

PUNJAB AND HARYANA HIGH COURT

Vidya Devi

Vs

Firm Madan Lal Prem Kumar

Civil Revision No. 92 of 1969

(Harbans Singh, C.J., R.S. Narula, Bal Raj Tuli, P.C. Jain and C.G. Suri, JJ.)

29.09.1970

ORDER

Mr. Mehar Singh, C.J.

1. On February 5, 1969, when issuing notice in Civil Revision Application No. 92 of 1969, the learned judge noted the case of *Tara Chand v. The State*¹. In that case the learned Judge held that the Rent Controller or for that matter the Appellate Authority under the provisions of the East Punjab Urban Rent Restriction Act, 1949, is not a civil Court within the meaning of section 476 of the Code of Criminal Procedure. A prosecution of Tara Chand for the offence of perjury on a complaint under section 476 of the Code of Criminal Procedure had been launched and the learned Judge accepted the revision application against that and quashed the complaint. As it is, that case is exactly parallel to the facts of the present case. However, there is any amount of authority which says that the word 'Court' as used in clause (b) of sub-section (1) of section 195 of Criminal Procedure Code is much wider than the expression 'Civil, Revenue or Criminal Court' as used in section 476 of the same Code. Now, if the Rent Controller or the Appellate Authority is not a civil or revenue or criminal Court, it may still be a Court if it administers oath and it has a duty to act judicially. If the Rent Controller or the Appellate Authority is a Court as that word is used in section 195 (1) (b) of the Code, then the only effect of the non-application of section 476 will be that the presiding Officer will make a complaint but he will not follow the procedure as laid down in section 476 of the Code. One of the two things is possible. The Rent Controller or the Appellate Authority is not a Court no matter how wide is the meaning of that word and this approach may be possible in view of the decision in *Pitman's Shorthand Academy v. B. Lila Ram and Sons*². In that case the question would till remain whether, if the applicant has committed the offence of perjury, would it come under the second part of section 193 of the Penal Code and, if so what will be the procedure that will apply and how will the criminal proceedings for prosecution begin. This is one question. Assuming that the Rent Controller or the Appellate Authority though not a civil or revenue or criminal Court, according to section 476 of the Code of Criminal Procedure, but is still a Court under section 195(1)(b) of the same Code, then the question arises what procedure is to be followed ? it is only if it is held that the Rent Controller or the Appellate Authority is not a Court as that word is used in section 195(1)(b) of the Code and it is further held that giving of false evidence before them is not an offence under

the second part of section 193 of the Penal Code, that the applicant can succeed in this case. There is, however, another matter that if the offence falls under the first part of section 193 of the Penal Code of giving false evidence in a judicial proceeding, then what offence shall have been committed ? Section 479 of the Criminal Code may not apply but that would not mean that there cannot be a prosecution for such an offence. I think there are many aspects of this matter which were not fully argued in Tara Chand's case. So I would refer this case to a Division Bench and at the same time order that a notice of this case should also be given to the Advocates General of Punjab and Haryana and a copy of this order shall be supplied to each one of them. The Deputy Registrar will then put up the case for the constitution of the Bench and after that fix it for hearing.

ORDER OF DIVISION BENCH

In *Pitman's Shorthand Academy v. R. Lila Ram and Sons*³, a Full Bench of this Court held that a Rent Controller under the provisions of the Rent Control Act is a *persons designata* entrusted with specific duties of a judicial or quasi-judicial nature but is not a Court. and following this a learned Judge of this Court in *Tara Chand v. The State*⁴, held that neither the Rent Controller nor the Appellate Authority under the East Punjab Urban Rent Restriction Act, 1949 (East Punjab Act 3 of 1949), hereinafter to be referred to as 'the Act', is a civil Court within the meaning of section 476 of the Code of Criminal Procedure, the learned Judge making a reference to *Virinder Kumar Satyawadi v. The State of Punjab*⁵, and relying upon Pitman's Shorthand Academy's case. It was in the wake of these decisions and pointing out certain difficulties in regard to the prosecution of a person committing perjury before a Rent Controller or an Appellate Authority under the provisions of the Act that I made reference of this case to a larger Bench on September 3, 1969.

3. Today on the side of the parties a reference is made to Virinder Kumar Satyawadi's case and then to another case decided by their Lordships of the Supreme Court reported as *Jagannath Prasad v. State of Uttar Pradesh*⁶, The first was a case of a Returning Officer and the second was a case of a Sales Tax Officer and neither was held to be a Court, but the learned counsel for the respondent has drawn our attention to the observations of their Lordships in paragraphs 5 and 6 of the judgment in the first case, and he contends that once the test laid down therein is applied, the Rent Controller and the Appellate Authority under the Act is a Court as that word is used in section 195 (a) and (b) of the Code of Criminal Procedure and that the decision in Pitman's Shorthand Academy's case needs reconsideration, though, as already pointed out, a learned Single Judge did consider that case in Tara Chand's case and still proceeded on the basis of the same. There are, however, observations of their Lordships in paragraph 6 of the judgment in Virinder Kumar Satyawadi's case which need consideration to reach the conclusion whether, so far as section 195(1)(b) of the Code of Criminal Procedure is concerned, a Rent Controller or an Appellate Authority under the Act is or is not a Court. The word 'Court' appears to have been used in a wider sense in this provision. However, if we are to proceed on an approach different than that in Pitman's Shorthand Academy's case then that can only be done by a larger Bench, and so we refer this case to a larger Bench of five Judges as the previous Full Bench of this Court consisted of three Judges.

(Sd.) Mehar Singh,

Chief Justice.

April 9, 1970.

(Sd.) Bal Raj Tuli,

Judge.

JUDGMENT OF FULL BENCH.

Bal Raj Tuli, J.

4. The petitioner, Shrimati Vidya Devi, filed an application under section 13 of the East Punjab Urban Rent Restriction Act, 1949 (hereinafter called the Act), for ejection of the respondent firm Madan Lal Prem Kumar, from the shop on the ground of non-payment of rent and house-tax. It was stated that the shop in question had been let out at an annual rent of Rs. 1,050-00, that a sum of Rs. 3,864,00 was due from the respondent-firm for the period from December 9, 1963, to August 8, 1967, that a sum of Rs. 225,00 was due on account of the rent of the Chhappar for the year 1963 to 1967 and that the respondent firm had also not paid the house-tax although the amount of house-tax was not stated in the application. The learned Rent Controller and the Appellate Authority came to the conclusion that the annual rent of the shop was Rs. 800.00, that the rent had been paid up to March 31, 1966, and that there was no liability of the respondent-firm for payment of the house-tax. It was also held that the rent of Rs. 800.00 included the rent of the chhappar. The respondent firm tendered the arrears of rent due from it to the landlord. On behalf of the landlord it was stated that the tender was not valid whereas the finding of the learned Rent Controller and the Appellate Authority was that it was a valid tender as the amount due on account of the arrears of rent did not exceed the amount tendered. On these findings, the application of the petitioner was dismissed by the learned Rent Controller on July 31, 1968, and her appeal against that order was dismissed by the learned Appellate Authority on January 3, 1969. Before the Appellate Authority, a request was made on behalf of the respondent-firm that the petitioner and her son Krishan Kumar, who appeared as a witness in the case, should be prosecuted for having given false evidence by making a false claim in order to cause harm to the respondent-firm and to gain their end. The learned Appellate Authority observed as under:

"The request is not unreasonable. From the perusal of the statements of the landlady and her son, it appears that they not only preferred a bogus claim but did not hesitate to perjure in Court. They claimed rent from 9.12.1963 to 31.3.1966 which was already paid. In Court also they denied the factum of receipt of this amount. They also perjured about the rate of rent and their entitlement to house-tax and rent for chhappar. For the eradication of the evil of perjury and in the interest of justice, it is expedient that such witnesses should be prosecuted for the offence of perjury. A notice be issued to Krishan Kumar and Shrimati Vidya Devi to show cause as to why a complaint should not be filed against them for an offence under section 193, Indian Penal Code."

The petitioner filed the present petition under section 15 (5) of the Act against the order of the learned Appellate Authority. It was admitted by Harbans Singh, J., (As my Lord the Chief Justice then was) on February 5, 1969. This order shows that the revision petition was admitted on the

ground that the Appellate Authority is not a Court within the meaning of section 476, Criminal Procedure Code, and, therefore, could not issue the notice. The petition then came up for hearing before Mehar Singh, C. J., on September 3, 1969, when it was referred to a larger Bench. It was thereafter placed for hearing before Mehar Singh, C. J., and myself on April 9, 1970 and we referred it to a Full Bench of five Judges because the correctness of the judgment of a Full Bench of three Judges in M/s Pitman's Shorthand Academy V. M/s B. Lila Ram and Sons, etc. ILR 1949 Punjab 606, was doubted. This is how this petition has come up for hearing before this Bench.

5. The learned counsel for the petitioner has submitted that the Rent Controller and the Appellate Authority under the Act are neither Courts nor Civil Courts as these terms are used in sections 195(1)(b), 476 and 479A of the Code of Criminal procedure, and, therefore, the Appellate Authority had no jurisdiction to file a complaint for perjury against the petitioner and her son nor had any jurisdiction to issue the notice to them to show cause why a complaint under Section 193, Indian Penal Code, should not be filed against them. The term 'Court' has not been defined in any Act other than the Indian Evidence Act, but that definition cannot be read into the Code of Criminal Procedure. That Code defines 'Judicial proceeding' in section 4(1)(m) as under :

"Judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath."

It has then been provided in section 4 of the Code that:

"all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code." The Indian Penal Code defines 'Judge' and 'Court of Justice' in sections 19 and 20 as under :

"Judge' - The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons, which body of persons, is empowered by law to give such a judgment."

"Court of Justice'. - The words 'Court of Justice' denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially."

We have, therefore, to find whether the Rent Controller and Appellate Authority fall within the word 'Judge' as defined above. The requirement that he should be empowered by law to give a definitive judgment or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, is fulfilled by both the Rent Controller and the Appellate Authority. They are empowered by the Act to give a definitive judgment which judgment, if not appealed against, is final and if it is appealed against and is confirmed by the Appellate or revisional Authority it becomes final. It has then to be seen

whether the proceedings before the Rent Controller and the Appellate Authority are legal. There can be no dispute that the proceedings are legal and judicial as the Rent Controller is authorised to take evidence and so is the Appellate Authority in case it feels the necessity of it. Otherwise, the Appellate Authority can decide the appeal before it on the record as is framed by the Rent Controller. The subject-matter of the applications before the Rent Controller is a is between the landlord and the tenant and concerns:

- (i) the fixation of fair rent (section 4);
- (ii) cases in which increase in fair rent is admissible (section 5);
- (iii) interference with amenities enjoined by the tenant (Section 10);
- (iv) conversion of a residential building into a non-residential building without the permission in writing of the Controller (section 11);
- (v) permission to be granted to the tenant by the Controller in case the landlord fails to make necessary repairs (section 12) and
- (vi) eviction of tenants (section 13).

Section 14 of the Act provides for certain decisions to operate as *res judicata*; section 15 provides for an appeal to the Appellate Authority and a revision to the High Court; section 16 provides that an Appellate Authority or a Controller shall have the same power of summoning and enforcing the attendance of the witnesses and compelling the production of evidence as are vested in a Court under the Code of Civil procedure; section 17-A empowers the High Court to transfer any proceeding pending before any Appellate Authority to another Appellate Authority and it empowers the Appellate Authority to transfer any proceeding pending before any Controller to another Controller within its jurisdiction and section 18 requires the landlord and tenant to furnish such particulars in respect of any building or rented land as may be prescribed to the Controller or any person authorised by him in that behalf. Section 19 provides for penalties while Section 20 authorises the State Government to make rules for the purposes of carrying out all or any of the provisions of the Act.

6. Under section 9 of the Code of Civil Procedure , the Civil Courts have the jurisdiction to try all suits of a civil nature excepting suits of which cognizance is either expressly or impliedly barred. It is well known that the suits for ejection of tenants were cognizable by the civil Courts before the Rent Acts were enacted and it is the jurisdiction of civil courts which is exercised by the Rent Controllers and the Appellate Authorities. All proceedings before the Rent Controller are of a civil nature and the power to adjudicate upon those matters would have been of the civil Courts but for the Rent Acts which have conferred that jurisdiction on special tribunals like the Rent Controller and Appellate Authority under the Act. There are various Acts under which the power has been given to the civil Courts before whom the suits are filed to ignore the contracts between the parties, for example, the Usurious Loans Act and the Punjab Relief of Indebtedness Act, where under interest at a rate higher than the one prescribed in the Act has to be disallowed. Similarly, all the powers that have been vested in the Rent Controller under the Act could be given to the civil Courts as all those matters are of a civil nature. For this reason, it cannot be denied that the proceedings before the Rent Controller and the Appellate Authority are legal and

of a civil nature.

7. In *Virinder Kumar Satyawadi v. The State of Punjab*⁷, their Lordships of the Supreme Court stated that essential characteristics of a Court as distinguished from a tribunal exercising quasi-judicial functions as under:

"It may be stated broadly that what distinguishes a Court from a quasi judicial tribunal is that it is charged with a duty to decide disputes in a Judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question, therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court."

I have already pointed out above that section 16 of the Act empowers the Rent Controller and the Appellate Authority to summon and enforce the attendance of witnesses and to compel the production of evidence like a civil Court under the Code of Civil Procedure and under the various sections of the Act, the Rent Controller has to decide the matters brought before it on the evidence that is produced by the parties and the parties have a right to produce that evidence and to be heard in support of their claims. Similarly, the Appellate Authority has to decide the appeal referred before it after sending for the records of the case from the Rent Controller and after giving the parties an opportunity of being heard. It has also been giving the power make further inquiry into the matter which, of course, means an inquiry held in the presence of the parties and not at their back. The parties have thus the right to be heard in the proceedings before the Rent Controller as well as the Appellate Authority. It is, therefore, evident that the Rent Controller and the Appellate Authority decide in a judicial manner the proceedings that are taken before them. From this attribute of the Rent Controller and the Appellate Authority it follows that they are not only Courts but 'Courts of Justice' as defined in Section 20 of the Indian Penal Code. Since the proceedings before them are of a civil nature, they are necessarily to be termed as civil Courts of Justice or Simply civil Courts for the purposes of sections 195(1)(b) 476 and 479-A of the Code of Criminal Procedure.

It is also useful at this stage to refer to sub-section (2) of section 195 of the Code of Criminal Procedure which is as under:

"In clauses (b) and (c) of sub-section (1), the term 'Court' includes a civil revenue or criminal Court but does not include a Registrar or Sub-Registrar under the Indian Registration Act, 1877."

It is evident from the language of this sub-section that but for the exclusion expressly made, a Registrar or a Sub-Registrar under the Indian Registration Act would legitimately be considered to have been included in the term 'Court'. In view of the legislative intention clearly expressed in this sub-section, there is every reason to include the Rent Controller and the Appellate Authority

within the definition of the term 'Court' as given in section 195(2) of the said Code as these tribunals have far greater trappings of a Court than a Registrar or a Sub-Registrar under the Indian Registration Act.

9. In view of what has been said above, I hold that the Appellate Authority had the right to issue the notices to the petitioner and her son under section 479-A of the Code of Criminal Procedure to show cause why a Complaint under section 193, Indian Penal Code, should not be filed against them and to file a complaint under section 195(1)(b) of the said Code if it came to the conclusion that it was expedient and in the interest of justice to file such a complaint against them, Under section 195(1)(b) of the said Code the complaint can be filed by the Court in which or in relation to any proceedings before whom the offence of perjury was committed or a Court to which that Court is Subordinate, Subordination means judicial subordination and it cannot be contended that the Rent Controller is not subordinate to the Appellate Authority in view of the fact that the appeals from the orders of a Rent Controller lie to an Appellate Authority under section 15(1)(b) of the Act.

10. The reason why the case was referred to a Full Bench of five Judges was that a Full Bench of three Judge of this Court had decided in *M/s Pitman's Shorthand Academy v. M/s B. Lila Ram and Sons. etc.* (supra), that neither the Rent Controller nor the Appellate Authority is a Court of law Subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure . No fault can be found with that judgment because the Rent Controller and the Appellate Authority are not civil Court's for the purposes of the Code of Civil Procedure as the jurisdiction of the civil Courts to adjudicate on the matters provided for in the Act is expressly barred. Any Court dealing with those barred matters cannot be termed as a civil Court, but that judgment cannot be read to mean that the Rent Controller and the Appellate Authority are not Courts or civil Courts for the purposes of sections 195(1)(b), 476 and 479-A of the Code of Criminal Procedure.

11. I now proceed to consider some of the other judgments cited before us which I consider to be relevant In *Lalji Haridas v. The State of Maharashtra and another*⁸ it was decided by majority of three to two, that the proceedings taken by an Income-tax Officer under section 37 of the Income-tax Act, 1922, are judicial proceedings and while taking those proceedings the Income-tax Officer is to be deemed a Court, so that the protection granted by section 195(1)(b) of the Code of Criminal Procedure has to be made available to the person who commits an offence under section 193, Indian Penal Code, in relation to those proceedings before the Income-tax Officer, with the result that the complaint by that officer is a condition precedent to a Magistrate taking cognizance of that offence. This judgment clearly supports the view that I have taken above in respect of the Rent Controller and the Appellate Authority.

12. Another judgment of their Lordships of the Supreme Court in *Thakur Jugal Kishore Sinha v. The Sitamarhi Central Co-operative Bank Ltd., and another*⁹, is quite instructive on this point. In that case, the question for determination was whether the Assistant Registrar, functioning under Bihar and Orissa Cooperative Societies Act is a Court subordinate to the High Court for the purposes of section 3 of the Contempt of Courts Act and the answer given by their Lordships was in the affirmative. In support of that conclusion, it was said:

"A Registrar exercising powers under section 48 must, therefore, be held to discharge the

duties which would otherwise have fallen on the ordinary civil and revenue Courts of the land. The Registrar has not merely the trappings of a Court but in many respects he is given the same powers as are given to ordinary civil Courts of the land by the Code of Civil Procedure including the power to summon and examine witnesses on oath, the power to order inspection of documents, to hear the parties after framing issues, to review his own order and even exercise the inherent jurisdiction of Courts mentioned in section 151 of the Code of Civil Procedure . In such a case there is no difficulty in holding in that in adjudicating upon a dispute referred under section 48 of the Act, the Registrar is to all intents and purposes, a Court discharging the same functions and duties in the same manner as a Court of law is expected to do."

Their Lordships Further observed in para 20 of the report :

"The Assistant Registrar had all the powers of a Registrar in this case as noted in the delegation and he was competent to dispose of it in the same manner as the Registrar would have done.

In the conclusion, therefore, we must hold that the Assistant Registrar was functioning as a Court in deciding the dispute between the bank and the appellant and Jagannath Jha."

These observations of their Lordships aptly apply to the Rent Controller and the appellate Authority under the Act. I, therefore, hold that the Rent Controller and the appellate Authority under the Act are civil Courts for the purposes of sections 195 (1) (b), 476 and 479-A of the Code of Criminal Procedure and the appellate Authority was within its jurisdiction to issue the notice to the petitioner and her son while disposing of the appeal and no fault cannot be found with that order.

13. I have not been able to understand why the petitioner has raised this contention. Sections 195 (1) (b), 476 and 479-A of the Code Criminal Procedure afforded a protection to the parties and witnesses appearing before the Courts that they will not be prosecuted for perjury except on the Complaint of the Court and before the Court files a complaint for perjury, it has to give a notice to the offender to show cause against the filing of the complaint and it has also to come to the conclusion that it is expedient and in the interest of justice to file a complaint. If this protection is taken away, any person can file a complaint against the offender which will mean a great deal of harassment to him particularly at the hands of opponents who are likely to be very vindictive in such cases. The Court, after hearing the offender, has to form an opinion whether it is advisable or expedient to file the complaint or not. In many cases it may form an opinion that the filing of the complaint will serve no useful purpose and thus discharge the notice and the offender shall be saved the botheration of under going a trial in the criminal Court. There is also another safeguard provided in section 476 B of the Code of Criminal Procedure inasmuch as an appeal lies against the order of a Court ordering prosecution. In the cases brought to our notice, the protection of section 195 (1) (b) of the said Code was claimed on the ground that the officers before whom the offence of perjury was alleged to have been committed were Courts and the Magistrate could not take cognizance of that offence without a written complaint by that officer. In those cases it was held that the said officers were not Courts and, therefore, the protection under section 195 (1) (b) was not available.

14. Virinder Kumar Satyawadi's case (supra) related to Returning Officer and it was held that the Returning Officer was not a Court although his function, while acting under section 36 of the Representation of People Act, is judicial in character but he is not to act judicially in discharging it. In *Brajnandan Sinha v. Jyoti Narain*¹⁰, their Lordships held that a commissioner appointed under the Public Servants (Inquiries) Act (37 of 1850), was not a Court. In *Jagannath Prasad and another v. State of Uttar Pradesh*¹¹, their Lordships held that the Sales-tax Officer is not a Court and in respect of an Offence under section 471, Indian Penal Code, committed in the proceedings before him, the complaint by him was not necessary under section 195 of the Code of Criminal Procedure.

15. In *Chaparala Krishna Brahman v. Guduru Govardhanaiah*¹², it was held that an Income-tax Officer is not a Court when acting under Section 37 of the Income-tax Act, 1922. This judgment should be deemed to have been overruled by the judgment of their Lordships of the Supreme Court in Lalji Haridas's case (supra).

16. In *Sudhindra Kumar Deb v. Gopika Ranjan Datta*¹³, it was held that the Industrial Tribunal is not a Court although for the purposes of section 193 of the Indian Penal Code, the proceedings before the tribunal will be considered to be judicial. The learned Judges relied on a decision of their Lordships of the Supreme Court in *Bharat Bank Ltd. Delhi v. Employees of the Bharat Bank Ltd Delhi*¹⁴. The reasons seem to be obvious because an Industrial Tribunal does not give a definitive judgment but makes an award and that award becomes operative only if the State Government publishes it. If the State Government does not choose to publish it, it does not become operative at all, from which it follows that the award made by an Industrial Tribunal *propollo vigore* has no operative force and cannot be said to amount to a definitive judgment.

17. Although in the grounds for revision the order of the Appellate Authority has been challenged on merits also, but no arguments were addressed to us on any other point nor were any arguments addressed on any other point before the learned Chief Justice or the Division Bench which referred it for decision to the Full Bench.

For the reasons given above, there is no merit in this revision petition which is dismissed and the order of the learned Appellate authority is affirmed. There is, however, no order as to costs as the point of law canvassed was not free from difficulty.

Sd/- Harbans Sing, Chief Justice :- I agree.

Sd/- R. S. Narula, Judge :- I agree.

Sd/- Prem Chand Jain, Judge :- I agree.

Sd/- C. G. Suri, Judge :- I agree.

Petition dismissed.

Cases Referred.

11962 P. L. R. 1922

21950 P. L. R. 1

31950 PLR 1

41962 PLR 1022
5AIR 1956 SC 153
6AIR 1963 SC 416
7AIR 1956 SC 153
8AIR 1964 SC 1154
9AIR 1967 SC 1494
10AIR 1956 SC 66
11 A.I.R. 1963, S. C. 416
12AIR 1954 Mad 822
13AIR 1960 Ass 55
14AIR 1950 SC 188