

Bahadurmal Vs. the State

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Court : Rajasthan

Decided On : Nov-25-1964

Reported in : AIR1965Raj224; 1965CriLJ801

Judge : Kan Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 476, 479A, 202 and 476B; Limitation Act, 1908 - Schedule - Article 154

Appeal No. : Criminal Revn. Nos. 36 and 37 of 1964

Appellant : Bahadurmal

Respondent : The State

Disposition : Revisions allowed

Judgement :

1. The revision applications before me are of identical nature and by them the petitioner Bahadurmal seeks to challenge the judgment of the learned District Judge, Balotra, dated 19-12-63, by which the learned Judge declined to interfere with an order of the learned Civil Judge Balotra, whereby the learned Civil Judge ordered the filing of a complaint against the petitioner for offences under Sections 467, 463 and 193 of the Indian Penal Code. Both the revision applications can conveniently be disposed of together.

2. As the facts too are identical it will be sufficient to re-count them with reference to suit No. 447 of 1959 in the court of the Civil Judge, Balotra.

3. The petitioner Bahadurmali filed a suit on behalf of his minor sons Manilal and Parasimal as their next friend for recovering an amount of Rs. 1000 on the foot of a bond from the defendants Mst. Chuni and Ghewarchand. In that suit the important issue amongst others was about the execution of the bond by the defendants. Bahadurmali examined himself as a witness and he deposed that the suit document was scribed by him at the instance of the defendants, who thereafter appended their thumb marks and at their behest the attesting witnesses also signed the same. Witnesses Birdi Chand, Bam Dayal, Madanlal and Kistoor Chand were examined on behalf of the plaintiff. The defendants pleaded that the document had never been executed by them and the plaintiff had, on account of previous enmity, fabricated a false document for basing a wrong claim only to cause harm to them. It is not necessary to deal with the reasons that had weighed with the learned Judge in coming to his findings. It will be sufficient to refer to the finding only.

4. In the light of the evidence the learned judge held that it was not established that the defendants had received Rs. 1000 from the plaintiff or that they had executed the suit document Ex. 1. In view of his finding the learned Judge ordered that a notice be issued to the petitioner to show cause why he should not be prosecuted. I may reproduce the relevant portion of the judgment where the learned Judge has dealt with the question of issuing the notice. Translated by me the relevant portion runs as follows:

'As issues Nos. 1 and 2 have been decided against the plaintiff he is not entitled to get any relief against the defendants. The suit of the plaintiff is dismissed with costs. It was found during the inquiry that Bahadurmali has on account of his malice against the defendants forged the document Ex. 1, and in order to make a gain on the basis thereof, has filed this suit which act of his comes under section I. P. C. (The learned Judge has not quoted the relevant section in the judgment). Consequently let a notice go to 'the petitioner to show cause why a complaint be not lodged against him for his prosecution in the competent court.

The costs of the defendants Nos. 1 and 2 shall be payable by Bahadurmal the next friend of the plaintiffs.'

It appears that a notice had gone to the petitioner as per the direction of the learned Civil Judge contained in his judgment referred to above and after the petitioner had given his reply the learned Judge ordered on 31-5-63, that a complaint be lodged in the court of the Sub-Divisional Magistrate, Balotra against the petitioner. The learned Judge also observed in his order dated 31-5-63, that the petitioner had not filed any appeal against his judgment dismissing the plaintiffs suit. The learned Judge drew up the complaint and signed it on 19-7-63; it reached the office of the Sub Divisional Magistrate on 20-7-63, but the learned Sub Divisional Magistrate was not at the headquarters and, therefore, no action seems to have been taken thereon on that day. On 27-7-63 the learned Sub Divisional Magistrate took action on that complaint and eventually registered the case against the petitioner on 29-7-1963. The petitioner then filed an appeal against the order of the Civil Judge for the filing of the complaint, in the court of the District Judge, Balotra on 22-8-63. The learned District Judge, after hearing the matter, came to the conclusion that in the first place no appeal lay against the order of the learned Civil Judge, Balotra, who had passed the order under the provisions of Section 479A of the Code of Criminal Procedure which did not provide for any appeal and secondly the learned Judge held that even if the appeal could be taken to be competent under Section 476B of the Code of Criminal Procedure, then it having been filed after the period of limitation was barred.

5. The learned counsel for the petitioner has challenged both the conclusions reached by the learned District Judge. The first question, therefore, with which I am faced is whether it is a case which falls under Section 479A of the Code of Criminal Procedure, so that no appeal against the order of the learned Civil Judge would lie, or this is an order outside the ambit of Section 479A of the Code of Criminal Procedure and falls under Section 476 of the Code of Criminal Procedure, so that the order will be appealable under Section 476B Cr. P. C. The consideration of the other question will arise only if it is held that the order is an appealable one under Section 476B Cr. P. C.

6. Now the respective domains of sections 476 Cr. P. C. and 479A Cr. P. C., have recently been the subject matter of judicial interpretation. It is not necessary to refer to other decisions on the point as there is the decision of their Lordships of the Supreme Court in *Shabir Hussain v. State of Maharashtra*, AIR 1963 SC 816. It has been observed by their Lordships in that case that in cases where Section 479A Cr. P. C. applies Section 476 Cr. P. C. will be inapplicable. It was also pointed out that Section 479A deals with only such persons as appear as witnesses in a judicial proceeding and have committed either the offence of perjury by intentionally making a false statement, or have intentionally fabricated false evidence in the stage of judicial proceeding. One cannot do better than reproduce the observations of their Lordships:

'Bearing in mind the non-obstante clause at the commencement of Section 479A 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. Where the offence consists of intentionally giving false evidence 'in any stage of judicial proceeding' it is no doubt true that as under Section 476 it is the Court which disposes of such judicial proceeding which primarily has to act under Section 479-A. There is no real distinction between Section 476 and Section 479-A as to the Court which can take action. Under Section 476 the action may proceed suo motu or on application while under Section 179-A no application is contemplated. But Section 479-A does not make a distinction between flagrant offences and offences which are not flagrant or between serious offences and offences which are not serious. If the Court does not form an opinion that the witness has given intentionally false evidence or intentionally fabricated false evidence no question of making a complaint can properly arise. Similarly where the Court has formed an opinion that though the witness has intentionally given false evidence or intentionally fabricated false evidence the nature of the perjury or fabrication committed by him is not such as to make it expedient in the interests of justice to make a complaint, it has a discretion not to make a complaint. But it does not follow from this that it can later on resort to Section 476 and make a complaint against the witness. For, even under Section 476 the Court must, before making a

complaint, be satisfied that it was expedient in the interests of justice to make an enquiry into the offence committed by the witness. It is not as if the Court has an option to proceed either under Section 479-A or under Section 476 and that if it does not take action under Section 479-A it can do so under Section 476. Whereas Section 476 is a general provision dealing with the procedure to be followed in respect of a variety of offences affecting the administration of justice, in so far as certain offences falling under Sections 193 to 195 and Section 47.1, I. P. C. are concerned the Court before which that person has appeared as a witness and which disposed of the case can alone make a complaint. The provisions of Section 476 to Section 479 are totally excluded where an offence is of the kind specified in Section 479-A (1).'

It may be further noticed that while Section 479-A applies only to a judicial proceeding, Section 476 has a wider range to cover in that it applies to proceedings other than judicial also the only qualification being that the proceeding must be in relation to a court. Then for the purposes of Section 479-A it is necessary for the court to give a finding in the judgment or the final order itself that the person concerned has intentionally given false evidence, or has intentionally fabricated evidence. It has also to be stated in the order that such prosecution is expedient to the interest of justice for the eradication of the evils of perjury and fabrication of false evidence. Then again reasons have to be recorded in support of the finding. On the other hand, under Section 476 a similar finding of the court need not be there.

7. I may also notice one more point of distinction between the two sections. Under Section 476 the court may make such preliminary inquiry as it may think necessary. Now for the making of a preliminary inquiry as for instance under section 202 Cr. P. C., it is not necessary to call upon the accused to show cause, whereas under Section 479-A before lodging the complaint a show cause notice has to be given to the person concerned. Now, whether a particular order is one falling under Section 479-A Cr. P. C., or that under Section 476 Cr. P. C., will have to be seen by considering the tenor of the order itself. The passage from the judgment of the civil Judge extracted above does not show that attention of the learned Civil Judge was directed: (1) to the character of the person sought to be

proceeded against. In other words to show that he was being prosecuted on account of his giving a statement as a witness; (2) the learned Judge also does not say that the person sought to be proceeded against had given intentionally any false statement or that he had intentionally fabricated false evidence in a judicial proceeding. The judgment also does not show that the learned Judge applied his mind to the question whether it was necessary to order the prosecution with a view to eradicating the evil of perjury or fabricating false evidence.

Indeed there is a serious lapse on the part of the Civil Judge in that he has not quoted the relevant section of the Penal Code under which the prosecution was intended by him, the place for the section having been left blank. In view of the nature of the order it is difficult to come to the conclusion that the learned Civil Judge wanted to proceed under Section 479-A and not under Section 476 Cr. P. C. Moreover, the relevant passage also shows that he had concentrated on the fact that the petitioner had committed forgery with a view to making illegal gain on account of his ill will with the defendants. Thus, it seems that he wanted to deal with the petitioner for the commission of the offence of forgery irrespective of what followed thereafter. For the offence of forgery one cannot say that it always amounts to an offence under section 193 of the Indian Penal Code. In appropriate cases a particular forgery, if it is made definitely with a view to creating false evidence for a judicial proceeding, may also be covered by section 198 of the Indian Penal Code. It will, however, be necessary for me to see as to what was the predominant thought of the learned Civil Judge in proceeding against the petitioner in the manner he did and for this I have to look to the observations actually made by the learned Judge and by no other means. So viewed the passage in question cannot legitimately lead to the inference that the learned Judge wanted to proceed against the petitioner for his having intentionally given false evidence or having fabricated the same as a witness. The provisions of Section 479-A are in a way more stringent than those of Section 476 Cr. P. C. for the obvious reason that while under the latter there is a right of appeal, under the former the Legislature has not chosen to confer a right of appeal on the aggrieved party. Therefore, in dealing with a case falling under Section 479-A Cr. P. C. a court is expected to devote matured consideration and to record reasons in respect of its findings. On the other hand the requirement is not so strict under Section 476 Cr. P. C. as in a

appropriate case the aggrieved party may be able to get a relief from the appellate court.

The learned District Judge in treating the case to be one falling under Section 479-A Cr. P. C. has placed reliance on an unreported Single Bench case of this Court Mehtab Chand v. State, Cri. Revn. No. 56 of 1961 dated 9-1-62 (Raj). That case to my mind is clearly distinguishable. In that case the Court, which ordered the prosecution, came to the conclusion that the receipt said to have been forged was not genuine one and the amount had never been repaid to the plaintiff. There was also a clear finding on facts that Mehtab Chand who had attested that receipt had intentionally fabricated false evidence for the purpose of being used in the suit. It was also found noted that he gave false evidence in the court to the effect that he had attested the document. It was also recorded in the order for launching the prosecution that it was necessary for eradication of evils of perjury and fabrication of false evidence and further that it was expedient in the interest of justice. The question for consideration in that case was whether it was necessary for the court to have given a show cause notice to the person proceeded against before the complaint was actually lodged. It was argued that as the case was covered by Section 476 Cr. P. C. and not by Section 479-A Cr. P. C. show cause notice was not necessary. Consequently, with a view to seeing whether a show cause notice was, or was not necessary the court examined as to whether the provisions of Section 479-A Cr. P. C. would govern the matter or the case was to be dealt with in accordance with Section 476 Cr. P. C. In view of the finding recorded the court came to the conclusion that it was a case covered by Section 479-A Cr. P. C. That judgment, in my view, thus does not afford any guidance for dealing with the facts of the present matter,

8. In the present case, as observed by me above, there is neither the finding that Bahadurmal had intentionally given false evidence or has intentionally fabricated false evidence for the purpose of the judicial proceeding, nor has the learned Civil Judge recorded any reasons. Further more, he has not said whether the intended prosecution was expedient in the interest of justice for the purpose of eradication of the evil of perjury. I am, therefore, of the opinion that the present case is distinguishable from the Mehtab Chand's case, Cr. Revn. No. 56 of 1961 dated 9-

1-1962 (Raj) that was before Bhargava J., and the learned District Judge was not right in applying that case for reaching his conclusion. To my mind, therefore, the case is clearly not one covered by the provisions of Section 479-A Cr. P. C. This opinion, however, is based on the plain language of what the learned Civil Judge himself has chosen to say in his judgment. I should not be understood to say that after having dealt with the matter properly the learned Civil Judge could not have proceeded under Section 479-A Cr. P. C. Any way, the question of appealability of an order depends on the tenor of the order itself. Now once it is held that the order is outside the ambit of Section 479-A Cr. P. C. then there is no escape from the conclusion that it falls under Section 476 Cr. P. C. In the circumstances therefore, I hold that the learned District Judge was not right in holding that the appeal under Section 476-B was not maintainable.

9. Turning now to the second question about the period of limitation. Section 476-B Cr. P. C. runs as follows:

'Section 476-B. Appeals. Any person on whose application any Civil, Revenue or Criminal Court has refused to make a complaint under Section 476 or Section 476-A, or against whom such a complaint has been made, may appeal to the Court to which such former Court is subordinate within the meaning of Section 195, Sub-section (3), and the superior Court may thereupon after notice to the parties concerned, direct the withdrawal of the complaint or, as the case may be, itself make the complaint which the subordinate Court might have made under Section 476, and if it makes such complaint the provisions of that section shall apply accordingly.'

10. According to the plain language of this section the aggrieved person against whom a complaint has been made may appeal to the court to which the court is subordinate. Now the words 'complaint has been made' clearly denote that it is the making of the complaint itself that entitles the concerned person to lodge the appeal. The words are not to the effect that 'complaint is to be made'; consequently the right to appeal accrues only when the complaint is made and it does not obviously arise at a stage anterior to that i.e. when the court concerned has merely ordered that a complaint be made. Consequently, it will be the making of the

complaint that will be the starting point of the period of limitation. Now, the further question as to what is the period of limitation for such appeals is not free from doubt. Article 154 of the Limitation Act has been resorted to for the purposes of limitation for such appeals. That article runs as follows:

'Art. 154. Under the Code of Criminal Procedure 1898, to any Court other than a High Court. Thirty days The date of the sentence or order appealed from.

This is undoubtedly an appeal under the Code of Criminal Procedure to any court other than the High Court, but the third column says that the time begins to run from the date of the sentence or order appealed from. It is not a case of sentence and the appeal could be covered only by the words 'order appealed from'. Now a comparison of column No. 3 of Article 154 with Section 476-B Cr. P. C. shows that while the Limitation Act uses the words 'order appealed from', the right of appeal under Section 476-B arises when a complaint is made. Now, the actual making of a complaint is not the same thing as the making of any order. The High Courts before whom the question had cropped up for consideration have, however taken the view that appeals under Section 476-B Cr. P. C. are governed by this Article of the Limitation Act.

11. In *Daga Devji Patil v. Emperor*, AIR 1928 Born 64 the learned Judges observed that 'Limitation (or an appeal under Section 476-B Cr. P. C., begins to run for the purposes of Art. 154, Limitation Act from the date when the finding under Section 476, Cr. P. C., is completed or supplemented by an actual complaint.' In other words the mere passing of an order for filing the complaint was not taken to be sufficient for the purposes of commencement of the period of limitation and the order itself was not considered to be effective for the purposes of limitation unless it was followed by the actual complaint itself.

12. To the same effect are the decisions of the Nagpur and Madras High Courts namely, *Bal Govind v. Jamnabai*, AIR 1935 Nag 199 and *In re, Subramania Achari*, (S) AIR 1955 Mad 129.

13. In *Hakim Rai v. The State*, (S) AIR 1957 Punj 134 (FB) it was observed by the learned Judges that

'an appeal against the filing of a complaint under Section 476-B was an appeal which arose out of a criminal proceeding for filing which the Criminal Procedure Code or the Indian Limitation Act did not clearly or specifically prescribe any period.'

In view of this observation they applied the principles of natural justice in dealing with such appeals and held that the starting point of the period of limitation will be the appellant's knowledge of the filing of the complaint, and in every case he would be entitled to extension of time on the score of sufficient cause for his inability to file the appeal in time if any specific period is to be supposed to govern the appeal.

14. On the other side of the line is a decision of the Allahabad High Court *Ramchandra Soti v. State of Uttar Pradesh*, AIR 1963 All 352. The learned Judges devoted attention to the plain language of Section 476-B Cr. P. C. and observed that though the appeal is provided against the making of a complaint it is not against the recording of the finding. According to this case, the making of a complaint and the forwarding of the same to a Magistrate are two distinct acts. The one step does not include the other. The learned Judges took the act of forwarding the complaint to be only a ministerial act and it was to have no bearing on the question of limitation. According to the learned Judges the complaint was made on the date on which it was signed by the Presiding Officer of the court making it and as to how it reached the Criminal Court concerned was of no significance for the purpose of seeing the starting point for limitation.

15. Now, making of a complaint is presenting it where personal presentation is necessary before the Criminal Court concerned, and where personal presentation is not necessary it should at any rate be available to the Criminal Court for action and the complaint will be available for action on to the Criminal Court only when it has reached that court and not before. The Legislature has used the expression 'making of complaint'. This expression could not, to my mind, be limited to the act of merely signing the complaint by the person seeking to make it. The act of making or the process of making can be said to be completed only when the thing is placed in a presentable form before the appropriate authority for necessary action. It is only at that stage when the thing is in a presentable form before the

appropriate authority that it can legitimately be said that the complaint was made. That being so, to my mind, the complaint can be said to have been made in the present case not on the date when the learned Civil Judge signed it, but only at the stage when the Sub Divisional Magistrate to whom it was to be made was in a position to act on it, the same being before him for such action. One may not go to the length of holding that the officer should be actually sitting in his office for work on the particular day so as to take action then and there on such complaint. But the minimum that is required to make the process of 'making of complaint' complete is that it should reach the court of the Sub Divisional Magistrate.

16. Now we have to see as to when the complaint actually reached the court of the Sub Divisional Magistrate. It reached the court on 20-7-63. When it so reached that court, the Presiding Officer was away. Assuming that the complaint was made on 20-7-63, the question is whether in the facts and circumstances of the case the present petitioner has been able to establish sufficient cause for not preferring the appeal within 30 days from 20-7-63. Now, the Punjab High Court has taken into consideration the knowledge of the person concerned about the actual making of the complaint, on the principles of natural justice. In the present case there is nothing to show that the petitioner had acquired knowledge of the making of the complaint on 20-7-63. In that situation when the petitioner had filed an affidavit to the effect that he did not know of the making of the complaint for a good deal of time and came to know of it only when he received the process from the Criminal Court, it was a case where sufficient cause can be said to have been made out for not filing the appeal within 30 days from the lodging of the complaint. In my view, therefore, the learned District Judge was clearly in error when he declined to condone the delay of one day in the filing of the appeal.

17. Revision petition No. 37 of 1964, as observed by me earlier, is of identical nature and the above discussion will determine its fate as well.

18. The result is that I accept both the revision applications and set aside the orders of the learned District Judge Balotra dated 19-12-63, and hereby remand the cases with the direction that the learned District Judge will dispose of both the appeals on merits.

