

**Binda Punnu Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/622324](http://sooperkanoon.com/622324)

**Court :** Punjab and Haryana

**Decided On :** Jul-20-1965

**Reported in :** AIR1966P& H467; 1966CriLJ1325

**Judge :** J.S. Bedi, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 479A(1) and 479A(5)

**Appeal No. :** Criminal Revn. No. 546 of 1965

**Appellant :** Binda Punnu

**Respondent :** The State

**Advocate for Def. :** G.S. Chawla for Adv. General

**Advocate for Pet/Ap. :** Surjit Kaur, Adv.

**Disposition :** Petition allowed

**Judgement :**

**J.S. Bedi, J.**

1. The facts giving rise to this revision are briefly as under: Kishan Lal was tried by a first class Magistrate, Shri G. S. Kalra, at Ferozepore, for an offence under Section 411 of the Penal Code It was alleged by the prosecution in that case that some ornaments were recovered from Kishan Lal on receipt of some information.

Binda, petitioner, was a witness to the disclosure statement made by Kishan Lal and also for the recovery of the ornaments. He was not examined by the prosecution as a witness against Kishan Lal. He, however, was examined by Kishan Lal as a defence witness on 5th June, 1964, wherein he stated that Kishan Lal had made no disclosure statement and no recovery of any incriminating article had been effected from his house. He also admitted certain facts in favour of Kishan Lal. Kishan Lal, however, was convicted. He filed an appeal in the Court of Session and the case was ordered to be retried. Binda again was examined in defence by Kishan Lal on 24th July, 1964, wherein he stuck to his previous statement. He was, on that occasion, confronted with some admissions which he had made in favour of the prosecution in his previous statement. He made some other admissions contradicting his previous statement as a result of which Shri G. S. Kalra on 24th July, 1964, lodged a complaint, Exhibit PC, against Binda, the allegation being that one of his statements mentioned above was false. Binda was convicted by Shri Harbhajan Singh, Judicial Magistrate, Ferozepore, under Section 193 of the Penal Code and was sentenced to rigorous imprisonment for two months and a fine of Rs. 50/-. In default of payment of fine, he was to undergo rigorous imprisonment for further two months. He took up an appeal in the Court of Session which was dismissed by Shri C. S. Tiwana, Additional Sessions Judge, vide his order dated 15th April, 1965. It is against this order that Binda has preferred this revision petition in this Court.

2. The learned counsel for Binda has drawn my attention to Section 479-A of the Criminal Procedure Code the relevant portion of which runs as under :-

'479-A. (1) 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 of his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate:

(2) to (6)

The words underlined (here into ') above are important for our purposes. The defence counsel submitted that the Magistrate gave no notice to the petitioner before lodging the complaint against him which was obligatory and, therefore, his conviction cannot sustain. In support of her contention she cited my judgment in *Sham Babu Gupta v. The State (Delhi Administration)*, 1965-67 Pun LR 411, wherein, in similar circumstances as in the case now before me, I came to the conclusion that before a complaint by a Court is lodged against an offender, the Court must give notice to him and hear him if he has anything to say against filing of the complaint and this provision is mandatory. Under Sub-sections (1) and (5) of this section, the person against whom a complaint is to be made is entitled to have a proper hearing before the complaint is made. An order in breach of the terms of the section cannot be allowed to stand. The statute, by providing that no order directing a complaint shall be lodged without giving the person affected thereby an opportunity of being heard, intended that after giving that hearing it would be open to the Court to decide not to make a complaint; otherwise, there would be no sense in directing that a hearing should be given. The Court may after giving that hearing, decide not to make a complaint either for the reason that the Court was satisfied that no false evidence was given by the witness concerned or that such evidence was not intentionally false, or lastly, that it was not expedient in the interests of justice or to eradicate the evils of perjury, to make the complaint. Any notion of avoiding prejudice would not justify a clear breach of the terms of the section. The word 'may', to my mind, gives an option to the Court for lodging or refraining to lodge a complaint against an offender; but to give notice to the

offender before lodging a complaint is mandatory. I am supported in my above view by a decision of their Lordships in *Dr. B K. Pal Chaudhry v. State of Assam*, AIR 1960 SC 133. This argument was raised by the defence counsel before the learned Additional Sessions Judge who, relying on *In re, Javvaji Uthanna*, AIR 1964 Andh Pra 308: 1964 Mad LT (Cr.) 202, held that before lodging the complaint it was not necessary for the Court to give notice to the offender. As already observed, this view is unsustainable.

3. For the reasons given above, I allow

this petition and set aside the conviction and sentence of the petitioner. Fine, if realised, shall be refunded to him.

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