

(2010) 08 KAR CK 0052

In the Karnataka High Court

Case No : Criminal Petition No. 8005 of 2010

Shri. Tippesh Sanna Halappa

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 19-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 344, 482
Electricity Act, 2003 — Section 135 A, 136 (1)

Citation : (2011) ILR (Kar) 1832 : (2011) 4 KCCR 398 SN

Hon'ble Judges : Arali Nagaraj, J

Bench : Single Bench

Advocate : V.K. Naik, for the Appellant; V.M. Banakar, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Arali Nagaraj, J.—The Petitioner herein has sought for quashing of the entire proceedings in Criminal Misc. No. 356/2010 pending on the file of learned 1 Additional Sessions Judge, Belgaum (herein after referred to as Sessions Judge).

2. Stated in brief the facts leading to the present petition are as under.

a) The Petitioner herein was examined as P.W.3 in Special Case No. 30/2008 on the file of the learned Sessions Judge. In his evidence, this Petitioner was supposed to identify M.O. Nos. 1 to 5 and 8 that were marked in the said case, as belonging to the complainant HESCOM. Belgaum. In his examination-in-chief, he did not identify the said articles as belonging to it. Therefore, he came to be treated as hostile witness. He did not support the prosecution in his cross-examination also.

b) The learned Sessions Judge, by his judgment and Order dated 12.01.2010 passed in the said case, while acquitting the accused Nos. 1 to 3 and 5 to 7, therein, of the offences punishable under Sections 135A and 136(1) of Indian Electricity Act 2003, directed initiation of separate miscellaneous proceedings against P.W.3 Tippesh (Petitioner herein) u/s 344 of Code of Criminal Procedure

c) Accordingly Crl. Misc. No. 356/2010 came to be registered on the file of the learned Sessions Judge. The Petitioner has sought for quashing of the entire proceedings in the said Crl. Misc. case.

3. Heard the arguments of Sriyuths. V.K. Nayak and G.V. Huller, the learned Counsel for the Petitioner and Sri. V.M. Banakar, learned High Court Government Pleader and perused the judgment and order passed in the said Special Case and the order dated 20.03.2010 passed in Criminal Misc. No. 356/2010.

4. Learned advocates for the Petitioner strongly contend that before invoking the provision of Section 344 of Code of Criminal Procedure the learned Sessions Judge ought to have expressed his opinion in his judgment in the said Special Case that the Petitioner, as PW3, gave false evidence knowingly or willfully and further, he ought to have satisfied himself that it is necessary and expedient in the interest of justice that this Petitioner should be tried summarily for giving false evidence and then he should have taken cognizance of the said offence and issued notice to the Petitioner calling upon him and show-cause as to why he should not be punished for the offence u/s 344 of Code of Criminal Procedure and therefore the entire proceedings in the said case deserve to be quashed.

5. Sri. V.M. Banakar learned HCJP, fairly concedes that: unfortunately the learned Sessions Judge has not made any observation in his judgment in the said Special Case that this Petitioner, who was examined as P.W.3, gave false evidence knowingly or willfully and that, it is necessary and expedient in the interest of the justice to proceed against him u/s 344 Code of Criminal Procedure

Section 344(1) Code of Criminal Procedure reads as under.

i) If, at time of delivery of any judgment or final order disposing of any judicial proceeding, 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 willfully 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.

A plain reading of the above provisions of Sub-section (1) of 344 of Code of Criminal Procedure it is clear that the learned Sessions Judge, in his Judgment, passed in the case, should express his opinion that the witness gave false evidence knowingly or willfully and further, he should be satisfied that "it is necessary and expedient in the interest of the justice" that such witness should be tried summarily under Sections 344 of Code of Criminal Procedure and thereafter he has to take cognizance of the said offence and then issue notice to

the witnesses requiring him to show-cause as to why he should not be punished for an offence u/s 344 of Code of Criminal Procedure

6. On careful reading of the judgment passed by the learned Sessions Judge in the said Special Case, it could be seen that he has observed at para No. 18 therein that this Petitioner, who was examined as P.W.3, being the Section Officer of Balekundri office of the complainant HESCOM, did not identify in his examination-in- chief M. Os. 1 to 5 and 8 as the very same articles belonging to the complainant-HESCOM, which were said to have been stolen by the accused in the said case. The learned Session Judge has further observed at the same paragraph that even in his cross examination made by the learned public prosecutor with the permission of the Court, this Petitioner did not identify the said articles as belonging to the complainant- HESCOM. It appears that for this reason only the learned Sessions Judge proceeded to initiate the proceedings u/s 344 Code of Criminal Procedure against the Petitioner.

7. Simply because the Petitioner came to be treated as hostile witness on the ground that he did not support the prosecution case, as said to have been stated by him in his statement recorded by the 1.0. during investigation, it could not be inferred that he gave false evidence either knowingly or willingly. In the absence of an observation by the learned Sessions Judge that this Petitioner gave false evidence knowing it to be false or willingly with any definite purpose to help the accused, it could not be said that the Petitioner committed the offence u/s 344 of Code of Criminal Procedure

8. Further, it is the mandatory requirement of Section 344 of Code of Criminal Procedure that before proceeding against any person there under, the Sessions Judge must be satisfied that it is necessary and expedient in the interest of justice to proceed against such person u/s 344 of Code of Criminal Procedure and thereafter, the Sessions Judge has to take cognizance of the said offence and then issue notice requiring him to show-cause as to why he should not be punished for the said offence. This mandate of Section 344 of Code of Criminal Procedure is not complied with by the learned Sessions Judge in the instant case. Therefore I am of the considered opinion that the present petition deserves to be allowed.

9. For the reasons aforesaid the present petition filed u/s 482 of Code of Criminal Procedure is hereby allowed. The entire proceedings in Criminal Misc. No. 356/2010 pending on the file of the I Additional Sessions Judge, Belgaum, are hereby quashed. The bail bond, if any, executed in the said case by the Petitioner shall stand cancelled.