(1979) 11 P&H CK 0006

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Revision No. 384 of 1977

Ujagar Singh		APPELLANT
	Vs	
The State of Punjab		RESPONDENT

Date of Decision: Nov. 21, 1979

Acts Referred:

- Penal Code, 1860 (IPC) - 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.