

BOMBAY HIGH COURT

State of Bombay

Vs.

Premdas Sukritdas Gadhewal Koshti

Criminal Ref. No. 100 of 1959

(Raju, J.)

26.02.1960

JUDGMENT

Raju, J.

1. This is a reference by the Additional Sessions Judge, Nagpur, recommending that proceedings under Section 476, Criminal Procedure Code pending before Magistrate, Third Class, Nagpur, upon an application made by one Jivtya requesting that Court to file a complaint against two persons Premdas and Ramchandra under Sections 193 and 211, Indian Penal Code be quashed. The learned Magistrate overruled the objection taken before him that no proceedings under Section 476, Criminal Procedure Code could be taken because the Magistrate who tried the case had not taken proceedings under Section 479A, Criminal Procedure Code (which will hereinafter be referred to as the Code). The learned Additional Sessions Judge, recommends that proceedings under Section 476 should be quashed as he is of the opinion that as the Magistrate had not taken any action under Section 479A of the Code, it was not open to take proceedings under Section 476 of the Code. The learned Judge has relied on *Jai Bir Singh v. Malkhan Singh*¹, *Narajappa v. Chikkaramiah*², *Mannalal v. Ramkishan*³, and *Parshottam Lal v. Madan Lal*⁴, in support of his view that no recourse can be had to the provisions of Section 476 of the Code when no action has been taken against the alleged perjurer under Section 479A. The reference therefore raises an important question as to the scope of Sections 476 to 479-A of the Code.

2. These sections are in Chapter XXXV of the Code which refers to proceedings in cases of certain offences affecting administration of justice. Section 476 provides the procedure of inquiry and complaint by any civil, revenue or criminal Court on an application made to it or otherwise in regard to offences referred to in Section 195(1), clause (b) or clause (c), which appear to have been committed in, or in relation to, a proceeding in that Court. Other procedural matters are also dealt with in this section. Section 476B then provides for an appeal against the order of the Magistrate under Section 476, either making a complaint or refusing to make a complaint. For

the purposes of this reference it is unnecessary to refer to Sections 476A, 478 and 479. The next important section is Section 479A which prescribes the procedure in certain cases of false evidence. For the purposes

¹ AIR 1958 All 364

³ AIR 1959 Mad Prad 264

² AIR 1959 Mys 117

⁴ AIR 1959 Pun 145

of this reference sub-section (1), sub-section (3) and sub-section (6) of this section are important and they are 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":

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

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

Some High Courts have taken the view that the intention of sub-section (6) of Section 479A is to exclude cases of perjury from the operation of Sections 476 to 479. For instance see AIR 1958 Allahabad 364; AIR 1959 Mysore 117 and AIR 1959 Madhya Pradesh 264.

3. But with great respect, the effect of Sections 476 to 479A is different. Section 476 provides for an inquiry on an application made to a Civil, Revenue, or Criminal Court or otherwise in respect of an offence referred to in Section 195(1), clause (b) or clause (c). Section 476B also makes a provision for appeals against an order refusing to make a complaint under Section 476 or making a complaint under Section 476. But Section 479A deals with the procedure in certain cases of false evidence, cases where a Civil, Revenue, or Criminal Court in its judgment expresses the 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 section provides that in such cases where the Court at the time of delivery of the Judgment or final order disposing of such proceedings, records a finding to that effect, stating its reasons therefor the Court may if it so thinks fit after giving the witness an opportunity of being heard, make a complaint thereof setting forth the evidence which in its opinion is false or fabricated. Sub-section (3) of Section 479A provides that there shall be no appeal against such a finding and complaint made under sub-section (1).

4. It is clear from sub-section (1) of Section 479A and also from the marginal note of the section that it deals with certain cases of false evidence namely, serious, flagrant and patent cases of perjury discovered by the Court itself during the course of proceedings and in respect of which the Court at the time of its judgment records a finding of the type mentioned in Section 479A. For such serious, flagrant and patent case of perjury the procedure of inquiry and of appeal from the order making the complaint is eliminated in view of the seriousness of the perjury involved. Sub-section (6) of Section 479A then provides that 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. In other words, after the Court has given a finding in its judgment of the type mentioned in Section 479A, it is not open to take proceedings under Sections 476 to 479 for the prosecution of such a person for giving or fabricating false evidence. After the judgment is declared giving a finding of the type referred to in Section 479A, the Court may, if it so thinks fit, give the witness an opportunity of being heard and may make a complaint in writing setting forth the evidence which in its opinion is false or fabricated. The expression "if in respect of such a person proceedings may be taken under this section" contained in sub-section (6) of Section 479A means "if in respect of such a person a finding has been recorded in the judgment as referred to in sub-section (1) of Section 479A." In this reference it is not necessary to discuss the question whether, when the Judge takes action against a person under Section 479A in respect of a statement, an application can be made under Section 476 against the same person in respect of a different statement.

5. The Legislature could never have, contemplated that the procedure contained in Section 479A should be the only procedure applicable to cases where a witness has intentionally given false evidence in any stage of a judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of judicial proceedings because there may be many cases where it would be impossible for the Judge to discover at the time of his judgment that an offence of giving false evidence or fabricating false evidence had been committed in the proceedings before him. For instance, a witness may have given a particular type of deposition and there may be a contradictory deposition of his which may be discovered only after the Court has delivered its judgment. There may also be cases where there are contradictions in the evidence of a witness which may have gone unnoticed by the Judge. There may also be cases where a statement made by a witness in Court, even if false, may not be liable to be contradicted

in the same proceedings because under Section 153 of the Evidence Act when a witness has been asked and has answered any question which is relevant to the inquiry only in so far as it tends to shake his credit by injuring his character, no evidence shall be given to contradict him; but, if he answers falsely, he may afterwards be charged with giving false evidence. It cannot therefore be argued that Section 479A of the Code contains an exhaustive and self-contained procedure relating to all classes of perjury. This is clear from the wording of Section 476 and Section 479A and the marginal note of Section 479A. With great respect I differ from the view taken in AIR 1958 Allahabad 364; AIR 1959 Mysore 117; AIR 1959 Madhya Pradesh 264 and AIR 1959 Punjab 145. The view taken in AIR 1958 Allahabad 364 was subsequently dissented from in *Durga Prasad v. State of U. P.*⁵ and also in *Kasi Thevar v. Chinniah Konar*⁶, The Madras decision however related to a case where the necessary documents to establish the falsity of the evidence of a witness were obtained and brought to the notice of the Court after it had delivered the judgment. A case decided by their Lordships of the Supreme Court, namely, *Dr. Pal Chaudhary v. State of Assam*⁷, has been referred to, but that case merely laid down that if a complaint by a Civil, Revenue, or Criminal Court was to be lodged under sub-section (1) of Section 479A of the Code or by the appellate Court under sub-section (5) of that section, the procedure contained in sub-section (1) of that section must be complied with and the Court intending to make a complaint must record a finding of the type referred to in sub-section (1). Questions as to the scope of sub-section (6) of Section 479A and the scope of Section 476 were not considered or discussed by their Lordships of the Supreme Court. Their Lordships observed that they think it unnecessary to consider Sections 476 to 479 because "the learned Advocates appearing for the parties agreed that sub-section (6) of Section 479A makes Sections 476 to 479 inapplicable to it". Their Lordships of the Supreme Court therefore only dealt with a case of a complaint lodged under sub-section (5) of Section 479A by an appellate Court and their Lordships did not explain the scope of subsection (6) of Section 479 of the Code or of Section 476.

6. The learned Additional Sessions Judge was therefore not correct in holding that no proceeding could be taken under Section 476 in the present case. It is true that in the application before the Magistrate for filing a complaint under Sections 193 and 211, Indian Penal Code it was alleged that the applicant had made contradictory statements in the same proceedings. But whether the alleged falsity of the evidence depends on the evidence in the same proceedings or on evidence discovered subsequent to the judgment, in cases of false evidence Section 476 can be resorted to, where the Judge has not acted under Section 479A of the Code.

7. Section 479A applies where the Court acts suo motu at the time of declaring its judgment, and records a finding that a person appearing before it as a witness had intentionally given false evidence or has intentionally fabricated false evidence. Section 476 deals with cases where the Court can act on an application made to it in this behalf or otherwise. Under Section 476, the Court can act even when no application is made to it. It is therefore clear that Section 479A of the Code applies only to certain cases of false evidence, namely serious, flagrant and patent cases

of perjury where the Judge acts under Section 479A(1), and that Section 476 applies to all other cases of false evidence where the Judge has not recorded a finding under Section 479A (1).

8. For another reason also the view taken by the learned Additional Sessions Judge is wrong because in the application made the applicant wanted two persons, Premdas and Ramchandra, to be prosecuted not only under Section 193 but also under Section 211, Indian Penal Code. Cases under Section 211, Indian Penal Code do not come within the scope of Section 479A of the Criminal Procedure Code but come under Sections 476 to 479 of the Code. Similarly, cases under Sections 205, 206, 207, 208 and 463, Indian Penal Code come only under Sections 476 to 479 and not under Section 479A of the Criminal Procedure Code. As an offence under Section 211, Indian Penal Code does not fall within the scope, of Section 479A, a preliminary inquiry must be made in respect of

⁵ AIR 1959 All 744

⁷ AIR 1960 SC 133

⁶ AIR 1960 Mad 77

such an offence as provided in Section 476, Criminal Procedure Code.

9. For these reasons the view taken by the learned Additional Sessions Judge is wrong and I reject the reference.

Reference rejected.