

**In Re : S.R. Ramalingam**

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**SooperKanoon Citation :** [sooperkanoon.com/807282](http://sooperkanoon.com/807282)

**Court :** Chennai

**Decided On :** Apr-01-1964

**Reported in :** 1965CriLJ311

**Judge :** S. Ramachandra Iyer, C.J. and ;Venkatadri, J.

**Appellant :** In Re : S.R. Ramalingam

**Judgement :**

ORDER

S. Ramachandra Iyer, C.J.

1. The petitioner, against whom a complaint under Section 193 I.P.C. has been filed by the First Assistant Registrar (Original Side) of this Court, seeks to revise the preliminary order passed by the learned Fifth Presidency Magistrate overruling the two objections taken against the trial of the case. To properly deal With the objections, it is necessary to set out the facts that led to the filing of the complaint.

2. The petitioner is one among three partners of a firm called Swami Oil Mills doing business at Erode. Early in the year 1957, the firm got into financial difficulties. Two of its creditors filed I.P. Nos. 76 and 85 of 1957 on the Insolvency Side of this Court to adjudicate as insolvents the firm and its partners. There were a number of creditors who had advanced moneys to the firm and whose claims had not been discharged. There was also a large amount due by the firm towards arrears of sales-tax as well as by way of advance tax in respect of sales effected by them

since the year 1952-53. That liability amounted to nearly Rs. 55000. The debtors, who were anxious to avoid insolvency, tried to enter into an arrangement with the petitioning creditors. But the withdrawal of the petitions could not be secured by merely satisfying those creditors. It was essential that other creditors should be satisfied. Such an arrangement was entered into with all the creditors except the Sales-tax department, the dues to whom were not disclosed by the debtors, either by design or by inadvertence, to the court. An application was then filed by the debtors for permitting the withdrawal of the insolvency petitions. In support of it, the petitioner filed an affidavit purporting to disclose the entire assets and liabilities of the firm and of its partners. The affidavit also contained a statement as to the nature of the arrangement entered into with the creditors. The liability for sales-tax was not shown amongst the other liabilities; nor was any reference made to the State Government as a creditor. Ganpatia Pillai J, before whom the application came, acting on the affidavit, the truth of the statements contained in which he had no reason to suspect having regard to absence of any information as to the existence of the liability to the State Government, permitted on 29.2.1960 the withdrawal of the insolvency petitions. The Sales-tax department eventually came to know of the proceedings in this Court. It appears that the Official Assignee, who was functioning as the interim receiver and who had been informed about this claim did not oppose the withdrawal. Neither the debtors nor the official Assignee apprised the court that the scheme of arrangement did not provide for payment of the amount due to the State Government.

3. Nearly a year after the withdrawal of the Insolvency petitions, the Sales-tax department, coming to know of the manner in which such withdrawal was secured, applied to this Court in its insolvency side to set aside the dismissal of the insolvency petitions and reopen the same. They also filed an application for preferring a complaint against the petitioner for the offence of perjury. Kailasam J, before whom the applications came up, set aside the dismissal of the insolvency petitions and thus reopened the proceedings for disposal in the usual course. The learned Judge then issued a notice to the petitioner why he should not be prosecuted for suppressing information regarding the debtor's liability to the Government. The explanation tendered by the petitioner not having satisfied the learned Judge, an order was passed under Section 479A Cri. P.C. on 4.3.1963,

directing the First Assistant Registrar (Original Side) of this Court to file a complaint against the petitioner before the Chief Presidency Magistrate, Madras. No objection was then taken before the learned Judge to the procedure adopted. But shortly thereafter, an application-Appn. No. 353 of 1963 was filed on his behalf for reviewing the aforesaid order on the ground that Section 479A could not apply to false evidence given-before court in the form of an affidavit. Kailasam J. did not accept the application and passed an Order on 2.8.1963 dismissing the same and expressing the view that the provisions of Section 479A would cover not merely a case of perjured evidence given by means witness before the court, but also one where such evidence was given by means of an affidavit. An appeal was filed against that order under Clause 15 at the Letters Patent but the same was dismissed in limine on the ground that no appeal could lie against an order refusing to grant review of a judgment.

4. Pursuant to the directions contained in the order of Kailasam J. dated 4.3.1968 the First Assistant Registrar of this Court filed a complaint against the petitioner before the Chief Presidency Magistrate, Madras, who, after taking the same on file, as disclosing an offence under Section 193 I.P.C transferred it to the Fifth Presidency Magistrate for disposal.

5. At trial the petitioner took two objection to the maintainability of the complaint: (1) that the offence charged would come only under Section 199, and not under Section 193 I.P.C. and (2) that no complaint under Section 479A could be made as the petitioner not appear before the court as a witness but only filed an affidavit. The learned Magistrate overruled both the contentions. There can be little doubt that his view that the complaint disclosed an offence under Section 193 I.P.C. is correct.

6. The substantial point that falls in consideration is, whether Section 479A can properly comprehend a case where false evidence was tendered in the form of an affidavit before a court answering that question in the affirmative, the learned Magistrate has followed, as he was bound to do, the view taken by Kailasam J. in Appn No. 353 of 1963.

7. We shall now proceed to consider whether that view is correct. Section 479A was introduced into the Criminal Procedure Code by the Amending Act XXVI of 1955. One of the principal objects of that Act was to avoid delays caused in the trial of criminal cases. Prior to the Amending Act, Section 476 provided the machinery for a court directing the prosecution of persons who commit the offences specified in Section 195 Cri P.C. The Amending Act, by introducing Section 479A into the main Act, provided a less elaborate procedure in respect of some of the offences till then covered by Section 476.

8. Section 479A provides for a complaint being filed by the court before which the offence of perjury is committed. The procedure prescribed<sup>1</sup> by it is summary, inasmuch as no preliminary enquiry of the kind contemplated<sup>1</sup> by Section 476 is necessary. The decision of the court to file the complaint is taken simultaneously along with the judgment or final order in the proceeding in which the offence of perjury is committed. Secondly, the decision of the court to file the complaint is not made the subject of any appeal.

9. Section 479A provides that where, in the opinion of the court, 'any person appearing before it as a witness' has intentionally given false evidence or has intentionally fabricated false evidence for being used before it, it can itself decide, at the time of the judgment in the main proceeding, where to such evidence is given, to file complaint against the offender. This power can only be exercised if the court finds it expedient to do so. In such an event, the court should record at the time of delivering the judgment in the main case, a finding in terms of Sub-section (1); then grant an opportunity to the witness giving the false evidence to show cause why he should not be prosecuted. If the court is not satisfied with the cause shown, it may make a complaint in writing to the appropriate criminal court for his prosecution.

10. The first part of the section shows that it is only when the witness, who appears before the court for the purpose of giving oral evidence, has, to the opinion of the court, committed perjury, that he could be proceeded against under that section. Now, a witness can attend court and give evidence only or he may be called merely to produce documents. In the latter case, there can be no testimony

by him. But if such a person fabricates false evidence and produces the same in court, the offence will be no less serious. The court hearing the case has the same opportunity of judging the genuineness of such documents as of judging the falsity of oral evidence. Evidently, it is to cover such cases that the second clause 'has intentionally fabricated false evidence' etc. has been introduced.

11. At one stage of the case we entertained some doubt as to whether those words namely, 'fabricated false evidence' were not wide enough to cover a case where false evidence was given by means of an affidavit. But, on further consideration, we are satisfied that the terms of the section as well as the principle underlying it preclude such an interpretation. In our view, the words 'any person appearing before it as a witness' qualify both the clauses, namely (1) has intentionally given false evidence, etc. and (2) has intentionally fabricated false evidence. This is made clear by the latter part of the section relating to the consideration of the expediency of the prosecution. That says that it should appear to the court that it is expedient that such witness should be prosecuted. Again, while referring to the 'show cause' notice, the section says that the notice should be given to the witness. There can be little doubt that the words 'such witness' and 'the witness' can only refer to the witness 'appearing' before the court either for giving oral evidence or for producing documents. It cannot therefore relate to a case where a witness does neither; it cannot also obviously refer to an affidavit sworn to by him before somebody and later put into court.

12. Kailasam J. expressed the opinion that the words 'appearing before it' are wide enough to comprehend cases where witnesses tender evidence without actually appearing before any court. This conclusion was based on two considerations: (1) the words 'appearing of a party' in the Civil Procedure Code has been defined to include appearance through counsel. Therefore, the learned Judge held that it was not necessary to constitute appearance, that there should be personal appearance. (2) Under the Civil procedure Code, as well as under certain of the provisions of the Criminal Procedure Code, e.g., Sections 145, 510A Cri P.C. evidence is permitted to be given by means of affidavits, The learned Judge remarks that Section 479A should include those cases as well, for, if a narrow construction were-adopted, a party can with impunity give false evidence by

means of an affidavit in those proceedings. With great respect, we are unable to agree with either of the two reasons as justifying the conclusion. The question in the present case is not so much as to whether the word 'appear' is wide enough to cover a case where there is no personal appearance-but rather what meant by the words 'person appearing before it as a witness', These words are simple and are capable of only one construction, namely, that it relates to persons who physically appear before the court and give evidence or produce-documents which are marked as evidence. In regard to the second point, we may point out that the fact that Section 479A cannot apply to cases of false-evidence given in the form of affidavits, does not mean that the offender will be allowed to go scot-free. Section 476 will undoubtedly apply to that case.

13. In this connection, we consider that it would be relevant to refer to Section 3 of the Indian Evidence Act, which defines 'evidence' as comprising (1) oral evidence, that is, all statements which the court permits or requires to be made before it by witnesses and (2) all documents produced for the inspection of the court.

14. Under that definition, affidavits as such, will not be evidence. For an affidavit is merely as declaration sworn to or affirmed before a person competent to administer an oath. Prima facie, it will amount only to a statement before the person before whom the affidavit is sworn to or affirmation made. It cannot certainly be regarded as oral evidence. But, nevertheless, the statutes have permitted affidavits to be used as evidence in certain cases. In several of the proceedings arising from and governed by the Civil Procedure Code, as well as certain others under the Criminal Procedure Code, or other special enactment certain matters are permitted to be proved by means of affidavits. They will, undoubtedly, be evidence in the case by virtue of the statute which makes them evidence.

15. Section 479A in our view, relates only to that type of evidence covered by Clause (1) of Section 3 of the Evidence Act and not to the other cases specified above. Kailasam J., has held that a person filing an affidavit in legal proceeding could be regarded as a witness. That may be so, For a witness has been defined to be one who gives sworn testimony before a court or any judicial authority. In

Ranjit Singh v. State of Pepsu : 1959 CriLJ1124 it was observed that the word witness would include all persons who might be lawfully required to give evidence by or before any court. In cases where the evidence in the form of an affidavit is permitted by statute, a person tendering such evidence, can, in a sense, be regarded as a witness.

16. But Section 479A is not concerned with witnesses as such for the words in it are 'any person appearing before it as a witness', namely, that class of witnesses who appear before the court.

17. It has been contended by Mr. Gopala, swami on behalf of the petitioner that Section 479A should be restricted only to cases where witnesses giving oral evidence are found guilty of perjury or where documents produced by witnesses are found to be fabricated. We are of opinion that the contention is correct, particularly as it accords with the object which the legislature had in introducing that provision into the Criminal Procedure Code as also with the true rule of interpretation of statutes. As we indicated earlier, Section 476 is the general section, while Section 479A is an exception to it in regard to certain of the offences covered by it. The provisions of the latter section are more stringent and less advantageous to from the point of view of the person who is sought to be proceeded against. It should therefore receive a strict construction. It can be easily accepted that false evidence given before a court by means of an affidavit is as objectionable as the one given in the form of oral evidence. But from the very nature of the two cases the procedure adopted for filing a complaint must be different. In the case of oral evidence, the Judge hearing the case has the advantage of seeing the witness in the box and assessing his evidence in the light of other evidence in the case. Equally so in the case of a document produced by a witness, which is found to be a fabricated one. But where evidence is tendered in the form of an affidavit the matter cannot be so simple. Not unoften affidavits are signed by persons without fully appreciating or understanding the contents thereof. At any rate, there may be defences in regard to statements contained in the affidavits on behalf of the person swearing to the same that he was not fully aware of the contents thereof. In such a case, it will not be proper for a court to summarily come to the conclusion, upon the mere perusal of the statements

contained in the affidavit that they are false and that the persons swearing to them should be prosecuted. It is essential that the person concerned should be given an opportunity, in the shape of a preliminary enquiry like the one provided in Section 476, before the court comes to a conclusion that he has deliberately made a false statement. This essential distinction between oral evidence and that of evidence given by means of an affidavit, does call for a difference in the matter of procedure to be adopted for prosecuting the alleged perjurer. Section 479A should not therefore apply to these affidavits which are not supported by oral evidence. This view is supported by authority. In *State v. Ugan Singh* it has been held that the words 'appearing as a witness' convey a sense of physical appearance of a person being witness before a court of law and that, therefore, a person who merely filed an affidavit without personally appearing before the court as a witness could not, if the statements contained in the affidavit turn out to be false, be proceeded against under Section 479A. The same view was adopted, by Bench of the Calcutta High Court in *Kalipada Maity v. Sukumai Bose* : AIR1962 Cal639 . Kunhamed Kutti J while referring the present case for consideration by this Bench has expressed that he found himself more in agreement with the view taken in the two cases cited above, than with the one that found acceptance with *Kailasam J*. We share that opinion. In our view, the words 'any person appearing before ii as a witness' employed in Section 479A are not words of article but are only intended to convey the idea of a witness physically appearing in court and giving evidence or producing documents. It follows that the procedure adopted for filing the complaint against the petitioner under Section 479A cannot be accepted as being in accordance with law. The proper procedure will be the one prescribed by Section 476 Cr.P.C. In the absence of such a complaint the prosecution cannot stand. The order of the lower court will, therefore, be set aside and this revision case allowed.