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(2008) 05 P&H CK 0057

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Jaskaran

APPELLANT

Vs

State of Haryana

RESPONDENT

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Date of Decision: May 1, 2008

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 193, 340, 344
- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 15
- Penal Code, 1860 (IPC) - Section 193

Citation: (2008) CriLJ 4261 : (2008) 3 RCR(Criminal) 125

Hon'ble Judges: Kanwaljit Singh Ahluwalia, J

Bench: Single Bench

Final Decision: Allowed

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### Judgement

#### @JUDGMENTTAG-ORDER

Kanwaljit Singh Ahluwalia, J.

This criminal revision has been preferred by Jaskaran. The record shows that Jaskaran was cited as a witness in sessions case No. 54 of 1997, State v. Kalu arising out of case FIR No. 197 dated 8.10.1996 u/s 15 of the NDPS Act. The judgment of trial Court reveals that the evidence of the witness was to be recorded on 23rd January, 1998. He is said to have not supported the prosecution case. On 23rd January, 1998 itself, the following notice was served upon him:

#### Notice

In Sessions case No. 54 of 97 State v. Kalu having FIR No. 197 dated 8.10.97 u/s 15 N.D.&P.S. Act you were cited as prosecution witness by the police and today in this Sessions case you have appeared as PW1 and before this Court you have intentionally told a lie and have given false evidence despite the fact that you were educated and retired Govt. Employee, so you are directed to show cause as to why

you should not be punished for giving false evidence as envisaged by Section 193 IPC read with Section 344 Cr.P.C.

Addl. Sessions Judge,  
Hisar 23.1.98

Certified that the contents of the notice read over and explained to Sh. Jaskaran witness-respondent and let his statement be recorded.

Addl. Sessions Judge,  
Hisar 23.1.98

Statement of Jaskaran son of Labhu Khan, aged 60 years, Retired Employee, r/o Railway Colony, Hisar w/o

Q. Have you heard and understood the contents of notice?

Ans. Yes, Sir.

Q. What do you want to say?

Ans. I am not to say anything. Again said, I beg pardon. I am not to say any thing else.

RO&AC

Addl. Sessions Judge,  
Hisar 23.1.98

2. After issuing a notice u/s 193 IPC read with Section 344 Cr.P.C. without taking any evidence, witness was convicted u/s 193 IPC read with Section 344 Cr.P.C. to two months simple imprisonment. Aggrieved against the same, present revision petition has been filed. In the judgment, it has been recorded by the trial Judge as under:

A perusal of the file shows that this witness was joined by the police in investigation as deposed by Sukh Lal HC PW5 and Sh. Gian Chand, ASI PW6. A perusal of the recovery memo Ex.PA shows that the same is also bearing the attestation of this witness and this witness has also admitted his visit to the Railway Station, Hisar on 8.10.96. But this witness has intentionally given false evidence before this Court by stating that he was called by the police in police station and the accused was sitting in the police station. It is also falsely deposed by him that the police officials told him that they have recovered poppy straw from the accused and that poppy straw was not recovered in his presence at the Railway Station. This witness was declared hostile at the request of learned P.P. for the State who requested for cross-examination of this witness on the ground that this witness was suppressing the truth. In cross-examination, this witness has nowhere stated that his signatures were obtained on blank papers. He has also admitted that his statement was recorded by the police. He has also admitted that the recovery memo was written

when he put his signatures. A perusal of the recovery memo Ex. PA shows that the entire facts which led to the apprehension of the accused in the presence of this witness are fully mentioned. But this witness who is a retired Railway employee has not raised any objection while putting his signatures on the recovery memo. This witness is knowing Hindi. The recovery memo is also in Hindi. He has today pretended before this Court about his weak eyesight, but he has come to the Court without the assistance of any person and thus, this witness has intentionally given false evidence before this Court deliberately so that same may be used despite the fact that he was administered oath to state true facts before the Court and it is also pertinent to mention that when this witness was cautioned that he can be prosecuted for giving false evidence, he even then challenged the authority of this Court by stating that he does not bother and he may be hanged. Considering the adamant and callous conduct of the witness, resort had to be had to summary procedure prescribed u/s 344 Cr.P.C. in order to maintain the decorum of the Court and it was deemed expedient to do so in order to discourage the tendency of such witnesses to depose falsely in a free manner whatever they like.

3. The approach adopted by the trial Judge in no way can be appreciated. Power to punish u/s 344 Cr.P.C. and Section 193 Cr.P.C. are distinct. Separate procedure for trial of both has been specified. Section 344 Cr.P.C. call for summary trial, whereas u/s 193 I.P.C. offender is to tried as warrant case. Petitioner was to be tried u/s 344 Cr.P.C. in summary procedure, Section 193 IPC requires that the petitioner should have been charged after holding an Criminal Revision No. 100 of 1998 4 inquiry u/s 340 Cr.P.C. for trial of offence u/s 193 I.P.C. no notice can be issued, only charge could be framed. Section 344 Cr.P.C. vests powers in the Courts to summarily try and punish the accused. It is for this reason that Section 344 Cr.P.C. prescribes sentence also. But in the present case, conviction has been recorded u/s 193 IPC read with Section 344 Cr.P.C, which in no way can be sustained. Either learned Special Judge should have convicted the petitioner u/s 344 Cr.P.C. and ought not to have invoked Section 193 IPC. Once, the Judge opted to try the petitioner for the offence u/s 193 IPC, it was incumbent upon him to hold an inquiry u/s 340 Cr.P.C. and then to frame a charge and try the offender for a warrant case as minimum sentence prescribed u/s 193 IPC is three years.

4. I am of the considered view that a grave prejudice has been caused to the petitioner as he has not been made to understand whether he has been tried u/s 344 Cr.P.C. or u/s 193 IPC. As already stated, conjunction of Section 193 IPC and Section 344 Cr.P.C. was not permissible.

5. I am conscious of the fact that in the present case, sentence awarded is two months simple imprisonment. Even otherwise, everything was done in a single day. Accused appeared as witness. He was served a notice. He was tried and convicted at the same time. Section 344 Cr.P.C. requires that offender should be given a reasonable opportunity. Reasonable opportunity cannot be made meaningless. It

has to be effective. After issuing the notice, it would have been desirable that reasonable time should have been allowed to the petitioner to think, make out his defence. Some times, a great hurry causes rashness, which is not permissible in the discharge of solemn judicial functions.

6. Be as it may, since the petitioner was convicted to undergo two months simple imprisonment and he has undergone four days and in the order itself, it has been recorded that he was of 60 years age.

7. This fact is also recorded in the head note of the order. It will not be appropriate to remand the matter to the trial Court.

8. Taking totality of circumstances in consideration, present revision petition is accepted and the sentence awarded upon the petitioner is set aside.