

State Vs. Gulab Singh and ors.

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Court : Allahabad

Decided On : Oct-20-1964

Reported in : AIR1965All300; 1965CriLJ58

Judge : D.P. Uniyal and ;C.B. Capoor, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 476 to 479, 479A, 479A(1) and 479A(6); Indian Penal Code (IPC) - Sections 193

Appeal No. : Criminal Misc. Case No. 967 of 1964

Appellant : State

Respondent : Gulab Singh and ors.

Advocate for Def. : P.C. Chaturvedi, C.S. Saran, A.N. Singh, C.S.P. Singh and K.N. Tripathi

Advocate for Pet/Ap. : Govt. Adv.

Judgement :

Uniyal, J.

1. One sheo Shanker Singh, along with nine others, was charged with offences under Sections 147 and 148, and Sections 302 and 307 read with Section 149, I. P. C. in S. T. No. 23 of 1961 in the court of the Sessions Judge, Mirzapur in

respect of an occurrence dated 20-11-1960 resulting in the death of Tarak Nath, Pande and injuries to two others. The accused pleaded a right of private defence of property and adduced oral and documentary evidence in support of their case. One of the documents filed in evidence by them was a complaint Ex. Kha-73 alleged to have been Instituted by Sheo Bhanker on 18-11-1960 in the court of the Judicial Magistrate, Chunar, District Mirzapur to the effect that P. W. Kishore, accompanied by Tarak Nath Pandey and several other men, had unlawfully and forcibly cut and removed paddy crop from plot No. 733 of village Semara Barch belonging to the accused.

2. The learned Sessions Judge found that the paddy crop standing on plot No. 733 aforesaid had been raised by the accused and that the said plot had been in their possession since long. He held that they were entitled to protect their possession and, therefore, acquitted them. At the same time he was of the opinion that

'the complaint Ex. Kha-73 was not Instituted on 18-11-1960 but that it was instituted on a later date and falsely shown as having been instituted on that date as a result of a conspiracy between the Criminal Ahalmad, the Reader and paiokar of Sheo Bhankar accused,'

and that the statement of D. W. 5 Sri Gulab Singh Vakil that he had instituted the said complaint on 18-11-1960 was false.

3. The State filed an appeal in this Court against the aforesaid order of acquittal. While endorsing the finding of the trial Judge on the question of possession, this Court came to the conclusion that two of the accused had inflicted injuries on the victims after a reasonable apprehension of danger to property had ceased. As regards the complaint Ext. Kha-73, the Court was of the opinion that the same was not filed on 18-11-1930 and the defence evidence on this part of the case was false, and that the conduct of D. W. 5 Sri Gulab Singh Vakil and the officials of the court of the Judicial Magistrate, Chunar was reprehensible. In disposing of the appeal the court made an order directing issue of notice to the opposite parties, who had been examined as witnesses at the trial, to show cause why a complaint should not be filed against them under Section 193 I. P. C. for Intentionally filing false evidence in S. T. No. 23 of 1961, State v. Sheo Shankar Singh and Ors.

4. Pursuant to the notice aforesaid the opposite parties showed cause and objected to the legality of the order for their prosecution. The learned counsel for the opposite parties made two submissions; first, that the order of the Court for the prosecution of the opposite parties was one made under Section 479-A of the Code of Criminal Procedure (hereinafter referred to as the Code) and that where the Court exercises Jurisdiction to proceed under that section it has to form an opinion that the witnesses had Intentionally given false evidence or intentionally fabricated false evidence, and further that it was expedient in the interests of justice to make a complaint for their prosecution under Section 193 I. P. C. It was said that in the absence of a clear and explicit finding by the Court in terms of Section 479-A(1), It had no jurisdiction to take action for the prosecution of the opposite parties under Section 193 I. P. C. Secondly, that if the case fell within the provisions of Sub-section (1) of Section 479-A the Court had no power to take action under the provisions of Section 476 of the Code. In other words, it was contended that the two sections, namely. Section 476 and Section 479-A were mutually exclusive and that if one was applicable to the facts of a particular case the other Was clearly excluded.

5. In the course of its judgment this Court was of the opinion that it was a fit case in which a complaint should be filed against the opposite parties for having intentionally given false evidence and intentionally fabricated false evidence in the course of the sessions trial. By Issuing notice the Court purported to act under Section 479-A of the Code because what was contemplated was a complaint against the opposite parties under Section 193 I. P. C. and not an inquiry in respect of an offence under Section 193 I. P. C. which appeared to have been committed by the opposite parties. The question, therefore, arises whether the action taken by this Court for the prosecution of the opposite parties was in accordance with the provisions of Section 479-A of the Code.

6. Chapter XXXV of the Code relates to proceedings in certain categories of offences affecting the administration of justice. Section 470-A was Incorporated in the Code by the Code of Criminal Procedure (Amendment) Act of 1955. Section 479-A (1) runs as follows :-

'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 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 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. '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.'

Section 479-A(6) reads thus:-

'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.'

7. The combined effect of the non-obstante clause of Sub-section (1) of Section 479-A and the provisions of Sub-section (6) of that section is that where a case falls within the provisions of Section 479-A of the Code resort cannot be had to the provisions of Section 476 of the Code. Sub-section (6) of Section 479-A creates a bar against action being taken under Sections 476 to 479 of the Code for the prosecution of a witness for giving or fabricating false evidence if in respect of such a person proceedings might be taken under Section 479-A(1) of the Code. The word 'may' in Sub-section (6) of Section 479-A has the meaning of 'can' and provides that if a witness has made a false statement in the course of a judicial

proceeding and the court finds it expedient to prosecute him for that offence recourse cannot be had to the provisions of Sections 476 to 479 of the Code; and the witness, or witnesses, sought to be prosecuted must be proceeded against in accordance with the provisions of Section 479-A(1) of the Code.

8. Section 476 of the Code is general in terms and provides that if any civil, revenue or criminal court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Sub-section (1) of Section 195, Clauses (b) and (c), which appears to have been committed in or in relation to a proceeding in that court, such court may after such preliminary inquiry as it thinks necessary record a finding to that effect and make a complaint thereof..... etc. It will thus appear that under Section 476 a court has jurisdiction to make an Inquiry into any offence in or in relation to a proceeding in that court by a party, witness or a stranger. The section is worded in very wide terms and covers not only offences under Sections 193 to 195 but also offences falling under Sections 463, 471, 475 and 476 I, P. C. There is a clear distinction between Section 476(1) and Section 479-A (1). In the one case, that is under Section 476 (1), the court concerned may make an inquiry into offences referred to in Clauses (b) and (c) of sub-section (1) of Section 195 which appear to have been committed in that Court, and in the other, that is under Section 479-A(1), the court concerned has Jurisdiction to make a complaint against a witness or witnesses appearing before It in respect of an offence of intentionally giving false evidence or intentionally fabricating false evidence.

The powers under Section 479-A (1) are drastic in that the court has jurisdiction to make a complaint against a witness if it is satisfied (1) that the witness has intentionally given false evidence or fabricated false evidence in the course of a judicial proceeding before it, and (2) 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. it will be seen that an appeal is provided against an order passed under Section 476(1) of the Code, whereas an order made under Section 479-A is not open to appeal. Further, whereas under Section 476(1) the court has only Jurisdiction to order an inquiry into the nature of the offence committed by a

person in or in relation to a proceeding in that court and cannot straightaway institute a complaint against him, the court acting under Section 479-A(1) has jurisdiction to file a complaint against a witness who appears to have intentionally given false evidence or intentionally fabricated false evidence in the course of a judicial proceeding, without any preliminary Inquiry in that behalf.

9. A comparative analysis of the respective provisions of Section 479-A(1) and Section 476 of the Code leaves no room for doubt that the Legislature by incorporating Section 479-A by the Amendment Act of 1955, Intended to arm the court with power to punish witnesses Intentionally giving false evidence or fabricating false evidence in the course of a judicial proceeding if the conditions prescribed by Section 479-A (1) of the Code are fulfilled. it is obvious that before a court can take action under the provisions of Section 479-A(1) of the Code it must record a finding that the witness or witnesses had Intentionally given false evidence or intentionally fabricated false evidence in the course of a judicial proceeding in that court, and further that for the eradication of the evils of perjury and forgery and in the interests of justice it was necessary to prosecute the witness or witnesses under Section 193 I. P. C.

10. The contention of the learned counsel that the court had not complied with the provisions of Section 479-A (1) of the Code while making the impugned order for the prosecution of the opposite parties is not without force. Although this Court did hold that the opposite parties had given false evidence and fabricated false evidence in the course of the sessions trial State v. Sheo Shanker, it did not record a clear and categorical finding that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice it was expedient that such witnesses should be prosecuted under Section 193 I. p. c.

11. The jurisdiction of the Court to proceed under Section 479-A(1) of the Code derives from the fact that the Court is of opinion that the prosecution of a witness or witnesses is expedient for the eradication of the evils of perjury and fabrication of false evidence, as well as in the interests of Justice. Where no such finding is recorded by the Court as required by Section 479-A(1), the order for prosecution under Section 193 I. P. C. would not be in accordance with Section 479-A of the

Code and, therefore, invalid.

12. The learned Government Advocate urged that the non-compliance of the provisions of Section 479-A(1) of the Code was a mere Irregularity and was cured by Section 537 of the Code. It was also contended that even if it was found that the provisions of Section 497-A of the Code had not been complied with, it was open to the court to proceed under Section 476 of the Code and order an inquiry into the offence of perjury and fabricating false evidence committed by the opposite parties. In our opinion both these contentions are devoid of substance. If the order made by this Court fell under Section 479-A(1) of the Code there is no escape from the position that the order must comply with the mandatory provisions of that section. It is equally clear that in view of Sub-section (6) of Section 479-A the Court would have no jurisdiction to fall back on the provisions of Section 47C to validate an act which was not in accordance with the provisions of law, namely, Section 479-A.

13. In *Dr. B.K. Pal Chaudhry v. State of Assam*, AIR 1960 SC 133 it was held that the terms of both Sub-sections (1) and (5) of Sec, 479-A have to be complied with and the court intending to make a complaint must record a finding that in its opinion a person giving evidence has intentionally given false evidence or fabricated a false document and for the eradication of the evils of perjury and in the interests of justice it is expedient that such witness should be prosecuted for that offence.

14. The above view was affirmed by the Supreme Court in *Shabir Husain v. State of Maharashtra*. AIR 1963 SC 816. In that case the Chief Presidency Magistrate, Bombay purported to make a complaint under Section 479-A of the Code but did not make the order in terms of that section. On an objection being raised by the persons affected the Magistrate discharged the notice. The State preferred an application in revision before the High Court which set aside the order of discharge and remanded the case for trial, observing that it was still open to the Chief Presidency Magistrate to take action under Sections 476 to 479 of the Code. The matter was brought up in appeal to the Supreme Court. After considering the relevant provisions of the Code the Supreme Court observed as follows :

'Sub-section (6) of Section 479-A 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 Section 497-A. Thus bearing in mind the non-obstante clause at the commencement of Section 479-A and the provisions of Sub-section (6), it would follow that only the provisions of Sub-section (1) of Section 479-A must be resorted to by the Court for the purpose of making a complaint against a person for intentionally giving false evidence or for intentionally fabricating false evidence at any stage of the proceeding before it.'

15. In the case cited above it was contended by the counsel appearing for the Bombay State that the procedure to be followed in Section 479-A was only an alternative procedure and that it was open to the Court to take action under Section 476 of the Code even where the requirements of Section 479-A had not been complied with, and reliance for that proposition was placed on the case of *Durga Prasad Khosla v. State of U. P.*, AIR 1959 All 744. The Supreme Court, however, came to the conclusion that the view taken in the case of *Durga Prasad Khosla*, AIR 1959 All 744 (*supra*) and of *State of Bombay v. Premdas Sukritdas*, AIR 1960 Bom 483 was not correct and that the provisions of Sections 476 to 479 of the Code are totally excluded where the evidence is of the kind specified in Section 479-A(1).

16. In yet another case, *Babu Lal v. State of Uttar Pradesh*, 1964 All LJ 620 : (AIR 1964 SC 725) the Supreme Court affirmed the view expressed by it in the case of *Shabir Hussain*, AIR 1963 SC 816 (*supra*).

17. It is a well recognised rule of interpretation that where in the same statute there is a general provision covering the whole subject-matter and a special provision in respect of a particular subject, the specific provision will override the general one. Section 479-A is a special provision incorporated in Chapter XXXV of the Code and deals exclusively with the prosecution of a witness who appears to have committed the offence of intentionally giving false evidence or intentionally fabricating false evidence in any stage of a judicial proceeding. Consequently, the provisions of Section 479-A will override the provisions of Section 476, even

though the latter section covers a wide field and Includes prosecution in respect of offences under Sections 193 to 195. In Craies on Statutes (5th Edition) at page 205 it is stated as follows:

'Acts of Parliament sometimes contain general enactments relating to the whole subject-matter of the statute, and also specific and particular enactments relating to certain subject-matter; and if the general and specific enactments prove to be in any way repugnant to one another the question will arise, which is to control the other?'

'In *Pretty v. Solly*, (1859) 26 Bom 606 at p. 610 Romilly M. R., stated as follows : The rule is that whenever there is a particular enactment and a general enactment in the same statute and the latter taken in its most comprehensive sense would over-ride the former, the particular enactment must be operative and the general enactment must be taken to affect only other parts of the statute to which it may properly apply.'

18-19. In this view of the law the general provisions of Section 476 would stand superseded by the special provisions of Section 479-A in so far as they relate to the subject-matter of prosecution of a witness in respect of an offence falling under Section 193 I. P. C. We, therefore, uphold the contention of the learned counsel appearing for the opposite parties.

20. 'We cannot, however, leave this case without expressing our disapproval of the improper conduct of Sri Gulab Singh Vakil, opposite party No. 1, in giving false evidence as a defence witness in Sessions Trial No. 23 of 1961. His conduct was unworthy of the highest traditions of the legal profession of which he is a member. So far as the other two opposite parties, namely, Sarvasri Vishnu Prasad Srivastava and Aditya Prasad Pandey, are concerned, the former, was Land Records Clerk in the Collectorate at Mirzapur and the latter Reader to the court of the Judicial Magistrate, Mirzapur on the relevant date. Their conduct in tampering with the records of the court and the judicial files was a most reprehensible act against the administration of justice. We hope and trust that the District Magistrate and Collector of Mirzapur would take suitable departmental action against these two officials in order that the course of justice may run even and corruption in the

subordinate courts may be eradicated.

21. Before parting with this order we would also like to observe that the courts are reluctant in having recourse to the provisions of Section 479-A of Cr. P. U. and the reason for this is not far to seek. A finding as to whether a witness has intentionally given false evidence and that in the interest of justice and for eradication of the evils of perjury and fabrication of false evidence it is expedient that a complaint be filed against him can properly and fairly be arrived at only after the conclusion of arguments in the case. The witness is generally not present at the time of the hearing of arguments and a court would naturally like to give a hearing to the witness before making an order for the filing of a complaint against him particularly as no appeal has been provided against such an order. Indeed under Sub-section (5) it is incumbent upon the appellate court to afford to the witness proposed to be proceeded against an opportunity of being heard. The giving of an opportunity would entail the postponement of the delivery of judgment.

More often than not there is disinclination on the part of the court to defer the delivery of judgment with the result that an order for the filing of a complaint is not made in the judgment. In view of Sub-section (6) of Section 479-A of Cr. P. C. recourse cannot be had to the provisions of Section 478 thereafter. The object of the legislature that the evil of perjury and fabrication of false evidence should be eradicated would be better achieved if it could be open to the courts to have recourse to Section 476 of Cr. P. C. in cases in which action is not taken under Section 479-A of that Code. In this connection reference may usefully be made to clause 92 of the Code of Criminal Procedure Amendment Bill 1954 and the notes on that clause published in the Gazette of India Extra-ordinary dated April 27, 1954. That clause and the cote thereon run as below.

92. Insertion of new Sections 485-A, 485-B and 485-C in Act V of 1898.

After Section 485 of the principal Act, the following sections shall be Inserted, namely :-

'485-A. Summary procedure for punishment for false evidence.

When any Civil or Criminal Court is of opinion that any witness has, in any stage of the judicial proceeding of that Court, intentionally given false evidence in relation to any matter which affects the credibility or veracity of the witness and the Court is satisfied that it is expedient in the interests of justice that such person should be tried summarily, such Court may, without making a complaint under Section 476, take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to simple imprisonment for any term not exceeding one month, or to fine not exceeding two hundred rupees, or both.

485-B. Summary procedure for punishment for non-attendance by a witness in obedience to summons--

If any witness being summoned to appear before a Criminal Court is legally bound to appear at a certain place and time in obedience to the summons and without just excuse neglects or refuses to attend at that place or time or departs from the place where he has to attend before the time at which it is lawful for him to depart, and the Court before which the witness is to appear is satisfied that it is expedient in the Interests of justice that such witness should be tried summarily, the court may take cognizance of the offence and after giving the offender an opportunity of showing cause why he should not be punished under this section, sentence him to simple imprisonment for any term not exceeding fifteen days, or to fine not exceeding fifty rupees, or both.

485-C. Record in cases under Sections 485 and 485-C--

In every case under Section 485-A or Section 485-B, the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials in which an appeal lies.'

Note on the clause:

'This clause provides for a summary procedure for punishment for giving false evidence and also for non-attendance by a witness in obedience to summons.'

22. It would thus appear that initially it was not the Intention of the Legislature to exclude the application of Sections 476 to 478 of Cr. P. C. if the Court falls to take action under the amended law. The object of the Legislature underlying Section 479-A of Cr. P. C. namely that the evil of perjury and fabrication of evidence be eradicated would be better achieved if it were open to the courts to have recourse to Section 476 of Cr. P. C. in cases in which they failed to take action under Section 479-A. it is suggested that it would be more apt if the words 'may be' as used in Sub-section (6) of Section 479-A after the word 'proceedings' and prior to the word 'taken' are substituted by the word 'is'.

23. For the reasons given above, we discharge the notice Issued to the opposite parties.

24. A copy of this order will be sent to the District Magistrate and Collector Mirzapur for necessary action.

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