

**Prem Narain Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/687889](http://sooperkanoon.com/687889)

**Court :** Delhi

**Decided On :** Mar-07-1975

**Reported in :** 1976CriLJ1918

**Judge :** R.N. Aggarwal, J.

**Appellant :** Prem Narain

**Respondent :** The State

**Judgement :**

ORDER

**R.N. Aggarwal, J.**

1. On the complaint of Prem Narain, the petitioner herein, one Om Parkash Malhotra was tried on the charges under Section 5 (2) read with Section 5 (1) (d) of the Prevention of Corruption Act and Section 161 of the Indian Penal Code, The case was tried by Sh. Muni Lal Jain, Special Judge, The Special Judge found Om Parkash Malhotra guilty of the offences charged with and sentenced him to various terms of imprisonment.

2. While disposing of the case the Special Judge was of the view that Prem Narain had made intentionally false statement and to eradicate the evil of perjury and in the interests of justice it is expedient that Prem Narain be prosecuted for the offence under Section 193 of the Indian Penal Code, and accordingly issued

notice to him to show-cause why a complaint under Section 193 of the Indian Penal Code be not filed against him. The Special Judge was not satisfied with the Explanation offered by Prem Narain and by an order dated 25th January 1973 ordered that a complaint under Section 193 of the Indian Penal Code be filed against Prem Narain.

3. Om Parkash Malhotra filed an appeal in the High Court against his conviction and sentence. The appeal was heard by V. D. Misra. J. His Lordship by his judgment dated 31st July 1972 affirmed the conviction, and sentence awarded to the appellant therein. Mr. Justice Misra in his judgment found that Prem Narain had told lies.

4. By this revision petition Prem Narain has challenged the validity of the order dated 25th January 1973.

5. Section 479-A in so far as it is relevant reads as follows:

(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 for his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate.

(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. Mr. Sethi on behalf of the petitioner urged that Mr. Justice Misra while deciding the appeal had not found that the witness had made intentionally false statement and by implication it should be taken that the prosecution of Prem Narain under Section 193 was not intended. He further submitted that in case it was intended that the witness should be prosecuted for the alleged offence it was obligatory on the Appellate Court to give notice to the witness as required by Section 479-A (4) and it having failed to do so the prosecution would not be valid. He further relying upon the provision of Sub-section (4) of Section 479-A contended that despite the language employed in Sub-section (4) it should be held that in cases where conclusion has been reached to prosecute under Sub-section (1) but no complaint was filed the provisions of Sub-section (4) will apply when an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter arose.

7. I find my inability to agree with the above contention of the learned Counsel.
8. Section 479-A has a limited operation and applies only to the prosecution of a witness appearing before the Court who has intentionally made 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. The section contemplates three steps:- (1) the recording of a finding in terms of Sub-section (1) at the time of delivery of judgment or final order disposing of the judicial proceeding in the course of which the witness had given false evidence, (2) the issue of notice to the witness and giving him opportunity of being heard and (3) the making of a complaint in writing signed by the presiding officer of the court.
9. The first step is complete when on a consideration of the material placed before the court, the court formed an opinion about the falsity of the evidence at the time of the disposal of the case. It is only when the court has formed such an opinion that it has to decide whether it deems it expedient and in the interests of justice to file a complaint against the witness concerned. But before taking the decision to file the complaint it is required to give the witness opportunity of being heard.
10. Where a complaint has been made under Sub-section (1) and an appeal has also been preferred from the decision of the main case, out of which the matter has arisen, Sub-section (4) of Section 479-A requires that the hearing of the complaint shall be adjourned until the appeal has been decided. In such cases the appellate court is empowered to withdraw the complaint after giving the person complained against an opportunity of being heard,
11. Under Sub-section (5) the appellate court hearing an appeal from the decision of the trial court in the original proceedings has the same powers as that of the trial court under Sub-section (1) and where no complaint has been made by the trial court, the appellate court can make such complaint. The appellate court has also to give notice to the witness concerned whether a complaint should be made or not.
12. A combined reading of the provisions discussed above brings out that to eradicate the evil of perjury the trial court as well as the appellate court have been

given powers under Sub-sections (1) and (5) to file a complaint against a witness who was found to have given false evidence provided the essential conditions laid down in Sub-section (1) are satisfied. Sub-section (3) expressly takes away the right of appeal against any finding recorded and complaint made under Sub-section (1). Sub-section (4) gives power to the appellate court to withdraw the complaint in the circumstances mentioned therein. Sub-section (4) is applicable only when a complaint has been made under Sub-section (1). If the complaint is made while the appeal is pending for decision immediately provisions of Sub-section (4) will come into operation and the Magistrate dealing with the complaint will have to stay the hearing of the complaint but if the appeal is decided before the complaint is made under Sub-section (1) the appellate court can do nothing in the matter.

13. A judicial finding recorded by the trial court in regard to the falsity of the statement of a witness is always open to review in appeal. It was, therefore, the necessity of making a provision in Sub-section (4) to that effect was not considered necessary.

14. If the appeal is decided earlier and the complaint is made later - the trial court while making the complaint is bound to take into account the findings recorded by the appellate court in regard to the statement of the witness against whom the complaint is intended to be made.

15. In the view I have taken of the provisions of Section 479-A, the contentions raised by Mr. Sethi must be rejected. Accordingly the revision petition fails and is dismissed.