DHANVANTRAI BALWANTRAI DESAI

1962

September 28

v.

STATE OF MAHARASHTRA

(JAFER IMAM, K. SUBBA RAO, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Bribery—Receipt of gratification—Presumption—Rebuttal of—Onus—Plausible explanation by accused, if discharges onus—Prevention of Corruption Act, 1947 (II of 1947), s. 4.

The appellant was the Resident Engineer for Light Houses and the complainant had a contract for reconstructing one of the light houses. For this construction the contractor used water from a temple well and used a temple room for storing cement. On the completion of the work the appellant asked the contractor to carry out certain repairs to the temple but he declined to do so. At the time of the payment of the final bill the contractor paid a sum of Rs. 1,000/- to the appellant and the amount was recovered from him upon a search. The explanation offered by the appellant was that the contractor had given this sum of money for payment to the temple authorities for repairs to the temple as he had himself been unable to do so. He was convicted under s. 161 Indian Penal Code by raising the presumption under s. 4 of the Prevention of Corruption Act. The appellant contended that the explanation given by him was both reasonable and probable and that accordingly the presumption was rebutted.

Held, that the presumption under s. 4(1) had properly been raised as the appellant had admittedly accepted gratification other than legal remuneration. The appellant had failed to rebut this presumption and was rightly convicted. The burden of rebutting such a presumption resting upon the accused was not as light as in the case of a presumption raised under s. 114 Evidence Act. The burden was not discharged by merely giving a reasonable and probable explanation. The accused had to show that the explanation was a true one. Unless the explanation is supported by proof, the presumption cannot be said to be rebutted.

C. I. Emden v. *State of U. P.*, [1960] 2 S. C. R. 592, *Otto George Gfeller* v. *The King*, A. I. R. (1943) P. C. 211 and

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State of Madras v. *A. Vaidyanatha Iyer*, [1958] S. C. R. 580, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 218 of 1960.

Appeal by special leave from the judgment and order dated August 3, 1960, of the Bombay High, Court in Cr. A. No. 282 of 1960.

A. S. R. Chari, M. K. Ramamurthi, R. K. Garg, D. P. Singh, S. C. Agarwal, L. M. Atmaram Bhukhanwala and *K. R. Choudhri*, for the appellant.

R. L. Anand, D. R. Prem, R. H. Dhebar and *R. N. Sachthey*, for the respondent.

1962. September 28. The Judgment of the Court was delivered by

Mudholkar, J.

MUDHOLKAR, J.—In this appeal by special leave from the judgment of the High Court of Bombay affirming the conviction and sentences passed on the appellant in respect of offences under s. 161, Indian Penal Code and s. 5(1)(d) of the Prevention of Corruption Act, 1947 (2 of 1947) read with s. 5(2) thereof, the only point urged is that the presumption raised against the appellant under s. 4 of the Prevention of Corruption Act must be held to have been rebutted by the explanation given by him inasmuch as that explanation was both reasonable and probable.

In order to appreciate the contention it is necessary to state certain facts.

In the year 1954 the appellant was appointed Resident Engineer for Light Houses and posted to Bombay. He was due to retire in January, 1955 but he was given extensions from time to time. The complainant, M. M. Patel (who will hereafter be referred to as the complainant) is a building contractor. It was proposed to re-construct a light house at Tolkeshwar Point which is situated on the West

Coast, somewhere between Ratnagiri and Karwar. The complainant submitted a tender for the construction on March 21, 1956. That tender was accepted on June 30, 1956 and a work order was issued to him. The general conditions governing the contract are contained in the set of papers inviting tenders.

The complainant commenced the work in November, 1956. It would appear that the overseer supervising the work was not satisfied with the manner in which the contractor was carrying on the work. As a result, in December, 1956, the appellant had to bring the fact to the complainant's notice and warn him to carry out the work according to the specification contained in the notice inviting tenders.

It may be mentioned that just near the place where the light house was being constructed, there is a temple of Tolkeshwar. Attached to the temple there is a small *dharmashala*. There is also a well near the *dharmashala*, and that well is the only convenient source of water supply to the neighbourhood. At the relevant time the water in it was upto a depth of six feet. In the year 1957 appellant wrote a letter to the trustee of the temple asking his permission to take water from that well for supplying it to the Government staff. The idea was to set up a pump in the well and lay out a pipeline leading up to the staff quarters. In reply to the letter Mr. Gole who was the trustee, wrote that if this was done the water in the well will run out in a short time. He, therefore, suggested that the well be deepened and added : "However, the trustees have no objection to the Government's intention of laying out a pipeline from the well provided arrangements are made for supply of water to the temple and the small *dharmashala* nearby". It is not clear whether a pump was set up by the Government and a pipeline laid out. But it is an admitted fact that the well has not been deepened. It is also admitted that the contractor used the well water for carrying on his work without

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obtaining any express permission of the trustees and by the time he finished the work the water level had gone down to a little below two feet.

According to the complainant in February, 1957, the appellant had paid a visit to Tolkeshwar and during his visit he told the complainant "to behave like other contractors" evidently suggesting that he should also pay him certain percentage of his bills as a bribe. It is sufficient to say that both the courts have found that the appellant did not visit Tolkeshwar in February, 1957, but the High Court has held that the appellant did make a demand for bribe in June, 1957, when he visited Tolkeshwar and that the complainant has made a mistake regarding the date on which the bribe was demanded. On March 26, 1957 one Bhatia was posted as Overseer there and though on March 30, 1957, a cheque for Rs. 7,278 odd was given to the complainant on his first running bill. Bhatia made a complaint to the appellant on April 2, 1957, that the complainant was not carrying on his work satisfactorily and was not affording facilities to him for supervising the work. On April 6, 1957, an Assistant Engineer attached to the appellant's charge inspected the work and found faults with it. On April 7, 1957, the complainant and some of his workmen assaulted Bhatia about which the latter made a complaint in writing to the appellant. This complaint was eventually forwarded to the higher authorities who reprimanded the complainant and required him to give an undertaking to behave properly. On April 9, 1957, the appellant wrote to Bhatia asking him to give instructions in writing to the complainant instead of giving mere oral instructions. He likewise wrote to the complainant asking him to carry on the work according to the instructions of Bhatia and also undertake not to use force. On May 13, 1957, the appellant reported to the Director General of light Houses that the complainant's work was bad and not according to specifications. He, therefore, suggested that

the complainant should be required to pull down the constructions which were not according to the specifications. The complainant protested against this. On May 28, 1957, he presented a second running bill for Rs. 38,000 odd and though apparently a cheque was prepared it was not handed over to the complainant as the work was defective. On August 1, 1957, the Director General of Light Houses instructed the appellant not to make any payment to the complainant. It would appear that after some correspondence between the complainant and the higher authorities he eventually pulled down the structures which were not according to the specifications and re-constructed them and was paid Rs. 27,569 odd. That was on February 6, 1958. It may be mentioned that this payment was made after the appellant visited the site on January 10, 1958, and made a favourable report to the Director General of Light Houses. Mr. A.S.R. Chari for the appellant points out that it is not suggested that even at this time the appellant asked for any bribe. Further payments of Rs. 35,000 odd, Rs. 7,000 odd, Rs. 21,000 odd, Rs. 6,200 odd, Rs. 9,190 odd, Rs. 18,900 odd were made between March 18, 1958, and February 9, 1959, and Mr. Chari again points out that there is no suggestion that any illegal gratification was demanded by the appellant before passing any of these bills. In the meanwhile reports that the work being done was unsatisfactory used to be made from time to time by the Overseer to the appellant.

According to the prosecution when the appellant visited the site on January 5, 1959, during the absence of the complainant he asked the complainant's brother-in-law Jaikishen, who was in charge of the work for Rs. 300/- to Rs. 400/-. Jaikishen, however, did not pay the money on the pretext that he had no funds with him. This story, it may be mentioned, was not believed by the Special Judge and no reference to it has been made in the Judgment of the High Court.

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At about that time the appellant was asked to level the ground adjoining the staff quarters and also deepen the well. This was extra work and the complainant declined to do it. It is said that he was also asked to repair the temple and *dharmshala* and he refused to do that work also. On February 9, 1959, the complainant presented his ninth running bill which was for Rs. 22,000 odd. On March 13, 1959, the appellant visited Tolkeshwar. During this visit he received a letter from D. S. Apte, D. W. 2 who used to look after the temple. In that letter he brought to the notice of the appellant that the temple was 400 years old, that small and petty repairs to the temple had become necessary, that it was also necessary to paint the temple both from inside and outside as also to provide a water tap in the temple and construct a road connecting the temple with the lighthouse. He, therefore, requested the appellant to consider these requirements sympathetically. According to the appellant, it is in pursuance of this request that he suggested to the complainant to do some work free for the temple. It may be mentioned that the complainant had actually taken up his residence in the *dharmshala* attached to the temple and had used the main temple hall for sometime for storing his cement bags. Thus in addition to using the water from the temple well he had made ample use of the temple properties. According to Mr. Chari it was apparently for this reason that the appellant made the aforementioned suggestion to the complainant. It is an admitted fact that though the cheque for payment of Rs. 22,000 odd for the ninth running bill was prepared on March 23, 1959, it was not handed over to the complainant on that date. It is the complainant's case that the appellant was demanding 10% of the bills by way of illegal gratification, that upon the complainant refusing to pay that amount the appellant brought down the demand to 3 or 4% and ultimately to Rs. 1,000/-. The prosecution case is that it is for compelling the complainant

to disgorge this amount that the cheque was being withheld. According to the appellant he refused to certify completion of the work unless the complainant undertook to level the ground and deepen the well and for no other reason. He admitted that this was extra work but he said that the complainant was required under the contract to do the extra work though of course he would have been entitled to separate payment with respect to it. It was for this reason alone that he had asked the complainant to see him in Bombay on March 26, 1959. The complainant on being informed of this, wrote to the appellant's office on March 27, 1959, saying that the cheque should not be sent by post but should be handed over to him personally when he visited Bombay. On March 28, 1959, this postcard was brought to the notice of the appellant. He was going on a short leave and, therefore, he made an endorsement on that postcard that the complainant should be asked to see him on April 6, 1959, by which time he would be back on duty and that the complainant would be given the cheque on that day. On March 31, 1959, the appellant learnt that a cheque for Rs. 32,200 odd on account of the tenth running bill had been prepared and he, therefore, asked for payment of the bill also but the officer in charge did not hand over either of the cheques to him. Thereafter the complainant went to the anti-corruption department and lodged a complaint.

On April 6, 1959, the complainant went to the office of the appellant and saw him in his cabin. There the cheque was handed over by the appellant to the complainant. But before that, according to the complainant, he paid Rs. 1,000 in currency notes to the appellant. Having done that he came out and then certain police officials accompanied by *panchas* entered the room. On being required to produce the money by the police officials the appellant promptly took out the currency notes from his pocket.

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It may be mentioned that the currency notes were besmeared with enthracene powder and it is common ground that traces of enthracene powder were found not only on the pocket of the appellant but also on his fingers and those of the complainant. The curreney notes were on examination also found to show traces of enthracene. It may be mentioned that the cheque was not subjected to the usual test. The appellant's explanation is that after he handed over the cheque to the complainant the letter said that he was really not in a position to do the repair work etc., to the temple and *dharmshala* because he did not have enough men even for doing the work which was undertaken by him and that he was therefore handing over to the appellant Rs. 1,000 for being transmitted to the temple authorities. His grievance is that by not subjecting the cheque to the usual test he has been deprived of the opportunity of establishing his defence that the cheque was handed over by him to the complainant even before he received the money. It does not appear, however, that any grievance was made of this fact before the special Judge who tried the case.

Thus the receipt of Rs. 1,000/- was admitted by the appellant. This was admittedly not the appellant's 'legal remuneration'. The first question, therefore, is whether a presumption under sub-s. 1 of s. 4 of the prevention of Corruption Act arises in this case. That provision runs thus :

> "Where in any trial of an offence punishable under section 161 or section 165 of the Indian Penal Code it is proved that an accused person has accepted or obtained, or has agreed to accept or attempted to obtain, for himself or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed unless the contrary is proved that he accepted or

> obtained, or agreed to accept or attempted to obtain, that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in the said section 161, or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

It was contended that the use of the word 'gratification' in sub-s. (1) of s. 4 emphasises that the mere receipt of any money does not justify the raising of a presumption thereunder and that something more than the mere receipt of money has to be proved. A similar argument was raised before this Court in *C. I. Emden* v. *State of Uttar Pradesh*[1]. Dealing with it this Court has pointed out that what the prosecution has to prove is that the accused person has received "gratification other than legal remuneration" and that when it is shown that he has received a certain sum of money which was not a legal remuneration, then the condition prescribed by this section is satisfied. This Court then proceeded to observe:

> "If the word 'gratification' is construed to mean money paid by way of a bribe then it would be futile or superfluous to prescribe for the raising of the presumption. Technically it may no doubt be suggested that the object which the statutory presumption serves on this construction is that the court may then presume that the money was paid by way of a bribe as a motive or reward as required by s. 161 of the Code. In our opinion this could not have been the intention of the Legislature in prescribing the statutory presumption under s. 4 (1)".

This Court further said that there is yet another consideration which supports the construction placed by it. In this connection a reference was made to s. 165 of the Code and it was observed:

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"It cannot be suggested that the relevant clause in s. 4 (1) which deals with the acceptance of any valuable thing should be interpreted to impose upon the prosecution an obligation to prove not only that the valuable thing has been received by the accused but that it has been received by him without consideration or for a consideration which he knows to be inadequate. The plain meaning of this clause undoubtedly requires the presumption to be raised whenever it is shown that the valuable thing has been received by the accused without anything more. If that is the true position in respect of the construction of this part of s. 4 (1) it would be unreasonable to hold that the word 'gratification' in the same clause imports the necessity to prove not only the payment of money but the incriminating character of the said payment. It is true that the Legislature might have used the word 'money' or 'consideration' as has been done by the relevant section of the English statute;....."

That being the legal position it must be held the requirements of sub-s. (1) of s. 4 have been fulfilled in the present case and the presumption thereunder must be raised.

The next contention of Mr. Chari is that the accused person is entitled to rebut the presumption arising against him by virtue of a statutory provision by offering an explanation which is reasonable and probable. According to him the complainant evidently nursed a grievance against the appellant because the latter used to find fault with his work that the complainant was required to demolish some construction and do the work over again. He further points out that the complainant also felt aggrieved because of the appellant's insistence on the complainant doing the work of levelling the ground adjoining

the staff quarters and deepening the temple well even though he would have been paid separately for this work. It is because of these circumstances that according to Mr. Chari, the complainant conceived the idea of laying a trap for involving the appellant. He points out that apart from the bare statement of the complainant there is nothing to show that the appellant had been asking for any bribes. No doubt the appellant had suggested that some work for the temple should be done free by the complainant. But that was merely by way of request and nothing more and that there is nothing to show that he was using his official position to coerce the complainant for doing this work. He has taken us through considerable portions of the evidence on record to show that the complainant was not the kind of man who could be easily cowed down and it is unthinkable that the appellant would have tried to use pressure tactics against the complainant either for doing some work for the temple or for obtaining illegal gratification for himself. And in this connection he referred in particular to a reply sent by the complainant to the Director General of Light Houses. Then he points out that it has not been established that though bills worth a lakh of rupees or so were already passed for payment by the appellant, he had used any pressure for obtaining bribe. It would, therefore, not be reasonable to hold that the appellant had withheld the ninth bill just for coercing the complainant to pay a thousand rupees to him by way of illegal gratification. He then pointed out that actually on March 19, 1959, the appellant had applied to the Director General of Light Houses for permission to retire as from June 30, and requested him to settle his gratuity amount. In these circumstances and knowing full well the kind of person the complainant was, would the appellant, says Mr. Chari, have been foolish enough to press him for a comparatively trivial amount of Rs. 1,000/- by way of bribe? He, therefore, urges that in the circumstances the explanation

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offered by the appellant which is to the effect that the complainant voluntarily paid to him a sum of Rs. 1,000/- on April 6, 1959, for being passed on to the temple authorities should be accepted as reasonable and probable. His grievance is that the High Court has mis-stated and misapplied the law when it observed in its judgment:

> "The usual standard of an explanation given by the accused which may reasonably be true, though the Court does not accept it to be true, cannot be enough to discharge the burden. It is not necessary to consider what evidence would satisfy the words 'until the contrary is proved' in this case. The least that can be said is that the Court must be satisfied from the material placed before it on behalf of the accused either from the evidence for the prosecution or for the accused that it creates a reasonable doubt about the prosecution case itself. It is not necessary to go beyond this in this case since we are satisfied that the circumstances and the evidence placed before us do not create a reasonable doubt about the prosecution case."

Mr. Chari contends that upon the view taken by the High Court it would mean that an accused person is required to discharge more or less the same burden for proving his innocence which the prosecution has to discharge for proving the guilt of an accused person. He referred us to the decision in *Otto George Gfeller* v. *The King* (1) and contended that whether a presumption arises from the common course of human affairs or from a statute there is no difference as to the manner in which that presumption could be rebutted. In the decision referred to above the Privy Council, when dealing with a case from Nigeria, held that if an explanation was given which the jury think might reasonably be true and which is consistent with innocence, although they were not convinced of its truth, the accused person would be

(1) A. I. R. (1949) P. C. 211.

entitled to acquittal inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused. That, however, was a case where the question before the jury was whether a presumption of the kind which in India may be raised under s. 114 of the Evidence Act could be raised from the fact of possession of goods recently stolen, that the possessor of the goods was either a thief or receiver of stolen property. In the case before us, however, the presumption arises not under s. 114 of the Evidence Act but under s. 4(1) of the Prevention of Corruption Act. It is well to bear in mind that whereas under s. 114 of the Evidence Act it is open to the Court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact and it is not obligatory upon the court to draw such presumption, under sub-s. (1) of s. 4, however, if a certain fact is proved, that is, where any gratification (other than legal gratification) or any valueable thing is proved to have been received by an accused person the court is required to draw a presumption that that person received that thing as a motive of reward such as is mentioned in s. 161 I.P.C. Therefore, the Court has no choice in the matter, once it is established that the accused person has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to that person to show that though that money was not due to him as legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which was lawful. The burden resting on the accused person in such a case would not be as light as it is where a presumption is raised under s. 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words 'unless the contrary is proved' which occur

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in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material before it the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

How the burden which has shifted to the accused under s. 4(1) of the prevention of Corruption Act is to be discharged has been considered by this Court in *State of Madras* v. *A. Vaidyanatha Iyer*(1) where it has been observed :

> "Therefore, where it is proved that a gratification has been accepted, then the presumption shall at once arise under the section. It introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. It may here be mentioned that the legislature has chosen to use the words 'shall presume' and not 'may presume', the former a presumption of law and latter of fact. Both these phrases have been defined in the Indian Evidence Act, no doubt for the purpose of that Act, but s. 4 of the Prevention of Corruption Act is in *pari materia* with the Evidence Act because it deals with a branch of law of evidence, i.e., presumptions, and, therefore, should have the same meaning. 'Shall presume' has been defined in the Evidence Act as follows :
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> "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

It is a presumption of law and therefore it is obligatory on the court to raise this presumption

(1) [1958] S. C. R. 580.

in every case brought under s. 4 of the Prevention of Corruption Act because unlike the case of presumption of fact, presumptions of law constitute a branch of jurisprudence."

These observations were made by this Court while dealing with an appeal against an order of the Madras High Court setting aside the conviction of an accused person under s. 161, I.P.C. In that case the accused, an Income-tax Officer, was alleged to have received a sum of Rs. 1,000 as bribe from an assessee whose case was pending before him. His defence was that he had taken that money by way of loan. The High Court found as a fact that the accused was in need of Rs. 1,000/- and had asked the assessee for a loan of that amount. It was of opinion that the versions given by the assessee and the accused were balanced, that the bribe seemed to tilt the scale in favour of the accused and that the evidence was not sufficient to show that the explanation offered cannot reasonably be rejected. This Court reversed the High Court's decision holding that the approach of the High Court was wrong. The basis of the decision of this Court evidently was that a presumption of law cannot be successfully rebutted by merely raising a probability, however reasonable, that the actual fact is the reverse of the fact which is presumed. Something more than raising a reasonable probability is required for rebutting a presumption of law. The bare word of the appellant is not enough and it was necessary for him to show that upon the established practice his explanation was so probable that a prudent man ought, in the circumstances, to have accepted it. According to Mr. Chari here, there is some material in addition to the explanation offered by the appellant which will go to rebut the presumption raised under s. 4 (1) of the Act. He points out that there is the letter from D. S. Apte addressed to the appellant, defence Ex. No. 32 collectively, which the appellant claims to have received on or after March

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13, 1959, during his visit to Tolkeshwar. He says that this letter was produced by him immediately when the police official came to his cabin on April 6, 1959 and recovered from him a sum of Rs. 1,000/- which the complainant had paid to him. He points out that this letter was in the same pocket in which the money was kept and says that it is conclusive to disprove the money being received by way of bribe. He also relise upon the evidence of D.S. Apte. That evidence, however, does not go further than the letter. No evidence was, however brought to our notice to show that the appellant had at any time asked the complainant to give any money by way of donation to the temple and indeed there is evidence to the contrary to the effect that none of the persons interested in the temple had authorised the appellent to collect any money for meeting the expenses of repairs to the temple. It is because of these circumstances and because it believed the statement of the complainant that the appellant had asked him for a bribe that the High Court did not accept the appellant's explanation that the money was paid by the complainant to him for being passed on to the temple trustee as true. The High Court disbelieved the evidence of Apte and held the letter to be worthless. In doing so it cannot be said that the High Court has acted unreasonably. It would therefore not be appropriate for us to place our own assessment on these two pieces of evidence. Further the question whether a presumption of law or fact stands rebutted by the evidence or other material on record is one of fact and not law and this Court is slow to interfere with the view of facts taken by the High Court. No doubt, it will be open to this Court to examine the evidence for itself where the High Court has proceeded upon an erroneous view as to the nature of the presumption or, again, where the assessment of facts made by the High Court is manifestly erroneous. The case before us does not suffer from either of these defects. In the circumstances we dismiss the appeal.

A plea was made before us that in view of the age of the appellant and the fact that he was just about to retire when the prosecution was started we should reduce the sentence to the period already undergone. These circumstances were borne in mind by the learned Special Judge when he passed a substantive sentence of imprisonment of one year only though the maximum for the offence is seven years. We do not think that there is room for further reduction of the sentence.

Appeal dismissed.

SHABIR HUSSEIN BHOLU

v.

STATE OF MAHARASHTRA

(JAFER IMAM, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Perjury by witnesses —Prosecution of—Order for prosecution made after conclusion of trial—Legality of —Committal proceedings—If a stage of Sessions trial—Code of Criminal Procedure, 1898 (Act V of 1898), ss. 476 and 479-A.

The appellant appeared as a witness in a jury trial for murder. Before the Court he gave a statemeut contradictory to the one he had given before the committing court. After the conclusion of the trial and delivery of judgment the Sessions Judge passed a separate order for prosecution of the appellant for intentionally giving false evidence.

Held, that the provisions of s. 479A had not been complied with and no cognizance could be taken of the offence Two conditions were laid down for the exercise of the powers under s. 479A, (i) the court must form an opinion that the person has committed one of the two categories of offences referred to in s. 479A, and (ii) the Court must come to the conclusion that for the eradication of the evils of perjury etc. and in the interests of