

# ALLAHABAD HIGH COURT

Jai Bir Singh

Vs.

Malkhan Singh

Criminal Revn. No. 125 of 1957. , against order of S. J. Bulandshahr  
(J. Sahai, J.)

08.01.1957. 29.08.1957

## ORDER

**J. Sahai, J.**

1. Jabir Singh has filed this revision application against the order of the learned Sessions Judge of Bulandshahr directing the filing of a complaint against the applicant for his prosecution for perjury.

2. The facts giving rise to this revision application are that one Malkhan Singh was prosecuted for an offence punishable under Section 382, I.P-C, and the applicant Jabir Singh was examined in that case as a prosecution witness. In cross-examination he was asked to state whether or not he had been convicted under the Martial Law and sentenced to imprisonment for 18 months having spent that period in Agra Jail. The applicant denied that he was ever convicted and confined in Agra jail. The question was not put apparently with a view to check the credibility of the witness. Malkhan Singh was acquitted in that case. Thereafter he moved under Section 476, Criminal Procedure Code the Magistrate who tried him requesting that Court to make a preliminary inquiry and file a complaint for the prosecution of the applicant for perjury. It appears that evidence was given before the learned Magistrate to prove that the applicant was convicted and was confined as a prisoner in Agra Central Jail. The learned Magistrate, however, did not file a complaint but dismissed the application under Section 476, Criminal Procedure Code on the ground that in view of the provisions of Section 479A(6), Criminal Procedure Code, the provisions of Section 476, Criminal Procedure Code, could not be invoked. Malkhan Singh filed an appeal before the learned Sessions Judge, Bulandshahr, under Section 476B, Criminal Procedure Code. The appeal was allowed by the learned Sessions Judge who directed that a complaint be made against the applicant for the offence of perjury. Thereupon the present revision application was filed in this Court.

3. Two points were urged before the learned Sessions Judge and the same have been urged before me. The first point is that in view of Section 479A(6), no Court has jurisdiction to file a complaint in respect of an offence of perjury otherwise than at the time of disposing of the case

in which the offence of perjury has been committed, and it was submitted that the provisions of Section 476. Criminal Procedure Code would not be applicable to a case of perjury at all. The second point argued was that considering the facts of the case it is not expedient in the interests of justice to prosecute the applicant for an offence of perjury.

4. I shall take the first point first. The provisions of Section 479A have been inserted in the Code of Criminal Procedure by Section 89 of the Code of Criminal Procedure (Amendment) Act 1955 (No. XXVI of 1955). Section 479A runs as follows :

"(1) 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 therefore 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.

Explanation : -For the purpose of this subsection a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

(2) Such Magistrate shall thereupon proceed according to law and as If upon complaint made under Section 200.

(3) No appeal shall lie from any finding recorded and complaint made under sub-section (1).

(4) Where, in any case, a complaint has been made under sub-section (1) and an appeal has been preferred against the decision arrived at in the judicial proceedings out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided;

and the appellate Court, after giving the person against whom the complaint has been made an opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of

the case is pending.

(5) In any case, where an appeal has been preferred from any decision of a Civil, Revenue or Criminal Court but no complaint has been made under sub-section (1), the power conferred on such Civil, Revenue or Criminal Court under the said sub-section may be exercised by the appellate Court; and where the appellate Court makes such complaint the provisions of sub-section (1) shall apply, accordingly, but no such order shall be made, without giving the person affected thereby an opportunity of being heard.

(6) No proceedings shall be taken under Sections 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."

5. Section 479A occurs in Chapter XXXV of the Code of Criminal Procedure. The other relevant sections in that chapter are 476, 476A, 476B, 478 and 479. Section 476 confers on a Civil, Revenue or Criminal Court, either on its own motion or on application made, the power to make a complaint in respect of an offence which in the opinion of that Court was committed in or in relation to a proceedings in that Court. Section 476A confers on superior Courts the same powers as the trial Court has under Section 476, in case the trial Court either refuses to make a complaint or has rejected the application for making such a complaint. Section 476B gives a right of appeal to a person whose application for making a complaint was rejected as also to a person against whom such a complaint has been made. Section 478 deals with a case where an offence was committed before a Civil or Revenue Court in exercise of judicial proceedings and the case is exclusively triable by the High Court or the Court of Session. In that case the complaint would be made not to the Magistrate but to the High Court or to the Court of Session as the case may be. Section 479 regulates the procedure that is to be followed by a Civil or Revenue Court in cases falling under Section 478. Section 477 was repealed by Section 29 of the Code of Criminal Procedure (Amendment) Act, 1923 (No. XVIII of 1923). The provisions of Section 476 are wide enough to include a case of perjury also. To a case covered by Section 479A, Section 476B will not apply because sub-section (3) of Section 479A says that :

"No appeal shall lie from any finding recorded and complaint made under sub-section (1)". Sub-section (4) of this section provides that in case complaint is made under Section 479A and an appeal has also been preferred against the decision arrived at in the case in connection with) which proceedings under Section 479A have been started, the hearing of the complaint shall remain adjourned till such appeal is decided. The appellate Court has also been given power to direct the withdrawal of the complaint. Sub-section (5) of Section 479A is something analogous to Section 476A but much more limited in its scope. It is clear that the provisions of Section 479A are special provisions relating to the offence of; perjury and fabrication of false evidence by witnesses and are self-contained.

The Legislature has inserted Section 479A but has not made any amendment in Sections 476,

476A, 476B, etc. By introducing a new section the Legislature can repeal by implication other provisions in respect of that matter without expressly repealing those provisions. Besides, the general rule is that if there is a special provision relating to a particular thing then the general provisions do not apply, the special excluding the general, vide *Ram Nath v. Emperor*<sup>1</sup>, *Aidal Singh v. Karan*

<sup>1</sup> AIR 1925 All 230

*Singh*<sup>2</sup>, and *Koka Ram v. Salig*<sup>3</sup>, Apart from this, the language of Section 479A itself shows that cases which would fall under S. 479A are excluded from the operation of S-476. Section 479A (6) runs as follows :

"No proceeding shall be taken under Sections 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."

In my opinion the word "may" here has been used in the sense of "can" and the intention of this sub-section is to exclude from the operation of Sections 476 to 479 cases of perjury. It may be said here that the purpose of the Legislature in introducing Section 479A in the Code of Criminal Procedure was to eradicate the evil of perjury and the words,

"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"

clearly express that intention. It is also obvious that the Legislature wanted that immediate action should be taken in a case of perjury and that is why it has made no provision for enquiry before filing a complaint as is provided for in S 476. For the same reason the provisions of Section 476B with regard to appeal have not been made applicable to a case covered by Section 479A and the Legislature has definitely provided in this section that no appeal shall lie from any finding recorded or complaint made under sub-section (1) of Section 479A. The opening words of Section 479A "Notwithstanding anything contained in Sections 476 to 479 inclusive" in my opinion mean that those provisions will not apply to cases of perjury with which Section 479A, Criminal Procedure Code deals. The only question that therefore requires consideration is whether the provisions of Section 479A will apply to all cases of perjury or only to some. It has been argued by the learned counsel appearing for the State that section 479A will apply to only those cases of perjury where the false statement is detected before the judgment is pronounced and it would not cover those cases where perjury has been discovered after the judgment has been pronounced. In my opinion there is no justification for holding that this section applies to one class of perjury and not to the other. The section itself does not express any such distinction.

Ordinarily when a section deals with a class it would be deemed to apply to the whole of that class and not only to a part or division of that class unless there is something in that section or some other section from which it is gathered that it applies to a sub-division of that class alone. Even from the Report of the Select Committee it appears that the idea was to make the provisions of Sections 476 to 479 inapplicable to cases where a witness gives false evidence. Whereas under Section 476 action can be taken against any one even though he is not a witness,

<sup>2</sup> AIR 1957 All 414 (FB)

<sup>3</sup> AIR 1928 All 536

under Section 479A proceedings can be taken only against a witness either for making a false statement or for fabricating false evidence. In my opinion the effect of Section 479A is that for the prosecution of a person who appears as a witness and gives false evidence or fabricates false evidence the provisions of that section alone will apply and the provisions of Sections 476 to 479 inclusive will not apply.

6. The learned Sessions Judge has taken the view that there are two ingredients of Section 479A. One is that there must be a witness intentionally giving false evidence or intentionally fabricating false evidence and secondly that the Court at the time of passing the final judgment or order disposing of the proceedings should be able to form, an opinion that the witness should be prosecuted for the offence committed by him. I do not agree with this. The words "the Court shall, at the time of delivery of the judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefore" only indicate that the stage at which a proceeding for filing a complaint should be taken is the stage when the judgment or the order in the case is being pronounced. It is because the Legislature insists that cases of perjury should be promptly punished. These words are not meant to classify cases of perjury into two classes, one those where the perjury or the fabrication of false evidence has been detected by the Court when the judgment is pronounced and the other where the perjury or fabrication of false evidence does not come to light till after the judgment has been pronounced. What I say is apparent from the fact that Section 479A itself says that for the eradication of the evils of perjury and false evidence that section has been introduced. That is why the provision for enquiry in Section 476 and the provision for appeal in Section 476B do not find any place in Section 479A which I have said above is a self-contained section. For the same reasons, the provisions of Sections 476 to 479 have been excluded with regard to cases covered by Section 479A. The language of Section 479A itself shows that it was not the intention of the Legislature that only those cases where perjury or fabrication of false evidence by a witness has been discovered by the time the judgment is pronounced should be dealt with under Section 479A and other cases of perjury under Section 476. It is true that in the view I am taking cases of perjury or fabricating false evidence detected after the judgment or the order has been pronounced would go unpunished, but a Court is not concerned with that when in its opinion the intention of the Legislature is to very promptly deal with cases of perjury and that is why they have made a special self-contained provision for the same. It may be that the Legislature may have thought that cases of perjury or

fabricating false evidence which could not be discovered till the time the judgment or the order is pronounced may not be worth prosecuting at all. Indeed cases where perjury or fabrication of false evidence will not be detected before the judgment or order is pronounced will be very few because Section 145 of the Evidence Act requires that if a witness is sought to be contradicted by this former statement his attention must be drawn to it and rules of evidence also require that a witness must be given an opportunity of meeting the points that are being raised against the acceptance of his testimony. Thus most of the cases of perjury will be discovered before the judgment or order is pronounced. In any case in my opinion in Section 479A, Criminal Procedure Code the stress is upon prompt action. The Legislature may have taken the view that cases of perjury in respect of which prompt action cannot be taken and which are not disclosed till after the final decision of the case may be ignored. Whatever may be the reason, in my view the intention of the Legislature is clear.

7. It has been argued that this interpretation will defeat the object of framing Section 479A, i.e., of eradicating the evil of perjury because by stopping prosecution of cases of perjury or fabricating false evidence not discovered till the judgment or order is pronounced there will be an encouragement and not discouragement to perjurers and fabricators of false evidence. But it seems to me that the Legislature did intend to provide for separately for all cases of perjury and though most of the provisions in respect of it have been made more harsh under Section 479A there has also been a little relaxation in harshness in some respects. For example the powers of the superior Courts under Section 476A have been taken away and now even in a case where perjury has been detected before the judgment or the order has been pronounced and the trial Court most arbitrarily refuses to file a complaint the superior Court has no jurisdiction to order the filing of a complaint if no appeal has been filed in the main case i.e., the case in which perjury has been committed. Again, however gross the perjury may be a party will have no right to make an application for filing of a complaint even in respect of a case of perjury or fabrication of false evidence which has been discovered before the judgment or order is pronounced though under Section 476 a party has' such a right. Similarly though under Section 476B in a case covered by Section 476 a party whose application for making a complaint has been dismissed can file an appeal such a party would have no right off appeal in cases where perjury or fabrication of false evidence has been detected even before the judgment or order is pronounced in the case. It cannot therefore be denied that whatever interpretation may be given to Section 479A, it does appear that some provisions against a perjurer have been deleted in his favor and in some respects the harshness has been relaxed. Therefore considerations of the object of Section 479A, i.e., of eradication of perjury and fabrication of evidence cannot be conclusive and the proper way to interpret is to find out the plain meaning of the section. The Legislature has its own views about the way in which the evils of perjury can be eradicated and those views have been given a shape in Section 479A. The general rule of interpretation of Statutes is that where the language of any Act is clear and unambiguous it must be given effect to whatever may be the consequence for in that case the words of the Statute speak the intention of the Legislature (vide Craies on Statute Law, 1952, Ed., p. 64). Maxwell has in his book on the Interpretation of

Statutes put down this rule in the following words :

"The fundamental rule of interpretation to which all others are subordinate is that a statute is to be expounded according to the intent of them that made it. If the words of the Statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such cases declaring the intention of the Legislature ..... If there is one rule of construction for statutes and other documents it is that you must not imply anything in them which is inconsistent with the words expressly used." (Maxwell or. the Interpretation of Statutes 1953 Ed. pp. 1 and 2).

8. In this view of the matter in my opinion the learned Sessions Judge was wrong in holding that proceedings under Section 476, Criminal Procedure Code could be taken against the applicant and he wrongly set aside the order of the learned Magistrate. On this ground alone the revision application should be allowed. But considering the facts of the present case I think the revision application should also be allowed on another ground, and that is, that it is not expedient in the interests of justice to prosecute the applicant. Even if he denied having been convicted and sentenced and having been confined in the Central Jail, Agra, that would not be a fact which would very much affect the result of the trial against Malkhan Singh. In similar cases Courts have held, that a prosecution should not be launched, vide *Batakrushnapal v. Emperor*<sup>4</sup>, *Sheodabin Singh v. Badhan Singh*<sup>5</sup>, and *Emperor v. Ganga Sahai*<sup>6</sup>, On that ground also the revision application should be accepted.

9. I therefore allow this revision application and set aside the order of the learned Sessions Judge.  
Revision allowed.

4 AIR 1945 Pat 295  
52 All LI 836

61903 All WN 68