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Court : Allahabad

Decided On : Aug-19-1960

Reported in : AIR1961All397; 1961CriLJ169

Judge : A.N. Mulla, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 476 to 479, 479A and 479A(6)

Appeal No. : Criminal Revn. No. 61 of 1960

Appellant : Badullah

Respondent : State

Advocate for Def. : Adl. Govt. Adv.

Advocate for Pet/Ap. : Kalbe Mustafa and ;Abdulla Mohd. Ali, Advs.

Judgement :

A.N. Mullah, J.

1. One Majid was shot at on the night between the 1st and the 2nd of March, 1959 at his house in village Maramau Khurd, police station Pisa-wan, district Sitapur. The report was lodged by Majid himself and he named one Tasadduq as his assailant. Subsequently Majid died. Sri Imtiaz Ali, station officer Pisawan,

investigated this case. In the course of investigation it is alleged that he took a search of the house of Tasadduq on the 2nd of March, 1959 in the presence of Tasadduq and his father Budha Khan and some search witnesses including Badullah, Imami Khan and Niaz Ahmed and recovered unlicensed fire-arms from the possession of both.

After completing the investigation he prosecuted both Tasadduq and Budha Khan. Budha Khan was prosecuted under Section 19(f) of the Arms Act, while two cases were launched against Tasadduq, one under Section 302 I. P. Code and the other under Section 19(f) of the Arms Act. The case of Budha Khan was heard by Shrimati Usha Kansal, Sub-Divisional Magistrate, Misrikh, Sitapur, and it was decided by her on the 12th of August, 1959. Budha Khan was acquitted as the trial court found that the entire evidence of: recovery was suspiciousand the allegations made by the prosecution that the fire-arms were recovered from the possession of Budha Khan from a safe place was unbelievable.

The Magistrate inspected the house of Budha Khan before pronouncing her decision and found that the condition of the house as deposed to by the prosecution witnesses was completely at variance with what she observed. The witnesses had stated that the Kothris had a pucca roof while she found that there was only a thatch over the Kothris. She also found that mast of those Kothris had no doors and were insecure, while the prosecution witnesses had deposed that they had doors and they could be chained from inside, as well as outside.

2. The cases against Tasadduq were committed to the Court of Session. The prosecution witnesses who were examined in the Arms Act case against Tasadduq gave a similar statement to the one which they had given in Budha Khan's case. Only two witnesses were examined at that stage and they were Imtiaz Ali, applicant in Criminal Revision No. 64 of 1960, and Niaz Ahmed, applicant in Criminal Revision No. 62 of 1960. It seems that such statements were not given by them in the committal proceedings in connection with the murder case against Tasadduq.

3. Both the Sessions cases against Tasadduq came up far hearing before the Sessions Judge, Sitapur. The Sessions Judge acquitted Tasadduq in both these

cases and at the time of pronouncing his judgment in the murder case he made the following observations :

'In this case the investigating officer Sri Imtiaz Ali (P.W. 26) and the four witnesses of the search of the house of Tasadduq and Budha have deliberately made false statements as has been shown above. The manufacturing of such evidence against the accused by the investigating officers is on the increase and though it has been pointed out in quite a large number of cases that this should not be done, the investigating officers are paying no heed to it. It is, therefore, expedient for eradica-tion of evils of perjury and fabrication of false evidence and in the interest of justice that the investigating officer and the witnesses namely Niaz Ahmed, Sadullah and Imami should be prosecuted for making false statements at different stages in these judicial proceedings'.

4. The trial court then mentioned the specific conflicting statements made by these four witnesses and then under Section 479-A Cr. P. Code it filed complaints against all these four witnesses under Sections 193, 194 and 195 I. P. Code. When filing these complaints the trial court mentioned these irreconcilable statements and observed that in any case either their statements before him were false or their statements in the courts of the two Magistrates were false.

5. Under the new Section 479-A Cr. P. Code, there is no right of appeal against an order directing prosecution and no inquiry is made before filing the complaint. The applicants, therefore, appeared before the Magistrate who took cognizance of these complaints and contended that the complaints cannot be proceeded with. The Magistrate rejected their contention and so they have come up in revision before this Court. AS the decision of all the four revisions rests on the same questions, I propose to dispose them of by the same order.

6. The main contention advanced by the counsel for these applicants was that the requirements of Section 479-A are not fulfilled in these complaints and, therefore, they should be quashed. My attention was drawn to the words of Section 479-A and us this contention merits serious attention, I would like to cite Section 479-A Cr. P. Code. It 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.

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

(4) Where, in any case, a complaint has been made under Sub-section (1) and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided; and the appellate court, after giving the person against whom the complaint has been made an

opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of the case is pending.

(5) In any case, where an appeal has been, preferred from any decision of a 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.".

7. I need not dilate upon the purpose of enacting this new procedure, for this point, if I may say so with respect, has been exhaustively dealt with in a Bench decision of this court in Durga Prasad Khosla v. State of Uttar Pradesh, 1959 Cri. LJ 1374: (AIR 1949 All 744). As I am in entire agreement with the view expressed by the learned Judges in this case, except on a very minor point which is not relevant to this case, it is not necessary to cover the, same ground again or to cite the opposite view or the case law which has been, adequately discussed.

The minor point on which I respectfully disagree relates to the meaning of witness as used in section 479-A. The learned Judges were of the opinion that 'witness' does not include 'Parties', but I have my doubts against this interpretation. In my opinion 'witness' includes any person who has given a statement on oath and when a party does so he becomes a witness for on the record he is classed as a witness and numbered as a witness. I am supported in this view by a decision of the Mysore High Court in Narajappa v. Chikkaramiah, AIR 1959 Mys 117.

8. Coming back to the point under discus-sion I would only like to add that the provisions of Section 476 Cr. P. Code and Section 479-A of the same Code are not co-extensive and the introduction of Section 479-A was made with the

intention of arming the Courts with another weapon which could deal with the growing evil in a more effective manner. The Legislature had to pass new enactments in relation to other crimes also and these new procedures enacted by the Legislature are meant to supplement the existing law and not to supplant it.

As an instance I may cite the enactment of the Prevention of Corruption Act. Even under the old law the offences which have been defined as criminal misconduct under the Prevention of Corruption Act were offences and a procedure existed for punishing those who committed those offences. But as a grave view had to be taken about these offences, another procedure was also placed in the hands of the prosecuting agency and the courts so that the trial of such cases should be expedited and suitable punishment should be awarded.

It did not repeal the existing law. The object of this new Section was to eradicate the evils of perjury and it was felt that the existing law was insufficient to cope with the situation. At thesame time it was realized that two alternative procedures would be undesirable and so it was clearly expressed in Sub-section (6) of Section 479-A that no proceedings shall be taken under the old law if proceedings may be taken against him under this new Section.

If I may use a metaphor the introduction of this new Section was only like pasting a smaller circle over a bigger circle. That amount of surface of the bigger sphere which was covered by the smaller sphere was eclipsed, but the bigger circle remained and it was not extinguished. The eclipse was a partial eclipse and not a total eclipse. In those cases where proceedings could not be started under Section 479-A, the right of the Courts to proceed under Sections 476 to 479 remained and it was not taken away.

The test in every case was to be whether proceedings could have been taken under Section 479-A and it was only in those cases where this question was to be answered in the affirmative that the old law became inoperative. In all other cases it could be used just as it was being used before the enactment of Section 479-A. The right conferred on the courts under Sections 476 and 476-A is restricted only to the extent mentioned in Sub-clause (6) of Section 479-A and no further.

9. There are, however, certain conditions which must be fulfilled first before Section 479-A can be used. In a way the range of Section 479-A is a little restricted as compared to the range of Sections 476 and 476-A. The words of Section 476 cover offences which have been 'committed in, or in relation to, a proceeding in that Court', while the words of Section 479-A confine the application of that provision when false evidence is given at any stage of the judicial proceeding before the Court. This change in terminology is not without significance.

The Legislature made it clear that prosecutions under Section 479-A are to be confined to false statements given on oath at any stage in the judicial proceedings before the Court and not to any other false statements On oath, even though the offence was committed in relation to a proceeding before the Court. Therefore, where prosecution is sanctioned under Section 479-A, the false statement must be made before the Court who sanctions the prosecution or at any earlier stage of the same judicial proceeding.

10. The learned Sessions Judge when he ordered the prosecution in this case came to the conclusion that the witnesses had given irreconcilable statements and one of them, therefore, must be false. While this approach is justifiable in those cases where both the statements have been made in the same judicial proceeding, where one of the statements is made in one judicial proceeding and the conflicting statements are made in other judicial proceedings, then it is not possible to hold that a complaint for perjury can be filed on the basis of such contradictory statements under the provisions of Section 479-A.

In this case the learned Sessions Judge found that the statements made before him by the four witnesses were in conflict not with the statements made by these witnesses in the same judicial proceeding but in two other judicial proceedings. The error which the Sessions Judge committed was that he held the case of Budha Khan and the two cases against Tasadduq under the Arms Act and the Indian Penal Code as parts of the same judicial proceeding.

In my opinion these are three separate judicial proceedings numbered separately and covered by three separate trials and not one judicial proceeding. If these

witnesses had made a conflicting statement before the committing Magistrate in the murder case, they could have been prosecuted, for then these statements would have been made at an earlier stage in the same judicial proceeding. But the statements made in the two Arms Act cases cannot be treated as having been made in the same judicial proceeding.

11. In such cases it was possible for the Sessions Judge to prosecute the witnesses if he had sufficient material to come to a definite conclusion that the statements made before him were false, but where the Sessions Judge was inclined to the opinion that the statements made before him were true and the earlier contradictory statements were false, the witnesses could have been prosecuted in Budha Khan's case and in the Section 19(r) Arms Act case against Tasadduq but not in the murder case against Tasadduq. The Sessions Judge perhaps launched the prosecution depending upon illustration (b) to Section 236 Cr. P. Code. The illustration runs as follows:

'A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false'.

The illustration cited above strengthens me in my view that the contradictory statements should be at different stages in the same judicial proceedings and not in two different judicial proceedings. Where prosecution is to be launched on the basis of statements made in two different judicial proceedings I am of the opinion that such a case is not covered by Section 479-A,

In the present case the trial court has taken a statement given by the witnesses before him and another statement given by them either in Budha Khan's case or in the Arms Act case against Tasadduq. It is, therefore, not clear that any false statement was made by any of these witnesses at any stage of the judicial proceeding in which the Sessions Judge filed complaints against them, I think such a course is not permissible under Section 479-A Cr. P. Code.

12. That the Sessions Judge was of the opinion that no false statements were made by the witnesses before him can be gathered by the following extract:

'It was definitely stated by these witnesses including Sri Imtiaz Ali (P.W. 26) before her (Shrimati Usha Kansal, S.D.M., Misrikh, in Budha Khan's case) that all those Kothris were Pati hui and none of them had a Chhapper roof and that even the Kothri A (that kothri from which 7 cartridges were recovered from a box the keyof which was supplied by Budha) had door leaves which were chained from outside and had to be unchained when it had been searched. They had definitely stated before her that to suggest otherwise was false.

The witnesses were examined in my court after her inspection and, therefore, had to state what was in fact the truth. All of them stated in my court that they had made false statements in their earlier Repositions due to some mistake. The explanation that they had made false statements due to some mistake cannot possibly be accepted'. He was, therefore, inclined to the view that the witnesses made a truthful statement before him because they were caught, but they had made false statements, in Budha Khan's case. Two of the applicants namely Badullah and Imami Khan made only one statement in this judicial proceeding for they were not examined before the committing Magistrate in the murder case and the other two Sri Imtiaz Ali and Niaz Ahmad apparently did not make a contradictory statement there for in the complaint filed by the Sessions Judge' no reference to such a contradictory statement is made although the contradictory statements made by them in the other two judicial proceedings are mentioned. If any proceedings can be started against the witnesses they certainly cannot be started under Section 479-A Cr. P. Code.

13. For reasons given above, I cannot but allow these applications of revision. I, however, entirely agree with the Sessions Judge that this was a fit case in which Sri Imtiaz Ali at any rate should have been prosecuted for giving false statements on oath in order to falsely implicate Tasadduq and Budha Khan. This could have been achieved if the Sessions Judge instead of launching the prosecution on the basis of these contradictory statements had picked out the false statements made on oath by Sri Imtiaz Ali (and from the judgment of the Sessions Judge I find that

such statements can be picked out) and based his complaint on the said statements. The present prosecution, however, cannot be upheld.

So far as the other three witnesses are concerned, namely Niaz Ahmad, Badullah and Imami, they were clearly the victims of Sri Imtiaz Ali when they made those false statements. Where a police officer misbehaves arid uses his pressure to make witnesses depose falsely, it is questionable, whether it is in the interests of justice to sanction the prosecution of such false witness. The main culprit Was Sri Imtiaz Ali and if a case had been properly made out against him I would not have interfered with the discretion exercised by the Sessions Judge, though the prosecution against Sri Imtiaz Ali cannot be launched, there is sufficient material on the record to prove his misconduct and the higher police authority should see to it that such misconduct does not go unpunished.

14. FOR reasons given above, I quash theproceedings instituted against the four applicants,Sri Imtiaz Ali, Badullah, Niaz Ahmad and ImamiKhan. Proceedings quashed.

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