

Form No.HCJD/C-121
**IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR
(JUDICIAL DEPARTMENT)**

Case No. P.S.L.A No.07/2023

Sumera Rasheed Vs. The State, etc.

S/No. of order/Proceedings	Date of order/Proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.
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27.11.2023 Rao Nasir Mahmood Khan, Advocate for the petitioner.
Mr. Shahid Fareed, Learned ADPP for State.
Mr. Tahir Mahmood Jatoti, Advocate for respondents.

This petition for special leave to appeal against acquittal of Abida Shahid and Muhammad Sajjad (respondents No.2 & 3) in a private complaint under section 500 read with sections 193/195/196/211/34 PPC has been filed for setting aside the impugned order dated 15.12.2022 of the learned Additional Sessions Judge Haroon Abad, District Bahawalnagar passed under section 265-K of Cr.P.C.

2. Abdul Razaq, husband of Sumaira Rasheed petitioner purchased two plots measuring 15 Marla in Evergreen Housing Colony, Haroon Abad through registered sale deed No.3091 on 27.08.2021; when suspected that said plot was sold to more than one person by Shahid Iqbal, owner of the colony, he took the dispute to civil Court and before ex-officio Justice of the Peace, though succeeded to secure status quo yet in the meantime on registration of FIR bearing No. 611/21 dated 24.09.2021 under sections 384/379/448/511/148/ 149 PPC at police station City Haroon Abad, he and one Javid Iqbal were arrested and respondents while taking benefit of his absence committed theft in the house of petitioner and she also got lodged an FIR bearing No.727 of 2021; due to that reason she along with others were also involved in the case FIR No. 611/2021 supra through supplementary statement. Matter was investigated, interim report under section 173 Cr.P.C. was sent to the Court; however, by change of investigation, case was recommended for cancellation which was agreed upon by the concerned Magistrate on 13.01.2022, prompted the petitioner to file

complaint under sections 500 etc. of PPC with the claim that by the act of Shahid Iqbal, owner of colony including the respondents, she and her family faced humiliation and were lowered down in the estimation of others because of false accusation levelled in FIR.

3. After recording cursory evidence, except Shahid Iqbal, rest of the respondents were summoned in the private complaint to face the trial but they secured acquittal under section 265-K of Cr.P.C. through impugned order. Hence, this P.S.L.A.

4. Learned counsel for the petitioner states that learned lower Court has not appreciated the law in its true prospective because as per section 193 PPC any statement made during the investigation also amounts to giving or fabricating false evidence and similar is the mandate of section 211 of PPC; therefore, if the Court was not ready to proceed under section 500 PPC by taking shelter of exceptions under section 499 PPC, then sections 193/195/196 & 211 PPC were open to be proceeded as per procedure explained in section 476 of Cr.P.C.

5. On the other hand, learned counsel for the respondent had defended the judgment; however, while responding to the query of this Court that can the Court of Session take direct cognizance of complaint filed under section 500 of PPC, and whether along with section 500, offences under sections 193/195/196 & 211 PPC can also be tried, the learned Prosecutor states that as per section 502-A PPC, inserted in year 2004, a special jurisdiction now vests in the Court of Session to entertain the complaint directly and there is no bar to try other offences along with offence under section 500 PPC.

6. Heard. Record perused.

7. Impugned order dated 15.12.2022 was more or less based on following legal premise;

“Statement made to police had not passed the test of judicial scrutiny and as per law, makers are not under obligation to state the truth in such statements; so much so information to law enforcement agency for action under the law is one of the exceptions of section 499 PPC, therefore, excludes the penal consequences under section 500 PPC; it was not a case of defamation but could be of malicious prosecution and that stage

too arrives only when such statements are repeated before the Court of Justice.”

8. Though the case before lower Court was of defamation, yet base of allegations was perjury, therefore, it is essential to understand the concept of perjury and its difference with act of lying which is used for deception. Research shows many motivators or incentives for an individual to tell a lie. Paul Ekman (1985) theorized there are eight motives for an individual to lie: be polite, avoid punishment, gain a reward, protect someone, protect oneself, maintain privacy, or just because he or she can. Lies told to make an individual feel better or to be polite were often referred to as white lies. Ekman argued that these types of lies were not necessarily lying because the individual was not attempting to be deceitful. On occasion, lies were necessary to protect oneself or another, avoid embarrassment, or to maintain privacy. These lies could include pure lies, such as a child lying to a stranger or hospital staff refusing to answer questions about a patient. ¹

Whereas ‘Perjury’ is a criminal charge. It is the act of lying or making verifiably false statements on a material matter under oath or affirmation in a court of law or in any sworn statements in writing (Black, 1990). A violation of specific criminal statutes; it is not sufficient for a statement to be false to meet the threshold of perjury; it must be an intentionally false statement regarding a material fact, – a fact relevant to the case at hand. Consequently, not all lies under oath are considered perjury. ²

At common law, perjury was considered one of the most odious of offenses. According to William Hawkins, perjury is mother of all Crimes whatsoever the most ‘Infamous and Detestable’. Under the Code of Hammurabi, the Roman law, and the medieval law of France, the punishment for bearing false

1. **PERJURY: ESTABLISHING A BETTER UNDERSTANDING OF THE FORGOTTEN CRIME** A Thesis Presented to the Faculty of the College of Graduate Studies and Research Angelo State University In Partial Fulfillment of the Requirements for the Degree MASTER OF SCIENCE by STEPHANIE DAYLE CRANK August 2019 Major: Applied Psychology.

2. **Ethical Issues in Forensic Examination**; W. Jerry Chisum, Brent E. Turvey, in Ethical Justice, 2013.

witness was death; in the colony of New York, punishment included branding the letter 'P' on the offender's forehead. In recent studies of public attitudes toward crime, perjury continues to be viewed as a very serious offense.³

9. Mode of trial in this case is the main question; Section 500 of PPC is triable by Court of Session on complaint filed by the aggrieved person whereas offences under sections 193/195/196/211 PPC are tried differently under section 476 of Cr.P.C. only on the complaint of concerned Court or the public servant, therefore, joining of two different modes of trial in one complaint is a serious issue. Though section 502-A PPC authorizes Court of Session to try the offence under section 500 of PPC but as per section 193 of Cr.P.C. Court of Session cannot take direct cognizance of an offence unless the case is sent to it by the learned Magistrate; in support whereof, cases reported as “*MUHAMMAD ILTAF KHAN Versus BASHEER and others*” (2022 SCMR 356) & “*BASHEER and 3 others Versus MUHAMMAD ILTAF KHAN and another*” (2016 P Cr. L J 1469) are referred; therefore, direct cognizance itself was a ground for dismissal of complaint or acquittal of accused as the case may be. Another question needs clarification that in the second schedule of Cr.P.C., section 500 of PPC was shown as triable by Court of Session and not only this section but many offences in the second schedule of Cr.P.C. are mentioned as triable by Court of Session, and as per mandate of law if such offences are not punishable with death, shall be tried by the Magistrate Section-30. With this scope, offence under section 500 of PPC then must have been tried by Magistrate section 30 but in my view when the legislature has specifically inserted section 502-A in PPC vesting special jurisdiction in Court of Session, offence under section 500 of PPC shall be tried by Court of Session and not by Magistrate Section-30.

3. **STUART P GREEN** (<https://doi.org/10.1093/acprof:oso/9780199225804.003.0013> Published: March 2007).

10. Before it is determined that what could be the mode of trial for offences under section 193/195/196/211 PPC, and any false statement made to police if not taken to the stage of its replication before the Court of Justice, could it still be made basis for offences under sections 193/195/196/211 PPC or for section 500 of PPC, it is essential to see the meaning of ‘giving false evidence and “fabricating false evidence”’. section 191 PPC states that;

“Whoever being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.”

This section talks about making of false statement in following three situations when;

- (1) legally bound by oath to state truth or
- (2) legally bound by express provision of law to state truth;
- (3) makes declaration upon any subject

First situation means false statement made on oath before the Court of Justice because witness swear to God or make affirmation under Oath Act, 1873 to state the truth.

2nd situation could be like statement made during investigation or inquiry before any public authority. Though witnesses are not bound to state truth when making statements under section 161 Cr.P.C. but one of the provisions like section 175 Cr.P.C. could be taken as example; according to which when a police-officer is conducting investigation under Section 174-A Cr.P.C. the witnesses so summoned are bound to **answer truly** all questions. Similarly, as per section 543 of Cr.P.C, interpreter is to be bound to interpret statement truthfully; likewise, in proceedings for tender of pardon, accused/approve is required to make a truthful disclosure.

3rd situation of making declaration on any subject, of course deals with executing false affidavits or making false declaration like one mentioned in sections 199 & 200 of PPC.

Section 192 PPC explains the situations of ‘fabricating false evidence’ as under;

“Whoever causes any circumstance to exist or makes any false entry in any book or record, or makes any document containing a false

statement, **intending that** such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry or false statement, so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said to fabricate false evidence.

(Emphasis supplied)

Requirement of this section shall be met only if there is an intention to create circumstance, false entry or document with the expectation of its being used as evidence in a judicial proceeding, or in any other proceeding by law before any public servant or an arbitrator, and such circumstance, false entry or document facilitated to render an erroneous opinion for result of that proceedings.

11. The punishment for giving false evidence or fabricating false evidence has been divided into two situations; first when it is given in any stage of judicial proceedings and second in any other case. Section 193 PPC is reproduced as under;

193. Punishment for false evidence; Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine; and whoever, intentionally gives or fabricates false evidence in any other case, shall, be punished with imprisonment of either description" for a term which may extend to three years, and shall also be liable to fine."

Explanation-1: A trial before a Court-martial is a judicial proceeding.

Explanation 2: An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Explanation 3: An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding/though that investigation may not take place before a Court of Justice.

First, it is essential to see what is judicial proceedings. It has been defined in section 4(m) of the Code of Criminal Procedure, 1898 as under;

"Judicial proceeding" includes any proceeding in the course of which evidence is or may be legally taken on oath."

If by law and at the discretion of the Court evidence is taken on oath it becomes a stage of judicial proceedings. Section 193 PPC as per

explanations 2 & 3 above creates a room for judicial proceedings even during investigation being conducted under the law or on the direction of a Court of Justice, but obviously only those false statements during investigation would be considered as giving false evidence, which are intentionally made and the maker by law is bound to state the truth on the subject, or on the same legal premise submit any signed statement, affidavits or declarations. In present case FIR or statements made under section 161 Cr.P.C. would not be considered as made during judicial proceedings. Case reported as “ABDUL KHANAN AND OTHERS versus THE STATE AND 2 OTHERS” (PLD 1986 Peshawar 39) is referred in this respect; however, they can be used for alleging perjury in other cases as mentioned in second part of section 193 PPC, but of course only when the matter is finally terminated. In this case, FIR was cancelled but private complaint was filed on the same subject, though was later dismissed; however, matter did not end here because this Court in Crl. Misc. No. 61-Q/2023 has remanded the case to the Court for trial in accordance with law.

12. Matter reported through FIR No.611/2021 while passing through the stage of investigation has not been finalized till today, therefore, as to whether statements made during investigation at this premature stage can be used for an offence of defamation; it has been observed that Section 499 PPC though authorizes a person to bring a complaint against a person who entirely makes defamatory statement to harm his reputation but when such statement is made to a police authority, it certainly falls within the exception of section 499 PPC, therefore, cannot be made basis of defamation. Reliance is placed on case reported as “AYESHA BIBI Versus ADDITIONAL DISTRICT JUDGE, LAHORE and others” (2018 SCMR 791) and such statement at the most could be used to counter malicious prosecution if they are tested through judicial scrutiny.

13. Now addressing to the question of petitioner’s counsel that barring trial under section 500 PPC, trial Court can proceed to take cognizance of offences under section 193/195/196/211 PPC. As per section 195 of Cr.P.C. if such offences have been committed in, or

in relation to, any proceeding in any Court, cognizance can only be taken on the complaint in writing of such Court or of some other Court to which such Court is subordinate. So far statements have not been formalized as part of judicial proceedings in the Court, therefore, Court had no authority to take cognizance of the matter. Even applicability of sections 195/196 of PPC is under question because statements as an evidence have not been used for procuring conviction nor corruptly used as evidence. Case reported as *“SALAH UDDIN Versus The STATE and 3 others”* (PLD 2022 Sindh 354) is referred in this respect.

14. I understand perjury is a vice which stigmatizes the judicial system and responsible for failure of justice mission of a country. Its impact on the victims of crime or the innocent accused persons psychologically or socially is immeasurable and loss is usually irreparable, therefore, it must be eradicated with sound measures within the parameters of law. It has been learnt that truthful witnesses hardly have their say in the system as clutched in the hands of powerful persons, who procure stock witnesses to lead the fate of case and Courts are to search out the truth from half-truth, based on crippled evidence. A study is necessary and required to understand how the cases are structured with the help of police by the powerful elites and are designed to set the list of witnesses of their choice to continue with the prosecution or withdraw at any time to leave astray the Court to reach out the justice.

15. For what has been discussed above, the learned trial court, taking stock of all above factors has rightly passed the impugned order which appears to be fully justified in the facts and circumstances of the instant case. The instant P.S.L.A is, therefore, **dismissed in limine** and leave to appeal is declined.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

APPROVED FOR REPORTING:

Judge