

The State of Madhya Pradesh Vs. Kamta Prasad and anr.

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Court : Madhya Pradesh

Decided On : Oct-14-1963

Reported in : AIR1966MP203; 1966CriLJ762

Judge : N.M. Golvalker, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439, 479A and 479A(5)

Appeal No. : Misc. Criminal Case No. 294 of 1962

Appellant : The State of Madhya Pradesh

Respondent : Kamta Prasad and anr.

Advocate for Def. : R.N. Rai, Adv. for Non-Applicant No. 2

Advocate for Pet/Ap. : Rama Gupta, Deputy Govt. Adv.

Judgement :

Golvalker, J.

1. By a revision petition accused one Beharilal had challenged the correctness of his conviction under Rule 81 read with Section 112 of the Motor Vehicles Act, and by my order dated 21-12-1962 I had held that the conviction of the accused was unwarranted and unsustainable. Accordingly it was set aside and the accused was

acquitted. But while coming to the said conclusion I had expressly held that Kamta Prasad (P. W. 3) and Mahesh Prasad, Sub-Inspector of Police (P.W. 2) not only had given false evidence in Court but had also fabricated false evidence for purposes of prosecution of the accused, and that for the eradication of the evils of perjury and fabrication of false evidence, it was expedient that these two witnesses should be prosecuted. Accordingly a notice as retired by Section 479-A (5), Criminal Procedure Code (hereinafter referred to as 'the Code'), was issued calling upon them to show cause why they should not be prosecuted. Hence these proceedings.

2. Witness Mahesh Prasad appeared before me through his counsel Shri K. N. Roy but witness Kampta Prasad has not cared to put in any representation and has not also cared to appear personally.

3. It was contended on behalf of Mahesh Prasad that since this Court was exercising powers only that of a revisional Court, it had no jurisdiction to take any action under Section 479-A of the Code inasmuch as powers there under could only be exercised by an appellate Court. My attention was drawn to section 520 of the Code wherein a Court of revision is expressly referred to, and it was argued that if the Legislature intended that a Court of revision may also exercise powers under Section 479-A of the Code it would have expressly mentioned that Court also in addition to the appellate Court in Clauses (4) and (5), more particularly in Clause (5) of Section 479-A which applies to the instant proceedings. The case of Ram Abhilakh v. State, AIR 1961 All 544 was relied upon.

4. In my opinion, the aforesaid contention has no force. I have had an occasion to consider a similar contention and reject the same in the case of The State of M. P. v. Jamna Prasad, Misc Cri Case No. 7 of 1962, D/- 17-3-1962 (Madh Pra). I had in that case held that since under Section 439 of the Code High Court has all the powers of an appellate Court, it could even when exercising revisional powers, order under Sub-section (5) of Section 479-A of the Code prosecution of a witness.

5. Since then not only nothing has transpired to persuade me to take a different view but after giving further consideration to the question raised I find that the

aforesaid contention is liable to be rejected on yet another ground and it is this. It is apparent from Sub-section (3) of Section 479-A of the Code that no appeal is permitted against any finding recorded and complaint made under Sub-section (1) of the said section. This finding is obviously to this effect that a certain witness has intentionally either given false evidence at any stage of the judicial proceedings or fabricated false evidence for being used in that judicial proceedings, and that it is expedient in the interest of justice to prosecute that witness. It means that once the Court has recorded such a finding that finding is final and cannot be challenged in appeal against it. It is only when an appeal is preferred against the decision on merits of the judicial proceeding itself that the appellate Court may, as provided in Sub-section (4) of Section 479-A of the Code, make an order merely directing the withdrawal of the complaint made by the lower Court. This direction by the appellate Court for withdrawal of the complaint, in my opinion, is not by way of any appellate decision as such. It would always be in consequence of its own independent decision either as to the expediency of prosecution or as to whether a certain witness has or has not perjured. If it were intended to be an appellate decision, the provisions of Sub-section (3) of Section 479-A of the Code would never have been made.

6. Then, when the original Court has not recorded the requisite finding, which finding it has to record at the time of the delivery of the judgment or final order disposing of the principal judicial proceedings and not thereafter, the appellate Court has been empowered under Sub-section (5) to do so and direct prosecution of the witness. The appellate Court too has to record that finding at the time of the delivery of its judgment or final order and not thereafter (see *Dr. B. K. Pal Chaudhry v. State of Assam*, AIR 1960 SC 133).

7. Thus, it is apparent that both the Courts, the lower Court as also the appellate Court, exercise the aforesaid powers in their own independent jurisdiction. If this position is kept in view then it will be apparent that though the expression 'appellate Court' may, in terms of Sub-section (5), refer to the Court before which an appeal against the decision on merits of the judicial proceedings is filed, yet in so far as the exercise of the powers to direct prosecution of witnesses is concerned, it means simply the Court before whom the appeal is pending. This

decision, it will be further seen, has neither any bearing whatsoever on the appellate decision on the merits of the judicial proceedings nor is affected thereby.

8. If the scheme of the whole Criminal Procedure Code is examined it will also be seen that no Court of reference or Court of revision as such are constituted thereunder. The only Courts, besides the High Court and the Courts constituted under any law other than the Code, have been specified in Section 6 of the Code. It is only when the Court or any other Court exercises powers only under Chapter 32 of the Code that it is merely described as a Court of reference or Court of revision according as the nature of the powers exercised. It will, therefore, not be correct to say that the High Court exercising revisional powers was also functioning as a Court of revision in the matter of exercise of powers under Section 479-A of the Code.

9. The reference to certain courts as court of appeal, confirmation, reference or revision in Section 520 of the Code is merely indicative of the courts to which appeals, references, confirmations or revisions ordinarily lie-against the judgment and decision of the courts subordinate to them and do not refer to a Court to which an appeal etc., has in fact been preferred and is pending. This is exactly what has been decided and no more in the case from the Allahabad High Court, AIR 1961 All 544 (supra) relied upon by the learned counsel for the accused, Under the said section the courts-referred to therein are entitled to deal with the subject-matter covered by section 520 even though they are not then seized of any appeal etc. However, Sub-section (5) of Section 479-A of the Code indicates a particular stage in the proceedings itself in appeal etc., when and at no other stage, certain powers thereunder can be exercised. This is fully borne out by the express mandatory provision that the findings, contemplated under Sub-section (1) of Section 479-A of the Code, have to be given at the same time when the judgment or final order on the merits of the entire judicial proceedings is being passed and not thereafter. Both, the decision in appeal etc., on merits as also the finding, have to be recorded together.

10. Thus, considering the matter further over again I am still of the opinion that there is no bar to the exercising by this Court of the powers under Section 479-A

of the Code, even when examining as a Court of revision the correctness or propriety of the judgment or final order in the judicial proceedings.

11. It was lastly submitted that the evidence in the trial indicates that Mahesh Prasad, Sub-Inspector of Police (P. W. 2), had not acted on his own volition but appears to have had been prevailed upon to do so, and hence it is not necessary to prosecute him. All that has transpired since the decision of this Court has been a sufficient punishment and would adequately serve as a deterrent not only to him but also to others similarly inclined to behave. I am unable to accede to this submission for the simple reason that all these considerations are irrelevant at this stage and can be properly considered as affecting extent of punishment, if and when, to be awarded to him after trial.

12. The result, therefore, is that I direct that necessary complaint in the light of my observations in the order dated 21-11-1962 in Criminal Revision No. 293 of 1962 be filed for the prosecution of Mahesh Prasad (P.W. 2) and Kampta Prasad (P. W. 3) under Section 193, Indian Penal Code.