

[Gokulraj Murder Case] Madras High Court Initiates Suo Moto Contempt Proceedings Against Witness For Making False Statement Under Oath

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
CRIMINAL JURISDICTION**

M.S. RAMESH; J., N. ANAND VENKATESH; J.

Crl.A(MD)Nos.228, 747, 515, 230, 232, 233 and 536 of 2022; 30-11-2022

YUVARAJ versus STATE

Gopalakrishna Lakshmana Raju, Senior Counsel for M/s. Rishwanth S.G.L. and A. Thiruvadi Kumar, Additional Public Prosecutor, T. Lajapathi Roy, Advocate, A. Ramesh, Senior Counsel for R. Venkateshwaran, Advocate, AR.L. Sundaresan, Senior Counsel for K.M.C. Arun Mogan, Advocate, S. Ashok Kumar, Senior Counsel for M. Jegadeesh Pandian, Advocate, N. Ananthapadmanathan, Advocate for M/s. APN Law Associates, Gopalakrishna Lakshmana Raja, Senior Counsel for P. Aju Tagore, Advocate, R. Navaneetha Krishnan, Advocate.

ORDER

N. ANAND VENKATESH, J.

Pursuant to the order passed by us on 24.11.2022, we called P.W.4 to record her statement in exercise of our powers under Section 391 Cr.P.C read with Section 165 of the Indian Evidence Act. Pursuant to this order, PW4 was produced before us and we had put several questions to PW4 which was recorded on oath on 25.11.2022. During examination, we found that PW4 was repeatedly evading in making a true statement or was denying certain obvious facts. While recording the statement of PW4, we had specifically recorded the demeanor of PW4.

2. We have physically seen PW4 in the witness stand before us and we also had the advantage of seeing the video and it was very clear and apparent that the person who was seen in the video, was none other than PW4, along with the deceased. The CCTV footage in M.O.36 (Ex.P297) was played to PW4 and we specifically asked her to identify the two persons who are seen in the video. The witness made a statement to the effect that, out of the two persons seen in the video, one person looked like the deceased Gokulraj. However, she expressed ignorance on the identity of the lady who was seen next to him. In other words, PW4 refused to identify herself. We repeatedly asked PW4 to come out with the truth atleast by identifying the person who is seen in the video and PW4 did not budge an inch. When we wanted to ascertain as to whether PW4 is under any pressure/threat from any side that prevented her from making a true statement before the Court, PW4 categorically stated that no pressure has been exerted on her from any quarters.

3. After affording sufficient opportunity to PW4 and after explaining her the consequences of making false statement before the Court on oath, we made it clear to P.W.4 that contempt proceedings will be initiated against her. We asked PW4 to once again think over and come back and accordingly, the matter was adjourned for hearing to 30.11.2022.

4. Even today, PW4 was administered oath and we asked PW4 as to whether she wants to stand by the statement made on 25.11.2022 or if she wants to make any other statement. PW4 made it clear that she will stand by the statement made on 25.11.2022. In view of the same, we are clear that PW4 understands the consequence of making such a statement before the Court. Accordingly, we proceed to pass the following order.

5. A trial becomes meaningful only when truth is uttered by a witness. The journey of a trial is such that neither the Judge nor the Police nor the Public Prosecutor or the Counsel, who is appearing for defence have seen the incident and inspite of the same, each one is

grappling to find out the truth and to come a conclusion as to whether the case as projected by the prosecution has been proved or not, based on the evidence collected during the course of trial. It therefore, becomes imperative that the witness, who deposes before the court speaks the truth. That is the reason why the witness is administered oath before recording the evidence. It is the statement of the witness made on oath and the materials that are collected during the course of trial, which ultimately throws light and enables a Judge to conclude as to whether the prosecution has proved the case or not.

6. Making a false statement on oath in Courts virtually prevents the Courts from administering justice and it will be a blow to the Rule of Law, if falsity is condoned. At some stage, the Courts and particularly the Higher Courts must send a very strong message that falsity in evidence will not be tolerated and a witness will not be allowed to go scot-free after making a false statement on oath.

7. There is a provision under the Indian Penal Code for proceeding against the witness for perjury. There is a separate procedure that has been prescribed under the Criminal Procedure Code to deal with a person who has committed perjury. Unfortunately, almost all the perjury cases never reaches its logical end. Even in the present case, when the trial court found that PW4 had retracted from the statement made before the Magistrate on oath under Section 164 of Cr.P.C., an order was passed in C.M.P.No.1253 of 2018 dated 20.12.2018 by granting sanction to prosecute PW4 for offence under Section 193 of IPC in line with the procedure contemplated under Section 195 (1) (b) of Cr.P.C. This order was passed in the year 2018 and till today, the case has not even moved an inch and it continues to remain at the stage of evidence. In almost all cases where proceedings are initiated for perjury, it never reaches its logical end and at some stage, such cases are given a decent burial.

8. Since we intended to proceed against PW4 for Contempt of Court, we exercise our jurisdiction under Section 407 of Cr.P.C. and transfer the perjury case which is now pending before the Judicial Magistrate No.I, Namakkal, in C.C.No.71 of 2019 to the file of this Court and the said case is merged along with the contempt proceedings initiated by us.

9. The question that arises for consideration is as to whether this Court can initiate Contempt proceedings against a witness of making a false statement on oath.

10. To answer this question, this Court has to necessarily take note of certain judgments of the Apex Court.

11. In **Zahira Habibullah Sheikh (5) and another Vs. State of Gujarat and Others** reported in **2006 (3) SCC 374**, the Apex Court has held as follows :

"18. Whatever be the fate of the trial before the court at Mumbai where the trial is stated to be going on and the effect of her statement made during trial shall be considered in the trial itself. Acceptance of the report in the present proceedings cannot have any determinative role in the trial. Serious questions arise as to the role played by witnesses who changed their versions more frequently than chameleons. Zahira's role in the whole case is an eyeopener for all concerned with the administration of criminal justice. As highlighted at the threshold the criminal justice system is likely to be affected if persons like Zahira are to be left unpunished. Not only the role of Zahira but also of others whose conduct and approach before the inquiry officer has been highlighted needs to be noted. The inquiry officer has found that Zahira could not explain her assets and the explanations given by her in respect of the sources of bank deposits, etc. have been found to be unacceptable. We find no reason to take a different view."

12. In **ABCD Vs. Union of India and Others** reported in **2020 (2) SCC - 52**, it was held as follows :

"14. We may now refer to the development which occurred during the pendency of the writ petition. In FIR No. 314, as well as in the application preferred thereafter, insinuation was definitely made that Respondent 7 was responsible for the incident that occurred on 17-10-2019. It was also submitted that the petitioner was hit by a car and suspicion was expressed in clear terms that Respondent 7 was behind the episode. As it now turns out, she was not hit by a car but by a thela which prima facie means that the allegations in her sworn statement before this Court were not truthful.

15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in *Pushpadevi M. Jatia v. M.L. Wadhawan* [*Pushpadevi M. Jatia v. M.L. Wadhawan*, (1987) 3 SCC 367 : 1987 SCC (Cri) 526] prosecution was directed to be launched after prima facie satisfaction was recorded by this Court.

16. It has also been laid down by this Court in *Chandra Shashi v. Anil Kumar Verma* [*Chandra Shashi v. Anil Kumar Verma*, (1995) 1 SCC 421 : 1995 SCC (Cri) 239] that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks' imprisonment. It was observed as under: (SCC pp. 423-24 & 427, paras 1-2 & 14)

"1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

17. In *K.D. Sharma v. SAIL* [*K.D. Sharma v. SAIL*, (2008) 12 SCC 481] it was observed: (SCC p. 493, para 39)

"39. If the primary object as highlighted in *Kensington Income Tax Commrs.* [*R. v. General Commissioners for Purposes of Income Tax Acts For District of Kensington, ex p Princess Edmond De Polignac*, (1917) 1 KB 486 : 86 LJKB 257 : 116 LT 136 (CA)] is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition

on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court.”

18. In *Dhananjay Sharma v. State of Haryana* [*Dhananjay Sharma v. State of Haryana*, (1995) 3 SCC 757 : 1995 SCC (Cri) 608] filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the persons concerned were punished.

13. It will also be relevant to take note of the judgment of the Apex Court in ***Dhananjay Sharma Vs. State of Haryana*** reported in **1995 (3) SCC - 757** and the relevant portions are extracted hereunder:

"38. Section 2(c) of the Contempt of Courts Act 1971 (for short the Act) defines criminal contempt as "the publication (whether by words, spoken or written or by signs or visible representation or otherwise) of any matter or the doing of any other act whatsoever to (1) scandalise or tend to scandalise or lower or tend to lower the authority of any court; (2) prejudice or interfere or tend to interfere with the due course of judicial proceedings or (3) interfere or tend to interfere with, or obstruct or tend to obstruct the administration of justice in any other manner. Thus, any conduct which has the tendency to interfere with the administration of justice or the due course of judicial proceedings amounts to the commission of criminal contempt. The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The filing of false affidavits in judicial proceedings in any court of law exposes the intention of the concerned party in perverting the course of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence, commits criminal contempt of the court and renders himself liable to be dealt with in accordance with the Act. Filing of false affidavits or making false statement on oath in Courts aims at striking a blow at the Rule of Law and no court can ignore such conduct which has the tendency to shake public confidence in the judicial institutions because the very structure of an ordered life is put at stake. It would be a great public disaster if the fountain of justice is allowed to be poisoned by anyone resorting to filing of false affidavits or giving of false statements and fabricating false evidence in a court of law. The stream of justice has to be kept clear and pure and anyone soiling its purity must be dealt with sternly so that the message percolates loud and clear that no one can be permitted to undermine the dignity of the court and interfere with the due course of judicial proceedings or the administration of justice. In *Chandra Shashi v. Anil Kumar Verma*, [1995] 1 SCC 421, the respondent produced a false and fabricated certificate to defeat the claim of the respondent for transfer of a case. This action was found to be an act amounting to interference with the administration of justice. Brother Han-saria, J. speaking for the Bench observed :

"the stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

Anyone who takes recourse to fraud deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice."

14. In the above judgment, at paragraph No.53, the Apex Court takes note of the fact that the witness had given a false statement before the Court and as a defence for the same, the witness took a stand that he was acting under the pressure of some of the respondents. While dealing with the same, the Apex Court held as follows:

"It is, however, no defence for him to say that he so acted on account of the fear of the police of Haryana and that he had been 'tutored' by respondents 4 and 5 to make a false statement and file a false affidavit in this Court. He should have known better."

15. It is clear from the above judgments that there is a procedure contemplated under Section 195 (1) (b) of the Code to deal with the offence of perjury. However, perjury is one facet of Criminal Contempt since the person who makes a false statement before the Court on Oath, virtually tries to interfere with the administration of justice and prevents the Court from taking the right decision in the facts of the given case. A false statement given before the Court on oath strikes at the very root of the Criminal Justice System. A Court cannot ignore such a conduct which has the propensity to shake the public confidence in Judicial Institutions. If the Courts become lackadaisical in dealing with false statements given by witnesses on oath, it will virtually dislodge the administration of justice and the dignity of the Court. Hence, apart from the alternative remedy of proceeding against the witness for perjury, it is always open to the Higher Courts to initiate contempt proceedings to ensure that the administration of justice remains unpolluted due to false evidence being tendered before the temple of justice.

16. In many important cases where serious crimes are committed, the Courts are virtually made to render acquittal to the accused persons in a platter since every other witness turns around and becomes hostile. The Courts are bound by the procedure that is prescribed by Law and the Courts cannot write judgment based on emotions. Hence, in a criminal case, proving the case beyond reasonable doubt continues to be the test. In order to ensure that the witnesses do not turn around before the Court, there are a few cases where the prosecution takes the effort of recording the statement of witnesses on oath before the Magistrate under Section 164 of Cr.P.C. This is done with the fond hope that witnesses will stand by what they said before the Magistrate. We have to hasten and state that it is not necessary for the witnesses to make the very same statement before the Court at the time of taking evidence and in such circumstances, it is the duty of the witness to state before the Court as to why the witness is retracting from the statement that was made on oath before the Magistrate under Section 164 of Cr.P.C. If, without any explanation, the witness merely retracts and gives a different version before the Court, the Court cannot turn a blind eye and the Court has to necessarily step in to ensure that the witnesses do not take Courts for granted.

17. The witnesses who depose before the Court of Law, at some stage, must be made aware that they cannot go scot-free if they make false statements before Court. Unless stern steps are taken, the witnesses making false statement before Court will become a routine affair and it will strike at the very root of Criminal Justice System.

18. In the present case, PW4 made a statement on oath before the learned Magistrate under Section 164 of Cr.P.C. While deposing before the trial court, PW4 completely went against her statement and was treated as a hostile witness. PW4 is not an illiterate woman. She is a well educated woman with an Engineering degree. The learned Magistrate even before recording the statement of PW4 under Section 164 of Cr.P.C had repeatedly informed P.W.4 that she was under no compulsion to make any statement and that she need not answer the questions that are put by the Court. In spite of understanding the caution given by the Magistrate, PW4 on her own volition, proceeded to give a statement before the Magistrate which was recorded on oath. The evidence of PW4 is very vital in this case since the cause of action for this case starts only from the stage where the deceased is said to have met PW4 on 23.06.2015. The investigation in a criminal case proceeds in line with the statement made by the witnesses and the materials collected during the course of investigation. Hence, the statement made by PW4 during the course

of investigation was a very important piece of information which showed the light for the prosecution to proceed further.

19. If really there was some pressure exerted on PW4 to give a statement under Section 164 of Cr.P.C., PW4 should have atleast stated that before the trial Court when her evidence was recorded. PW4 cannot be allowed to completely disown the statement made by her on oath before the Magistrate and retract at the time of trial, without giving a reasonable explanation as to why she is retracting. It is only under such circumstances, the trial court had initiated perjury proceedings against PW4.

20. During the course of hearing the above Criminal Appeals, we also wanted to ascertain as to why PW4 had retracted from the statement made by her on oath before the Magistrate. We therefore, wanted to give PW4 an opportunity to explain as to why she retracted from the statement given by her on oath before the Magistrate. PW4 is a star witness in this case and hence, we did not want to ignore the evidence of PW4 completely and to secure the ends of justice, we wanted to examine PW4 by calling her in exercise of our powers under Section 391 of Cr.P.C read with Section 165 of the Indian Evidence Act.

21. On 25.11.2022, when we had examined PW4 on oath, we had specifically put a question to her, among other queries, as to what happened on 23.06.2015 ? To such a query, P.W.4 replied that on 23.06.2015, when she was at home, the Police had taken her, along with her mother and father, to the Police Station. We then asked her as to whether she had seen the deceased Gokulraj on 23.06.2015. She answered that she had not seen Gokulraj on that day. We then played the CCTV footage from M.O.36 (Ex.P297) and made PW4 see the footages. We asked PW4 to merely identify the persons, who are seen in the footage. However, for reasons best known, PW4 was repeatedly refusing to identify herself in the CCTV footage and was giving evasive answers. It was evident to us that the person accompanying the deceased in the video, was none other than PW4. However, surprisingly, while PW4 was able to identify the deceased, she refused to identify herself in the footage. This ex-facie is a false statement that was made before the Court. If PW4 is allowed to go scot-free after making a false statement *in facie curiae*, it will tantamount to mocking at the Criminal Justice System. PW4 stated that there was no pressure from any side and she is making the statement on her own. If that is the case, PW4 is intentionally making a false statement after clearly understanding the consequences.

22. In view of the above, the perjury proceedings pending before the Judicial Magistrate No.I, Namakkal in C.C.No.71 of 2019 is withdrawn and transferred to this Court and it is merged along with the contempt proceedings initiated against P.W.4 since we do not want PW4 to undergo two separate proceedings for the same cause of action viz., making false statement on oath. If the statement given by PW4 before the learned Magistrate under Section 164 of Cr.P.C is not true, then PW4 has uttered falsity on oath. Once again, PW4 was administered oath before the trial Court and she retracts and completely disowns the statement recorded before the learned Magistrate. If the stand taken by PW4 that the statement made by her before the trial Court is true, then there is absolutely no explanation as to why she made a completely different statement before the Magistrate when it was recorded under Section 164 of Cr.P.C. Once again, this Court wanted to give an opportunity to PW4 to clarify herself and unfortunately, PW4 continued to make false statement before this Court also and it went to the extent of PW4 refusing to identify herself in the CCTV footage that was shown to her. This attitude of PW4 clearly amounts to

Contempt on the face of the Court (*in facie curiae*) and we cannot turn a blind eye to such flagrant contempt committed by PW4 before the Court.

23. For all the above reasons, we are *prima facie* satisfied that PW4 *in facie curiae* has made a false statement on oath and thereby, she has interfered in the administration of justice and hence, we are inclined to initiate Contempt proceedings against PW4.

24. We hereby call upon PW4 to explain as to why she must not be punished for Contempt of Court for having made false statements on oath and thereby, interfered with the administration of justice.

25. A separate notice will be sent to PW4 along with a copy of this order in order to enable P.W.4 to give her explanation and if she desires, to take legal assistance to defend herself.

26. Post all the above Criminal Appeals after two weeks.

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