charges of misconduct which might be levelled against the petitioner or that it means any such thing. It does envisage an opportunity to the petitioner to represent his case and such opportunity would be an empty formality if he is not given a chance to demolish the charges levelled against him either by showing that the evidence relied upon by the Government in support thereof was false and worthless or by contradicting the same independently. Such opportunity must be a real opportunity so that it would be one akin to that envisaged by clause (2) of Article 311 of the Constitution of India. This is the interpretation we would have placed on the sentence even if it were ambiguous, for, the presumption would be that it was intended to be in conformity with the law and not to contravene it. In fact, learned counsel for the State does not urge that it derogated from the constitutional provision above cited.

(7) As the petitioner was not given a month's notice or a month's salary in accordance with the terms and conditions of his service as contained in the appointment letter and as no real opportunity to defend himself was afforded to him, the impugned order must be held to be illegal. Accordingly the appeal succeeds and is accepted and the impugned order is quashed. The parties are, however, left to bear their own costs.

H.S.B.

APPELLATE CRIMINAL

Before S. S. Sandhawalia and S. C. Mital, JJ.

M. M. PASRICHA,—*Appellant.*

versus

THE STATE OF PUNJAB —*Respondent.*

Criminal Appeal No. 220 *of* 1977

August 10, 1977.

Code of Criminal Procedure (2 *of* 1974)—*Section* 344—*Accused denying the charge of giving false evidence—Court convicting the accused after recording his statement—Procedure prescribed for summary trials not followed—Such conviction—Whether sustainable.*

Held, that section 344 of the Code of Criminal Procedure 1973 enjoins the trial of offenders summarily. However this would not warrant an immediate conviction after recording the statement of the person committing an offence where he does not plead guilty to the charge. Where the offender denies the charge or claims to be tried, there is no option but to resort to the procedure for summary trials. When sub-section (1) of section 344 provides that an offender shall be tried summarily, it does not mean that the court is totally free to devise its own procedure for convicting such an offender. The position is made crystal clear by sub-section (2) of section 344 which lays down that the trial herein shall conform as nearly as may be practicable to the procedure prescribed for summary trials. A reference to chapter 21 and in particular to section 262 of the Code would show that under the said chapter, the procedure specified for the trial of summons cases has to be followed. A plain reading of sections 251, 252 and 253 which provide for the trial of summons cases by the Magistrate would show that in all cases in which the conviction is not recorded on a plea of guilty by the accused person, the Magistrate is bound to hear the prosecution and take all such evidence as may be produced in support of its case. He is equally bound to hear the accused and to take all evidence which he produces in his defence by virtue of section 254(1). The Court, therefore, could not possibly proceed forthwith and record conviction after merely recording the statement of the accused. (Paras 8, 11 and 12).

Appeal from the order of Shri M. L. Merchea, Sessions Judge, Faridkot, dated the 13th January, 1977 convicting the appellant.

H. L. Sibal, Sr. Advocate with S. C. Sibal, Advocate, *for the appellant.*

D. N. Rampal, Deputy Advocate-General, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, J.:

(1) This is an appeal by Dr. M. M. Pasricha directed against his conviction and sentence of 3 months' simple imprisonment imposed by the learned Sessions Judge, Faridkot, in a summary trial under section 344 of the Code of Criminal Procedure, 1973.

(2) The present case is an off-shoot of the Sessions case No. 84 of 1976 (Sessions trial No. 71 of 1970) tried before the aforesaid Sessions Judge. In view of the fact that we are remanding the case for re-trial for reasons, which appear hereinafter, it is unnecessary

to advert to the facts in any great detail. Five accused persons were brought to trial for the commission of a triple murder in the township of Giddarbaha. Dr. M. M. Pasricha, who on 22nd August, 1976, was posted as the senior Medical Officer at Civil Hospital Giddarbaha, had performed the autopsy on the bodies of two deceased persons, namely, Pirthi Singh and Mithu Singh. This apart, the third victim Harmel Singh, who was immediately brought to the hospital after the incident, was rendered first-aid by Dr. Pasricha and his dying declaration was recorded in his presence by the investigating officer (Kulwant Singh Head Constable) and he appended a certificate thereto to the effect that the same had been recorded in his presence and that the injured remained in possession of his full senses throughout. Harmel Singh injured was thereafter shifted to the civil hospital Bhatinda, but shortly thereafter succumbed to his injuries.

(3) At the Sessions trial which followed, Dr Pasricha appeared as P.W. 2 and in his cross-examination on behalf of the defence made certain statements, which in the view of the learned Sessions Judge were patently false and fabricated. He was summoned again as a court witness in the case and appeared as C.W. 1 on 13th January, 1977. Judgment was thereafter recorded on that very day and whilst sentencing Tehal Singh accused to death under section 302, Indian Penal Code, and imposing life imprisonment on his co-accused Darshan Singh and Gurmel Singh (whilst acquitting Chiman Lal and Murari Lal accused persons on the charge of conspiracy to murder) the learned Sessions Judge recorded the following finding against Dr. Pasricha:—

> "Before parting with the judgment, I must observe that I am of the opinion that Dr. Pasricha P.W. knowingly and wilfully gave false evidence and fabricated the presence of Shri Daulat Ram, Assistant Sub-Inspector, with the intention that such evidence shall be used in the Sessions case and I am satisfied that it is necessary and expedient in the interest of justice that Dr. Pasricha P.W. 2 be tried summarily for giving false evidence. I order that a separate show-cause notice be issued to him within the meaning of section 344 of the Code of Criminal Procedure.".

(4) It is he case of Dr. Pasricha that he was served with a show-cause notice under section 344, Cr. P. C. in the court room of Sessions Judge, Faridkot, where he had come as a court witness on 13th

January, 1977 and was immedately asked to give a reply to the said notice. His statement was forthwith recorded in the following words by the Sessions Judge:—

> "Harmel Singh was being given treatment. I am very sure that I was not by side of Harmel Singh throughout the period his statement was being recorded by Head Constable Kulwant Singh. My assistants were by the side of Harmel Singh and they were keeping a watch on the condition of Harmel Singh. They had been duly instructed to keep me in touch about his condition and progress if anything goes wrong. Harmel Singh was visible to me from the room where I was working."

Thereupon the learned Sessions Judge without more, proceeded to record the judgment of conviction and sentence which is sought to be challenged in these proceedings.

(5) Now the main plank of the learned counsel for the appellant is that there has been a patent infraction of the procedure prescribed for the summary trial of the offenders under section 344 of the Criminal Procedure Code. Counsel contended that on the present record it is plain that the appellant had never entered a plea of guilty against the show-cause notice issued to him under section 344 and the tenor of his statement recorded in Court was clearly a denial of the charge levelled against him. Consequently it would be imcumbent on the Court to try the appellant and the procedure therefor, has been prescribed as that of a summons case. This procedure having admittedly not been followed, it was urged that grave prejudice has been caused to the appellant and the conviction cannot be sustained on this ground alone.

(6) It is plain that the controversy must necessarily turn on the language of the provisions of section 344, Criminal Procedure Code, and it is thus necessary to first set down its relevant portions for facility of reference:—

> "344(1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Sessions 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) * * *."

(7) Now the question of some significance which arises herein is whether the words "try such offenders summarily" as used in the penultimate part of section 344(1) require conformity with the procedure provided for summary trials or do they warrant the conviction and sentence of the offender forthwith after affording him an opportunity of showing cause against the notice. On behalf of the respondent-State it was at one stage sought to be contended that the summary trial visualised by this provision would be adequately satisfied if the offender is merely afforded an opportunity of replying to the charge of wilfully giving false and fabricated evidence before the Court. On the other hand it has been forcefully contended that sub-section (1) even when construed in isolation prescribes the procedure of summary trials for offenders under section 344, Criminal Procedure Code, and any doubts on this point are more than amply resolved when reference is made to the succeeding sub-section (2).

(8) I find patent merit in the submission made on behalf of the appellant. Nevertheless it is instructive to make a brief reference

to the legislative history of the provision which calls for interpretation. It deserves recollection that Chapter 26 of the present Criminal Procedure Code has been substituted in place of Chapter 35 of the earlier Code of 1898 for dealing with offences affecting the administration of justice. It is worthwhile to recall that in the earlier Code, the only procedure prescribed for the punishment of such offences after complying with the necessary preliminaries was by the process of filing a regular complaint by the Court concerned for the trial of such offences. Section 479-A of the earlier Code is in some way analogous to the provisions of section 344 of the present one. It is significant to notice that the previous provisions invariably necessitated the filing of a complaint for the punishment of such like offences which was then to be dealt with as if it was a complaint under section 200, Indian Penal Code. The present provision of section 344, Criminal Procedure Code by virtue of sub-section (3) thereof does not in any way affect the power of the Court even now to make such a complaint as is provided by section 340, Criminal Procedure Code. However, sub-section (1) provides for an alternative and a less cumbersome procedure where the Court concerned does not intend to impose a sentence of more than three months or a fine of more than Rs. 500 or both. In such cases, the law enjoins the trial of the offender summarily. However, even this would not warrant an immediate conviction after recording the statement of the person committing an offence where he does not plead guilty to the charge. Where the offender denies the charge or claims to be tried, there is no option but to resort to the procedure for summary trials. In my view, when sub-section (1) provides that an offender shall be tried summarily, it does not mean that the Court is totally free to devise its own procedure for convicting such an offender. It seems unnecessary to labour this point because the position seems to be made crystal clear by sub-section (2) of section 344 which lays down that the trial herein shall conform as nearly as may be practicable, to the procedure prescribed for summary trials.

(9) It is equally instructive to compare the language used by the framers in the succeeding sections 345 and 346 in contrast with the one used in section 344, Criminal Procedure Code. Section 345 provides for an exceptional procedure in certain cases of contempt committed in the view or presence of the Court and falling under sections 175, 178, 179, 180 and 228, of the Indian Penal Code. The language used in this section is materially different and expressly provides that the Court after giving the offender reasonable opportunity of showing cause may sentence the offender to fine not

exceeding Rs. 200/- and in default thereof a simple imprisonment extending up to one month. In this provision, the law does not provide for the trial of the offender summarily. It has also to be borne in mind that the exceptional procedure under section 345 is confined to only those cases where a substantive sentence of a fine not exceeding Rs. 200/-, is to be imposed. In all other cases, the procedure under section 346, Cr. P. C. has to be resorted to even in matters where the offence has been committed in the view or presence of the Courts and the procedure prescribed is the filing of a regular complaint and the trial thereof.

(10) It is thus manifest that where an exceptional procedure is prescribed for punishing contempts with a relatively milder sentence of fine under section 345, the language used therein is entirely different than the one employed in section 344(1), Criminal Procedure Code. It appears that in the present case, the learned Sessions Judge seems to have conformed to the provisions of section 345 rather than to those of section 344 which were incumbent upon him to observe.

(11) Even the learned counsel for the respondent State was fair enough to concede that the appellant herein had not pleaded guilty to the charge. That being so, he had to be tried in accordance with the procedure prescribed for summary trials. A reference to Chapter 21 which pertains thereto and in particular to section 262, Criminal Procedure Code, would show that under the said Chapter, the procedure specified for the trial of summons cases has to be followed. However, a relatively abbreviated mode for the maintenance of records therein is provided by virtue of the succeeding section 263.

(12) One has necessarily, therefore, to turn to Chapter 20 which provides for the trial of summons cases by the Magistrate. A plain reading of sections 251, 252 and 253, Criminal Procedure Code, would show that in all cases in which the conviction is not recorded on a plea of guilty by the accused person, the Magistrate is bound to hear the prosecution and take all such evidence as may be produced in support of its case. He is equally bound to hear the accused and to take all evidence which he produces in his defence by virtue of section 254(1). In the present case, statement made by the appellant makes it plain that he had not pleaded guilty to the charge and in fact had sought to rebut the allegation against him. Consequently

it would become incumbent on the learned Sessions Judge to conform as nearly as could be practicable with the provisions of sections 254 and 255. The learned trial Court could not possibly proceed forthwith to convict and sentence the appellant after merely recording his statement. It is the appellant's case that he had sought an opportunity to engage counsel and to lead evidence but was not allowed to do so. Even the learned counsel for the State despite his zeal to have the conviction maintained was unable to take the stand that in the present case, the procedure provided by law has been conformed to.

(13) In the present case we have not chosen to hear the learned counsel for the appellant on merits. Even assuming in favour of the prosecution that in fact no serious prejudice on merits had been occasioned to the appellant because the case against him was a matter of record in the trial of the connected sessions case yet it is plain that the mandatory requirements of law as regards the procedure and the form of trial prescribed have not been satisfied. On the larger principle that justice must not only be done but should appear to be so done, we feel constrained to set aside the conviction and sentence of the appellant and hereby direct that he shall be tried afresh in accordance with law.

(14) The appeal is allowed and the case is remanded to the trial Court for an expeditious disposal.

S.C. Mital, J.—I agree.

H.S.B.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and S. P. Goyal, JJ.

NAWAL KISHORE.—*Petitioner.*

versus

STATE OF HARYANA and others,—*Respondents.*

Civil Misc. No. 826 *of* 1977

in

Civil Writ Petition No. 3793 *of* 1973

August 18, 1977.

Constitution (Forty-Second Amendment) Act, 1976—*Section* 58(4)—*Whether a stringent and an exceptional provision*—'*Project of*