SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Narajappa Vs. Chikkaramiah

Narajappa Vs. Chikkaramiah

SooperKanoon Citation : sooperkanoon.com/373202

Court : Karnataka

Decided On : Feb-25-1958

Reported in : AIR1959Kant117; AIR1959Mys117; 1959CriLJ618; ILR1958KAR167; (1958)36MysLJ253

Judge : M. Sadasivayya, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 145, 195(1), 476, 476(1), 477, 478, 479, 479A and 479A(6); Indian Penal Code (IPC), 1860 - Sections 465

Appeal No. : Criminal Revn. Petn. No. 454 of 1957

Appellant : Narajappa

Respondent : Chikkaramiah

Advocate for Def. : K.V.S. Ramaswamy, Adv.

Advocate for Pet/Ap. : B. Rangaswamy, Adv.

Judgement :
ORDER

1. This is a criminal revision petition against the order passed by the learned First Additional Sessions Judge, Bangalore Division, in Criminal Miscellaneous Appeal No. 2 of 1957. The facts and circumstances which have led to the present criminal

revision petition, briefly stated are as follows :

2. There were proceedings under Section 145 of the Code of Criminal Procedure in Criminal Misc. Case No. 17/55 in the Court of the First Class Magistrate, Tumkur. Amongst the documents which had been produced by the first party in those proceedings was a certain kandayam receipt which bore the date 15-12-1947 and purported to be for Rs. 66-11-3 and had been signed by Narajappa second member of the first party.

This Narajappa appears to have been examined as P.W. 4 in the said proceedings and this receipt has been marked as Exhibit D-23. This receipt purported to show that the payment of the said amount of Rs. 66-11-3 had been made by Sidclara makka the first of the first party; but, it also appears that there was an entry made by this very same Navajappa in the Khirdi showing that this sum of Rs. 66-11-3 had been paid by Chikkaramiab, the first member of the second party.

The relevant Khirdi appears to have been marked as an exhibit in the case. The final order in the said Criminal Misc. Case was passed by the learned First Class Magistrate, Tumkur, on 14-4-1956. Subsequently, on 14-5-1958 an application I.A. No. 1 was filed by the first member of the second party. That application purported to be under Section 195 (1) of the Cri. P. C., and the prayer in the petition was to the effect that Exhibit D-23 was a forged document and that proceedings should be taken against the said Narajappa for having committed an offence punishable under Section 465 of the I. P. C.

Orders on this application were passed on 21-0-1957 by the then Magistrate to whom the said application had been transferred and it was the successor that passed the orders on 21-6-1957. By the said order dated 21-6-57, the learned Magistrate dismissed the application I.A. No. I. In so dismissing that application, the learned Magistrate took into consideration the circumstances that no opinion had been expressed by his predecessor in regard to Exhibit D-23 and further that it was his predecessor that was tho proper person to have ordered prosecution had ho considered that the same was necessary.

This order was taken up in appeal by the first member of tho second party to the Court of Session. Tho said appeal was Criminal Miscellaneous Appeal No. 2/1957 on the file of the First Additional Sessions Judge. Bangalore Division. The learned Sessions Judge took tho view that under Sub-section (1) of Section 476 of Cri. P. C., the holding of a preliminary enquiry was necessary and the order passed by the learned Magistrate rejecting the application without holding such a preliminary enquiry, could not be supported.

Consequently, he allowed the appeal and remanded the case to the District Magistrate, Tumkur, directing him to hold a preliminary enquiry and then to pass such order as the Magistrate might find expedient. It is against this order passed by the learned Additional Sessions Judge, that the present revision petition has been preferred by the second member of the first party.

3. The view taken by the learned Additional Sessions Judge, to the effect that there should always be a preliminary enquiry before a Court can make an order under Sub-section (1) of Section 476 of the Cri. P. C. does not appear to be correct. The relevant portion of Sub-section (1) of Section 476 runs as follows :

'....such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof.....'

It is seen from these wordings that the Court may record a finding to that effect and for that purpose may hold such preliminary enquiry, if any, as it thinks necessary. It is, therefore, clear that it is a matter left entirely to the discretion of the Court as to whether it should in the circumstances of any case hold any preliminary enquiry or not before recording a finding and making a complaint.

The learned counsel for the respondent has not placed before me any authority in support of the view taken by the learned Sessions Judge. I do not think that it is proper to place any fetters on the discretion of the Court in the matter of holding a preliminary enquiry. Under these circumstances, the view taken by the learned Additional Sessions Judge is not correct.

4. But, it is not merely in consequence of the view above taken that the order passed by the learned Additional Sessions Judge is liable to be set aside. There is a much more serious objection to its being allowed to stand. The contention which has been advanced by the learned counsel appearing for the petitioner is, that the provisions of Section 479-A of the Code of Criminal Procedure have been overlooked by the learned Sessions Judge.

There appears to he much force in this contention. It would appear from a perusal of the order of tho learned Sessions Judge, that what the learned Sessions Judge had in his mind was only the provisions of Section 476 of the Cri. P. C. It is not disputed that at the time when the application I. A. No. 1 was made, the provisions of the Code of Criminal Procedure as amended by Act 26 of 1955 had come into force. Therefore, by then, the provisions of Section 479-A of the Cri. P. C. were in force. In Sub-section (6) of Section 479-A itis stated 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 Section 479-A.

It is, therefore, dear that if on the date on which I.A. No. 1 was filed before the learned Magistrate at Tumkur, proceedings could have been taken against Narajappa under the provisions of Section 479-A of the Code or Criminal Procedure, it was not permissible to initiate any proceedings under Section 476 of the Cri. P. C. The learned counsel for the respondent urged that the provisions of Section 479-A of the Cri. P. C. were not applicable to Narajappa by reason of the fact that he was a party to the proceedings and that, to a party to a proceeding it was only the provisions of Clause (c) of Sub-section (1) of Section 195 of the Cri. P. C. that would be applicable.

The learned counsel urged that proceedings as against a party could be properly taken only under Section 476 of the Cri P. C. read with the provisions of Sub-section (1) of Section 195 of the Cri. P. C. On a consideration of the provisions of Section 479-A of the Cri. P. C., I find that I am unable to accept this contention which has been urged by the learned counsel for the respondent.

Clause (c) of Sub-section (1) of Section 195 of the, Cri. P. C., no doubt, makes reference to an offence alleged to have been committed by a party to any proceeding in any Court in respect of a document produced or given in evidence in such proceeding. But, it appears to me that having regard to the over-riding provisions of Section 479-A of the Cri. P. C., it would not be permissible to initiate proceedings as against any person appearing before any Civil, Revenue or Criminal Court, as a witness, for his having given any false evidence or for his having in emotionally fabricated false evidence, except in accordance with the provisions of Section 479-A of the Cri. P. C.

Sub-section (1) of Section 479-A of the Code of Criminal Procedure refers to 'any person appearing before it as a witness'. Therefore, the application of the provisions of Section 479-A of the Code of Criminal Procedure, to a person appearing as a witness before Court, cannot be obviated merely by reason of the fact that the said person also happens to be a party to the said proceedings.

Once the person has appeared as a witness before the Court, then, it will be the provisions of Section 479-A of the Code that wilt he applicable and not any of the provisions contained in Sections 476 to 479 of the Cri. P. C. The provisions of Section 479-A have been enacted with a view to eradicate evils of forgery and false evidence. There is no reason as to why the provisions of Section 479-A should be made inapplicable to a person appearing before the Court as a witness, merely because he happens to be a party to the suit or proceedings.

The learned counsel for the respondent has not placed before me any authority in support of his contention to the effect that under such circumstances the witness concerned should not be proceeded against, under Section 479-A of the Cri. P. C, I am satisfied that in the present case when Narajappa has been examined as a witness in the proceedings before the learned Magistrate, any action which could have been taken against him, should have been only in accordance with the provisions of Section 479-A of the Cri. P. C.

When no action has been taken against him, in accordance with the provisions of Section 479-A of the Cri. P. C., it is not open to have recourse to the provisions of Section 476 of the Cri. P. C. to do so, would be to go against the provisions of

Sub-section (6) of Section 479(A). In this view of the case, no proceedings under Section 470, Cri. P. C. being permissible, the order made by the learned First Additional Sessions Judge, remanding the case to the learned Magistrate for on enquiry under Section 476 of the Cri. P. C., cannot be sustained. It is, therefore, liable to be set aside and the order passed by the learned District Magistrate at Tumkur dismissing I.A. No. 1 has to be affirmed.

5. It is accordingly ordered. Order accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com