellants guilty for having given false evidence on oath knowing the same to be false, and sentenced each one of them to simple imprisonment for one month and fine of Rs. 100. In default of payment of fine, each of them was sentenced to simple imprisonment for a further period of seven days.

7. By virtue of the present appeals, the two Appellants have assailed the sentence imposed upon them u/s 344, Code of Criminal Procedure, by the learned Special Judge.

Section 344, Code of Criminal Procedure, provides:

(1) If, at the time of delivery of any judgment of final order disposing of any

judicial proceeding, a Court of Sessions 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 of 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) ...

(4) ...

8. A bare reading of the above provisions shows that such provisions enjoin the trial of an offender summarily. This would, however, not warrant an immediate conviction of the offender after recording his statement. Where the offender denies the accusation levelled against him or claims to be tried, there is no option but to resort to the procedure prescribed for summary trials. Sub-section (2) of Section 344, quoted above, specifically lays down, that, that trial herein shall conform, as nearly as may be practicable, to the procedure prescribed for summary trials.

9. Section 262, Code of Criminal Procedure, which deals with the procedure for summary trials, provides that the procedure specified in the Code of Criminal Procedure for the trial of summons case shall be followed.

10. Chapter XX of the Code of Criminal Procedure, comprising of Sections 251 - 259, prescribes the procedure for the trial of summons cases. A combined reading of Sections 251, 252 and 253, would show that in all cases in which the conviction is not recorded on the plea of guilty by an accused, the Magistrate is bound to hear the prosecution and take all such evidence as may be produced in support of its case. He is equally bound to hear the accused and to take all evidence which he may produce in his defence by virtue of Section 254(1). The Procedure and form of trial prescribed is of mandatory nature.

11. In the present case, a perusal of the record shows that while sentencing the two Appellants u/s 344, Code of Criminal Procedure, the learned Special Judge has failed to follow the prescribed procedure laid down under the law. The learned Special Judge, without recording any evidence of the prosecution and without affording any opportunity to the Appellants to lead defence, if any, has proceeded to convict and sentence the Appellants merely after recording their plea. Even in such plea neither of the two Appellants pleaded guilty. They

specifically pleaded not guilty to the accusations levelled against them.

12. In *Nasib Din v. State of H.P.* (1992) 3 Crimes 706, it has been held by a Division Bench of this Court in every "case tried summarily in which the accused does not plead guilty, the Court is required to record the substance of evidence which expression means such evidence as is sufficient to justify the order made and to enable the appellate Court to perform its function.

13. There is yet *Anr.* illegality committed by the learned Sessions Judge inasmuch as no copy of the statement of the Appellants in regard to which they were alleged to have perjured themselves was annexed to the show-cause notice served upon the Appellants.

The apex Court in *Dr. S.P. Kohli, Civil Surgeon, Ferozepur Vs. High Court of Punjab and Haryana*, has held:

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.

14. For the above said reasons, the present appeals are allowed and the sentence imposed upon the two Appellants by the learned Special Judge u/s 344, Code of Criminal Procedure vide orders dated 29.6.1993 is set-aside and they are acquitted of such offence. Their bail bonds shall stand cancelled and discharged. The amount of fine, if already paid, shall be refunded to them forthwith.