
(2003) 03 P&H CK 0054
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1152 of 1997

Ram Niwas Sharma, Advocate

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 26-03-2003

Acts Referred:

Citation : (2003) 2 CCJ 351 : (2003) 3 RCR(Criminal) 166

Hon'ble Judges : S.S.Saron, J

Advocate : Mr. Ram Niwas Sharma, Advocate. Mr. Sanjiv Dahiya, AAG, Haryana.,
Advocates for appearing Parties

Judgement

S.S. Saron, J.

1. This criminal revision petition is against the order dated 10.11.1997 passed by the learned Additional Sessions Judge, Hisar releasing the petitioner on probation after finding him guilty for an offence under Section 181 Indian Penal Code (I.P.C. for short) in appeal against the order dated 20.3.1997 of the learned Additional Chief Judicial Magistrate, Hisar.

2. The petitioner was convicted under Sections 181 IPC on the allegation that he deposed a false affidavit dated 14.6.1995 which was submitted by Balbir Singh, President of the Hissar Unit of the Judicial Employees Association before the District & Sessions Judge, Hisar in its administrative capacity. In the said affidavit, the petitioner deposed that in Civil Writ petition No. 8729 of 1995 filed by some of the employees of the District Courts, Hisar, this Court while issuing notice of motion on 12.6.1995, had stayed further promotion in respect of the employees. In fact, this Court had ordered : "Promotion, if any, will be subject to the decision of this Civil writ petition".

3. I have heard the petitioner in person and Mr. Sanjiv Dahiya, AAG, Haryana, and with their assistance gone through the records of the case.

4. The petitioner has contended that there was no mens rea on his part to commit any offence and that he being a lawyer from the District Courts, deposed

the affidavit as he understood the order passed by this Court on 12.6.1995 when he was present in the High Court. He misinterpreted the order and took it to be a stay of promotion till the decision of the writ petition. He has also submitted that for this very lapse suo motu proceedings were initiated by the State Bar Council of Punjab & Haryana. The Bar Council of India ultimately vide order dated 15.10.2000 held that he had not committed a professional misconduct as envisaged under Section 35 of the Advocates Act but he was definitely responsible for negligence on his part. For that purpose he had been reprimanded and warned to be careful in future while making statement before the Court or any authority and the complaint was dismissed. Copy of the order dated 15.10.2000 has been submitted by the petitioner which is taken in record. It is further contended that the District & Session Judge, being the complainant in the case, had prejudged his guilt while filing the complaint along with an application under Section 195(1)(b)(i) Cr.P.C. alleging offence under Section 193 IPC. In fact, the affidavit deposed did not relate to judicial proceedings. In these circumstances it is contended that the impugned order is liable to be set aside.

5. The learned counsel appearing for the State, however, contended that the case against the petitioner stands proved and he has been released on probation which meets the ends of justice and the impugned order calls for no interference.

6. The petitioner is an Advocate and he deposed in affidavit dated 14.6.1995 to the effect that this Court had stayed promotions vide its order dated 12.6.1995. This affidavit was deposed when the matter regarding promotion for the posts of Assistant was being examined on the administrative side by the District & Sessions Judge, Hisar. Complaint was filed by the then District & Session Judge, Hisar, on 11.9.1995 in the Court of Additional Chief Judicial Magistrate, Hisar, on the allegation that the petitioner deposed false affidavit dated 14.6.1995. It was stated that the petitioner was legally bound to state the truth in the said affidavit and that he had intentionally fabricated and given false evidence. Thus, he committed an offence punishable under Section 193 IPC. An application was also filed for dispensing with the personal appearance of the complainant on the ground that as he was a busy public servant and was too occupied to attend the Court on each and every date of hearing. A note was appended that formal complaint under Section 195(1)(b) Cr.P.C. to enable the Court to take cognizance of the offence under Section 193 IPC against the accused was attached with the application.

7. The learned Additional Chief Judicial Magistrate, Hisar, took cognizance of the offence and vide his order dated 9.12.1995 framed a charge under Section 193 IPC against the petitioner.

6. In support of the complaint, Ms. Chanchal Arora, Advocate and Oath Commissioner was examined who proved the affidavit dated 14.6.1995 as Ex.PA. The then District & Session Judge, Hisar, appeared as PW2 and stated that while he was dealing with the departmental promotion from the cadre of clerks to that of Assistants, Balbir Singh, President of the Haryana Judicial Employees

Association, Hisar, produced before him an application Ex.P8 alongwith affidavit Ex.PA sworn by the petitioner duly attested by the Oath Commissioner in which it was represented that this court has stayed the promotions. Copy of the order of this Court is Ex.PC. The application of Balbir Singh is Ex.PD and Ex.PD/1 is the order on the said application directing departmental proceedings against Balbir Singh and legal action against the petitioner for filing a false affidavit and misrepresenting the facts before him while working as a public servant. The complaint is Ex.PE which was filed by him and the formal application Ex.PF under Section 195(1)(b) Cr.P.C.

9. The petitioner in his statement under Section 313 Cr.P.C. took the following defence :

"On 12.6.95 I was present before the Hon"ble High Court. In my presence the order in a writ petition filed by the representative of Employees Association Distt. Court, Hisar, was being argued by Mr. Hariom Sharma Advocate. After hearing the facts the Hon"ble High Court passed the order "Promotion, if any, will be subject to the decision of the writ petition". I misinterpreted this order and took it to be a stay of promotion till the decision of the writ petition. After coming outside the Court Mr. Hariom Sharma, Advocate requested me to inform Balbir Singh, President of Employees Association, Distt. Court, Hisar, that the stay has been granted by the Hon"ble High Court in the writ petition filed by Shri Chander Bhan Ahlmad, of the Distt. Court of Sub Judge Ist Class, Hisar. On 14.6.95, I informed Balbir Singh, President of the said association about the message given by their counsel Sh. Hariom Sharma. Then Balbir Singh, President of the association requested me to give him in writing about that message, so that he may show the same to the members of his association for the purpose of collecting the funds and justify the action taken by him by filing a writ in the Hon"ble High Court. I neither appeared before the Oath Commissioner nor swore the affidavit Ex.PA before any Oath Commissioner. I was not concerned with the promotion proceedings pending before the Distt. & Sessions Judge, Hisar, in any way. I am innocent."

10. In his defence he examined Balbir Singh, President of Judicial Employees Association, Hisar, who in fact was cited as a witness of the complainant but was not examined. In his deposition he states that he had got affidavit Ex.PA drafted and signed from the petitioner in his chamber which was got prepared to show his colleagues to justify that a case is pending in this Court. He also states that before submitting the affidavit in the office of the District Judge, the petitioner was not told that this affidavit would be submitted in the office. He also states that he had a talk on telephone with his counsel in the High Court who said that stay had been granted. The petitioner had no concern with the promotion. Departmental proceedings were pending against him about this affidavit. In his crossexamination he states that information about the stay which was mentioned in the affidavit was not supplied by the petitioner. He denied the suggestion that whatever is written in the affidavit was told to him by the petitioner and that he

had got drafted the affidavit on the asking of the petitioner.

11. The learned Additional Chief Judicial Magistrate, Hisar, vide her order dated 20.3.1997 found the petitioner guilty and convicted him under Section 181 IPC to undergo rigorous imprisonment for one year and also to pay fine of Rs. 1,000/. In default to further undergo imprisonment for one month. It was also observed by her that subsection (2) of section 222 Cr.P.C. did not require any alteration in the charge framed against the petitioner because he was charged for an offence under Section 193 IPC but the facts proved on record reduced it to a lesser offence under Section 181 IPC.

12. In appeal, the learned Additional Sessions Judge, Hisar, vide his order dated 10.11.1997 keeping in view the fact that the petitioner was a practising Advocate and not a previous convict, considered it to be a fit case to release the petitioner on probation subject to his furnishing personal bond in the sum of Rs. 1,000/ with one surety in the like amount to be of good behaviour for a period of six months from that date i.e. 10.11.1997 and to appear and receive sentence as and when called upon to do so during the said period. The amount of Rs. 1,000/ was ordered to be converted and treated as costs of proceedings. With this modification, appeal was dismissed.

13. The question that requires to be considered is whether there was any mens rea on the part of the petitioner in deposing the affidavit for which he has been convicted and also whether the learned District & Sessions Judge who filed the complaint had prejudged his guilt in the complaint itself.

14. It is not in dispute that affidavit dated 14.6.1995 Ex.PA has not been filed in any judicial proceedings for which he could be charged under Section 193 IPC for giving false evidence in a judicial proceeding. In this view of the matter, the formal complaint under Section 195(1)(b) Cr.P.C. was not liable to be filed as that provides that no Court shall take cognizance of any offence punishable under Sections 193 to 196 IPC except on the complaint in writing of that Court, or some other Court to which that Court is subordinate. Therefore, filing of complaint in terms of Section 195(1)(b) Cr.P.C. was not warranted. It may, however, be noticed that in the complaint Ex.PF filed by the then District & Sessions Judge, Hisar, it was stated as follows :

"8. That in this view of the above order of the Hon"ble Punjab & Haryana High Court, accused falsely sworn in para 2 of his affidavit dated 14.6.95 that Hon"ble High Court vide that order dated 12.6.95 has stayed the said promotions. In this way the accused, who was legally bound to state the truth in his affidavit, has knowingly and intentionally made a false statement before the undersigned with a view to mislead me. The accused made a false declaration/statement which he either knew or believed to be false. He fabricated false evidence and caused the complainant, while working as a public servant, to form an erroneous opinion touching any point material to the result of such proceedings and stayed the proposed promotions.

9. That undersigned enquired orally from Sh. R.N. Sharma aforesaid and he admitted having filed his said affidavit and added that no offence was made out as the affidavit was not given in the course of any judicial proceedings. However, he lost sight of second part of section 193 IPC and his professional ethics.

10. That in view of the aforesaid facts and circumstances accused has intentionally given and fabricated false evidence in the shape of false affidavit dated 14.6.95 and as such he has committed the offence punishable u/s 193 IPC."

15. Besides, in the application Ex.PE it was stated that formal complaint under Section 195(1)(b) Cr.P.C. was attached the above averments are reiterated. A reading of para 10 of complaint Ex.PF shows that the learned District & Sessions Judge had in fact prejudged the guilt of the petitioner. The complainant initiated proceedings taking it to be an affidavit deposed by the petitioner in judicial proceedings. The learned trial Magistrate vide her order dated 20.3.1997 after recording a finding of guilt against the petitioner did not convict him for an offence under Section 193 IPC and converted the charge to that for an offence under Section 181 IPC. However, the complainant, being the District & Session Judge, in a way had expressed his opinion with regard to the guilt of the petitioner. The provisions of Section 340 Cr.P.C. provide for the procedure in respect of cases mentioned in Section 195 Cr.P.C. which includes an offence under Section 193 IPC. The Hon"ble Supreme Court in the case of Pritish v. State of Maharashtra, 2002(1) RCR(Criminal) 92 (SC) in proceeding under Section 340 Cr.P.C. where the accused produced forged documents before Court to get relief, held that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 Cr.P.C. during the preliminary enquiry by the Court for purpose of filing complaint before Magistrate. The following observations are apposite :

"Be it noted that the court at the stage envisaged in Section 340 of the Code is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrate. At that stage the court only considers whether it is expedient in the interest of justice that an inquiry should be make into any offence affecting administration of justice. In M.S. Sheriff and another v. State of Madras and others, AIR 1954 SC 397 a Constitution Bench of this court cautioned that no expression on the guilt or innocence of the persons should be made by the court while passing an order under Section 340 of the Code. An exercise of the court at that stage is not for finding whether any offence was committed or who committed the same. The scope is confined to see whether the court could than decide on the materials available that the matter requires inquiry by a criminal court and that it is expedient in the interest of justice to have it inquired into." (Emphasis added).

16. The learned District & Sessions Judge being the complainant in the case and he having made the observation in the complaint as aforenoticed, in a way prejudged the case of the petitioner before trial. This was likely in the facts and

circumstances of the case to weigh on the mind of the Courts below in passing their respective orders. The fact that the District & Sessions Judge was the complainant, in my view, is a circumstance which may have provided a reasonable possibility so as to affect the fair assessment of the merits of the case, particularly in view of the prejudged averments spelt out in the complaint when examined in the light of the caution indicated by the Hon'ble Supreme Court in M.S. Shariff's case (supra) and reiterated in Pritish's case (supra). Therefore, I am inclined to agree with the contention that there has been no mens rea on the part of the petitioner to give a false affidavit. The petitioner, as already noticed, is an Advocate and a member of the legal profession. He has an onerous duty to discharge to the society and to the Courts. The legal profession, as is well known, is not a trade or business. It is a noble profession and members of the profession have to strive to secure justice for their clients within the legally permissible norms. Members of legal profession are officers of the Court. Therefore, it is unlikely that if he indeed had been aware of the order, he would depose the affidavit. He happened to be in the High Court on 12.6.1995 the date when the order was passed in the writ petition and he gave the affidavit as he understood the order. The possibility of his not fully and correctly understanding the order cannot be ruled out. It appears to be a case at the most of overreaction or overzealousness towards the employees of the District Courts. However, it is not one which could be said to have a criminal intent. Besides, the petitioner himself had nothing to gain for deposing a false affidavit. The certified copy of the High Court order Ex.PC was produced by Balbir Singh on 20.6.1995 in which the correct order passed by this court was brought to the notice of the complainant. In these circumstances and keeping in view his candid stand in his statement under Section 313 Cr.P.C., I am of the view that there is no mens rea on the part of the petitioner to commit the offence. "Mens rea" as is well understood is a state of mind and in criminal law is the "guilty intention". Unless it is found that the accused had the guilty intention to commit the crime, he cannot be held liable for committing the same.

15. Another aspect that may be noticed is that in the complaint, it was not shown that there was application of mind of file the complaint in the interest of justice. In the case of B.K. Gupta v. Damodar H. Bajaj & Others, JT 2001(4) SC 422 the appellant had filed an affidavit in which the Hon'ble Bombay High Court found that he had made a false statement on oath and also adduced evidence known to be false and fabricated. It was held by the Hon'ble Supreme Court as under :

"..... that there are two conditions, on fulfilment of which a complaint can be filed against a person who has given a false affidavit or evidence in a proceeding before a court. The first condition being that a person has given a false affidavit in a proceedings before the court and, secondly, in the opinion of the court it is expedient in the interest of justice to make an inquiry against such a person in relation to the offence committed by him. It is no doubt true that the High Court has recorded a finding that the appellant has made a false statement on oath

and has also used evidence known to be false and fabricated. On perusal of the record we do not find any material on record to show that there was any application of mind by the Court that it was expedient in the interest of justice to make an inquiry and file a complaint against the appellant. We have also perused the judgment in Writ Petition No. 1442/1983 and the judgment does not show that the court applied its mind regarding the second condition as to whether it is expedient in the interest of justice to make an inquiry into the false evidence given by the appellant and a complaint is to be filed. In the absence of application of mind in regard to expediency for filing complaint against the appellant, the order passed by the High Court directing the Prothonotary and Senior Master of the High Court to file a complaint against the appellant was vitiated." (Emphasis added).

16. Besides, in *Chajoo Ram v. Radhey Sham and another*, AIR 1971 S.C. 1367 it was held that before sanctioning prosecution for perjury, Court must be satisfied that there is prima facie case of deliberate falsehood on a matter of substance and that there is reasonable foundation for the charge. The following observations of Hon"ble Supreme Court are apposite :

"The 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. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its every purpose. Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge....."

17. As already noticed above, the petitioner himself was not to derive any benefit by deposing the affidavit Ex.PA and there was no mens rea on his part to commit an offence. Besides, there is nothing on record to show that there has been application of mind on the part of the complainant that it was in the interest of justice to file the complaint. The complaint itself was filed for an offence under Section 193 IPC taking it to be a case of deposing an affidavit in a judicial proceedings. Therefore, the circumstances do not fasten any criminal liability on the petitioner. Besides, in the order dated 15.10.2000 passed by the Disciplinary Committee of Bar Council of India, the petitioner for the same lapse was found not to have committed any professional misconduct as envisaged under Section 35 of the Advocates Act but was found responsible for negligence on his part for which he was reprimanded and warned to be careful in future while making statements before the Court or any other authority.

18. Keeping in view the above facts and circumstances, the revision petition is accepted and the impugned order passed by the learned Additional Sessions

Judge, Hisar, is set aside and the petitioner is acquitted of the offence attributed to him.

Revision allowed.