ANDHRA PRADESH HIGH COURT

In re Javvaji Uthanna

Vs.

State (Andhra Pradesh)

Criminal Revn. Case Nos. 650 to 653 of 1962 and Cri. Revn. Petn. Nos. 551 to 554 of 1962

(Kumarayya and Sharfuddin Ahmed, JJ.)

05.12.1963

JUDGMENT

Kumarayya, J.

1. The short point that falls for determination in these four revision petitions is whether having regard to the provisions of Section 479-A(1), Criminal Procedure Code, it was obligatory on the Additional Sessions Judge to give the petitioners opportunity of being heard after recording a finding contemplated by that sub-clause and before making a complaint in writing for the offence of perjury under Section 193, Indian Penal Code.

2. The petitioners were called as eye-witnesses (P.Ws. 1 to 4) in Sessions Case No. 19/62 in relation to the stab injuries inflicted on P.W. 1 and E. Venkataramana, as a result of which Venkataramana died on 2-11-1961. These witnesses before the committal Court as also before the Magistrate under Section 164, Cri. P.C., deposed that they had actually witnessed the stabbing of the deceased, Venkataramana, by A.1 and gave all other details of the occurrence. They deposed to the fact that P.W. 1 was stabbed by A.2 and gave all further details in relation thereto. But when they were called as witnesses in the Sessions Court, they turned hostile to the prosecution and completely gave a go-by to the fact of their having witnessed the stabbing of the deceased by A.1 and of P.W. 1 by A.2. They were cross-examined by the Public Prosecutor with the permission of the Court. They were confronted with their statements in the Committal Court in so far as they were contradictory with the statements in the Sessions Court and were called upon to explain the same. They stated that their statements before the Sessions Court were true and that they gave earlier statements on account of the threats extended by the Police. The learned Additional Sessions Judge found that their explanation was false and frivolous and having regard to the fact that they were present near the scene of occurrence which they have admitted even in their statements in the Sessions Court he was inclined to believe that their denial in the Sessions Court having witnessed the actual stabbing is untrue and that they are probably won ever. He recorded a finding stating reasons therefore in his judgment, that the petitioners, P.Ws. 1 to 4, had given intentionally false evidence and that for the eradication of evils of perjury and in the interests of justice it was expedient that they should be prosecuted for the offence of giving false evidence. Accordingly, he directed prosecution and lodged complaints with the

Munsif-Magistrate, Chittoor, under Section 193, Indian Penal Code. He did not, before making such complaints, give any notice to the petitioners, for he was of the opinion that it was not necessary to do so, since they had already given their explanations that they made the statements in the committal Court under the threat of the police, which explanation is false. All the four petitioners aggrieved by the complaints lodged against them have come up in revision to this Court.

3. The only point for consideration is whether it was obligatory on the trial Court before making the complaints to give opportunity to the petitioners of being heard as to whether the complaints against them should be made or not. This turns upon the interpretation of the relevant provision in Section 479-A, Cri. P.C. That section so far as is necessary for our purpose, may be extracted here : Section 479-A. "(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 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 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 : * *
> (2) * * * *
> (3) * * * *
> (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 matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may rive 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 of 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."

Though we are concerned only with Sub-Section (1) while construing the same Sub-Section (5) also, which makes specific reference to that Sub-Section, must come up for our consideration, because it impliedly prescribes the avowed province of that Sub-Section. Of course, Section 476, Cri. P.C. which contains parallel provision though with some difference need not engage our attention at all in view of Sub-Section (6) of Section 479-A.

4. The Court intending to proceed under Section 479-A has to strictly comply with the formalities prescribed therein. Under Sub-Section (1) it has to record a finding stating reasons therefore at the time of delivery of judgment or final order that in its opinion the witness has intentionally given false evidence and that for the eradication of the evils of perjury and fabricating of false evidence and in the interests of justice, it is expedient that the witness should be prosecuted for the offence in question. It has to give an opportunity to the witness of being heard and make a complaint in the manner stated in that provision. The additional Sessions Judge while confirming with the other conditions has purposely omitted to issue a notice because he was clearly of opinion that so far as trial Court was concerned in view of the language of the section, issuance of notice was merely discretionary and that in the circumstances of the case no useful purpose would be served by issuance thereof, as the witnesses had already offered their explanation which was false and frivolous. It is indisputable that if at all any notice is to be issued it has to be issued before making a complaint. Obviously enough, that stage comes after the recording of finding. The question then is whether on the language of the provision the issuance of notice is mandatory or discretionary. If it be held that it is mandatory, since a mandatory provision has to be obeyed exactly and in full, failure to give an opportunity would render the filing of complaints without jurisdiction. Otherwise, the discretion exercised would be interfered with only if the Additional Sessions Judge has gone wrong on principle. The whole controversy therefore turns upon the expression "and may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint thereof." If the words "if it so thinks fit" govern the expression "make a complaint" there can be little doubt that "giving the witness an opportunity of being heard" is a pre-essential requisite for making complaint. On the other hand, if those words qualify the expression "after giving the witness an opportunity of being heard", issuance of notice would be a matter of mere discretion. Nevertheless it is a judicial discretion to be exercised on principles of equity, justice and good conscience. The learned Sessions Judge has adopted the latter interpretation. He seems to have understood the provision to mean that opportunity of being heard is to be given if the Court deems it meet to do so. In other words, he seems to have in effect, for purposes of construction, read the relevant clause thus : "..... and may, after the giving the witness an opportunity of being heard, if he so thinks fit, make a complaint thereof....." of course, no words are added, nor taken out only the punctuation is changed to bring home the intended meaning of the Legislature. Sub-Section (1) construed in isolation, i.e. without regard to the other Sub-Section of the same section may render the first-mentioned interpretation highly probable nay, having regard to the punctuation may make it the only correct interpretation. But that is not the way how a section must be interpreted. Each part of it ought to be so construed as to be consistent with the other, removing if necessary all apparent

inconsistency so far as it is possible and making the scheme or the purport of the whole section coherent and intelligible. This principle has been stated in Maxwell on the Interpretation of Statutes, 2nth Edn. at pages 27 and 28, in the following terms :

> ".....It is an elementary rule that construction is to be made of all the parts together, and not of one part only by itself..... Such a survey is often indispensable, even when the words are the plainest for the true meaning of any passage is that which (being permissible) best harmonizes with the subject and with every other passage of the statute."

So, then, while construing Sub-Section (1), we have to necessarily consider Sub-Section (5). Sub-Section (1) concerns the original authority which has the advantage of seeing the witnesses in the box and Sub-Section (5) with the Appellate Authority, which has no such advantage. But the power conferred on original authority must of necessity be exercisable by the appellate authority as well. Sub-Section (5) therefore in terms gives such power and provides further thus :

> ".....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."

It is plain therefore that the appellate authority has not merely to comply with all the formalities prescribed in Sub-Section (1) but also has to necessarily give the person affected an opportunity of being heard. If Sub-Section (1) already contained a mandatory provision in relation to issuance of notice, it passes one's comprehension why the legislature made a further imperative provision in this behalf in specific terms and that beginning with the word "but", which should necessarily imply that Sub-Section (1) contains no such mandatory provision. Thus a combined reading of both the sub-sections makes it abundantly clear that It the trial Court wants to make a complaint against a witness for intentionally giving false evidence, giving an opportunity of being heard to the person affected is entirely left to its discretion, but if, on the other hand, the appellate Court wants to make such complaint, it is incumbent on it to give such opportunity. That is the difference between the scope of Sub-Section (1) and Sub-Section (5) of Section 479-A, as clearly brought out by the language used in Sub-Section (5). Therefore, on a proper consideration of the section, it is difficult to accept the contention that Sub-Section (1) contains a mandatory provision as to issuance of notice before making a complaint and this is mainly because if that were so, reference to Sub-Section (1) in Sub-Section (5) would itself have been sufficient, and the Legislature in order to express its mind would not have been further impelled to add a significant clause beginning with the word "but". It cannot be accepted either that this clause is superfluous, for the word "but" by itself must negative such contention.

5. The learned counsel for the petitioners, however, has referred us to certain decided cases-which support his contention that the notice even under Sub-Section (1) is mandatory. But these are the cases decided without reference to Sub-Section (5) of Section 479-A. The earliest case cited before us is In Re, Ponneri Dasi Reddi, AIR 1958 Andhra Pradesh 657. There the Additional Sessions Judge did not comply with the essential pre-requisite of recording of a finding with reasons therefore at the time of delivery of the judgment, to the effect that the witness had intentionally given-false evidence In a judicial proceeding and that in the interests of

justice it is expedient that the witness should be prosecuted for perjury. Non-compliance with such a mandatory provision wag necessarily fatal. The order directing a complaint to be filed was, therefore, set aside and the complaint was withdrawn. No doubt, the judgment contains a further observation to the effect that "a formal complaint could be made subsequently after giving the witness an opportunity of being-heard." That was only a casual observation which is relied on to support the contention that under the provisions of section 479-A (1) issue of notice before making the complaint was obligatory. The same learned Judge in In re, Muniamma, AIR 1959 Andhra Pradesh 330 happened to deal with this part of the provision in some further detail. But this also, as the earlier one, was a case where the finding contemplated by Section 479-A(1) was not recorded. The order on that basis could have been likewise set aside. But there was a further point raised touching the question of jurisdiction. It was urged that the complaint, if any, could nave been made on the same day when the order of discharge was passed and it was not competent to the Court to make the complaint subsequent thereto. This contention was repelled. In the course of the order, the learned Judge pointed out three definite stages contemplated by Section 479-A. They are :

> (1) the recording of a finding in terms of Sub-Section (1) at the time of the delivery of the judgment or final order disposing of the judicial proceedings in the course of which a witness has given false evidence; (2) the issue of notice to the witness and giving him an opportunity of being heard, and (3) the making of a complaint in writing signed by the presiding officer of the Court setting forth the evidence which in the opinion of the Court, is false; and forwarding the case to a Magistrate of the first class having jurisdiction to try the case. He observed that the section enjoins that the first step should be taken at the time of the delivery of the judgment or final order and it does not further require that the formal complaint itself should be filed on that date.

On these observations, it is argued that issuance of notice under Sub-Section (1) of Section 479-A is mandatory. The judgment relied on does not contain any discussion as to the mandatory nature of this part of the provision nor does it refer to the language of Sub-Section (5). Of course, Sub-Section (1) makes a provision for giving an opportunity of being heard and that indeed must precede making of complaint; but whether or not that could be dispensed with at the discretion of the Court depends upon the construction to be placed on the relevant phrase in that Sub-Section, regard being had to the language of Sub-Section (5) also. The next case is an unreported judgment of this Court *in re Chippada Ramanna*[1] where Ekbote, J. after referring to Sub-Section (1) of Section 479-A came to the conclusion that the Court should not only record a finding as provided in Section 479-A(1), but also, before making a complaint in writing after setting forth the evidence which in the opinion of the Court is false or fabricated should give the witness concerned an opportunity of being heard, which means only granting audience and not the opportunity of giving evidence. The learned Judge referred to the three stages contemplated by that provision, as also referred to in the decision in AIR 1959 Andhra Pradesh 330 and observed thus :

> "It is no doubt true that after hearing the explanation given by the witness the Sessions Judge had the discretion to make or decline to make a complaint. He was however under a legal obligation to issue notices to all these witnesses and give them an opportunity to

explain as to why they should not be prosecuted. He was similarly under a legal obligation to consider their explanations and then come to the conclusion whether prosecution is called for or the matter should be dropped thereto".

That with respect is the true legal position if, as noticed by us, the expression "if it so thinks fit" be understood as governing the words "make a complaint thereof" used in Sub-Section (1) and this would be possible and would admit of no controversy if Sub-Section (5) which contains pointed reference to Sub-Section (1) had not imposed a further condition by providing "but no such order shall be made, without giving the person affected thereby an opportunity of being heard." As already noticed by us, but for that expression, the words used in Sub-Section (1) would be capable of being construed - nay, ought to be construed - in the manner observed by our learned brother Ekbote, J. But it is the provision in Sub-Section (5) that stands in the way of interpreting Section 479-A(1) as containing a mandatory provision of issuing a notice. Issuance of notice of course is contemplated by this sub-section, but as discussed above, only at the discretion of the Court, which ought to be exercised judicially on principles of justice, equity and good conscience of the Court. It would appear from the judgment that Ekbote, J., did not construe the provision with reference to the language used in Sub-Section (5) also. Of course the learned Judge has referred to a decision of the Supreme Court in *Dr. B.K. Pal Chowdhary v. The State of Assam*[2], But that was a case directly falling under Sub-Section (5) of Section 479-A. It was in terms observed therein that the case being governed by Sub-Section (5) of Section 479-A the terms of both Sub-Sections (1) and (5) have to be complied with, and that the combined effect of these Sub-Sections is to require the Court intending to make a complaint to record a finding that in its opinion a person appearing as a witness has intentionally given false evidence and that for the eradication of the evils of prejury and in the interests of justice, it is expedient that such witness should be prosecuted for the offence and further give the witness proposed to be proceeded against, an opportunity of being heard as to whether a complaint should be made or not. As cone of these conditions was satisfied, the order was set aside. There is nothing in this decision which would lend support to the contention of the learned counsel for the petitioners that issue of notice under Sub-Section (1) is mandatory. That is of course so, under Sub-Section (5). The Madras High Court no doubt in In re, Virudan 1963

[1] Cri. M. P. Nos. 1144, 1146, 1148 and 1150 of 1962 D/-27-11-1962 (Andh Pra)

[2] AIR 1960 S C 133

(1) Cri. L.J 370 (2) has interpreted Sub-Section (1) to contain a mandatory provision in relation to giving an opportunity of being heard. Sadasivam, J., cited with approval the decision in AIR 1959 Andhra Pradesh 330 and referred to Section 479-A as proposed by the Select Committee and also as passed by Parliament with an amendment providing that a witness against whom the Court records a finding of perjury shall be given an opportunity of being heard before a complaint is made against him, and on that basis he was of opinion that the clause "may, if it so thinks fit" In Section 479-A(1) governs the clause "make a complaint thereof in writing" and that if the court wants to make a complaint, it can do so only after giving an opportunity of being heard. That, as we have already observed, is the necessary interpretation if that provision is construed detached from Sub-Section (5) of the same section. The case of *Rattanchand v. Bhatia*[3], decided by the Punjab High Court also falls in line with the above cases, as it says that the witness has to be given an opportunity of being heard before the complaint is instituted. To a like effect was the opinion expressed in *Rameshwar Gangadin v. State*[4], where it was held that in cases falling under Sub-Section (1) of Section 479-A, an opportunity to show cause has to be

afforded to the witness, and the final order directing the complaint has to be made only after considering the cause, if any, shown by him and that it would mean a notice (and hearing on it) which will necessarily take place, after the delivery of the judgment in the criminal case.

6. The only case which has dealt with Sub-Section (5) while considering the scope of Sub-Section (1) is *Rukmani Bai v. Govindaswamy Chetty*[5], The learned Judge therein observed that on a strict construction of Section 479-A(1) of the Criminal Procedure Code notice to the person affected, namely, the witness charged with having given false evidence or having fabricated false document, is not necessary. The learned Judge there was faced with the same difficulty and in the same manner as we, with regard to the interpretation of Section 479-A(1) for on the plain language of Sub-Section (1) it could be interpreted to mean that giving of an opportunity of being heard before making a complaint was obligatory, but when read in conjunction with Sub-Section (5) it ought to be interpreted to mean that that step' is only discretionary. The learned Judge dealing with Sub-Section (5) observed at p. 425 thus :-

> "If Sub-Section (1) in its own terms mandatorily provides for the issue of notice to the person affected by the complaint, it would have been enough for the Legislature to say that the appellate Court may make the complaint in accordance with the provisions of Sub-Section (1). This is perhaps an indication that in the opinion of the Legislature there is no necessity to issue notice to the person affected, if the complaint is directed to be filed by the very Court which conducted the proceedings and in the course of which it was found that a particular person was guilty of giving false evidence or fabricating documents, but that, if the complaint is to be filed at the instance of some other Court even if it be the appellate Court, notice is necessary."

That, with respect, is the necessary and logical conclusion having regard to the

[3]1961 (1) Cri LJ 557 [5](1963) 1 Mad L J 421

[4]1961 (1) Cri LJ 668 (Madh Pra)

language used in Sub-Section (5). It is clear to our mind that though Sub-Section (1) read by itself may be taken to contemplate a mandatory provision in relation to giving an opportunity of being heard before making complaint, yet read with Sub-Section (5) it clearly means that giving of such opportunity is discretionary with the Court. In this situation, we conclude that it is not imperative on the trial Court to give the person affected an opportunity of being heard as to whether a, complaint should be made or not. It is of course left to its discretion yet it is a discretion which ought to be exercised judicially and not arbitrarily. A witness affected may or may not be a party to the proceeding. Whereas it is open to a party to address his arguments in the case which will include incidentally or otherwise argument also on the question bearing on the offence and advisability of prosecution, a witness other than a party has no such opportunity. He has no occasion to address the Court on question whether his act amounts to intentionally giving false evidence or fabricating false evidence in the circumstances he was placed, nor has he an opportunity to convince or impress the Court that his prosecution is inexpedient in these circumstances. In such a situation, the question of exercise of discretion becomes of vital importance. It would be wrong on principle if the witness is condemned unheard. Even in cases where the witness is a party and as such had an opportunity of being heard generally, a situation may arise where it may be necessary for the Court to give an opportunity of being heard before complaint is lodged. Hence it is always desirable on the broad principle of natural justice to give,

as a rule, a person affected by the proposed step an opportunity of being heard. The province of natural justice in sooth is to ensure observance of at least minimum standards of fairness. Natural justice, therefore, postulates adherence at least to three main principles which are fundamental in character. They are (1) that no man shall be a judge in his own case (2) that no man shall be condemned unheard and (3) that a party is entitled to know the reason why he has been condemned. The first mentioned rule is commonly known as the rule against bias and the second mentioned is sometimes referred to as the audi alteram partem rule. It is the latter rule with which we are concerned in this case. Fairness demands that the person should have a right to be heard before he is condemned. That is the urge of civilization and refinement also. A person's right to be heard must be real. It will not be real unless he is put in a position to know in good time the case he has to meet. Notice is therefore the first limb of hearing. It must be definite and must be ample to give him time for the case against him so that he may fairly represent his cause. He should have in fact the opportunity to represent. If that is done, this part of requirement of natural justice is fully satisfied. The doctrine of natural justice though essentially a concept of English common law, has its world-wide recognition. Indian law follows the English law on question of natural justice. As observed by the Supreme Court in *Sangram Singh v. Election Tribunal*[6]*,*:

> "..there must be ever present to the mind the fact that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined

[6] AIR 1955 SC 425 at p. 429

> they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that is reasonably possible, in the light of that principle."

Thus when the procedural law in terms provides for giving an opportunity of being heard, even though that is left to the discretion of the Court justice and fairness would demand that it should ordinarily be given unless there are any special circumstances.

Of course, the learned Additional Sessions Judge was of the view that no useful purpose would be served by giving an opportunity of being heard, because the witnesses while in the box during the course of cross-examination had offered an explanation which is but frivolous. It is not right on principle for the Judge to divine and conclude what their plea would be against the advisability or expediency of launching prosecution against them. The right of hearing must be real, and it is a matter of substance. The witnesses had indeed no opportunity to say in this behalf. Their explanation in relation to falsity of their statement while in the box and under a searching cross-examination may not be a substitute for the oral hearing which should take place after the persons affected are given notice and reasonable time or opportunity. The right of hearing under the provision is no doubt limited to oral hearing, but even that is a valuable right and must be given effect to. We respectfully agree with the observations of Jagadisan, J., in (1963) 1 Mad LJ 421 that prosecuting a person for an offence under the Indian Penal Code is certainly a grave matter and however much it may be called for in the interests of justice the person who is to face the prosecution should in all fairness be given an opportunity to vindicate

himself if he can prior to the commencement of the prosecution in cases governed by Section 479-A, Criminal Procedure Code. In fact, the scheme of the Criminal Procedure Code makes it abundantly clear that prosecution for certain offences against public justice should be made only in public interest and after due satisfaction as to the expediency of the measure to be taken. Though ordinarily it is open to any one to prefer any complaint, Sections 195 to 199 Criminal Procedure Code, have engrafted exceptions to this general rule. Offences of the kind, such as these in question, before the amendment Act 18 of 1923, could be taken cognisance of by the Court even on the complaint of any member of the public, provided he had obtained sanction from the Court concerned, but that method of launching complaint was given a go by, as it did not advance the public interest. The Legislature then thought it necessary to leave the prosecution entirely into the hands of the Court, laying down certain standards for guidance in order to carry out the avowed purposes. The standards laid down and the procedure prescribed leave no room for doubt that the Court has to be cautious and launch prosecutions only in fit cases and after full satisfaction following the procedure laid down. It has to satisfy about the prima facie case made against the witness and taking into account not only the circumstances of the case but also circumstances of the witness, it has to satisfy itself also about the expediency of the measure. If the prosecution has to be launched with so much care and caution, we do not think that the Court below will be deemed to have conformed fully to the rule of caution if it has not heard the witnesses at all, though that may be only discretionary with it. The discretion has to be exercised in favour of the witness save for special reasons. The Court certainly cannot be deemed to have exercised its discretion properly if it has not given opportunity to be heard even though the witnesses were other than party to the proceeding. Since the discretion has to be exercised on principles of justice and equity, the Court went wrong on principle in not observing the well known rule of audi alteram partem. The result of the above discussion is, though we do not accept the interpretation of the counsel for the petitioners that the provisions of giving opportunity of being heard as in Sub-Section (1) of Section 479-A, Cri. P.C. is mandatory in nature, we agree with him that the trial Court went wrong on principle in not exercising its discretion in favor of the petitioners in the circumstances of the case.

7. We, therefore, allow these revision petitions and set aside the order of the learned Additional Sessions Judge directing the Munsif Magistrate, Chittoor to proceed with the complaints. This order may not preclude the learned Judge from taking such steps as may be open to him in accordance with law.
Petitions allowed.