

Inquiry U/S 340 CrPC Mandatory, Failure Renders Entire Proceedings Conducted Thereafter Non-Est: Kerala High Court

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THE HIGH COURT OF KERALA AT ERNAKULAM

A. BADHARUDEEN, J.

Crl.M.C.No.3275 of 2016; 25 November, 2022

SAJEEVAN versus STATE OF KERALA

Petitioner / Accused by Advs. Sumathy Dandapani (Sr.), Millu Dandapani

Respondent / State by G. Sudheer, Public Prosecutor

ORDER

This is a petition filed under Section 482 of the Code of Criminal Procedure to quash Annexure-A and Annexure-H orders. The petitioner herein is the accused in C.C.No.67 of 2015 pending before the Judicial First Class Magistrate Court-II, Peerumedu.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. In this matter, the petitioner herein, who was authorised by the Managing Director of KLD Board, a Government of Kerala undertaking, to give evidence before the Munsiff Court in connection with O.S.No.65 of 2011, a suit filed by Sri.Sankarapandy against the KLD Board and MM Board alleged to have given false evidence, on the premise that, during his cross-examination, when a question was put as to lodging of police complaint and sighting of the place/property during the visit of the police to prepare the mahazar, he answered in the negative, though records showed otherwise. Alleging that the petitioner herein had given false evidence and committed the offence of perjury, Sri.Sankarapandy, the plaintiff in O.S.No.67 of 2011 on the file of the Munsiff Court, Peerumedu, against whom the KLD Board alleged encroachment of Government land, lodged complaint, I.A.No.1002 of 2014 under Section 340 read with Section 195 of Cr.P.C. alleging commission of offence punishable under Section 193 of Indian Penal Code.

4. Thereafter, the learned Munsiff passed Annexure-B order in I.A.No.1002 of 2014 dated 20.12.2014 and thereafter, passed Annexure-H order on 08.01.2015 in the same petition. As per AnnexureH order, the learned Munsiff observed that since Munsiff, Peerumedu and the Judicial First Class Magistrate Court-I, Peerumedu are one and the same person, it was proper to send the case to the Judicial First Class Magistrate Court-II, Peerumedu to proceed further. On receipt of Annexure-H order, the learned Magistrate passed Annexure-I order and thereby, took cognizance for the offence punishable under Section 193 of IPC against the petitioner.

5. The learned counsel for the petitioner argued that, while passing Annexure-H order, the learned Munsiff failed to conduct the mandatory inquiry provided under Section 340 of Cr.P.C. Therefore, the entire proceedings in Annexure-B and H as well as Annexure-I whereby, the learned Magistrate proceeded further are unsustainable in the eye of law. Accordingly, the learned counsel pressed for quashment of the said proceedings.

6. In view of this argument, it is relevant to refer Section 340 of Cr.P.C. and the same is as under:

“340. Procedure in cases mentioned in section 195.

(1) When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in

relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary-

- (a) record a finding to that effect;
 - (b) make a complaint thereof in writing;
 - (c) send it to a Magistrate of the first class having jurisdiction;
 - (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and
 - (e) bind over any person to appear and give evidence before such Magistrate.
- (2) The power conferred on a court by sub-section (1) in respect to an offence may, in any case where that court has neither made a complaint, under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of section 195.
- (3) A complaint made under this section shall be signed-
- (a) where the court making the complaint in a High Court, by such officer of the court as the court may appoint;
 - (b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.
- (4) In this section, "Court" has the same meaning as in section 195."

7. Section 195(1) of Cr.P.C. provides as under:

(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, 1860 (45 of 1860), or
- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence,

except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, 1860 (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court; or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in subclause (i) or sub-clause (ii),

[except on the complaint in writing of that court or by such officer of the court as that court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate].

8. In this context, the questions arise for consideration are two fold 1) Whether the enquiry contemplated under Section 340 of Cr.P.C. is mandatory in nature and 2) Is it fair to hold that every incorrect testimony given by a witness during evidence before a Court leads to the offence of perjury punishable under Section 193 of IPC?

9. A bare perusal of Section 340 of Cr.P.C. would indicate that when, upon an application made to a court alleging commission of offence referred to in clause (b) of Sub-

Section (1) of Section 195(offences under Sections 193 to 196 of IPC), if the Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause(b) of sub-section (1) of Section 195, the court may after such preliminary inquiry, if any, as it things necessary (a) record a finding to that effect; (b) make a complaint thereof in writing; (c) send it to a Magistrate of the first class having jurisdiction; (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and (e) bind over any person to appear and give evidence before such Magistrate.

10. In the decision reported in [2010(1) KLT 445 KLT], **Babu P.Benedict v. Principal, Motor Accidents Claims Tribunal**, this court considered the scope of enquiry contemplated under Section 340 of Cr.P.C. and held that the inquiry is mandatory in nature and the word 'may' appearing in the body of Section 340, has to be understood as 'shall'. Thus, it has to be held that the inquiry envisaged under Section 340 of Cr.P.C is mandatory in nature and such an enquiry should be conducted before proceeding further, in cases involving allegation of commission of offences under Sections 192, 193 and 195 of IPC. Here, evidently, no such enquiry was conducted and therefore, the entire proceedings, thereafter, are non-est.

11. The second question is whether every false testimony should be put through the procedure prescribed in S.340 of the Code. To attract the procedure, the person concerned should have intentionally given false evidence for the purpose of being used in a judicial proceedings and the court should have to form an opinion in this regard to hold that it is necessary in the interest of justice to penalise the person. It is difficult to lay down a principle that every incorrect statements given by a witness in a judicial proceedings shall be dealt under Section 340 of Cr.P.C. The rationale is, if every such instances to be proceeded under Section 340 of Cr.P.C, the courts will be over flooded with cases of this nature. No doubt, the gravity of the false statement, the circumstances under which such statement/statements is/are made, the intend behind making such statements and its ramification in the final decision of the case may be decisive while proceeding under Section 340 of Cr.P.C.

12. Here, an Officer of the Board, who was authorised to give evidence on behalf of the Government of Kerala undertaking deposed before the court representing the Government. Therefore, his knowledge with regard to the entire facts in relation to the prosecution should not have been presumed or expected, since his knowledge regarding the case emanates from the official records that he could gather within the short span of time he obtained. Therefore, nobody, in the ordinary circumstances would expect that an Officer representing a State Entrepreneur, would be aware of each and everything in relation to the case in minute niceties, so that he could say everything in the affirmative. Likewise, all the omissions or false statements given by a witness, shall not be construed as substantive to attract the offence of perjury. Therefore, even otherwise, it could not be held that the petitioner herein intentionally given false evidence before the court, so as to proceed under Section 340 read with Section 195 of Cr.P.C. Therefore, the entire proceedings are vitiated and the same are liable to be quashed.

Accordingly, the petition stands allowed. Annexures-A and I orders stand quashed.