

(supra). In this view of the matter, the order of the trial Court is illegal and liable to be set aside in this revision petition.

(6) For the reasons recorded above, this revision petition succeeds and the impugned order is set aside. It is further directed that the plaintiffs may be given an option to amend the plaint if they are so advised, failing which the present suit for permanent injunction will stand dismissed as having become infructuous. Since there is no representation on behalf of the respondents, the parties will bear their own costs.

*H. S. B.*

*Before D. S. Tewatia, J.*

DIDAR SINGH (DR.) and others,—*Petitioners.*

*versus*

STATE OF PUNJAB,—*Respondent.*

*Criminal Misc. No. 741-M of 1978*

August 29, 1980.

*Indian Penal Code (XLV of 1860)—Section 193—Code of Criminal Procedure (I of 1974)—Section 161—Statement of witness recorded in court on oath at variance with the statement made to police officer under section 161—Witness denying making of the statement before the police officer—Such witness—Whether can be said to have committed perjury—Statement of a witness recorded in vernacular and in English—Vernacular version at variance with the statement previously recorded by the Court in another case—English version not so discrepant—Such witness—Whether guilty of an offence under section 193.*

*Held*, that the statements recorded by an Investigating Officer under section 161 of the Code of Criminal Procedure 1973 are generally not signed by a witness. Witnesses whose statements in the very proceedings in which the statements under section 161 of the Code of Criminal Procedure had been earlier recorded by the Investigating Officer in the event of running counter to their statements under section 161 of the Code of Criminal Procedure are confronted with such statements. That is done only to make the witness aware of the presence of such a statement having been made by the witness. The witness may admit to have made such statement or may

Didar Singh (Dr.) and others v. State of Punjab (D. S. Tewatia, J.)

not have admitted of having made such a statement. It is then for the Court to assess the value of the evidence given on oath which ran counter to the alleged statement of the witness to the Investigating Officer under section 161 of the Code of Criminal Procedure but it is never taken that a witness whose statement in Court on oath runs counter to his or her earlier statement made to the Investigating Officer under section 161 of the Code of Criminal Procedure which the witness either does not admit as having made or does not remember as having made, in making the statement that he does on oath before the Court, commits any perjury. The question of witness having committed perjury would arise only if the witness was to admit the fact that he or she had made the statement to the Investigating Officer with which he or she had been confronted in the Court while making the statement in Court and if the statement in Court was at variance with such an admittedly made statement by the witness. As already observed, such is not the case here.

(Para 4).

*Held*, that where admittedly two versions are taken down of the statement one in English and the other in vernacular and the vernacular version of the statement is at variance with the statement of the witness previously recorded by the Court in another case, then it cannot be said in law that the witness had in fact committed perjury in making the statement in court which runs counter to his earlier statement and such a witness cannot be held guilty of an offence under section 193 of the Indian Penal Code. (Para 5).

*Petition under section 482 of the Code of Criminal Procedure praying that the orders at Annexures 'P/1' dated 20th April, 1977 and Annexure 'P/2' dated 28th October, 1977 and the complaint at Annexure 'P/2' dated 26th April, 1977 be quashed.*

D. S. Bali, Advocate with Ashok Sharma, Advocate, for the Petitioner.

D. S. Keer, Advocate for A. G. Punjab, for the Respondent.

#### JUDGMENT

D. S. Tewatia, J.

(1) Petitioner Didar Singh and his wife Smt. Gurbachan Kaur have sought the quashing of order, dated 20th April, 1977 Annexure P. 1 ordering the lodging of the complaint under section 193 of the Indian Penal Code against them, the complaint lodged in consequence thereof by Judicial Magistrate I Class, Batala on 26th April, 1977 and the order passed by the Additional Sessions Judge, Gurdaspur, dated 28th October, 1977, holding that the appeal against the order Annexure P. 1 was not competent. Didar Singh was said to have made a statement on oath in a criminal case titled *State versus*

*Piara Singh* resulting from F.I.R. No. 147, dated 10th September, 1971, under sections 342, 506, Indian Penal Code, at Police Station Batala as P.W. 4, which was considered to be at variance with his earlier statement made as P.W. 3 in a criminal case titled *State versus Sarbjit Singh and others*.

(2) So far as Gurbachan Kaur is concerned, her statement made in the criminal case *State versus Piara Singh* as P.W. 2 was said to be at variance with the statement Exhibit D.A. which she had earlier made to the Investigating Officer under section 161 of the Code of Criminal Procedure during the investigation of the case *State versus Sarbjit Singh and others*.

(3) Taking the case of Gurbachan Kaur, first, it may be observed that when she was confronted with Exhibit D. A. when making her statement in *State versus Piara Singh* as P.W. 2, she stated that she did not remember whether she had made any statement like Exhibit D.A.

(4) Statements recorded by an Investigating Officer under section 161 of the Code of Criminal Procedure, are generally not signed by a witness. Witnesses whose statements in the very proceedings in which the statements under section 161 of the Code of Criminal Procedure had been earlier recorded by the Investigating Officer in the event of running counter to their statements under section 161 of the Code of Criminal Procedure are confronted with such statements. That is done only to make the witness aware of the presence of such a statement having been made by the witness. The witness may admit to have made such statement or may not have admitted of having made such a statement. It is then for the Court to assess the value of the evidence given on oath which ran counter to the alleged statement of the witness to the Investigating Officer under section 161 of the Code of Criminal Procedure but it is never taken that a witness whose statement in Court on oath runs counter to his or her earlier statement made to the Investigating Officer under section 161 of the Code of Criminal Procedure which the witness either does not admit as having made or does not remember as having made, in making the statement that he does on oath before the Court, commits any perjury. The question of witness having committed perjury would arise only if the witness was to admit the fact that he or she had made the statement to the Investigating Officer with which he or she had been confronted in the Court while making the statement in Court and if the statement in Court was at variance with such an admittedly made statement

Swaran Dass v. Shiromani Gurudwara Parbandhak Committee,  
Amritsar (S. S. Sandhawalia, C.J.)

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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 is 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.

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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*