

**In Re: Muniamma and ors.**

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**SooperKanoon Citation : [sooperkanoon.com/430876](http://sooperkanoon.com/430876)**

**Court : Andhra Pradesh**

**Decided On : Apr-14-1958**

**Reported in : AIR1959AP330; 1959CriLJ812**

**Judge : Basi Reddy, J.**

**Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 476, 479A, 479A(1) and 479A(6)**

**Appeal No. : Criminal Revn. Case Nos. 232 to 235 of 1957 and Criminal Revn. Petn. Nos. 164 to 167 of 1957**

**Appellant : In Re: Muniamma and ors.**

**Advocate for Def. : A. Subba Rao, Adv. for ;D. Munikannaiah, Public Prosecutor**

**Advocate for Pet/Ap. : R. Venkatasubba Rao, ;K. Raghava Rao and ;I. Panduranga Rao, Advs.**

**Disposition : Revision allowed**

**Judgement :**

**ORDER**

**Basi Reddy, J.**

1. This is yet another case coming from the district of Chittoor in which persons who ought to be prosecuted for perjury, cannot be prosecuted because of the failure on the part of the Court concerned to follow the procedure prescribed by Section 479-A. Criminal Procedure Code.

2. In this case the witnesses had intentionally given conflicting statements on oath, and were liable to be prosecuted for perjury. But the Magistrate, who had held the preliminary enquiry and discharged the accused involved therein, did not record a finding at the time of delivering the final order disposing of the committal proceedings, to the effect that the said witnesses had intentionally given false evidence in a stage of the judicial proceeding, and that it was expedient in the interest of justice to prosecute them for perjury.

Such a finding should have been recorded at the time of the delivery of the judgment or final order under the express provisions of Sub-section (1) of Section 479-A, Criminal Procedure Code, and after recording such a finding and giving the witnesses an opportunity of being heard, the Magistrate should have made a complaint in writing setting forth the evidence which in his opinion was false and then forwarded the complaint to a Magistrate of the first class having jurisdiction. It is regrettable that the provisions of this section are honoured more in the breach than in the observance and perjurers go unpunished. The object of the Legislature in enacting the new Section 479-A is to eradicate the evils of perjury. The Courts below should take note of this and try to observe the provisions of the section faithfully.

3. Besides in this case the finding was recorded, not by the Magistrate who had conducted the preliminary enquiry, as should have been done, but by another Magistrate some considerable time after the close of the preliminary enquiry. This procedure also is not one warranted by Section 479-A, Criminal Procedure Code.

4. Another argument advanced by the learned Advocate for the petitioners is that the complaints in this case were not filed on the date on which the order of discharge was passed by the committing Magistrate but some time later, and therefore the complaints were made without jurisdiction. For this position, he relies on a judgment of mine in Abdul Jabbar, in re (1958) 1 Andh WR 221; (AIR 1958

Andh. Pra 469). In that case, the complaints were filed nine months after the termination of the committal proceedings in which the witnesses had given false evidence, and the finding as required by Section 479-A (I), Criminal Procedure Code, was recorded in the complaints themselves.

Therefore that decision is no authority for the proposition that in every case the complaint itself should be filed on the date of the delivery of the judgment or order disposing of the proceeding in which the witness had given false evidence. All that the section requires is that the finding should be recorded at the time of the delivery of the judgment or final order and the complaint itself may be filed subsequently after giving the witness an opportunity of being heard.

5. Section 479-A, Criminal Procedure Code, contemplates three steps: (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 proceeding 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. The section enjoins that the first step should be taken at the time of the delivery of the judgment or final order. It does not further require that the formal complaint itself should be filed on that date.

6. Furthermore, the learned Sessions Judge was in error in holding that notwithstanding the provisions of Sub-section (6) of Section 479-A, Criminal Procedure Code, resort could be had to Section 476, with regard to the prosecution of a person for giving false evidence. The sub-section itself makes the position clear.

7. I have, therefore, no option but to allow these revision petitions and direct the complaints laid against the petitioners to be withdrawn.