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Court : Chennai

Decided On : Mar-08-1976

Reported in : 1977CriLJ678

Judge : Ratnavelpandian, J.

Appellant : Vasudevan and anr.

Respondent : The District Judge South Arcot

Advocate for Pet/Ap. : Mr. T.S. Arunachalam

Judgement :
ORDER

Ratnavelpandian, J.

1. Accused 1 and 2 in P.R.C. 11 of 1973 on the file of the Court of the Sub-Magistrate, Cuddalore, have preferred this revision petition challenging the order dated 14-9-1973 passed by the learned Magistrate in Crl.M.P. No. 1135 of 1973, in the above case, concluding that the complaint given by the learned District Judge, South Arcot, Cuddalore under Section 476-A, Criminal Procedure Code, is perfectly right and not hit by Section 479-A (6), Criminal Procedure Code, and dismissing the said petition filed by the present petitioners.

2. To appropriate the petition, I feel that a synopsis of the facts of the complaint, which led to the above petition, is necessary. One Smt. Sabiya Bibi, wife of one Mohamed Hanifa Sahib of Andikuppam village, Cuddalore Taluk, filed a Civil Suit in O.S. No. 766 of 1970 on the file of the District Munsif, Cuddalore, against Vasudevan, the first petitioner herein, for the recovery of possession of the suit property with damages for use and occupation, on the basis of a registered sale deed dated 23-8-1969 executed in her favour by the first petitioner, The first petitioner was the only defendant in the said suit. He filed a written statement on 7-1-1971 resisting the claim of the plaintiff, contending that the plaintiff herself had executed an agreement dated 8-9-1969 in favour of the first petitioner to reconvey the said property. The said Sabiya Bibi, in her reply statement, denied such execution of the deed of reconveyance as alleged and contended that the said document was nothing but a rank forgery. The suit was posted for trial on 9-12-1971, on which date it was decreed ex parte. Thereafter, on the petition filed by the petitioner, the decree was set aside and the suit was restored to file on payment of costs. At the time of the trial of the said suit, the first petitioner filed an unregistered agreement for reconveyance of the suit properties, purported to have been executed by the plaintiff in his favour, while he was examined as D.W. 1, and marked it as Ex. B-l. The second petitioner (second accused), who is none other than the brother of the first petitioner, examined himself as D.W. 2 and deposed that he was the scribe of Ex. B-1 and that it was signed by the plaintiff in the suit. The learned District Munsif, while decreeing the suit in favour of the plantiff, by his judgment dated 20-6-1972, found that Ex. B-1 was a forged document brought into existence by the first petitioner with the help of the persons interested in him, in order to gain an undue advantage for himself. It may be noted here that the learned District Munsif who observed as above did not propose to take action against the two petitioners herein, nor is there any evidence to show as to whether the affected defendant, viz., the first petitioner preferred any appeal against the said judgment. Then, it appears from the complaint that the said plaintiff Sabiya Bibi filed O.P. 100 of 1972 before the complainant (learned District Judge) praying for laying a complaint against the two accused herein under the provisions of Section 476-A, Criminal Procedure Code, for offences under Sections 463 and 471, Indian Penal Code, read with Section 195(1)(c), Criminal P.C. Notices were

ordered to be issued and duly served on them; but the petitioners did not appear before the Court. Thereupon, after hearing Sabiya Bibi, the plaintiff, and her Counsel and perusing the records, the learned District Judge came to the conclusion that the document Ex, B-1 filed by the first petitioner in the suit suppored by the second petitioner in his evidence is a forged document, fabricated by these two petitioners for purposes of defeating the claims of the plaintiff and thus they both had used Ex. B-1 as genuine in the proceedings of the said Civil Suit before the Court. Since he felt that it was just, necessary and expedient in the interests of justice as well as in the interests of administration of public justice, he laid the present complaint for offences under Sections 193, 465, 467 and 471, Indian Penal Code before the District Magistrate (J), Cuddalore, who, after taking it on his file in P.R.C. 3 of 1973 for the above offences, transferred the same to the file of the Sub Magistrate, Cuddalore for disposal according to law. Hence, this complaint was taken on file by the learned Sub Magistrate in P.R.C. 11 of 1973.

3. The petitioners filed a petition, raising preliminary objections, contending that as one of the offences mentioned in the complaint fell under Section 193, Indian Penal Code, the complaint should have been filed under Section 479-A, Criminal Procedure Code, and the proceedings now initiated by the complainant under Section 476-A, Criminal Procedure Code, could not be entertained. The learned Sub Magistrate, after elaborately discussing all the provisions of law pertaining to the subject and going through the authorities cited, dismissed the said petition. Hence this revision petition.

4. Mr. T.S. Arunachalam, appearing for the petitioners, contended that the lower Court ought to have seen that in view of Section 479-A(6), Criminal Procedure Code, Sections 476 to 479, Criminal Procedure Code are totally excluded, where the offence is of the kind specified in Section 479-A (1), Criminal Procedure Code, and that the complainant had no powers to file this complaint as the complainant (District Judge) did not lay the complaint sitting in his appellate jurisdiction in re-assessing the evidence. Further, he would contend, no summons was properly served on the petitioner and as such they were denied the opportunity of being heard on the matter. Further, since the trial Court had not recorded any finding at the time of delivery of the judgment as contemplated in Section 479-A(1), Criminal

Procedure Code, even the said Court was not competent to lay the complaint against the petitioners for giving false evidence and in such circumstances the action taken by the learned District Judge in laying the complaint for the offence under Section 193, Indian Penal Code on the petition preferred by the plaintiff, has no basis whatsoever.

5. Now, I shall deal with the scope of Sections 476 and 479-A of the old Criminal Procedure Code, Section 476 prescribed the procedure for cases mentioned in Section 195, Criminal Procedure Code. It provides that if a Court is of opinion that an inquiry should be made into any offence referred to in Section 195(1), Clause (b) or Clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, record a finding to that effect and make a complaint thereof in writing, signed by the Presiding Officer of the Court and shall forward the same to a Magistrate of the First Class having jurisdiction. Section 479-A of the Code, which was introduced in the year 1955, provides:

Notwithstanding anything contained in Sections 476 to 479, when a Court is of opinion that any person appearing before it was 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 dsiposing of such proceeding, record a finding to that effect, stating its reason therefor and may if it 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,

Section 479-A(6) states that no proceeding 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. A combined study of Section 195(1)(b) and (c) and Sections 476 and 479-A makes it clear that when proceedings could be taken under Section 479-A, proceedings under Section 47(5 are forbidden.

6. The phraseology used in Section 479-A, Criminal Procedure Code, is plain and unambiguous. A reading of this Section would indicate that Section 479-A has no application to prosecutions for offences other than an offence under Section 193 and cognate Sections in Chapter XI of the Indian Penal Code. The special procedure of this section is thus prescribed only for the prosecution of a witness for the act of giving false evidence in any stage of judicial proceedings. In other words, Section 479-A, is restricted in its scope, whereas Section 476 provides the procedure for a Court making a complaint in respect of offences referred to in Section 195, Sub-section (1), clauses (b) and (c). Therefore, in cases which do not strictly fall within Section 479-A, the procedure prescribed in Section 476 can be followed. Section 195(1)(b), Criminal Procedure Code, deals with offences under Sections 193 to 195, Indian Penal Code, and other offences enumerated in Sub-section (1)(b), while Section 195(1)(c) deals with offence under Sections 463, 471, 475 or 476 of the Indian Penal Code, when such offences are said to have been committed by a party to a proceeding in any Court.

7. The main question that arises for consideration here is whether Sub-section (6) of Section 479-A bars the applicability, of the provisions of Sections 476 to 479 for the prosecution of a witness under Section 193, Indian Penal Code. The Supreme Court, in Shabir Hussain v. State of Maharashtra : AIR 1963 SC816 has elaborately laid down the scope of Sections 479-A and 476, as follows:. bearing in mind the non obstante clause at the commencement of Section 479-A and the provisions of subsection (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....

Restricting ourselves to a case 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 a judicial proceeding which primarily has to act under Section 479-A. There does not appear to be any 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 479-A, no application seems to be contemplated. But there is nothing in this provision which makes 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 complain, 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 under either 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....

From this it would follow that 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 471, Indian Penal Code, are concerned the Court before which that person has appeared as a witness and which disposed of the case can alone make a complaint.

In our opinion,... the view taken in parshottam Lal's case and Amolak's case : 1961 CriLJ566 to the effect that the provisions of Sections 476 to 479 are totally excluded where an offence is of the kind specified in Section 479-A (1) is correct.

The words 'and Section 471' appearing in the sentence 'From this... alone make a complaint' in the above decision, fleem to have crept in by oversight. This is made

clear by the observations made by the Supreme Court in Babulal v. State of Uttar Pradesh : 1964 CriLJ555 wherein the Supreme Court, approving the principles laid down In Sahbir Hussain's case : AIR 1963 SC816 has held that Section 479-A, of the Criminal Procedure Code, excludes the jurisdiction of the Court to proceed under Sections 476 to 479 only in respect of offences under Section 195 (1), Clauses (b) and (c), of the Code, where a person appearing before the Court or a witness has intentionally given false evidence in any stage of a judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding. Thus, Sub-section (6) makes It clear that the provisions of Section 479-A alone are applicable and not the provisions of Sections 476 to 479 for the prosecution of a witness who has given or fabricated false evidence.

8. In the light of the above observations, the initiation of the proceedings by the complainant for the offence under Section 193 along with other offences, cannot be sustained.

9. So far as the filing of the complaint in relation to the other offences, is concerned, there is no bar for the complainant to take proceedings under Section 476, by invoking the powers under Section 476-A, Criminal Procedure Code. But, we have to consider whether it is expedient in the interests of justice that an enquiry should be made into the said offences at this stage.

10. The learned District Munsif, Cuddalore, when he disposed of the suit, did not think it necessary in the interests of justice to prosecute the petitioner. It is apparent that the said Court did not also subsequently take steps suo motu to prefer a complaint against the petitioner. No petition for preferring a complaint against the petitioner, had been filed before the learned District Munsif. O.P. 100 of 1972 was filed by the plaintiff before the learned District Judge, Cuddalore, after an interval of four months. No appeal has been preferred by the defendant in the suit and as such the District Judge did not have an opportunity of re-assessing the evidence sitting in his appellate jurisdiction. Obviously, this original petition by the plaintiff was to spite his opponent. In these circumstances, the complainant, the learned District Judge, need not have initiated the proceedings by filing a

complaint. The judgment in O.S. No. 766 of 1970 was pronounced by the District Munsif on 20-6-1972. Nearly 3 years 9 months have elapsed from that judgment. Though this Court, sitting in its revisional jurisdiction, would not ordinarily interfere with the discretion of the lower Court, I do not think that the interests of justice require that the complaint should be proceeded with.

In this view, I allow the petition and quash the impugned proceedings.

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