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KUPPA GOUNDAN & ANR.

v.

M.S.P. RAJESH

B

May 5, 1966

[M. HIDAYATULLAH, V. RAMASWAMI AND J. M. SHELAT, JJ.]

Criminal Procedure Code, 1898 (*Act* 5 *of* 1898). *s.* 476—*Trial concluded—Maintainability of the complaint for perjury.*

At a trial, the appellants gave evidence against the respondent. C After the conclusion of the trial the respondent filed a petition in the court of the Magistrate under s. 476(1) Criminal Procedure Code, praying for the prosecution of the appellants for giving false evidence under s. 193 Indian Penal Code, and adduced evidence in support of his contention. The Magistrate thought that in the interest of justice the appellants should be prosecuted and accordingly filed a complaint. The appellants contended that the complaint was not maintainable because the trying Magistrate had not followed the procedure under s. 479-A, Criminal Procedure Code and it was there- D fore not open to the Magistrate to take recourse to the provisions of s. 476.

HELD: The prosecution of the appellants under the provisions of s. 476 Criminal Procedure Code by the Magistrate after the conclusion of the trial was legally valid and was not affected by the bar of cl. (6) of s. 479-A. Criminal Procedure Code. [377G]

The bar of cl. (6) will not apply to a case where perjury is detec- E ted not merely with reference to the evidence adduced at the trial but with reference to the evidence adduced in some other distinct proceeding not then brought before the court or because there is some other material subsequently produced after the conclusion of the trial and delivery of judgment which renders the prosecution for perjury essential in the interests of justice. [377 F]

Shabir Hussein Bholu, v. *State of Maharashtra*, [1963] Supp. 1 S.C.R. 501, explained and distinguished. F

C.P. Kasi Thevar v. *Chinniah Konar*, A.I.R. 1960 Mad. 77 and *In re Gnanamuthu* A.I.R. 1964 Mad. 446, approved.

Jai Bir Singh v. *Malkhan Singh*, A.I.R. 1958 All. 364, *Parsotam Lal Vir Bhan* v. *Madan Lal Bashambar Das*, A.I.R. 1959 Punj. 145 and *Amolak* v. *State*. A.I.R. 1961 Raj. 220, disapproved.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 69 G of 1966.

Appeal by special leave from the judgment and order dated December 9, 1965 of the Madras High Court in Criminal Revision Case No. 1261 of 1964 and Criminal Revision Petition No. 1235 of 1964.

H *R. Thiagarajan*, for the appellants.

Purshottam Trikamdas and *T. V. R. Tatachari*, for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J. The 2nd petitioner Kuppuswami lodged a a complaint with Yercaud Police on October 12, 1963 alleging that the respondent, M. S. P. Rajesh and other persons had formed an unlawful assembly and committed offences of house trespass, mischief and causing hurt at 10 p.m. on October 11, 1963. The complaint was the subject-matter of investigation by the police who did not present a charge-sheet against respondent, M. S. P. Rajesh but filed a charge-sheet against 4 other persons under ss. 323, 325 and 448, Indian Penal Code in C.C. No. 3097/1963 in the Court of Sub-Magistrate 3, Salem. The case was tried by the Sub-Magistrate who ultimately acquitted all the accused by his judgment dated December 13, 1963. In the course of evidence at that trial the 1st petitioner was examined as P.W. 1 and 2nd petitioner as P.W. 2 and it is alleged by the respondent that the petitioner gave false evidence to the effect that the respondent was also among the trespassers and assailants and that he was armed with a gun which another accused took from him. After the conclusion of the trial the respondent filed a petition in the court of the Magistrate under s. 476(1), Criminal Procedure Code alleging that on October 11, 1962 he along with certain other Directors had attended a meeting of the Board of Directors of Chembra Peak Estate Ltd. from 4.30 p.m. to 5.15 p.m. at Bangalore and that he was not at Yercaud on October 11, 1963, and prayed for the prosecution of the petitioners for giving false evidence under s. 193, Indian Penal Code. The respondent produced a copy of the Draft Minutes of the Board meeting and also cited certain witnesses in support of his case. After considering the matter, the Sub-Magistrate of Salem held that he was satisfied that the respondent could not have been present at the alleged occurrence on October 11, 1963 at Yercaud and that P.W.s 1 and 2 deliberately committed perjury and implicated Mr. Rajesh as among the assailants. The Sub-Magistrate thought that in the interest of justice the petitioners should be prosecuted under s. 193, Indian Penal Code and accordingly filed a complaint against the petitioners under s. 193, Indian Penal Code in the Court of District Magistrate (Judicial), Salem. The petitioners contended that the complaint was not maintainable in law because the trying Magistrate had not followed the procedure under s. 479-A. Criminal Procedure Code and it was therefore not open to the Magistrate to take recourse to the provisions of s. 476, Criminal Procedure Code. By his order dated February 10, 1964 the District Magistrate discharged the petitioners holding that the complaint was not sustainable in view of the decision of this Court in *Shabir Hussain Bholu* v. *State of Maharashtra*(1). Thereupon the respondent filed Criminal R.C. No. 1261 of 1964 in the Madras High Court against the order of the District Magistrate (Judicial), Salem. By his

(1) [1933] Supp. 1 S.C.R. 501.

judgment dated December 9, 1965 Anantanarayanan, J. set aside the orders of the District Magistrate (Judicial) and directed that the case should be taken up by the District Magistrate and the trial proceeded with in accordance with law.

This appeal is brought, by special leave, from the order of the Madras High Court dated December 9, 1965 in Crl. R.C. No. 1261 of 1964.

The question of law arising in this case is—what is the true meaning and scope of s. 476, Criminal Procedure Code in the context of s. 479-A(1) and (6), Criminal Procedure Code with regard to a prosecution authorised by a Court in respect of an offence of prejury committed before it in the course of the trial?

Chapter XXXV of the Code of Criminal Procedure prescribes the procedure to be followed for prosecution of offenders in case of certain offences affecting the administration of justice. Section 476 sets out the procedure for prosecution of offenders for offences enumerated in s. 195(1)(b) and (c) of the Code of Criminal Procedure. If a Civil, Revenue or Criminal Court is of opinion, that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in s. 195(1)(b) or (c) which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing and forward the same to a Magistrate of the first class having jurisdiction. Section 476-A authorises a superior Court to make a complaint where a Subordinate Court has omitted to do so in respect of offences and in the circumstances mentioned in s. 476(1). Section 476-B provides for a right of appeal against the order making or refusing to make a complaint. Sections 478 and 479 deal with the procedure which may be followed in certain grave cases. Section 479-A which was added by the Code of Criminal Procedure (Amendment) Act 26 of 1955 by the first sub-section (in so far as it is material) provides as follows :

> "479-A. (1) Notwithstanding anything contained in sections 476 to 479 inclusive, when any Civil, Revenue or 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 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 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, and may.....".

Sub-section (6) of this section enacts as follows:—

"(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.

The scheme of s. 479-A is to enact a special procedure for the more expeditious and effective manner of dealing with certain cases of perjury and fabrication of false evidence by witnesses in the course of judicial proceedings. There is, however, a necessary condition for the application of s. 479-A, Criminal Procedure Code. The condition is that the Court before it delivers its judgment or at any rate at the time of delivering the judgment must form an opinion that a particular witness or witnesses, is, or, are giving false evidence, if the court could not form any opinion about the falsity of the evidence of the witness appearing before it, then certainly the court cannot at the time of delivering its judgment, record any finding about the same. It is manifest that a court can come to a conclusion that a witness is false only when there are materials placed before it to justify that opinion. If no materials are placed before the court to enable the court to form an opinion that a witness is giving false evidence, then certainly it could not form that opinion. In the present case, the respondent produced material before the trial court on December 23, 1963 after the conclusion of the trial that the petitioners had given false evidence in the case and the respondent produced the necessary documents along with an application for proceeding against the petitioners under s. 476, Criminal Procedure Code. Till those documents were produced there was no opportunity or occasion for the magistrate to form an opinion about the falsity of the evidence adduced by the petitioners. It is, therefore, manifest that at the time when the judgment was delivered the magistrate had no material before him to form an opinion that the petitioners had given false evidence. It is only after the respondent had made his application on December 23, 1963 and brought the necessary material to the notice of the court that the falsity of the evidence of the petitioners became apparent and the magistrate was in a position to form an opinion about the falsity of the evidence given by the petitioners. It is, therefore, clear that s. 479-A will not be applicable on the facts of this case, and if the provisions of s. 479-A will not apply on the facts of this case it follows that the bar contemplated by cl. (6) of that section will not be applicable. The reason is that cl. (6) can be invoked only in cases in which

A s. 479-A(1) will be applicable. The crucial words of cl. (6) are "if in respect of such a person proceedings may be taken under this section". It is clear that the bar under s. 479-A (6) refers not to the legal character of the offence *per se* but to the possibility of action under s. 479-A upon the facts and circumstances of the particular case. If, for instance, material is made available to the B court after the judgment had been pronounced, rendering it clearly beyond doubt that a person had committed perjury during the trial and that material was simply unavailable to the Court before or at the time of judgment, it is very difficult to see how the court could have acted under s. 479-A, Criminal Procedure Code at all. It cannot be supposed that the legislature contemplated that such a case of perjury, however, gross should go unpunish- C ed in such circumstances. It appears to us that the true interpretation of the language of cl. (6) of s. 479-A is that it does not operate as a bar to the prosecution for perjury in a case of this description. Take, for instance, the trial of 'A' for the murder of 'B' in the Sessions Court where 'C', 'D' and 'E' gave evidence that they actually saw 'A' committing the murder of 'B'. Suppose D at the conclusion of the trial and after delivery of judgment by the Sessions Court 'B' is found alive and there is uncontestable evidence to show that 'A' was falsely charged for the murder of 'B'. Is it to be contemplated that in such a case there is no remedy available to the Court to prosecute C, D, and E for perjury under the provisions of s. 476, Criminal Procedure Code, though action cannot be taken, in the circumstances of the case, under E s. 479-A, Criminal Procedure Code? In our opinion, such a startling consequence was not contemplated by Parliament and the bar of cl. (6) of s. 479-A was intended only to apply to cases of perjury and fabrication of false evidence in which the trying Magistrate could have acted under s. 479-A(1). In other words, the bar of cl. (6) will not apply to a case where perjury is detected not merely with reference to the evidence adduced at the trial F but with reference to the evidence adduced in some other distinct proceeding, not then brought before the court or because there is some other material subsequently produced after the conclusion of the trial and delivery of judgment which renders the prosecution for perjury essential in the interests of justice. Applying the principle in the present case we are of opinion that the prosecution of the petitioners under the provisions of s. 476, Criminal G Procedure Code by the Magistrate after the conclusion of the trial is legally valid and is not affected by the bar of cl. (6) of s. 479-A, Criminal Procedure Code.

On behalf of the appellants Mr. Thiagarajan referred to the decision of this Court in *Shabir Hussein Bholu* v. *State of Maha- H rashtra*(1). But the principle of that decision does not afford any assistance to the appellants in this case. It appears that the

(1) [1963] Supp. 1 S.C.R. 591.

appellant in that case appeared as a witness in a jury trial for murder. Before the Court he gave a statement 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 under s. 193, Indian Penal Code. It was held by this Court that the provisions of s. 479-A 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. 479-A, (i) the court must form an opinion that the person has committed one of the two categories of offences referred to in s. 479-A, and (ii) the Court must come to the conclusion that for the eradication of the evils of perjury etc. and in the interests of justice it is expedient that the person be prosecuted. This opinion and conclusion must be arrived at at the time of the delivery of the judgment or final order in the trial; the court cannot later on resort to s. 476 and make a complaint against the witnesses. The provisions of s. 479-A were held applicable to the case and the fact that the trial was with the aid of a jury did not preclude the Sessions Judge from recording the findings required by s. 479-A. While considering whether action should be taken under s. 479-A it was open to the Sessions Judge to say whether the evidence tendered at the trial was true or false. It is manifest that the material in that case was produced before the Sessions Court for coming to the conclusion that the appellant had committed perjury and so the procedure contemplated in s. 479-A(1) was applicable and since the Sessions Judge did not proceed under that section, though he could have done so, the bar contemplated by cl. (6) of s. 479-A operated and no action could have been taken under s. 476, Criminal Procedure Code. The ratio of that decision is not applicable to the present case because the material facts are different. It is necessary to add that in *Shabir Hussein Bholu* v. *State of Maharashtra*(1) this Court observed that if the Judge is unable to come to a conclusion that the statement made at the trial is false then provisions of s. 479-A (1) would not be applicable. At page 512 of the Report it was observed by this Court as follows:

> "But, for considering the applicability of s. 479-A(1) what has to be borne in mind is that in a jury trial it is possible for the Judge to come a conclusion that the statement made at the trial is false. If he comes to that conclusion then, as rightly observed in Badullah's case (A.I.R. 1961 All. 397), he has no option but to proceed under s. 479-A(1), Cr. P.C. The question then is whether he could act under this provision if he is unable to form an opinion one way or the other as to whether the evidence tendered at the trial is false or the evidence before the committing Magistrate is false. What would be the position in such a case? If the proceed-

(1) [1963] Supp. 1. S.C.R. 501.

A ings before the committing Magistrate must be held to be entirely separate proceedings then we agree with the Allahabad High Court that s. 479-A(1) would not apply."

There is divergence of opinion among the various High Courts on the question of law presented for determination in this B case. In *Jai Bir Singh* v. *Malkhan Singh and another*(1), it was held by Sahai, J. that the bar of s. 479-A(6) applies to all cases of perjury, *viz.*, (1) those where the perjury or the fabrication of false evidence has been detected by the court when the judgment is pronounced, and (2) cases where the perjury or fabrication of false evidence does not come to light till after the judgment has been pronounced and it was not open to the Court to proceed C under s. 476, Criminal Procedure Code for prosecution in the latter class of cases. The same view has been taken by the Punjab High Court in *Parshotam Lal L. Vir Bhan* v. *Madan Lal Bishambar Das*(2) and the Rajasthan High Court in *Amolak* v. *State*(3). A contrary view has been expressed by the Madras High Court in *C. P. Kasi Thevar* v. *Chinniah Konar*(4) and *In re. Gnanamuthu*(5).

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For the reasons already expressed we are of opinion that the decision of the Madras High Court in *C.P. Kasi Thevar* v. *Chinniah Konar*(4) and *In re. Gnanamuthu*(5) represents the correct law on the point.

For these reasons we hold that there is no merit in this appeal E which is accordingly dismissed.

Appeal dismissed.

(1) A.I.R. 1958 All. 364.
(2) A.I.R. 1959 Punjab 145.
(3) A.I.R. 1961 Rajasthan 220.
(4) A.I.R. 1960 Mad. 77.
(5) A.I.R. 1964 Mad. 446.