by the witness. As already observed, such is not the case here. Smt. Gurbachan Kaur did not admit the fact that she had made statement Exhibit D.A. to the Investigating Officer. Her reply was that she did not remember whether she made that statement. That reply cannot be taken by no stretch of imagination as admission of the fact that she had made statement Exhibit D.A. before the Investigating Officer. Hence in view of the facts as they are, she committed no perjury and, therefore, the question of lodging any complaint against her did not arise.

(5) Now coming to the case of Didar Singh, admittedly his testimony as P.W. 3 in State *versus* Sarbjit Singh, was taken down in two versions; vernacular and English. It is the vernacular version that is at variance with his deposition as P.W. 4 in criminal case titled State *versus* Piara Singh. The English version of his statement in State *versus* Sarbjit Singh is not at variance with his statement in Piara Singh's case. Without going into the question as to what was the Court language and whether only the vernacular version in case of divergence between the two versions recorded by the Court in considered authentic, in my opinion where admittedly two versions are taken down of a statement; one in English and the other in vernacular and the latter statement in Court of such a witness is in accord with English version then it cannot be said in law that the witness had in fact committed perjury in making a statement in Court which ran counter to the version of his earlier statement.

(6) For the reasons aforementioned, I allow this petition, quash the order, dated 20th April, 1977 and the complaint, dated 26th April, 1977.

August 29, 1980.

H. S. B.

Before S. S. Sandhawalia, C.J.

SWARAN DASS,—*Appellant.*

versus

SHIROMANI GURDWARA PARBANDHAK COMMITTEE AMRITSAR,—*Respondent.*

F.A.O. 315 *of* 1971.

September 9, 1980.

Sikh Gurdwaras Act (*VIII of* 1925)—*Sections* 12(11) *and* 34—*Letters Patent*—*Clauses* 26 *and* 27—*Code of Civil Procedure* (*V of*

1908)—*Section* 98 (3)—*Appeal preferred under section* 34—*Difference of opinion between the Judges constituting the Division Bench—Appeal—Whether could be referred to a third Judge for decision—Clause* 26 *of the Letters Patent—Whether in conflict with section* 34.

Held, that the command of sub-section (3) of section 34 of the Sikh Gurdwaras Act, 1925 stands fully and amply complied with when an appeal is duly placed before a Division Bench. The case, therefore, stands patently heard by a Division Bench of the Court when the Judges constituting the same record their separate judgments. What calls for notice is that clause 26 of the Letters Patent can only follow and cannot in any situation precede the provisions of section 34 of the Act. It is only after the hearing of the appeal by a Division Bench in accordance with section 34 of the Act that possibly the question of any difference of opinion betwixt the Judges constituting the same and the mode of resolving the same could possibly arise. In that situation, clause 26 of the Letters Patent is exhaustive and there is no conflict with any similar or parallel provision either of the Sikh Gurdwaras Act or any other clause of the Letters Patent. Moreover, section 12(11) of the Act itself makes the provisions of the Code of Civil Procedure 1908 directly applicable to matters governed by the said Act. Once that is so it may well attract the provisions of section 98 of the Code. Sub-section (3) of section 98 of the Code expressly lays down that nothing in this section shall be deemed to alter or otherwise affect any provision of the Letters Patent of any High Court. Even otherwise, the provisions of section 98 of the Code and clause 26 of the Letters Patent, in this context, appear to be similar if not virtually in *pari materia*. Viewed from this angle also, in the case of a difference of opinion, section 98 of the Code itself in any case sub-section (3) thereof saving the Letters Patent from its operation would make it evident that the matter has to be placed before a third Judge for decision in the event of the Judges composing a Bench differ in their opinions.

(Paras 4 and 5).

First Appeal from order of the court of the Sikh Gurdwaras Tribunal, Punjab, Chandigarh, dated 5th August, 1971 dismissing the petition under section 8 of the Sikh Gurdwaras Act, 1925, with costs and ordering that the claim of the petitioner will now be separately registered and proceeded with under section 10 of the aforesaid Act.

Tehal Singh Mangat, Advocate, *for the Appellant.*

Narinder Singh, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether an appeal preferred under section 34 of the Sikh Gurdwaras Act, 1925, in the event of difference of opinion between

the learned Judges of the Division Bench hearing the same cannot be referred to a third Judge under Clause 26 of the Letters Patent—is the point which has been raised at the very threshold in this case.

2. For the limited purpose of determining the aforesaid question, it is unnecessary to advert to the facts. It suffices to mention that this case first came up for hearing before a Division Bench in accordance with section 34 of the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Act). The learned Judges constituting the Division Bench, after framing exhaustive judgments separately have jointly recorded the following order:—

> "In view of our difference of opinion, and keeping in view the provisions of Clause 26 of the Letters Patent, the case is sent to the Hon'ble Chief Justice for referring the same to a third Judge."

3. Mr. T. S. Mangat, the learned counsel for the appellant, at the very outset has contended that in view of the difference of opinion noticed above, the matter must now be heard by a Full Bench of at least three Judges or more and cannot be legally disposed of by me singly. The core of the learned counsel's argument appears to centre on clause 37 of the Letters Patent, which is in the following terms:—

> "And we do further ordain and declare that all the provisions of these our Letters patent are subject to the Legislative powers of the Governor-General in Legislative Council, and also of the Governor-General in Council under section seventy-one of the Government of India, 1915 and also of the Governor-General in cases of emergency under section seventy-two of that Act, and may be in all respects amended and altered thereby."

Taking a cue from the aforesaid provisions, it was sought to be submitted that the Act and in particular Section 34 thereof prescribes that an appeal thereunder must be heard by a Division Bench and consequently the matter cannot be posted for hearing even after a difference of opinion before learned Single Judge as provided in Clause 26 of the Letters Patent. Mr. Mangat submitted that Section 34 of the Act read with Clause 37 of the Letters Patent

would override Clause 26 thereof with the effect that in the event of a difference betwixt the learned Judge of the Division Bench, the matter must be placed before a Bench of at least three Judges or more to resolve the same. Reliance was sought to be placed on *Mahant Lachhman Dass* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar* (1), and *Hari Kishan Chela Daya Singh* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar and others,* (2), as also on *Mahant Budh Dass and Mahant Purna Nand through his guardian Smt. Vidya Wanti Legal Rept. of Mahant Jiwan Mukta Nand* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar* (3).

4. It appears to me that the aforesaid contention, apart from being hypertechnical, is also logically fallacious. The material part of Section 34 of the Act is in the following terms:—

> 34. (1) ———
>
> (2) ———
>
> (3) An appeal preferred under the provisions of this section shall be heard by a Division Court of the High Court."

Even assuming that the aforesaid sub-section when read with clause 37 of the Letters Patent has an overriding effect, I am unable to see how Section 34(3) of the Act would in any way conflict with or run counter to the provisions of Clause 26 of the Letters Patent. For ease of reference, this provision may also be first set down :—

> "And we do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a

(1) I.L.R. 1976 (1) (Pb. & Haryana) 594.
(2) A.I.R. 1976 Pb. and Haryana 138.
(3) A.I.R. 1978 Punjab and Haryana 39.

majority, but, if the Judges be equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it."

Now seeing the matter in the correct perspective and sequence in the light of the aforesaid provisions, it would be apparent that in direct compliance with Section 34 of the Act, this appeal was duly placed before the Division Bench. Therefore, the command of sub-section (3) of Section 34 of the Act stands fully and amply complied with. The case, therefore, stands patently heard by a Division Bench of this Court who have recorded their separate judgments. Now what calls for notice is that clause 26 of the Letters Patent can only follow and cannot in any situation precede the provisions of Section 34 of the Act. It is only after the hearing of the appeal by a Division Bench in accordance with Section 34 of the Act that possibly the question of any difference of opinion betwixt the judges constituting the same and the mode of resolving the same could possibly arise. In that situation clause 26 of the Letters Patent is exhaustive and there is no conflict with any similar on parallel provision either of the Skh Gurdwaras Act or any other clause of the Letters Patent. Therefore, the ghost of any conflict betwixt Section 34 of the Act and clause 26 of the Letters Patent and the one overriding the other, is purely an imaginary one. Indeed both the provisions here would be complementary and can be harmoniously construed.

5. The matter can also be viewed from another angle. Section 12(11) of the Sikh Gurdwaras Act itself makes the provisions of the Civil Procedure Code directly applicable to matters governed by the said Act. Once that is so, it may well attract the provisions of section 98 of the Civil Procedure Code. Herein what calls for notice is that Sub-section (3) of section 98 of the Code expressly lays down that nothing in this section shall be deemed to alter or otherwise affect any provision of the letters patent of any High Court. Even otherwise the provisions of section 98 of the Code and clause 26 of the Letters Patent, in this context, appear to be similar if not virtually in *pari materia*. Viewed from this angle also, in the case of a difference of opinion, section 98 of the Code itself and in any case sub-section (3) thereof saving the Letters Patent from its operation would make it evident that the matter has to be placed before a

third Judge for decision in the event of the Judges composing a Bench differ in their opinions.

6. Again reference in this connection may be made to the pertinent rules on the point as well. Herein again rule 5 of Chapter 4-H, Volume V of the High Court Rules and Orders is in the following terms:—

> "When an appeal is heard by a bench consisting of two judges and the Judges composing the Bench differ on point of law and refer the appeal under section 98 of the Code of Civil Procedure, the Judges so differing shall each record his judgment on the appeal, and the appeal shall thereupon be laid before the Chief Justice, who shall direct to which other judge or other Judges the appeal shall be referred. Similarly when the Judges composing a Bench being equally divided in opinion as to the decision on a point, state that point for reference to another Judge or Judges under clause 26 of the Letters Patent, the case shall be heard on that point by one or more Judges to be nominated by the Chief Justice. The Chief Justice may be such other Judge or one of such other Judges."

The language is plain and this would again lead to the same result that the matter, in the event of difference, has to be placed before a third Judge for decision.

7. Viewed from any angle, the statutory provisions on the point completely negative the stand of Mr. T. S. Mangat that a single Judge is barred from resolving the difference of opinion arising from the conflicting opinions of the learned Judges composing the Division Bench.

8. Equally the judgments relied upon by the learned counsel for the appellant are patently distinguishable and provide no warrant for the proposition that on a difference of opinion in an appeal under section 34 of the Sikh Gurdwaras Act the same cannot be referred to and decided by a third Judge. In *Mahant Lachhman Dass* v. *Shiromani Gurdwara Parbandhak Committee, Amritsar,* (supra), a similar objection as in the present case along with others was raised before the learned Single Judge hearing the matter on a difference of opinion under clause 26 of the Letters Patent. It was nowhere decided that a Single Judge was not competent to hear the matter but apparently in view of the three objections raised and the importance of the matter the learned Chief Justice hearing the same thought it proper that the appeal be set down for hearing before a Full Bench. Similarly in *Hari Kishan Chela Daya Singh* v. *The*

Shiromani Gurdwara Parbandhak Committee, Amritsar (supra) on a number of objections being raised before the learned Judge hearing the matter on a difference, he thought it safer that the surviving questions in the appeal as well as the third question as to whether this reference could be heard by a Single Judge might be decided by a Full Bench of this Court. The Full Bench proceeded to decide the case on merits but did not advert to the question, whether the reference could be heard by a Single Judge or not. Again in *Mahant Budh Dass and Mahant Purna Nand* v. *The Shiromani Gurdwara Parbandhak Committee, Amritsar,* (supra), on a difference betwixt the Judges constituting the Division Bench the matter had to be placed before a Full Bench because of the express recommendation made by the Judges composing the Bench that the case should be referred to a larger Bench.

9. It would be evident from the above that it was merely for reasons of safety, propriety and in view of the importance of the issue involved in the said cases that these were referred by the third Judge for decision by a larger Bench. Obviously there is and cannot be any bar in such a situation for the matter to be considered and decided by a larger Bench—may be of three, five or even seven Judges. The real issue herein is whether the hearing by a third Judge alone on a difference of opinion is not warranted by law. None of the aforesaid three judgments laid down anything even remotely on that point. It appears to me that these authorities are plainly wide of the mark.

10. Both on principle and precedent I would, therefore, return the answer to the question formulated at the outset in the negative and hold that the hearing of this appeal by a Single Judge on the point of difference betwixt the learned members of the Division Bench composing the same is perfectly in accordance with law.

H. S. B.

Before R. N. Mittal, J.

BHATIA BROTHERS, INDUSTRIAL AREA-B and another,—
Petitioners.

versus

I. T. C. LIMITED (AN EXISTING COMPANY) and another,—
Respondents.

Regular First Appeal No. 907 *of* 1977.

September 9, 1980.

Court Fees Act (VII of 1870)—*Section* 13—*Code of Civil Procedure* (*V of* 1908)—*Order* 41, *Rules* 23 *and* 23-*A*—*Appellate Court*