

Babu Lal

Vs

State of Uttar Pradesh and Others

Civil Appeal No. 708 of 1962

(J. C. Shah, K. Subha Rao, P. B. Gajendragadkar, K. N. Wanchoo, Raghuvar Dayal JJ)

18.09.1963

JUDGEMENT

SHAH, J. –

Jairam and three others - hereafter collectively called "the plaintiffs" - sued Babu Lal - appellant in this appeal - in the Court of the Munsiff, Koli, District Aligarh, for a decree for possession of a strip of land, for removal of a wall and a slab of stone and for an injunction restraining the making of certain constructions in the northern wall of the plaintiff's house. The plaintiffs claimed that Mohini wife of Jairam the first plaintiff had purchased the house occupied by them by sale deed dated August 1, 1932 from the vendor who was also named Mohini, who in turn had purchased the house by sale deed dated July 25, 1917 from the original owner Kishan Lal.

Babu Lal who is the son of Kishan Lal pleaded that the vendor Mohini had acquired only a life interest in the house by the deed under which the property was conveyed to her by Kishan Lal and the plaintiffs' predecessor-in-interest had acquired no title under the sale deed dated August 1, 1932. In support of this plea Babu Lal gave evidence at the trial of the suit and tendered in evidence an agreement dated July 25, 1917 purported to be executed by Mohini to whom Kishan Lal had conveyed the house reciting that the sale deed in her favour was without consideration and that she had only a life interest in the house.

The Trial Judge held that the agreement relied upon by Babu Lal was "not genuine" and that Mohini, predecessor-in-interest of the plaintiffs had under the sale deed dated August 1, 1932 acquired title to the house in dispute and on that footing decreed the suit. In appeal to the District Court the findings that the agreement was not genuine was not challenged.

Before the suit was disposed of by the Munsiff the plaintiffs had applied that action be taken against Babu Lal under s. 479 A of the Code of Criminal Procedure, because Babu Lal had given false evidence before the Court, that he had forged the agreement relied upon by him, and that he had fabricated false evidence and had used such fabricated evidence at the trial, and had thereby committed offences punishable under ss. 193, 209, 463 and 471 of the Indian Penal Code. The Munsiff did not dispose of the application by his judgment deciding the suit. After the disposal of the suit the plaintiffs moved the Munsiff for an order on the application filed by them. The Munsiff held that no action could be taken against Babu Lal for the offence of intentionally giving false evidence or intentionally fabricating false evidence for the purpose of being used in the suit for such action was barred by s. 479A Code of Criminal Procedure, but in his opinion it was expedient in the interest of justice that a complaint be filed against Babu Lal for offences "under ss. 463 and 471 I.P. Code". Pursuant to this order on May 30, 1959 a complaint was filed against Babu Lal charging him

with committing an offence under s. 471 read with s. 463 India Penal Code by using the agreement dated July 25, 1917 knowing or having reason to believe that it was a forged document. The order passed by Trial Court was confirmed in appeal by the District judge, Aligarh and a revision application to the High Court of Allahabad challenging the order was dismissed. With special leave, Babu Lal has appealed to this Court.

Chapter XXXV of the Code of Criminal Procedure prescribes the procedure to be followed for prosecution of offenders in case of certain offences affecting the administration of justice. Section 476 sets out the procedure for prosecution of offenders for offences enumerated in s. 195(1)(b) & (c) of the Code of Criminal Procedure. If a Civil, Revenue or Criminal Court is of opinion, that it is expedient in the interests of justice that an enquiry be made into any offence referred to in s. 195(1)(b) or (c) which appears to have been committed in or in relation to proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing and forward the same to a Magistrate of the first class having jurisdiction. Section 476A authorises a superior Court to make a complaint where a Subordinate Court has omitted to do so in respect of offences and in the circumstances mentioned in s. 476(1). Section 476B provides for a right of appeal against the order making or refusing to make complaint. Sections 478 and 479 deal with the procedure which may be followed in certain grave cases. Section 479A which was added by the Code of Criminal Procedure (Amendment) Act 26 of 1955 by the first sub-section (insofar as it is material) provides :

"Notwithstanding anything contained in sections 476 to 479 inclusive, when any Civil, Revenue or Criminal Court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which appears to have been committed by him, the Court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefor and may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint thereof in writing signed by the presiding officer of the Court setting forth the evidence which, in the opinion of the Court, is false or fabricated and forward the same to a Magistrate of the first class having jurisdiction, and may * * * * *."

And sub-s. (6) enacts that :

"No proceedings shall be taken under section 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section."

It is clear from the terms of sub-s. (6) that the procedure prescribed thereby alone applies if the case falls within sub-s. (1). But sub-s. (1) has a limited operation : it applies only to the prosecution of a witness appearing before the Court, who has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. The subsection may therefore be resorted to only in a case which falls within the first paragraph of s. 193 of the Indian Penal Code and allied sections 194 & 195 - when it is committed by a witness appearing before the Court.

Babu Lal was examined as a witness in the Civil suit filed by the plaintiffs. He tendered in evidence the agreement dated July 25, 1917. In the opinion of the Munsiff the document was a forged document. The Munsiff however by his judgment disposing of the suit did not record an opinion that it was expedient for the eradication of the evils of perjury and fabrication of false evidence, and in the interests of justice to prosecute Babu Lal for the offence of intentionally giving false evidence, or for intentionally fabricating false evidence for the purpose of being used at any stage of the judicial proceeding. He could not therefore after the disposal of the suit make a complaint for the offence of giving false evidence or fabricating false evidence. The Trial Court accepted this restriction upon its jurisdiction and directed in exercise of the powers vested under s. 476 Criminal Procedure Code the making of a complaint of an offence of fraudulently or dishonestly using as genuine a document which Babu Lal knew or had reason to believe to be a forged document.

It is urged by counsel for Babu Lal that a complaint for an offence under s. 471 Indian Penal Code may also be made under s. 479A Code of Criminal Procedure and not otherwise. The phraseology used in s. 479A is plain and unambiguous : it excludes the jurisdiction of the Court to proceed under ss. 476 to 479, in respect of offences specified in s. 195(1)(b) & (c) of the Code of Criminal Procedure only where a person appearing before the Court as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. An offence punishable under s. 471 Indian Penal Code being one of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document, does not fall within the category contemplated by s. 479A(1) of the Code of Criminal Procedure and therefore the authority of the Court to act under s. 476 of the Code is impaired by sub-s. (6) of s. 479A. This Court in *Raghubir Prosad Dudhwalla v. Chamanlal Mehra and another* ([1964] 3 S.C.R. 980.)ⁱ observed :

"The special procedure of s. 479A is prescribed only for the prosecution of a witness for the act of giving false evidence in any stage of judicial proceeding or for fabrication of false evidence for the purpose of being used in any stage of a judicial proceeding. There is nothing in the section which precludes the application of any other procedure prescribed by the Code in respect of other offences. * * * Examining the special procedure prescribed by s. 479A in that light, it is important to notice that the act of intentionally giving false evidence in any stage of a judicial proceeding and the act of fabricating false evidence for the purpose of being used in any stage of a judicial proceeding mentioned in s. 479A of the Code of Criminal Procedure are the acts which are made punishable under s. 193 of the Indian Penal Code and cognate sections in Chapter XI."

It is true that some of the ingredients of the act of fabricating false evidence which is penalised under s. 193 Indian Penal Code and of making a false document and thereby committing forgery within the meaning of ss. 463 and 464 Indian Penal Code are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of s. 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of s. 192 Indian Penal Code besides causing a circumstance to exist or making a false document - to use a compendious expression - is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator, and lead to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are therefore distinct, and within the description of fabricating false evidence for

the purpose specified in s. 479A Criminal Procedure Code, the offence of forgery is not included. In any event the offence penalised under s. 471 Indian Penal Code can never be covered by sub-s. (1) of s. 479A. Therefore for taking proceeding against a person who is found to have used a false document dishonestly or fraudulently in any judicial proceeding, resort may only be had to s. 476 Code of Criminal Procedure.

We may point out in the following observation made by this Court in dealing with the true interpretation of s. 479A Code of Criminal Procedure in *Shabir Hussain Bholu v. State of Maharashtra* ([1963] Supp. 1 S.C.R. 501.) :

"From this it would follow that whereas s. 476 is a general provision dealing with the procedure to be followed in respect of a variety of offences affecting the administration of justice, in so far as certain offences falling under ss. 193 to 195 and s. 471 I.P.C. are concerned the Court before which that person has appeared as a witness and which disposed of the case can alone make a complaint",

the words "and s. 471" appear to have crept in by oversight. That is clear from the observation made by the Court earlier in the judgment, that the discussion relating to the exclusive operation of s. 479A of the Code of Criminal Procedure was restricted to the offence of intentionally giving false evidence in any stage of judicial proceeding.

The appeal therefore fails and is dismissed. No order as to costs.

Appeal dismissed.

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