

MAHILA VINOD KUMARI
v.
STATE OF MADHYA PRADESH
(SLP (Criminal) No. 4950-4951 of 2008)

JULY 11, 2008

[DR. ARIJIT PASAYAT AND P. SATHAVIVAM, JJ.]

*Code of Criminal Procedure, 1973: ss. 340 & 344/
Penal Code, 1960: s.376*

Perjury - Petitioner lodging a report against two persons for committing rape - Resiled from statement made during investigation - Acquitting accused persons trial Court directed to take cognizance against prosecutrix in terms of S. 344 of the Code - Admission of guilt by petitioner - Trial Court found prosecutrix guilty of committing the offence of perjury, sentenced her to undergo imprisonment for 3 months - Appeal dismissed by High Court - Correctvero of of - Held: Correct - The purpose of enacting S.344 Cr. P.C. is to eradicate the evil of perjury and also fabrication of evidence - even recourse to S.340 (l)CrPC could be taken by Courts in case they failed to take action against such witness such witness underS.344 Cr.P.C.- In the facts and circumstances of the case, Trial Court has rightly taken action against the Prosecutrix in terms of S.344 CrPC - No infirmity found in the order of Courts below warranting interference.

s.344 - Power of Courts to take action against witnesses for Committing the offence of perjury/fabrication of false evidence - Discussed.

The Petitioner lodged a report against two persons at the Police Station for committing rape on her, one after another. The accused persons faced trial for alleged commission of offence punishable under Section 376(2)(g) of the Indian Penal Code, 1860. During trial, the petitioner

A stated that she had actually not been raped. As she resiled from the statement made during investigation, she was permitted to be cross-examined by the prosecution. She even denied to have lodged the first information report and to have given any statement to the police. Trial Court
B acquitting the accused persons found that the petitioner had tendered false evidence and had fabricated evidence against the accused persons with the intention that such evidence shall be used in the proceedings, and, therefore, directed cognizance of offence in terms of Section
C 344 of the Code of Criminal Procedure, 1973, to be taken against her. A show-cause notice was issued and the case was registered against her. She filed a reply, admitting her guilt. Trial Court sentenced her to undergo three months' simple imprisonment. Appeal filed thereagainst by the
D petitioner was dismissed by the High Court. Hence the present Special Leave Petition.

Dismissing the petition, the Court

HELD: 1. It is a settled position in law that so far as
E sexual offences are concerned, sanctity is attached to the statement of a victim. This Court, has, in several cases, held that the evidence of the prosecutrix alone is sufficient for the purpose of conviction if it is found to be reliable, cogent and credible. In the present case, on the basis
F of the allegations made by the petitioner, two persons were arrested and had to face trial and suffered the ignominy of being involved in a serious offence like rape. Their acquittal, may, to a certain extent, have washed away the stigma, but that is not enough. [Para 6] [873-F,G & H; 874-A]

G 2.1. The purpose of enacting Section 344, Cr.P.C. appears to be further arm the Court with a weapon to deal with more flagrant cases and not to take away the weapon already in its possession. The object of the legislature underlying enactment of the provision is that the evil of per-
H jury and fabrication of evidence has to be eradicated and

can be better achieved now as it is open to the courts to take recourse to Section 340(1) Cr.P.C. in cases in which they are failed to take action under Section 344 Cr.P.C. [Para 6] [874-A,B & C]

2.2. For exercising the powers under s.344/ the Code the Court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the Court must come to the conclusion that in the interests of justice the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions are mandatory. The object of the provision is to deal with the evil of perjury in a summary way. [Para 8 and 9] [875-E,F,G & H]

Narayanswamy v. State of Maharashtra, (1971) 2 SCC 182 - reliced on.

2.3. The evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done. [Para 10] [876-A]

CRIMINALAPPELLATE JURISDICTION : Petition for special Leave to Appeal (Criminal) Nos. 4950-4951 of 2008

From the Judgment and final Order dated 30.11.2007 of the High Court of Madhya Pradesh, Bench at Gwalior in Crl. Appeal No. 173 of 2002

Suryanarayana Singh and Pragati Neekhtra for the Appellant.

The Judgment of the Court was delivered by

A **Dr. ARIJIT PASAYAT, J.** 1. Heard learned counsel for the petitioner.

2. Delay condoned.

B 3. Though, we are not inclined to entertain the special leave petitions, but we find that there is a need for expressing views on action to be taken for maliciously setting law into motion.

C 4. The petitioner lodged a report against two persons at Pichhore Police Station to the effect that on 28.1.1993 between 6.00 to 7.00 a.m. she was waylaid by them who dragged her and committed rape on her, one after another. She claimed to have narrated the incident to her father and uncle and, thereafter lodged the report at the police station. On the basis of the report, matter was investigated. The accused persons were arrested. Charge-sheet was filed. The accused persons faced trial for alleged commission of offence punishable under Section 376(2)(g) of the Indian Penal Code, 1860 (in short 'the IPC'). The accused persons abjured their guilt. During trial, the petitioner stated that she had actually not been raped. As she resiled from the statement made during investigation, she was permitted to be cross-examined by the prosecution. She even denied to have lodged the first information report (Exh.P-1) and to have given any statement to the police (Exh.P-2). In view of the statement of the petitioner, the two accused persons were acquitted by judgment dated 28.11.2001. The Trial Court found that the petitioner had tendered false evidence and had fabricated evidence against the accused persons with the intention that such evidence shall be used in the proceedings, and, therefore, directed cognizance in terms of Section 344 of the Code of Criminal Procedure, 1973 (in short 'the Code') to be taken against the petitioner. A show-cause notice was issued and the case was registered against the petitioner who filed reply to the effect that being an illiterate lady, she had committed the mistake and may be excused. The Trial Court found that the petitioner admitted her guilt that she had lodged false report of rape against the accused. She was, accordingly, sentenced to undergo three

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months' simple imprisonment. Aggrieved by the order, the petitioner filed an appeal before the Madhya Pradesh High Court, which, by the impugned order, was dismissed. A

5. Stand before the High Court was that being an illiterate lady, she does not understand law and the particulars of the offence were not explained to her and, therefore, the appeal should be allowed. This was opposed by the State on the ground that the petitioner had admitted her guilt before the Trial Court and, therefore, the conviction is well founded. The High Court perused the records of the Trial Court and found that in the show-cause reply she had admitted that she had told lies all through. The stand that the particulars of the offence were not explained to her, was found to be equally untenable, because in the show-cause notice issued, relevant details were given. In the first information report, and the statement recorded by the police, she had clearly stated that she was raped by the accused persons. But in Court she denied to have stated so. Learned counsel for the petitioner submitted that the Court imposed 15 days' simple imprisonment which is harsh. But that is not the end of the matter. The petitioner filed an application before the High Court stating that a wrong statement was made before the High Court that she had already suffered custody for 15 days, which weighed with the High Court to reduce the sentence. B
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6. Learned counsel for the petitioner stated that being a girl of tender age, she was pressurized by her mother and uncle to give a false report. This is at variance with the statement made in court during trial to the effect that she had not reported anything to the police. It is a settled position in law that so far as sexual offences are concerned, sanctity is attached to the statement of a victim. This Court, has, in several cases, held that the evidence of the prosecutrix alone is sufficient for the purpose of conviction if it is found to be reliable, cogent and credible. In the present case, on the basis of the allegations made by the petitioner, two persons were arrested and had to face trial and suffered the ignominy of being involved in a serious offence like rape. Their acquittal, may, to a certain extent, have washed away F
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A the stigma, but that is not enough. The purpose of enacting
Section 344, Cr.P.C. corresponding to Section 479-A of the
Code of Criminal Procedure, 1898 (hereinafter referred to as
B the weapon already in its possession. The object of the legisla-
C ture underlying enactment of the provision is that the evil of per-
jury and fabrication of evidence has to be eradicated and can
be better achieved now as it is open to the courts to take re-
course to Section 340(1) (corresponding to Section 476 of the
Old Code) in cases in which they are failed to take action under
Section 344 Cr.P.C.

7. This section introduces an additional alternative proce-
D dure to punish perjury by the very Court before which it is com-
mitted in place of old Section 479 A which did not have the de-
sired effect to eradicate the evils of perjury. The salient features
of this new provision are:

- E (1) Special powers have been conferred on two
specified Courts, namely Court of Session and
Magistrate of the First Class, to take cognizance of
an offence of perjury committed by a witness in a
proceeding before it instead of filing a complaint
before a Magistrate and try and punish the offender
by following the procedure of summary trials. For
summary trial, see Ch. 21.
- F (2) This power is to be exercised after having the matter
considered by the Court only at the time of delivery
of the judgment or final order.
- G (3) The offender shall be given a reasonable opportunity
of showing cause before he is punished.
- (4) The maximum sentence that may be imposed is 3
month's imprisonment or a fine up to Rs.500 or both.
- H (5) The order of the Court is appealable (*vide* S. 351).

(6) The procedure in this section is an alternative to one under Sections 340-343. The Court has been given an option to proceed to punish summarily under this section or to resort to ordinary procedure by way of complaint under Section 340 so that, as for instance, where the Court is of opinion that perjury committed is likely to raise complicated questions or deserves more severe punishment than that permitted under this section or the case is otherwise of such a nature or for some reasons considered to be such that the case should be disposed of under the ordinary procedure which would be more appropriate, the Court may chose to do so [*vide* sub-section (3)].

(7) Further proceedings of any trial initiated under this section shall be stayed and thus, any sentence imposed shall also not be executed until the disposal of an appeal or revision against the judgment or order in the main proceedings in which the witness gave perjured evidence or fabricated false evidence [*vide* sub-section (4)].

8. For exercising the powers under the section the Court at the time of delivery of judgment or final order must at the first instance express an opinion to the effect that the witness before it has either intentionally given false evidence or fabricated such evidence. The second condition is that the Court must come to the conclusion that in the interests of justice the witness concerned should be punished summarily by it for the offence which appears to have been committed by the witness. And the third condition is that before commencing the summary trial for punishment the witness must be given reasonable opportunity of showing cause why he should not be so punished. All these conditions are mandatory. [See *Narayanswamy v. State of Maharashtra*, (1971) 2 SCC 182].

9. The object of the provision is to deal with the evil perjury in a summary way.

A 10. The evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively it is desirable for the courts to use the provision more effectively and frequently than it is presently done.

B 11. In the case at hand, the court has rightly taken action and we find nothing infirm in the order of the Trial Court and the High Court to warrant interference. The special leave petitions are, accordingly dismissed.

S.K.S.

SLP dismissed.