ALLAHABAD HIGH COURT

Durga Prasad Khosla

Vs.

State of U.P

Criminal Revn. No. 1367 of 1956 conn. with Criminal Revn. No. 85 of 1957, against decision of S.J. Saharanpur

(S.N. Sahai and A.P. Srivastava, JJ.)

20.09.1956. 17.11.1958

JUDGMENT

Srivastava, J.

1. Two reports were lodged at the police station Sadar Bazar, Saharanpur, on the 27th of May 1952 and the 28th of May 1952, by Sri Durga Prasad Khosla. It is suggested that the reports were lodged with the connivance and collusion of Sri Balwant Singh Vakil, Munshi Atma Ram and Ch. Wali Mohammad. Sri Durga Prasad Khosla mentioned certain facts in his reports and said on their basis that he apprehended a breach o? peace on behalf of Dr. Jatnuiia Prasad and Sri Ghasita Singh. He wanted action to be taken against them. On the 30th of May 1952 the police submitted a challan against the two persons, and proceedings were started against them under Section 107 Criminal Procedure Code. On the 27th of July 1952 the Additional City Magistrate, who was dealing with the case, dropped the proceedings finding that there was no sufficient ground to proceed. Sri Durga Prasad Khosla then went up in revision to the Sessions Judge but his revision application was dismissed. He then filed an application in revision in the High Court and the case was remanded to the learned Magistrate for disposal according to law. Evidence was thereupon recorded by the Magistrate and Sri Durga Prasad Khosla as well as Sri Balwant Singh, Munshi Atma Ram and Ch. Wali Mohammad gave evidence. A letter Ex. 1 said to have been written by Sri Balwant Singh was also produced. The Magistrate after considering the evidence again dropped the proceedings on the 3rd of March 1956 on the ground that no case had been made out. On the 10th of April 1956 Dr. jamuna Prasad and Sri Ghasita Singh filed an application purporting to be one under Section 476 Criminal Procedure Code praying that a complaint be filed against Sri Durga Prasad Khosla and the three other persons who had appeared as witnesses in the case so that they may be tried for the offences punishable under Sections 193, 211, 342, 500, 109, 114 and 120B Indian Penal Code. The application was opposed on behalf of the four persons concerned on various grounds and after hearing the parties the learned Magistrate

ordered on the 11th of July 1956 that a complaint be filed against the four persons abovementioned charging them with offences punishable under Sections 193, 211 and 500 Indian Penal Code because it was expedient in the interests of justice that those persons be prosecuted for those offences and a prima facie case had been made out against them on the materials on the record. A complaint was actually sent by the learned Magistrate in pursuance of the order on the 17th of July 1956, but somehow in this complaint Sri Durga Prasad Khosla was charged with offences punishable under Sections 193, 211, 120B and 500 Indian Penal Code. Sri Bahvant Singh was charged under Sees, 193, 120B and 500 Indian Penal Code. Munshi Atma Ram was charged under Sections 193, 120B, and 500 Indian Penal Code and Ch. Wali Mohammad was charged under Sees, 193, 120B and 500 Indian Penal Code. Against the order of the Magistrate directing the complaint to be filed and the complaint which was filed two appeals were preferred under Section 476B Criminal Procedure Code to the Court of Session-one (Criminal Appeal No. 349 of 1956) by Sri Durga Prasad Khosla and the other (Criminal Appeal No. 371 of 1956) by Sri Balwant Singh, Munshi Atma Ram and Ch. Wali Mohammad. The main contentions which were pressed by the appellants in the two appeals were four :

(1) That in the circumstances of the case no complaint should have been ordered to be filed against the appellants at all.
(2) That in any case the learned Magistrate having directed that a complaint be filed for the offences punishable under Sections 193, 211 and 500 Indian Penal Code only there could be no justification for charging the appellants for the other offences with which they had been charged in the complaint.
(3) That the complaint under Section 193 Indian Penal Code could not have been filed on the date on which it was filed in view of the provisions of Section 479-A of the Code.
(4) That no prima facie case having been made out a complaint should not have been filed even under Section 211 Indian Penal Code

On behalf of Dr. Jamuna Prasad and Sri Ghasita Singh at whose instance the complaint had been filed a preliminary objection was raised about the maintainability of the two appeals. It was contended that so far as the offences under Sections 120B, 342 and 500 Indian Penal Code were concerned they not being offences mentioned in Section 195 Indian Penal Code the complaint in respect of those offences could not be considered to have been filed under Section 476 Criminal Procedure Code and on that account so far as that part of the complaint was concerned no appeal lay under Section 476-B of the Code. The other contentions raised on behalf of the appellants were also seriously disputed.

2. The learned Sessions Judge accepted the preliminary objection so far as the offences under Sections 120-B, 342 and 500 Indian Penal Code were concerned. He thought that the complaint in respect of those offences had not been filed by the Magistrate under Section 476 Criminal Procedure Code and his order in that respect was therefore not appealable under Section 476-B of the Code, So far as the complaint in respect of the offence under Section 193 Indian Penal

Code was concerned, the learned Sessions Judge accepted the contention of the appellants that it was not open in view of Section 479-A of the Criminal Procedure Code to the learned Magistrate to file a complaint for that offence long after he had concluded the case under Section 107 Criminal Procedure Code. So far as the complaint under Section 211 Indian Penal Code was concerned, the learned Sessions Judge held that a prima facie case had been made out and that the learned Magistrate was justified in making a complaint for that offence. As a result of his findings the appeals were allowed in part, the complain under Sec, 193 Indian Penal Code was withdrawn, but the appeals were otherwise dismissed.

3. Against this order of the Sessions Judge two applications in revision have been filed in this Court-one No. 1367 of 1956 has been filed by Sri Durga Prasad Khosla and the other No. 85 of 1957 by Dr. Jamuna Prasad and Sri Ghasita Singh, Sri Durga Prasad Khosla took exception to that portion of the order of the learned Sessions Judge by which he had dismissed his appeal and contended that the entire complaint filed against him should be ordered to be withdrawn. Dr. Jamuna Prasad and Sri Ghasita Singh in their application for revision questioned the correctness of that portion of the order of the learned Sessions Judge by which he had held that a complaint could not be filed under Section 193 Indian Penal Code in view of Section 479-A Criminal Procedure Code. They therefore prayed that that portion of the order of the learned Sessions Judge should be set aside.

4. These two applications in revision came up for disposal before one of us and while the question raised by Dr. Jamuna Prasad and Sri Ghasita Singh in Criminal Revision No. 85 of 1957 was being considered learned counsel for the opposite party referred to the case of *Jaibir Singh v. Malkhan Singh*[1], and contended that the decision in the case concluded the matter and in view of it that application in revision was bound to fail. It was pointed out that in that case it had been held clearly that after the introduction of Section 479-A in the Criminal Procedure Code by the amending Act of 1955 all cases of witnesses having committed perjury or fabrication of false evidence in proceedings pending in Courts were covered by the provisions of Section 479-A of the Code and to that extent Section 476 of the Code stood repealed. Learned counsel for Dr. Jamuna Prasad and Sri Ghasita Singh urged that the case of 1958 All LJ 256 : (AIR 1958 Allahabad 364) (supra) needed reconsideration as several aspects of the matter had not been considered by the learned Judge who decided that case.
Probably those aspects had not been brought to his notice. The question being of general importance it was thought that tin authoritative pronouncement in respect of it was necessary for the guidance of the litigant public and the subordinate Courts. Two questions were therefore framed and were referred for answer to a larger Bench. That is how the case has come up before us. We have therefore to answer the following two questions :

> (1) Whether Section 479-A Criminal Procedure Code has impliedly repealed Section 476 of the Code in respect of all cases of witnesses giving or fabricating false evidence in judicial proceedings ?

(2) If not, for what class of such witnesses are the provisions of Section 476 of the Code still available ?

Section 476 Criminal Procedure Code reads thus :

"476. Procedure in cases mentioned in Section 195.-

(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the

[11]958 All LJ 256 : (AIR 1958 All 364)

interests of justice that an inquiry should be made into any offence referred to in Section 195, Sub-Section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a 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 signed by the presiding officer of thy Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before such Magistrate or it the alleged offence is nonbailable may, if it thinks necessary so to do, send the accused in custody to 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.

For the purpose of this Sub-Section, 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) Where it is brought to the notice of such Magistrate or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided."

Section 476-A confers the same powers on a superior Court in case the subordinate Court has omitted to exercise them. Section 476-B provides for appeals in respect of orders making a complaint under Sections 476 and 476-A or refusing to make the same Section 477 is no longer there in the code because it has been repealed. Section 478 provides for case committed before any civil or revenue Court or brought to the notice of such Court in the course of a judicial proceeding if it is triable exclusively by the High Court or Court of Session or such Court thinks that it ought to be tried by the same Court; In that case instead of filing a complaint as provided in Section 476 the Court itself can complete an enquiry and commit the accused to take his trial before the High Court or the Court of Session. Section 479 provides that such a commitment should be made not by the civil or revenue Court directly but through the Presidency Magistrate,

District Magistrate or other Magistrate authorised to commit for trial.

5. In the Code, as it stood prior to its amendment in 1955, all cases of witnesses giving or fabricating false evidence in or in relation to a judicial proceeding had to be dealt with under Section 476 only and the procedure laid down in that section and the following sections was to be followed in respect of all such cases. The amending Act of 1955 introduced Section 479-A in the Code for the first time. That section provides as follows :

> "479A. Procedure in certain cases of false evidence - (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 interest of justice, it to 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 it's 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 Courts may appoint.
> Explanation :- For the purposes of this Sub-Section, 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 re-corded 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 proceeding out of which the master 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 hoard, 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.

(5) 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."

6. The contention of the learned counsel for Sri Durga Prasad Khosla is that Section 479A Criminal Procedure Code is complete in itself and now that it has been enacted all cases of witnesses giving or fabricating false evidence in a judicial proceeding can be dealt with only under this section. For such witnesses the provisions of sees, 476 to 479 are no longer available and must be deemed to have been impliedly repealed. He lays particular stress on the opening words of Sub-Section (1) of Section 479A Criminal Procedure Code "Notwithstanding anything contained in Sections 476 to 4/9 inclusive" and also on Sub-Section (6) of that section which provides :

"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."

He seeks support for his contention from the observations made in 1958 All LJ 256 : (AIR 1958 Allahabad 364) (supra).

7. The reply of the learned counsel for Dr. Jamuna Prasad and Sri Ghasita Singh on the other hand is that Section 476 is a general section covering a very large field. Along with other persons it covers cases of witnesses who are guilty of giving or fabricating false evidence in judicial proceedings also. Section 479A has a limited scope. It covers only a part of the field which is covered by Section 476. There is really no question of tire repeal of any portion of Section 476 by Section 479A. Each of the two sections can operate in their own fields. In order to avoid any conflict the Legislature has taken care to provide that it Section 479A applies Sections 476 to 473 shall not apply. In each case of a witness having given or fabricated false evidence in a judicial proceeding therefore it has to be

Secs. 476 to 479.	Sec. 479A.
1. Cover all offences referred to in Section 195 (1) sub-clauses (b) and (c).	1. Covers only the two offences of intentionally giving false evidence and intentionally fabricating false evidence and does not deal with any other kind of offence.
2. Apply to all sorts of persons whether witnesses or not e.g. parties.	2. Applies only to witnesses.

3. Apply not only to offences committed in a proceeding in a Court but also to offences committed in relation to a proceeding in a Court.	3. Applies only if the offence of intentionally giving or lubricating false evidence is committed at any stage of the proceeding or for the purpose of using in any stage of the proceeding. It does not apply to an offence committed in relation to a proceeding.
4. Apply to proceedings other than Judicial also. Only the proceeding must be in a Court.	4. Applies only to a judicial proceeding.
5. No finding of the Court is necessary that it appears that an offence has been committed.	5. Such a finding is necessary.
6. The finding that it appears that an offence has been committed need not be recorded at the time of the disposal or the delivery of judgment or final disposal of the proceeding.	6. It is necessary that the finding that an offence appears to have been committed should be recorded at the time of the delivery of judgment or final order disposing of the proceeding.
7. The only thing necessary is that the Court should be of opinion that it is expedient in the interests of justice that an enquiry should be made into the offence.	7. The Court should be of opinion not only that it is expedient in the interests of justice that the witness should be prosecuted but also that the prosecution is necessary for the eradication of evils of perjury and fabrication of false evidence.
8. As no finding that it appears that an offence has been committed is necessary it is open to the Court before filing a complaint to make a preliminary enquiry if it considers necessary.	8. No question of holding any preliminary enquiry arises because the finding has already been recorded. Only before making the complaint if the Court thinks fit it can give the witness an opportunity of being heard.
9. In the complaint it is only necessary to mention that an enquiry is to be made in respect of the specific offence.	9. The Court must set forth in the complaint the evidence which in its opinion is false or fabricated.
10. Against an order of filing a complaint or refusing to make one an appeal can be filed.	10. No appeal lies against an order filing a complaint. Nor is there any provision for an appeal against an order refusing to file one.
11. If it is brought to the notice of the Magistrate who has taken cognizance of the offence that an appeal is pending against the decision arrived at in the judicial proceeding out of the matter that has arisen it is in his discretion at any stage to adjourn the hearing till the appeal is decided.	11. If an appeal has been preferred against the decision of the Court the Magistrate to whom the complaint has been forwarded is bound to adjourn the case till the appeal is decided.
12. The appellate Court which deals with the	12. The appellate Court has such a power.

decision of the case out of which the matter has arisen has no power while dealing with the appeal to withdraw the complaint. The complaint can be withdrawn only by the Court dealing with the appeal against an order of filing a complaint.

8. Before proceeding to adjudge the validity or other wise of these rival contentions it appears to be necessary to state the points of distinction between see. 479A on the one hand and Sections 476 to 479 on the other in a tabular form. This will show in what respects the two provisions differ from each other.

9. These points of distinction enable us to discover the purpose for which the Legislature found it necessary to introduce Section 479A. It is not disputed that widely worded was Section 476 as it covered the cases of all witnesses who committed offences in or in relation to any proceeding considered first whether Section 479A is applicable or not. If it is applicable action must be and can be taken under that section alone. If however, for any reason that section is not applicable Section 476 is still there and action can be taken under its provisions. in a civil, revenue or criminal Court - whether judicial or non-judicial in nature. Why was then the new section enacted ? The reason is obvious. Under Section 476 all cases ofgiving or fabricating false evidence stood on the same footing. The same dilatory procedure was to be followed however grave the nature of the offence may be. The result was that though Section 476 had been, on the Statute for more than half a century the evil of perjury flourished unabated. It was felt that the witnesses appearing in such proceedings may be of different kinds, and the evidence which they gave may be of varying importance. In respect of some statements made or documents produced it may be necessary for the proper disposal of the proceedings to consider in the proceeding itself whether the statement is true or whether the document is a fabricated one. In respect of other statements or documents it may not be so necessary to do that. For instance, a statement may be made which may not be relevant or material to the matter in issue. Documents may be filed which it may not be necessary even to refer to for properly deciding the case. Statements may be made or documents may be filed which it may be open to the opposite party to contradict in the very proceedings. In such a case material will be available for the Court for deciding in the proceeding itself whether the statement is false or the document is fabricated. In other cases it may not be open under the law to the opposite party to contradict the statement or rebut the documents filed in that very proceeding. Thus if a question is put in cross-examination for the purpose of challenging the credit of a witness no evidence can be led under the provisions of the Evidence Act for contradicting the witness in those very proceedings, if the witness perjures himself on the point ho can only be subsequently prosecuted for perjury. Similarly if a forged or fabricated document is filed and it is not found to be material or relevant to the questions in issue the question whether it is a false or fabricated document cannot be considered in the proceedings itself and can be considered only in separate proceedings when the relevant material is put up before the Court. It was thought that at least for the more serious type of the offences when the Court arrived at a definite finding in the proceeding itself that action was necessary it should be

empowered to take immediate action. Section 479A was therefore enacted to give this additional power to the Court authorizing it to deal speedily with the more flagrant or serious cases of intentionally giving false evidence or intentionally fabricating evidence in judicial proceedings. The Court could, however, act under the new provision only if it was of opinion not merely that tit was expedient in the interests of justice to launch, such a prosecution but that it was so necessary to do so for the eradication of the evils of perjury and fabrication of false evidence. The use of these words in Section 479A shows clearly that the intention with which the section was enacted was to deal with the offences of enjury of a more serious type. The less serious type of offences which could not be brought under the new provision could not, however, be allowed to go unpunished. They could be dealt with under Section 476. As two alternative provisions depending for their application on the nature of the offence were being enacted it became necessary to provide that if Section 479A could apply the action should not be taken under Sections 476 to 479.
Had this even not been theme it would have been left to the sweet will of the presiding; officer of the Court to proceed in respect of the same offence either under Section 476 or under Section 479A and that would not have been desirable by any means. It is difficult to accept the contention that because a more effective and speedy procedure was devised for offences of more serious nature the intention was to allow offences of a less serious nature to go unpunished. Had that been the intention some effective words would have been employed either in Section 476 or in Section 479A to indicate that the former section was to apply no longer to the cases of witnesses who wore guilty of either giving or fabricating false evidence in a judicial proceeding. We do not find any such words in either of those sections. To express the intention if that was realty the intention of the Legislature it could also provide in Section 476 itself or in a separate section that in respect of witnesses committing perjury or fabricating false evidence Section 476 was being repealed. We do not find any such provision in the amending Act of 1955.

10. Repeal by implication of one provision by another in the same Act can be inferred only for compelling reasons. The two provisions must for that purpose be wholly irreconcilable and repugnant to each other. This cannot be said in our opinion with reference to Sections 476 and 479A Criminal Procedure Code. The former has a wider application and covers a larger field. The latter is limited in its application to a part of the field covered by the former. There is no necessary inconsistency between the two provisions.

11. The expression "Notwithstanding anything contained in Sections 476 to 479 inclusive" in the opening sentence of Section 479A (1) or the words of Sub-Section (6) of that section do not, in our opinion, show either that Section 479A alone was to remain available in respect of all kinds of witnesses in judicial proceedings whatever may be the nature of seriousness of the offence committed by them or that Sections 476 to 479 were to cease to be applicable to all such witnesses. Their only purpose appears to be to indicate that if a case is covered by Section 479A it should be dealt with under that section and not under the other sections. It, however, a case is not covered by Section 479A the other sections are there and if necessary can be employed to

bring the offender to book.

12. It must he conceded that the decision in 1958 All LJ 256 : (AIR 1958 Allahabad 364) (supra) supports the contention of the learned counsel for Sri Durga Prasad Khosla. In that case Malkhan Singh was prosecuted under Section 382 Indian Penal Code and Jaibir Singh was examined as a witness for the prosecution in that case. To shake the credit of Jaibir Singh a question was put to him whether he had been convicted under Martial Law and sentenced to 18 months' imprisonment which period he had spent in jail at Agra. Jaibir Singh denied that he had ever been convicted and confined in Agra Jail. Malkhan Singh was ultimately acquitted of the offence with which he stood charged. Subsequently he made an application under Section 476 praying that a complaint be made against Jaibir Singh charging him under Section 193 of the Code because his statement that he had never been convicted under Martial Law and had never been confined in Agra Jail was a false one. The learned Magistrate refused to file the complaint because he thought that in view of the enactment of Section 479A, Sub-Section (6) Criminal Procedure Code the provisions of Section 476 of the Code could not he invoked. Malkhan Singh went up in appeal to the Sessions Judge who allowed the appeal and directed that a complaint be filed. Jaibir Singh then came up in revision to this Court and contended that the view taken by the Sessions Judge was not correct. The learned Judge who disposed of the application in revision agreed with the contention put forward on behalf of Jaibir Singh and was of opinion that the effect of Section 479A was that for the prosecution of a person who appeared as a witness and gave or fabricated false evidence the provisions of that section alone would be applicable and that the provisions of Sections 476 to 479 inclusive would not apply. He thought that Section 479A had impliedly repealed Section 476 of the Code at least in part, viz. so far as it applied to witnesses intentionally giving or fabricating false evidence in judicial proceedings.

13. The learned Judge agreed that the purpose of introducing Section 479A in the Code was to eradicate the evil of perjury and that it was obvious that the Legislature wanted that immediate action should be taken, against that kind of offence. In arriving at his conclusion that Section 479A applied to all kinds of witnesses appearing in judicial proceedings and impliedly repealed Section 476 to a certain extent the learned Judge appears to have been influenced mainly by the fact that in Section 479A itself there was nothing to show that it was applicable only to some witnesses and not to all. He referred to the general rule of interpretation that the 'special' excluded the 'general' and interpreting the word 'may' used in Sub-Section (6) of Section 479A as having been used in the sense of "can,' he inferred that the intention of the Sub-Section was to exclude from the operation of Sections 476 to 479 all cases of perjury. It was pointed out that certain anomalies would follow from the way in which he was interpreting the provision. He, however, remarked that that could not be helped. He said that the general rule of interpretation was that effect must be given to the plain meaning of the section and that that should be done irrespective of the consequences that may follow.

14. With due deference to the learned Judge it appears to us 'that if Section 479A is held to apply

to all kinds of witnesses appearing in judicial proceedings without exception some of the essential limitations that are contained in the section itself must be overlooked. As we have pointed on from the words used in the section itself it appears that its application was to be confined to witnesses of a particular class only, i.e. those

(a) who intentionally gave or fabricated false evidence,
(b) who did that in any stage of a judicial proceeding or for the purpose of being used at any stage of such proceeding,
(c) about whom a finding about their committing such an offence has been recorded.
(d) about whom such a finding had been recorded either at the time of delivering judgment in the proceeding or the final order disposing of the proceeding, and
(e) about whom the Court is of opinion not only that the prosecution of the witness was necessary in the interests of justice but also that the offence was of such a nature that it was necessary Jo prosecute the witness for the eradication of the evils of perjury and fabrication of false evidence.

15. To us it is obvious that these conditions for the applicability of Section 479A being there it could not apply to all kinds of witnesses appearing in judicial proceedings irrespective of the nature of their evidence or the seriousness of the offence.

16. The two principles of interpretation relied upon in the case of 1958 All LJ 256 : (AIR L958 All 364) (supra) are certainly unexceptionable. But we are unable to see how by applying them one can necessarily come to the conclusion that Section 479A impliedly repeals Section 476 in any respect or that it was intended to cover all cases of perjury. It is true that Section 479A lays down a special rule. The 'special' excludes the 'general'. That only means that if all the essential ingredients of Section 479A are present Section 476 will not apply. But that does not mean that Section 476 will not apply even to those witnesses whose cases cannot for any reason fall under Section 479A. Let it be conceded that the word 'may' in Sub-Section (6) of Section 479A should be interpreted as in the sense of 'can', the only thing that follows appears to be that if a case can fall under Section 479A action in respect of it cannot be taken under Section 476. It cannot be said on that account that Section 476 ceases to be applicable in respect of those witnesses in whose case action cannot be taken under Section 479A in view of its limitations.

17. It cannot be denied that the words of a statute must be interpreted by giving them their natural and ordinary meaning. We are prepared to do that in respect of the words used in Section 479A. We, however, do not find anything in that section which can necessarily lead to the conclusion that it was to apply to all kinds of witnesses appearing in judicial proceedings even if some of the features mentioned in the section were not present in the cases of those witnesses.

18. An equally well established principle of interpretation is one which is known as the principle of harmonious construction. It was referred to by their Lordships of the Supreme Court in a recent case reported in *Venkataramana Devaru v. State of Mysore*[2], In paragraph 29 of the report

it was observed :

> "The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of constructions is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction."

If therefore there is any apparent inconsistency between Sections 476 and 479A (we do not find any) the two provisions should be so construed that effect may be given to both.

19. It is also well settled that if two constructions are possible the Court must adopt that which will implement and ensure the smooth and harmonious working of the work and discard that which will stultify the apparent intention and lead to absurdity or give rise to practical inconvenience. To avoid such a result it is permissible even to

[2] AIR 1958 SC 255

put a construction which modifies the meaning of the words or even the structure of the sentence. As Maxwell lays down :

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence" (Maxwell's Interpretation of Statutes, 10th Edition, page 229). As there is no manifest contradiction between the two provisions it is not necessary in this case to go to the extent indicated by Maxwell in the above passage. As far as possible, however, unless one is compelled to do otherwise the provisions of Sections 476 and 479A which are to be found in the same Code must be interpreted in such a manner that effect may be given to both and that all anomalies are avoided. The obvious purpose of enacting the two sections being to eradicate the evils of perjury we are unable to agree with the contention that the Legislature intended to punish only the more serious offences of the kind and wanted other witnesses who had committed the same kind of offence but of a less serious nature to go scot-free. Learned counsel for Sri Durga Prasad Khosla has not been able to point out any words to us either in Section 476 or in Section 479A which can justify the narrow interpretation leading to obvious anomalies which he seeks to put on the two sections. With all respects due to the learned Judge who decided the case of 1958 All LJ 256 : (AIR 1958 Allahabad 364) (supra) therefore we are unable to share the view taken by him.

20. Some reliance was placed on the case of *In re Abdul Jabbar*[3], In that case three witnesses had made statements in course of a preliminary enquiry which was conducted by a Judicial Magistrate II Class. Subsequently they went back on their statements and alleged that they had

made the former statements under coercion by the police. The enquiry was concluded on the 30th of January 1956 and ultimately the accused in the case were acquitted. On the 9th of November 1956 the Judicial Magistrate Second Class before whom the original statements had been made filed a complaint for perjury against the three witnesses under Section 476 Criminal Procedure Code. It was contended in revision before the High Court that the complaint was not maintainable, as in view of Section 479A it should have been made, if at all, on the 30th of January 1956 when the enquiry was completed and the commitment was made. The contention was accepted by a single Judge of the Andhra Pradesh High Court but the "learned Judge gave no reasons for his conclusion. He only said that the argument put forward on behalf of the accused persons appeared to be unanswerable and that for the prosecution of a witness who had given or fabricated false evidence the provisions of Section 479A alone were applicable and not the provisions of Sections 476 to 479. The judgment contains no discussion of the points involved and appears to have been based on a first Impression. We are unable to agree with the view taken.

21. The only other case to which reference appears to be necessary is the case of *Beni*

[3] AIR 1958 And Pra 469

Ram v. State[4]*,* The case is not directly in point because the question
that was raised in it was whether the provisions of Section 479A Criminal Procedure Code were hit by Article 14 of the Constitution. The question was decided in the negative. The contention urged before the learned Judge was that Sections 479-A and 476 were two parallel provisions and it was in the unfettered discretion of a Magistrate to proceed against a witness under either of the two provisions. This contention was repelled by referring to Sub-Section (6) of Section 479-A and it was remarked :

> "This clearly means that if the circumstances justifying a complaint under Section 479-A existed action is to be taken under that section alone and not under Section 476 Criminal Procedure Code. In other words, though the facts of a case do not justify a complaint under Section 479-A they may justify complaint under Section 476 Criminal Procedure Code or if they do justify a complaint under both the sections action will be taken under Section 479-A and not under Section 476 Criminal Procedure Code. No discretion is left in the Magistrate to take action under either of the sections and therefore no question of discrimination arises with reference to the provisions of Section 479-A Criminal Procedure Code. These observations show that the view which the learned Judge was taking was in consonance with the view we are taking in this case. He too was of opinion that a witness could be proceeded against under Section 476 in spite of the enactment of Section 479-A. If, however, a case could be brought under Section 479-A the proceedings must be taken under that section and not under the other.

22. After giving the matter our best consideration therefore we have come to the conclusion that the first question referred to us must be answered in the negative. Our answer to the second

question is that the provisions of Section 476 of the Code are still available for witnesses whose cases cannot be brought under Section 479-A for one reason or another. We answer the question referred to us accordingly.

(After the reference was answered by the Division Bench, the final order in the revisions was passed on 12-12-1958 by Srivastava, J. The same is not material for reporting.)

Reference answered.

[4]1957 All LJ 918