IN THE HIGH COURT OF KERALA AT ERNAKULAM **CR**

PRESENT

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

MONDAY, THE 24TH DAY OF JUNE 2019 / 3RD ASHADHA, 1941

Crl.MC.No.1542 of 2019

AGAINST THE ORDER/JUDGMENT IN MC 11/2018 of GRAMA NYAYALAYA, KATTAPPANA, IDUKKI. DATED 04-12-2018

PETITIONER/S:

SAJAN MATHEW
AGED 50 YEARS
S/O MATHEW, VATTAKKUNNEL VEEDU, KADAYANIKKAD P.O, ULLAYAM, KOTTAYAM DISTRICT

BY ADV. SRI.S.SACHITHANANDA PAI

RESPONDENT/S:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN 682031.

OTHER PRESENT:

PUBLIC PROSECUTOR -SRI SWAMIDHAS K N

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24.06.2019, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CR

O R D E R

The order under challenge in this proceeding initiated under Section 482 of Code of Criminal Procedure 1993 (for short the Code) is one passed by the Grama Nyayalaya, Kattappana registering M.C No. 11/2018 in ST No. 154/2017 against the petitioner following its decision to proceed against him under Section 344 of the Code.

2. The petitioner is a defence witness in ST.No. 154/2017 examined as DW1 before the Grama Nyayalaya, Kattappana on 04.12.2018. The prosecution case against accused in ST No.154/2017 is that on 16.11.2017 at 5pm, he drove a private Stage Carrier Bus along a place called Puliyanmala causing the death of one Shahina, who was travelling in a scooter driven by her husband.

3. What the accused sought to establish through his defence witness, the petitioner herein, was that the accident was the result of negligence of the scootorist and the petitioner had occasion to witness the true incident since he

too was a passenger in the bus.

4. After recording the deposition of the petitioner and also watching his demeanour in the witness box, it appeared to the Grama Nyayalaya that the petitioner was uttering false hood with the sole intention of saving the accused from the clutches of criminal charge. After enumerating the grounds in detail, the Grama Nyayalaya formed an opinion at the end of his examination on the same day itself that the petitioner knowingly and willfully gave false evidence and accordingly ordered to register M.C. No.11/2018 against him in exercise of powers under Section 344 of the Code. It is an admitted fact that trial of ST No.154/2017 is still pending and judgment or final order in the case is yet to be pronounced. Being aggrieved by the action directed against the petitioner, he seeks to quash the order passed by the Grama Nyayalaya on the ground that the same was issued in violation of the principles enshrined in Section 344 of the Code.

5. It was contended that Section 344 of the Code did not permit initiation of proceedings under the said Section otherwise than at the time of delivery of the judgment or final

order disposing of a judicial proceeding pending before a court of Session or Magistrate of First Class. The impugned order pronounced is assailed as being too premature enough to form a valid and successful foundation for prosecution of the petitioner under Section 344 of the Code. It was also contended that in any view of the matter, there was dearth of materials sufficient to charge the petitioner with offence of perjury and therefore itself, the order of the court below taking cognizance of offence of perjury against the petitioner is without jurisdiction.

6. Section 344 of the Code reads as follows:-

> *S. 344.* ***Summary procedure for trial for giving false evidence****.-(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully given false evidence or had fabricated false evidence with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and expedient in the interest of justice that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished*

for such offence, try such offender, summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both.

(2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials.

(3) Nothing in this section shall affect the power of the Court to make a complaint under Section 340 for the offence, where it does not choose to proceed under this section.

(4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Sessions or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision.

7. The aforesaid Section provides for summary trial of persons who are guilty of perjury. In order that provisions of Section 344 may apply, the court is under a statutory duty to

form an opinion that the witness appearing in the proceeding before it has knowingly or willfully given or fabricated false evidence. A meticulous reading of the Section would make it clear that the offence made punishable under Section 344 is committed only when the witness had knowingly or willfully given false evidence or had fabricated evidence with the intention that such evidence should be used in the proceeding before the court. To put it otherwise, an act of witness not being willful or intentional cannot be said to constitute an offence of perjury liable to prosecution under Section 344 of the Code. In order to enable the court to form an infallible opinion as to the true knowledge or intention with which the witness testified in the proceeding and further to decide on the proposed action, it is incumbent on the court to wait for the completion of entire evidence and final arguments in the case because the opinion to be formed must be the outcome of appreciation of entire evidence recorded by it. Any haste shown by the court in the course of trial and any hurried opinion formed in this respect will result in premature consideration of the matter disabling the court from clearly

and precisely assessing the truth or reliability of the statement of the witness in its proper perspective. That must have been the logical reason why the legislature very consciously provided at the opening part of the Section 344 the following words:-

> *"If at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of First Class....."*

8. There is clear indication in the aforesaid words that the court should not hurry to form its opinion in the midst of the trial of the case that a witness has knowingly or willfully given false evidence intending it to be used as evidence in the proceeding.

9. The impugned order of the Grama Nyayalaya taking cognizance of offence of perjury against the petitioner was passed without completing trial and before delivery of judgment or final order. It is true that the learned Nyayadhikari has tried to assign reasons which appeared to be just and proper to him to form an opinion that the petitioner had willfully given false evidence. But law doesn't

permit such a premature opinion being formed at an early stage of the proceeding since such an approach cannot be said to be conducive to the smooth progress of trial and in certain cases, such a pre-judged action is likely to put a witness of truth also in terror. Therefore, the legitimate stage when the court could take cognizance of offence of perjury invoking Section 344 of the Code is the time of court delivering the judgment or final order terminating the proceeding before it.

10. In ***Janardhanan v. State of Kerala (1978 KHC 136),*** the learned Single Judge of this Court held that Section 344 of the Code could be invoked only at the time of delivery of a judgment or final order or in other words, before the judicial proceedings comes to an end. The principles laid down in Section 344 were discussed in extenso by the Hon'ble Apex Court also after adverting to the corresponding old Section 479-A of 1898 Code in ***Mahila Vinodkumari Vs. State of Madhya Pradesh (AIR 2008 SC 2965)***

11. Section 344 indicates that before the court initiating prosecution, it has to satisfy itself that the proposed

action is necessary and expedient in the interest of justice. That means the court has necessary discretion in the matter before proposing to proceed under Section 344. The court has to address itself as to whether there is, in fact, any need and expediency in the interest of justice to initiate prosecution and if it appears to the court that the proposed exercise would be meaningless or futile, it would be a ground for declining to exercise jurisdiction. Anyway power of the court in this respect is only discretionary and the same requires to be exercised in accordance with principles of law. The impugned order does not indicate that before initiating prosecution against the petitioner, the court below was satisfied that interest of justice demanded such a course. This is another reason that persuades this Court to interfere with the impugned order.

12. The learned counsel for the petitioner raised another plea that the court below failed to give the petitioner a reasonable opportunity to show cause why prosecution as contemplated by Section 344 ought not to be initiated and on that short ground of breach of procedure, impugned order is

liable to be set aside. I do not agree to this contention since Section 344 does not oblige the court to give opportunity to the offender to be heard as to why prosecution should not be initiated against him. Once the court determines to proceed against the perjurer under Section 344 and takes cognizance of offence of perjury, no offender can complain that he was not heard in the matter and consequently cognizance is illegal. This is because of the widely accepted principle of criminal jurisprudence that an accused has no right to be heard at the stage prior to issue of process against him. All that he is entitled under Section 344 is to an opportunity to contest the charge of perjury in accordance with the procedure established for trial of summons case after the offence is taken cognizance of and notified to him. The contention advanced by the learned counsel for the petitioner therefore fails. Nonetheless the impugned order is not sustainable for the other legal reasons already indicated supra.

In the result, Crl.M.C.No. 1542/2019 is allowed quashing the impugned order dated 04.12.2018 and also the consequential proceedings in M.C.No.11/2018 against the

petitioner. The court below will take steps to complete the trial of S.T.No.154/2017 without delay. It is made clear that this order will not preclude the learned Nyayadhikari, if he is so satisfied from the materials before him that a case of perjury has been made out, from initiating prosecution against the petitioner under Section 344 at the time of delivery of judgment in S.T.No. 154/2017.

T.V.ANILKUMAR
Judge

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APPENDIX

PETITIONER'S/S EXHIBITS:

ANNEXURE 1	**CERTIFIED COPY OF THE ORDER DATED 04/12/2018 IN MC 11/17 IN ST 154/17 OF GRAMA NYALALYA, KASTTAPPANA.**