RAJASTHAN HIGH COURT

Amolak

Vs.

State (Rajasthan)

Criminal Revn. No. 46 of 1959
(I.N. Modi, J.)

08.06.1959

ORDER

I.N. Modi, J.

1. This is a revision by the petitioner Amolak and raises an interesting question relating, to the interpretation of the newly enacted Section 479-A of the Code of Criminal Procedure.

2. The facts, out of which this revision arises, may be very shortly stated.

3. In Criminal case No. 21 of 1957 Harisingh and four others were tried for offences under Sections 302. and 302/149 I.P.C. and certain other sections for causing the death of one Hari Ram and grievous-injuries to his son Mangla. By his judgment dated the 26th of August 1958, the learned Additional Sessions Judge, Jodhpur, acquitted the accused, having, come to the finding that whatever injuries were caused to the deceased and his son, were so caused by the two accused Hari Singh and Madho in the exercise of their right of private defense of person. The petitioner Amolak was one of the three eyewitness in that case. On the 5th of December, 1958, an application was moved on behalf of the State that the said Amolak had intentionally given false evidence and had thereby committed the offence of perjury and therefore the court be pleased to file a complaint against him under Section 195 Criminal Procedure Code in the court of the magistrate concerned. This application was made under Section 476 of the Code of Criminal Procedure. A notice was given to the petitioner to show cause why a complaint be not made against him-whereupon an objection was raised on his

behalf that the aforesaid application was incompetent by virtue of the provisions of Section 479A and, therefore, it should be dismissed.
The argument was that the learned Judge must have recorded a finding to the effect that the petitioner had given false evidence at the time of the delivery of the judgment as required by Section 479A, and, that inasmuch as he had failed to do so, no complaint could thereafter be filed relying on Section 476, as the case of the petitioner was fully covered by the provisions of Section 479A of the Code. The learned Judge rejected this argument by merely saying that in his opinion the complaint could be made even later, and there was no Statutory bar to do so.

4. The narrow question which emerges for determination in these circumstances is whether the view of the learned Additional Sessions Judge, set out above, is correct. It clearly seems to me that the learned Judge did not carefully apply his mind to the provisions of Section 479A. The material portion of this suction reads 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 or 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 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 imbricate 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.
> *** *** ***

(2) *** *** ***

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

(4) *** *** ***

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

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

I may also reproduce Sections 476, 476A and 476B which existed before and which have been left untouched by the Code of Criminal Procedure Amendment Act 26 of 1955 by which Section 479A was enacted.

"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 interests of justice that an inquiry should be made into any offence referred to in S. 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 the 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 if the alleged offence is non-bailable 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 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) 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".

"476A. Superior Court may complain where subordinate Court has omitted to do so. - The power conferred on Civil, Revenue and Criminal Court by S. 476, Sub-Section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such court, by the Court to which such former Court is subordinate within the meaning of S. 195, Sub-Section (3) in any case in which such former Court has neither made a complaint under Section 476 in respect of such offence nor rejected an application for the making of such complaint, and, where the superior court makes such complaint, the provisions of Section 476 shall apply accordingly.

476B. Appeals - Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under Section 476 or Section 476A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of S. 195, Sub-Section (3) and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under Section 476, and if it makes such complaint the provisions of that section shall apply accordingly".

5. Having carefully considered the provisions of these sections, I am unhesitatingly of the opinion that where a witness is sought to be prosecuted for, giving or fabricating false evidence in a judicial proceeding, before a civil, revenue or criminal court, the procedure for filing the complaint against him must be governed by Section 479A which lays down a self-contained set of rules on the subject, and Section 476, and the cognate sections which prior to the enactment of Section 479A applied in the matter of such a prosecution are no longer applicable. The opening words of Sub-Section (f) of Section 479A, to wit, 'Notwithstanding anything contained in Sections 476 to 479 inclusive', in my opinion, make the intention of the Legislature clear beyond any doubt

or dispute. The same intention is made still more manifest by Sub-Section (6) of this section which plainly provides that where in respect of a person, proceedings can be taken under Section 479A, no proceedings shall be taken under Sections 476 to 479.

6. It may be pointed out here that the intention of the Legislature in enacting the provisions contained in Section 479A, obviously was to ensure prompt action being taken against perjuring witnesses in a judicial proceeding before a civil, revenue or criminal court. It was in fulfillment of this object that the Legislature has thought fit to provide that no inquiry as under Section 476 preceding the filing of the complaint would be necessary, and that what is necessary is that the court, before whom the witness appeared and intentionally gave perjured evidence or fabricated false evidence must record a finding that he did so, giving its reason for the finding, simultaneously with the delivery of its judgment in the main case, and if necessary it may give the witness an opportunity of being heard, and it is then open to it to make a complaint in writing 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 take sufficient security from the witness if he is present in court to appear in the Magistrate's court, and it may also bind over any other person to appear and give evidence before such magistrate. It is in fulfillment of the same object that the person against whom such a complaint is made has not been given any right of appeal against such an order or the complaint (see Sub-Section 3), although a provision has been made that if, in the main case, an appeal has been preferred, the hearing of the case before the Magistrate to whom the complaint has been forwarded must adjourn the same until the appeal is decided by the court of appeal, and it is open to the latter court to order a withdrawal of the complaint, should such a course appear to it to be warranted (see Sub-Section 4). It clearly appears to me in these circumstances that Section 479A specifically lays down the procedure for the prosecution of witnesses suspected of having given false evidence or fabricated false evidence in relation to a judicial proceeding in a civil, revenue or criminal court, and this procedure is self-contained and expressly excludes the applicability of Sections 476 to 479 to such cases.

7. It is contended by the learned Government Advocate that this interpretation of Section 479A in relation to the pre-existing Sections 476 to 479 may result in certain unfortunate consequences. Firstly, that there may be cases of perjury which may come to the notice of the first court after it has delivered its judgment, and secondly, that the

object of the section would be defeated where the trial court may have omitted to record a finding to the necessary effect either through oversight or negligence and in such cases the guilty witnesses would go entirely unpunished because no complaint under the interpretation set out above could be made after the judgment in the parent case had once been delivered. I have given my anxious and careful consideration to these contentions and I am unable to accept them.

8. Now, so far as the first contention is concerned, the intention of the Legislature clearly appears to be deducible from tile language of Section 479A that it is the trial court which is eminently in a fit position to come to a conclusion whether a certain witness has perjured himself or not. That court has the opportunity of hearing and seeing the witness which no other court would have. Broadly speaking, therefore, it should be rare that the court of first instance will not be in a position to discover the element of perjury in the evidence of such a witness. In the second place, the section itself provides that where (by some mischance) the trial court has failed to detect the perjury, the appellate court, when the case is before it, may discover it; and if it so does, it is open to that court also to record a finding that the witness has perjured himself, simultaneously when it delivers its judgment, and in that event, the appellate court can also exercise the same powers as have been vested in the court of first instance but in such a case it must give the person affected an opportunity of being heard in the matter. It is difficult to conceive of cases where both the first court and the court of appeal should not be in a position to find out whether a certain witness, who has appeared before it, or whose evidence is considered by it, has or has not perjured himself. But assuming for the sake of argument that there may be such cases, then, the only proper conclusion to come to in such circumstances to my mind is that it was not the intention of the Legislature that a complaint for perjury should be allowed to be filed in such cases.

9. As for the second contention that in certain cases of perjury where the court of first instance may through negligence or oversight fail to record a finding under Sub-Section (1) of Section 479, and that when once such an omission has occurred, no further action can be taken in the way of moving the court for filing a complaint of perjury against a witness, and that in such cases the perjuring witness would go entirely unpunished, there seems to me to be a two-fold answer. In the first place, where the case is open to appeal it would be open to the prosecutor to raise the point before the appellate court and the appellate court would then be in a position to give

an appropriate finding as it thinks fit. There may be other cases, however, which may not be taken in appeal at all, or there may be cases in which both the court of first instance and the appellate court have failed or omitted to record the finding required by Sub-Section (1) of Section 479. If the contention is that even in such cases a complaint should be allowed to be filed later on under Section 476 Criminal Procedure Code and that it could not have been the intention of the Legislature that no such complaint could ever be fifed, then all that I can say is that the Legislature has not only failed to express that intention but has in fact expressed a contrary intention, and it is for the Legislature to make the desired provision should it consider it fit to do so. This Court can only interpret the section as it stands and it is not its business to supply a casus omissus. For aught one knows, the intention of the Legislature may well have been that a complaint against a perjuring witness in a judicial proceeding should be filed promptly or not at all, and if that is so. Section 479A properly carries out that intention.

10. My conclusion, therefore, is that the language of Section 479-A is quite plain and unambiguous and it does override Sections 476 to 479 in so far as the cases which has within the ambit of Section 479A are concerned.

11. The view which 1 have set out above receives ample support from ***In re*** *Ponneri Dassi Reddi* [1] *Parshottam Lal v. Madan Lal Bashambar Das,*[2] *Jai Bir Singh v. Malkhan Singh*· [3] and *Narajappa v. Chikkaramiah,* [4]

12. The result of the above discussion is that where Section 479A comes into play, as it does in this case, before a witness can be complained against for perjury by the court of first instance, the court must record a finding at the time of delivering its judgment or final order that it is expedient in the interests of justice and for the eradication of the evils of perjury and fabrication of false evidence that such witness should be prosecuted, and record its reasons for that conclusion, and thereafter it can make a complaint in writing to the magistrate concerned, but not otherwise. A similar opportunity is available at a later stage to the court of appeal where the matter has been taken in appeal to it. But where the court of first instance, or the court of appeal, have both omitted to record any finding as required by Sub-Section (1) or Sub-Section (5) of Section 479A simultaneously with the delivery of its judgment, as the case may be, then the matter ends, and it is not possible to hold the view that in such cases the court can still act under Sections 476 to 479 of the Code of Criminal Procedure for

that is what Section 479A clearly prohibits. It is clear that, in the present case, the trial court did not record any such finding at the time of the delivery of its judgment. I am also informed that there was an appeal by the State against the acquittal of the accused and that appeal was also dismissed.

13. The inevitable result therefore is that this revision must be allowed and the Order of the learned Additional Sessions Judge set aside. It must follow that the learned Additional Sessions Judge must withdraw the complaint against the petitioner which has been already filed in the court of the Magistrate First Class concerned.

Revision allowed.

Cases Referred.

1. AIR 1958 And Pra 657
2. AIR 1959 Pun 145
3. AIR 1958 AIR 364
4. AIR 1959 Mys 117