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Court : Rajasthan

Decided On : Dec-12-1967

Reported in : 1969CriLJ341

Judge : D.M. Bhandari and; L.S. Mehta, JJ.

Appellant : The State

Respondent : Laduram and anr.

Judgement :

D.M. Bhandari, J.

1. This appeal arises under the following circumstances:

Karola, Kishana and Onkar filed a suit for the recovery of Rs. 1,368 against Ram Chander and his sons Laduram and Fatehlal on the basis of an agreement dated Jeth Sudi 2, Smt. 2014 (31.5.1957), executed by Laduram under which, it was alleged by the plaintiffs that the defendants were liable to pay Rs. 1,300, and interest thereon to the plaintiffs. Laduram, defendant, alone contested the suit and the case proceeded ex parte against the other defendants. The defence taken up by Laduram was that he had paid the entire amount due under the agreement to the plaintiffs after a settlement had been arrived at. The receipt Ex. P-1 dated Baisakh Sudi 15, Smt. 2015, corresponding to 3.5.1958 was produced by Laduram in support of his plea. This receipt purported to be signed by the plaintiffs. The

scribe of this receipt is Ladulal, son of Magji. During the trial Laduram and Ladulal appeared as witnesses in proof of the receipt. The learned Civil Judge, Bhilwara, decreed the suit and held that the receipt Ex. P-1 was a forgery and Laduram had produced the forged document and had given a false evidence and that Ladulal had forged that receipt and had given false evidence. It was ordered that notices be issued to Laduram and Ladulal to show cause why they should not be prosecuted for the offences committed by them. Notices were issued to Ladulal and Laduram under Section 476, Cr.P.C. Eventually, a complaint was filed by the learned Civil Judge, Bhilwara, against Ladulal and Laduram in the Court of the City Magistrate, Bhilwara, under Sections 467, 468, 193 and 477A, I.P.C. Learned Munsiff-Magistrate, First Class, Bhilwara, framed charges under Sections 467, 471 and 193, I.P.C., against Laduram and under Sections 467 and 193, J.P.C., against Ladulal and committed them for trial to the Court of the Sessions Judge, Bhilwara. The said Judge reframed the charges. Laduram was charged under Sections 467/114 and 471, I.P.C., while Ladulal was charged under Section 467., I.P.C. The accused pleaded not guilty. The learned Sessions Judge held that the charges were proved against the accused but he accepted the contention raised on behalf of the accused that the accused could not be tried for the aforesaid offences as no proceedings could have been taken under Section 476, Criminal Procedure Code, in view of the provisions of Section 479-A, Cr.P.C. It was held that the complaint filed against the accused persons was void and, therefore, there was no option left to the Court but to drop the proceedings against the accused persons. The State has filed this appeal against Laduram and Ladulal.

2. The main contention urged by learned Deputy Government Advocate in this appeal is that Section 479A did not apply when the prosecution is for offences under Sections 467 and 471, I.P.C. Learned Counsel for the accused has supported the view taken by the learned Sessions Judge and has further urged that in this case the learned Civil Judge, Bhilwara, while filing the complaint, had not recorded a finding as required under Section 476, Cr.P.C., that it was expedient in the interest of justice that an inquiry should be made for offences under Sections 467 and 471, I.P.C., and without recording such finding the accused could not have been prosecuted and, therefore, the learned Sessions Judge, Bhilwara, had no jurisdiction to try the accused for the said offences. It was

also urged that it was not proved on the evidence on the record that the accused had committed offences with which they had been charged.

3. We take up the last argument addressed by the learned Counsel for the accused first. The receipt Ex. P-1 purports to be executed by three persons: Onkar, Shri Kishan and Karola. It is proved by the evidence on the record that Shri Kishan was confined in the judicial lock-up on the date of execution of the receipt. Shri Kishan had appeared in the witness-box and had denied that he got the receipt executed and put his thumb-impression on it, Karola also gave the same statement. Laduram had been examined by the Committing Magistrate and he had stated that he had paid money to Karola and Onkar and had got the receipt Ex. P-1 executed from them and the receipt was got thumb-marked by Shri Kishan after he had been released from the jail. He could not give the exact date on which Shri Kishan put the thumb-impression. In his statement under Section 342, Cr.P.C., he admitted that Shri Kishan was in judicial lock-up.

4. In his statement to the Committing Court Ladulal stated that while he was going from his house to village Nansa, he met on the way 3 Mochis, who asked him to write a report which he did and three Mochis put their thumb-impressions on it. He did not know who those Mochis were. Against the thumb-impression of each Mochi he wrote the name of each as was given out to him at that time. In his statement under Section 342, Cr.P.C., Ladulal admitted that on the date of the execution of the receipt Shri Kishan was in jail. He said that he had executed the receipt while going to the village Nansa.

5. No evidence was produced by the accused in defence. The trial Court held that Ladulal, accused, had forged the receipt, Ex. P-1, which was a valuable security, and had committed the offence under Section 467, I.P.C. It also took the view that Ladulal had used Ex. P-1 as a valuable security, and it was prepared for the purpose of using it as a valuable security, and he had, therefore, committed the offence under Section 467/114, I.P.C. He had further committed the offence under Section 471, I.P.C., as he used a forged document in a Civil Court as genuine. The learned Sessions Judge also observed that, so far as the merits of the case were concerned, the learned Counsel for the accused had practically nothing to say.

6. In our opinion, there is sufficient evidence on the record to prove the offence under Section 471, I.P.C., against Laduram, accused and offence under Section 467, I.P.C., against Ladulal, accused. Of course, there is no evidence to prove that the accused Laduram was present at the time of forging the receipt Ex. P-1, and we hold that offence under Section 467/114, I.P.C., is not proved against Laduram.

7. Now we take up the question whether Section 479-A, Cr.P.C., is a bar to the prosecution of the accused.

8. The relevant part of Section 479-A, Cr.P.C., runs as follows:

(1) Notwithstanding anything contained in Sections 476 to 479 inclusive, when any...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 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 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....

(2) ...

(3) ...

(4) ...

(5) ...

(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.

In the present case the Civil Judge, Bhilwara, did not at the time of deciding the civil case make an order for filing of a complaint against the accused. He, however, ordered for issuing notices under Section 476, Cr.P.C, and they were issued to the accused and then a complaint was filed. The argument is that in such a situation subsection (6) of Section 479-A, Cr.P.C., bars any proceedings under Section 476, Cr.P.C. It is, however, to be noted that proceedings under Section 476, Cr.P.C. are barred under Sub-section (6) only for the prosecution of the person for giving or fabricating false evidence and not for other offences. This is the law laid down by their Lordships of the Supreme Court in *Shabir Hussain Bholu v. State of Maharashtra* : AIR 1963 SC816 . Their Lordships pointed out that they cannot ignore the opening words of Section 479-A. or the provisions of Sub-section (6) of Section 479-A, and the inevitable effect of these provisions, was to exclude the provisions of Sections 476 to 479 in respect of offences which are dealt with specifically in Sub-section (1). Their Lordships pointed out that Section 476 was a general provision dealing with the procedure to be followed in respect of a variety of offences affecting the administration of justice and in so far as certain offences falling under Sees. 193 to 195 and Section 471., 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. This ruling of their Lordships of the Supreme Court was considered in *Babulal v. State of Uttar Pradesh* : 1964 CriLJ555 and it was pointed out that Section 471, I.P.C, appeared to have crept in by oversight along with Sections 193 to 195 in *Shabir Hussain Bolu's case* AIR. 1963 SC 816 (supra). Their Lordships observed that the phraseology used in Section 479-A. was plain and unambiguous: and it excluded the jurisdiction of the Court to proceed under Sections 476 to 479 in respect of the offences specified in Section 193(1)(b) and (c) of the Criminal Procedure Code only when a person appearing before the Court as a witness has intentionally given false evidence in any stage of the judicial proceedings and has intentionally fabricated-such false evidence for the purpose of being, used in any stage of the judicial proceedings. Their Lordships pointed out the distinction between offences

of fabricating false-evidence for the purpose of using it in judicial proceedings and forgery and observed as follows:

It is true that some of the ingredients-of the act of fabricating false evidence which, is penalised under Section 193, I.P.C and of making a false document and thereby committing forgery within the meaning of Sections 463 and 464, I.P.C., are common. A person by making a false entry in any book or record or by making any document containing a false statement may, if the prescribed conditions of Section 463 are fulfilled, commit an offence of forgery. But the important ingredient which constitutes fabrication of false evidence within the meaning of Section 192, I.P.C., beside causing a circumstance to exist or making a false document - to use a compendious expression - is the intention that the circumstance so caused to exist or the false document made may appear in evidence in a judicial proceeding, or before a public servant or before an arbitrator and lend to the forming of an erroneous opinion touching any point material to the result of the proceeding. The offences of forgery and of fabricating false evidence for the purpose of using it in a judicial proceeding are, therefore, distinct, and within the description of fabricating false evidence for the purpose specified in Section 479-A, Cr.P.C., the offence of forgery is not included. In any event the offence penalised under Section 471, I.P.C., can never be covered by Sub-section (1) of Section 479-A. Therefore, for taking proceeding against a person who is found to have used a false document dishonestly or fraudulently in any judicial proceeding resort may only be had to Section 476, Cr.P.C.

Learned Counsel for the accused has argued that after the pronouncement of their Lordships of the Supreme Court in Babulal's case AIR 1964 SC 725, it may be taken that Sub-section (6) of Section 479-A is no bar to the filing of a complaint for an offence under Section 471, I.P.C., but when a forgery of a document has been committed for the purpose of using such a document in a judicial proceedings, then no complaint can be filed for an offence of forgery as the whole of offence is covered by Section 193, I.P.C. It is urged that Babulal's case AIR 1964 SC 725 (supra) is not an authority for holding that Section 479-A, Cr.P.C., is not applicable when the offence is under Section 467, I.P.C. In this connection reliance is also placed on the following observations of their Lordships of the Supreme Court in

Basir-ul-Huq v. State of West Bengal : 1953 CriLJ1232 :

Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting, him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195, Cr.P.C. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195, prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting, a wrong label on it.

It is urged that the offence under Section 467, I.P.C., when it is committed for the purpose that the false document may appear in evidence in a judicial proceeding, is entirely covered by the provisions of Section 193, I.P.C., and there is no scope for the non-application of Section 479-A, Cr.P.C., in a case in which a false document has been made for the purpose of using such document in a judicial proceeding. It may, however be pointed out that offence under Section 467, I.P.C., is not a minor, offence as defined under Section 193, I.P.C. The sentence for an offence under Section 467, I.P.C., is the imprisonment for life, or imprisonment for either description for 10 years and fine, while of an offence under Section 193, I.P.C., is imprisonment of either description for seven years and fine.

9. In *Raghubir Prosad Dudhwalla v. Chamanlal Mehra* 1964 (1) Cri LJ 489 (SC), their Lordships have pointed out that it will be unreasonable to read in Section 479-A, Cr.P.C., that where a person who appeared to have committed an. offence under Section 193, Indian Penal Code, by giving false evidence or fabricating

false-evidence, appeared to have committed some other offence also, say, forgery, for the very purpose of fabricating false evidence, complaint for such other offence also can be made under Section 479-A of the Code of Criminal Procedure. Raghubir Prosad Dudhwalla's case 1964 (1) Cri LJ 489 (SC), has been referred in Babulal's case AIR 1964 SC 725. In view of the pronouncement in Raghubir Prosad Dudhwalia's case 1964 (1) Cri LJ 489 (SC) (supra), it is not open to us to accept the argument of the learned Counsel for the accused. Thus, the learned Sessions Judge was wrong in acquitting the accused on the ground that sub-section (6) of Section 479-A, Cr.P.C., was a bar to take any proceedings against the accused when such proceedings were not taken at the time of pronouncement of the judgment in the¹ civil suit.

10. It has been urged by learned Counsel for the accused that in this case the Civil Judge, Bhilwara, had not recorded a finding that it was of the opinion that it was expedient in the interest of justice that an inquiry should be made into the offences aforesaid, and that without recording such finding no complaint could have been made by the learned Civil Judge under Section 476, Cr.P.C., and the prosecution of the accused was void, This argument was not urged in the trial Court and the order of the Civil Judge for filing the complaint has not been brought on the record. The Civil Judge who ordered the filing of the complaint, appeared in the witness-box to prove that he had filed the complaint. He has said that after giving notice to the accused he ordered the filing of the complaint on 31st May, 1962. In cross-examination he stated that it had not been given in writing in the order dated 31.5.1962 that the filing of the complaint was proper in the interest of justice. But this was in his mind. The order of the Civil Judge dated May 31, 1962, being not on the record, it cannot be said in what language it was couched. It is not necessary that the opinion of the Judge filing the complaint must necessarily contain the words that 'it was expedient in the interest of justice that an inquiry should be made,' and the sense may be conveyed by using other phraseology. In this case the Civil Judge while deciding the civil case had taken the view that the receipt Ex. P-1 was a forged document and a notice was given to the accused to show cause why they should not be prosecuted for offences committed by them, and then the complaint was filed in which it was mentioned that the accused did not show any reason for not filing the complaint. In these circumstances, it must be

taken that the Civil Judge thought it proper to prosecute the accused in the interest of justice.

11. We are further of the view that even when such a finding had not been definitely recorded in writing, it could not be said that the Criminal Court had no jurisdiction to try the offences brought to its notice by a complaint. It is Section 195, Cr.P.C., which bars the jurisdiction of the Court for trying an offence described in Section 463 or punishable under Section 471 when such an offence is alleged to have been committed by a party in proceedings in any Court in respect of a document produced or given in evidence in any such proceedings except on the complaint in writing by such Court or some other Court to which such Court is subordinate. In this case there has been a regular complaint by a Civil Court for trial of the accused and the Criminal Court had jurisdiction to try the offences under Sections 467 and 471, I.P.C. Section 476, Cr.P.C., merely contains the procedure which should be followed by any Court for determining whether a complaint should or should not be made and then the procedure to make a complaint. If an order for filing a complaint is made in an irregular manner, it can be challenged in appeal under Section 476-B, Cr.P.C. There is, however, nothing in Section 476, Cr.P.C., barring the jurisdiction of the Criminal Court to try an offence if there had been some defect in the proceedings prior to the making of the complaint. In this respect the provisions of Section 479-A, Cr.P.C., differ from Section 476, Cr.P.C., because Sub-section (6) of Section 479-A expressly provides that no proceedings shall be taken under Section 476 for the prosecution of a person, thus bars a Court altogether from making a complaint against any person if in respect of such person proceedings could be taken under Section 479-A, Cr.P.C.

12. Learned Counsel for the accused has referred to the decision of this Court in *Brij Mohanlal v. Sohan Raj* ILR (1962) 12 Raj 526 : 1963 (1) Cri LJ 713. It may, however, be pointed out that in that case the order of the Sessions Judge passed under Section 476-B, Cr.P.C., for filing the complaint was challenged by filing a revision application on the ground that the Sessions Judge failed to comply with the terms of Section 476, Cr.P.C., inasmuch as he had not recorded a finding that it was expedient in the interest of justice that a complaint may be filed. This case

cannot be treated as an authority for taking the view that the Criminal Court, before whom a complaint has been filed, had no jurisdiction to take cognizance of the complaint. We, therefore, find no substance in this argument of the learned Counsel for the accused.

13. Before we conclude our judgment, we may make certain observations on the provisions contained in Sub-sections (1) and (6) of Section 479-A, Cr.P.C. Sub-section (1) requires that the Court shall, at the time of delivery of the judgment or final order disposing of the proceedings, record a finding that, for the eradication of the evil of perjury and fabrication of false evidence and in the interest of justice it is expedient that the witness should be prosecuted for the offence which appears to have been committed by him. It further provides that the Court may, if it so thinks fit, give the witness an opportunity of being heard before making a complaint. Thus, the Court has been directed by the law to record the finding as aforesaid before even hearing the witness. In a case in which the witness is a party to the suit, it may be that he may have been heard at the time of arguments before the delivery of the judgment or final order, but in a case in which a witness has not been heard, the law envisages that the Court may, in exercise of its discretion, grant a witness an opportunity of being heard. Granting of such an opportunity is no doubt discretionary, but it shall have to be conceded that in case the witness is not a party to the proceedings, it would be advisable to grant such opportunity to him except in exceptional cases. Such opportunity can be granted only by issuing notice to the witness that he is being granted an opportunity of being heard. If a witness appears in pursuance of such notice, he will already find on the record a verdict of the Court that in its opinion it is expedient that such a witness should be prosecuted for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice. In other words, the Court has already made up its mind to file a complaint. After hearing the witness, the Court may of course change its opinion for ordering the prosecution of the witness. But would it not be proper that a finding to the effect that for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice it is expedient that the witness should be prosecuted should be recorded only after hearing the witness if the Court considers that granting such hearing is necessary? Similar provisions contained in Section 476, Cr.P.C., are much more logical and realistic. If the Court

thinks that a preliminary inquiry is necessary under that section, it is to record a finding only after a preliminary inquiry has been made and not at the close of the proceedings in the main case. This is first point.

14. The other point in Sub-section (1) is that it applies not only to the case where the witness has intentionally given false evidence, but also applies to a case where he has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceedings. Would it not be proper that this sub-section should be confined only to a case where a witness has intentionally given false evidence? The cases in which question of fabricating false evidence arises often relate to the offence of forgery which has been separately defined in the Penal Code in Chapter XVIII and which is not defined in Chapter XI of the Penal Code and it would add to clarity of law if the Sub-section (1) is confined to giving of false evidence.

15. With regard to Sub-section (6), our view is that this sub-section has the effect of barring a Court from taking proceedings for prosecution for all times if a prosecution could have been ordered under the provisions of Sub-section (1) to Sub-section (5) of Section 479-A, Cr.P.C., and has been not so ordered. In most cases of consequence arising under civil and criminal law, appeals have been provided and the matter does not become final till the expiry of the period of limitation for appeal. Sometimes a trial Court is somewhat hesitant in ordering the prosecution in a case in which it finds that its judgment is not final. If eradication of the evil of perjury is the aim, no useful purpose is served by barring the Court to take steps for prosecuting a witness except by recording a finding as required in Sub-section (1) at the time of the delivery of the judgment or the final order. The Court should be left free to take proceedings later on under Section 476, Cr.P.C. Again, if the same person has committed the offences under Sections 193 and 467, I.P.C., he has to be prosecuted by following two procedures, one laid down in Section 479-A; another under Section 476, Cr.P.C. By omitting Sub-section (6), this cumbersome procedure would be avoided. All these matters are for the Legislature to consider.

16. So far as the present case is concerned, in the light of the aforesaid discussion, we accept this appeal, set aside the order of acquittal of the accused Laduram and Ladulal passed by the Sessions Judge, Bhilwara, and convict Laduram under Section 471, I.P.C., and sentence him to 1 years' rigorous imprisonment and to pay a fine of Rs. 500, in default of payment of fine, to undergo further rigorous imprisonment for six months. We also convict Ladulal, accused, under Section 467, I.P.C., and sentence him to undergo two years' rigorous imprisonment.

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