Ujagar Singh Vs The State of Punjab

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Nov. 21, 1979

Acts Referred: Penal Code, 1860 (IPC) â€" Section 218

Hon'ble Judges: M.M. Punchhi, J

Bench: Single Bench

Advocate: D.R. Puri and Mr. Gurjit Singh, for the Appellant; Askok Behal for A.G. Punjab, for the Respondent

Final Decision: Dismissed

Judgement

Madan Mohan Punchhi, J.
Ujagar Singh has challenged his conviction u/s 466 and 218 of the Indian Penal Code, whereunder he stands

sentenced to one year''s rigorous imprisonment and fine of Rs. 200/-, in default rigorous imprisonment for three months for the first mentioned

offence and no separate sentence was imposed for the second mentioned offence. The trial Court convicted and sentenced him as aforesaid and

his appeal to the Sessions Judge remained abortive.

2. The case of the prosecution was that one Harmel Kaur complained against her husband that he had committed bigamy by marrying a second

time a woman named Dhan Kaur. As a part of preliminary evidence, she produced Hazara Singh and Chand Singh as witnesses before Shri Dina

Nath, Judicial Magistrate Ist Class Gidd-erbaha. The statements were recorded on 20-10 1973 and 8-11-1973 respectively, on the dictation of

Shri Dina Nath, Judicial Magistrate, to the Petitioner Ujagar Singh, who was than working as a Reader in that Court. The case of the prosecution

is that the Petitioner incorporated words at the end of those statements to the effect that one Sur-jit Singh had seen the entire occurrence with his

own eyes. It is immaterial as to what fate that complaint ultimately met but the matter came to light of the said Magistrate. He made a reference to

the Sessions Judge, Far dkot(sic). After a preliminary inquiry was held against the Petitioner, a case was registered against him. On completion of

the investigation, the police report was put in, the accused was charged and convicted as aforesaid.

3. Though the prosecution examined as many as seven prosecution witnesses yet the most important and the material one was Shri Dina Nath (P

W. 3), Judicial Magistrate Ist Class who stated in categoric terms that the inserted writing concededly being in the hands of the accused, were

never dictated by him. It was also stated by him that had these assertions been at his instance at the close of the evide-ces on suggestion by the

councel for the parties, he would have initialled them. That apart, other evidence was also examined to connect the accused with the crime. The

accused did not deny the writing and the assertion but twisted the pivot of the case of the posecution by saying that the Insertions had been made

at the instance of the Judicial Magistrate and not on his own. The only question which had to be determined was whether the aforesaid asertions

made in the statements of Hazara Singh and Chand Singh were made on the dictation of Shri Dina Nath, Judicial Magistrate, or added later by the

accused Petitioner. It is apparent to the naked eye that the main body of the statement with regard to Hazara Singh, Exhibit P. E , dated 20th

October, 1973 is written by a different pen and ink then the insertion. It is patent that the insertion is abbreviated because the space was smaller. It

is to the effect ""Surjit Singh also saw the occurrence."" The latter statement Exhibit P. A. of Chand Singh dated 8-11-1973(sic) is still in a different

ink and the insertion in this instance was longer because of availability of space. It is to the effect that ""Surjit Singh of Giddar-baha had seen the

whole occurrence with his own eyes"". The ink and pen of the later insertion is different than the body of the statement. However, both the

insertions are in the same ink and with the same pen. It is obvious thereform that these insertions came about at one and the same time whereas the

statements of the witness were recorded at different times. There is no possibility of the insertions happening at the time when Hazara Singr''s

statement was recorded but the need for it may be have arisen after the statement of Chand Singh was recorded as it is latter in time. In view of the

categoric statement of Shri Dina Nath, Judicial Magistrate, there is no scope to doubt that the last lines in the aforesaid two statements had been

inserted by the Accused-Petitioner after the said Magistrate had signed the two statement as part of the record of a judicial proceeding prepared

by him. Two Courts have believed, and rightly so, Shri Dina Nath, Judicial Magistrate, and no infirmity could be found in his statement in this Court

as well.

4. It was then contended that there was a legal bar to the trial and the conviction arising thereform has to be quashed. It was contended that the

conviction u/s 218, Indian Penal Code, cannot sustain as it is an offence which falls u/s 195(1)(b)(i) of the Code of Criminal Procedure and that

offence could only be tried if a complaint in writting had been made by the court when such offence was alleged to have been committed in or in

relation to any proceeding in the Court. Carrying the argument further, it was contended by the learned Counsel for the Petitioner that the offence

u/s 466, Indian Penal Code, was also an offence described in Section 463 Indian Penal Code and as such that offence also could not be tried

except on the complaint in writing of the Court when the offence was committed in respect of a document prepared by the Court in judicial

proceedings. In support thereof, a decision of the Supreme Court reported as Kamla Prasad Singh Vs. Hari Nath Singh and Another, , was cited

to contend that at least the offence u/s 218 Indian Penal Code, could not be taken cognizance of except on a complaint because the offence

accordiag to the learned Counsel was within the ambit of Section 193 Indian Penal Code and not u/s 218, Indian Penal Code.

5. A bare reading of the provisions of Section 195 Criminal Pro-cedurs Code, reveals that the alog to cognizance is placed on Courts with respect

to the offences mentioned therein and Section 218, Indian Penal Code, is not one of these sections. Equally, the offences described u/s 453, Indian

Penal Code, which are excluded from the purview of cog izance(sic) except on a complaint are those offences which are alleged to have been

committed in respect of a document produced or given in evidence in a proceeding in any Court. It is clear thereform that the record prepared by

the Court as a momorandum of evidence is neither a document produced or given in evidence in a proceeding in any Court. It is postulated by an

outside agency and then produced or given in evidence in the Court. A writing prepared by the court itself cannot be a document which would

come within the mischief of Section 195(1)(b)(ii), Criminal Procedure Code. Equally the offence u/s 218, Indian Penal Code, pertains to a public

servant framing an incorrect record, the object of which is to save any person from legal punishment or property from forfeiture or to other charge

to which it is liable by law. Section 193, Indian Penal Code, would have no applicability to the present case, as fabrication of false evidence which

has been taken care of in that section again pertains to a document which would ultimately appear in evidence in a judicial proceeding. This again

pertains to an outside agency fabricating false evidence, and using it in a judicial proceeding, It is concedely not a case of giving false evidence.

Since Section 193, Indian Penal Code, cannot be attracted to the facts established in this case, obviously the Supreme Court"s decision in Kamla

Prasad Singh"s case (supra) has no applicability. The conviction u/s 218, Indian Penal Code, is attracted to the facts established. Even otherwise,

the discussion is purely acadmic for no sentence has been imposed on the Petitioner for this offence. Thus the conviction is well based on either of

the two courts and is hereby affirmed.

6. It was then contended by the learned Counsel for the Petitioner that the Petitioner be granted probation u/s 360, Criminal Procedure Code, and

there were no reasons to deny him that benefit. He cited Dilbag Singh Vs. State of Punjab, , in support of his prayer. That was a hurt case u/s 324,

Indian Penal Code, and would have no bearing to the criminal conduct of the Petitioner in the present case. For the maintanance of the prestigious

role and high standards of judicial conduct, it is essential that not only the members of the judicial service are to stay clean and remain above

suspicion; but that joyful burden be also shared by the Clerks, Readers, Ahlmads, Record Keepers and other functionaries of the Courts with

equal zeal and discipline. The fountain of justice has to remain unpolluted. Even the slightest attempt to sully its clear and calm waters disturbs the

judicial mind and the broomstick to sweep the dirt comes into action severly and swiftly. There cannot be any exenuating cirumstance in favour of

the Petitioner merely because he at the time of the commission of the offence was 39 years of age; a family man and having children, as suggested.

Previous conduct of the Petitioner may have been noted as good but that can cast no reflection of innocence for the crime for which he has been

found guilty. He has already been leniently dealt with, In the result, the revision petition fails and is hereby dismissed.