

Baban Singh and Anr.

Vs

Jagdish Singh and Ors.

Criminal Appeal No. 74 of 1964

(K. Subha Rao, M. Hidayatullah, R. S. Bachawat JJ)

08.02.1966

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal under section 476-B of the Code of Criminal Procedure by one Baban Singh and his wife Dharichhan Kuer against a judgment and order of the High Court at Patna ordering the Registrar to file a complaint against them under Section 199 of the Indian Penal Code for making false affidavits. The respondents are persons who had moved the High Court under Section 476 of the Code for the prosecution of the appellants in the following circumstances.

Jagdish Singh and Parmhans were appellants in F.A. 301 of 1952 in the High Court at Patna. Mst. Dharichhan Kuer was respondent No. 13 in that appeal. During the pendency of the appeal a compromise was said to have been arrived at between Dharichhan Kuer on the one hand and Jagdish Singh and Parmhans on the other. Dharichhan Kuer and Jagdish Singh swore an affidavit on June 22, 1953 in support of the petition for compromise which was filed in the High Court. Baban Singh's brother identified Dharichhan Kuer before the Oath Commissioner and Rs. 4,000 were paid to Dharichhan Kuer under the terms of the compromise in the Commissioner's presence. Dharichhan Kuer also passed a receipt and her thumb impression was identified by Baban Singh's brother. The petition of compromise was filed in court on July 13, 1953. The same day Baban Singh swore an affidavit (Ex. B) denying the compromise or that his wife had received Rs. 4,000. This affidavit was filed in the High Court on July 31, 1953. On September 9, 1953 Dharichhan Kuer also filed an affidavit (Ex. A) in support of her husband.

As the compromise was in dispute the High Court ordered the Registrar to hold an enquiry. Nine witnesses were examined on behalf of Jagdish Singh and Parmhans including the Oath Commissioner. Dharichhan Kuer and her husband Baban Singh have evidence on their own behalf. The Registrar reported on July 14, 1954 that the compromise was genuine and that Dharichhan Kuer had, in fact, sworn the affidavit before the Oath Commissioner and had received Rs. 4,000. B. N. Rai and Kanhaiya Singh, JJ. accepted the report by their order dated October 5, 1956. One of the terms of the compromise was that if Dharichhan Kuer resiled from it the amount of Rs. 4,000 would be refunded with costs Rs. 500. Dharichhan Kuer deposited this amount in court on October 9, 1956. The first appeal was then heard and disposed of.

The application under section 476 out of which this appeal has arisen was filed during the pendency of the first appeal and was taken up for hearing after the appeal was disposed of. A question arose whether a complaint for prosecution of Baban Singh and Dharichhan Kuer for an offence under Section 193, Indian Penal Code could be filed in the High Court because Baban Singh and

Dharichhan Kuer had deposed not before the court but before the Registrar. Further Section 479A (to which we shall refer presently) was introduced from January 1, 1956 and thus on October 5, 1956, when the High Court accepted the report of the Registrar, it was in force. The Divisional Bench did not consider taking action under Section 193 because of Section 479A and it appears that the counsel for Jagdish Singh and Parmhans also conceded that no prosecution could take place under that section. The High Court, however, considered whether action should be taken in respect of the two affidavits (Exs. A and B). It is not necessary to refer to the statements in these affidavits because we are not considering whether they were true or false. It was contended before the High Court that a prosecution under Section 199 of the Indian Penal Code would be equally covered by Section 479A and as the procedure under that section was not followed an application for prosecution under Section 476 was barred. This contention was not accepted by the High Court and after going into the expediency of the prosecution the learned Judges ordered the Registrar of the High Court to file a complaint before the appropriate authority for the prosecution of the appellants. The appellants now appeal as of right under section 476B.

At the hearing before us there was no representation on behalf of the respondents. Although notice were issued to Jagdish Singh, Parmhans and the State Government, none appeared. On hearing the learned counsel for the appellants we are satisfied that this appeal must succeed. The short question in this case is whether Section 476 could at all be invoked because of the bar contained in Section 476A sub-Section (6). The sixth sub-section, to which we have referred lays down that no proceedings shall be taken under Sections 476 to 479 (both inclusive) for the prosecution of a person for giving or fabricating false evidence if in respect of such a person proceeding may be taken under Section 479A. The point to decide, therefore, is whether proceedings under Section 479A could be taken against Baban Singh and his wife, for if they could be, then action ought to have been taken under that section and Section 476 cannot be invoked. Section 479A, in so far as it is relevant to our purpose, provides as follows :-

"479-A. Procedure in certain cases of false evidence. -

(1) Notwithstanding anything contained in section 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, if the accused is present before the court, take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate :

Provided that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

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The learned Judges in the High Court did not take action in respect of the offence of giving false evidence on oath, as defined in Section 191 and punishable under Section 193 of the Indian Penal Code, because they were of the opinion that Section 479-A of the Code of Criminal Procedure would be applicable to that offence even though evidence was recorded by the Registrar. The High Court selected for action the offence in relation to the two affidavits holding that prima facie an offence under Section 199, Indian Penal Code was committed. That offence is also punishable in the same manner as if false evidence was given. The difference between Sections 191 and 199 is this; Section 191 deals with statements and declarations falsely made by a person legally bound by an oath or by an express provision of law to state the truth. Section 199 deals with statements and declarations made voluntarily provided they are capable of being used as evidence and which the court is bound to receive as evidence.

The matter has to be considered from three standpoints. Does the swearing of the false affidavits amount to an offence under Section 199, Indian Penal Code or under either Section 191 or 192, Indian Penal Code ? If it comes under the two latter sections, the present prosecution cannot be sustained, Section 199 deals with a declaration and does not state that the declaration must be on oath. The only condition necessary is that the declaration must be capable of being used as evidence and which any court of justice or any public servant or other person, is bound or authorised by law to receive as evidence. Section 191 deals with evidence on oath and Section 192 with fabricating false evidence. If we consider this matter from the standpoint of Section 191, Indian Penal Code the offence is constituted by swearing falsely when one is bound by oath to state the truth because an affidavit is a declaration made under an oath. The definition of the offence of giving false evidence thus applies to the affidavits. The offence may also fall within Section 192. It lays down inter alia that a person is said to fabricate false evidence if he makes a document containing a false statement intending that such false statement may appear in evidence in a judicial proceeding and 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. When Baban Singh and Dharichhan Kuer made declarations in their affidavits which were tendered in the High Court to be taken into consideration, they intended the statements to appear in evidence in a judicial proceeding, and so appearing, to cause the court to entertain an erroneous opinion regarding the compromise. In this way their offence came within the worst of Sections 191/192 rather than Section 199 of the Indian Penal Code. They were thus prima facie guilty of an offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding.

Section 479-A lays down a special procedure which applies to persons who appear as witnesses before civil, revenue or criminal courts and do one of two things : (i) intentionally give false evidence in any state of the judicial proceeding or (ii) intentionally fabricate false evidence for the purpose of being used in any stage of the judicial proceeding. The first refers to an offence under Section 191/193 and the second to that under Section 192/193 of the Indian Penal Code. In respect of such offences when committed by a witness, action under Section 479-A alone can be taken. The appellants were witnesses in the inquiry in the High Court and they had fabricated false evidence. If any prosecution was to be started against them the High Court ought to have followed the procedure under Section 479-A of the Code of Criminal Procedure. Not having done so, the action under Section 476 of the Code of Criminal Procedure was not open because of Sub-section. (6) of Section 479-A and the order under appeal cannot be allowed to stand.

In the result the appeal succeeds and is allowed. The order for the prosecution of the appellants is

set aside. The complaint, if filed, shall be withdrawn.

Appeal allowed.

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