

## CRIMINAL MISCELLANEOUS

Before G. D. Khosla and Gurnam Singh, JJ.

PARSHOTAM LAL,—Petitioner

versus

MADAN LAL,—Respondent

Criminal Miscellaneous No. 295 of 1958.

Code of Criminal Procedure (V of 1898)—Section 479A—Scope of—Whether overrides section 476 in respect of witnesses who give false evidence.

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*Held*, that section 479 was enacted for the more expeditious and effective manner of dealing with perjurers. It was meant to be fair to both sides, i.e., to bring a criminal to book promptly and not to harass him after long delays. There is a clear remedy at least in some cases where perjury is discovered after the disposal of the proceedings. When an appeal is taken from the decision of the case, the appellate Court has the same powers to deal with the offender under section 479A as the trial Court.

*Held*, that the provisions of section 479A override the provisions of sections 476 to 479, Criminal Procedure Code, in so far as they relate to the giving of false evidence or fabricating false evidence by a person who gives evidence during the course of the judicial proceedings.

*Case referred on 7th July, 1958, by Hon'ble Mr. Justice A. N. Grover, to a Division Bench, for decision of a legal point involved in the case and finally decided by the Division Bench consisting of Hon'ble Mr. Justice G. D. Khosla and Hon'ble Mr. Justice Gurnam Singh, on the 22nd September, 1958.*

M. R. MAHAJAN, for Petitioner.

HIRA LAL SIBAL, and CHETAN DASS, Assistant Advocate-General, for Respondent.

## JUDGMENT

G. D. Khosla, J.      G. D. KHOSLA, J.—This petition under section 561A of the Code of Criminal Procedure which has been referred to this Bench by Grover, J., raises the interpretation of section 479A of the Code.

The matter arose in the following manner. Parshotam Lal who is the petitioner before us filed a suit against Madan Lal, for the recovery of a sum of money. He appeared as a witness on his behalf and also called one Satya Parkash who gave evidence for him. The suit was eventually decreed in favour of Parshotam Lal but while it was still pending, Madan Lal on 17th June, 1957, made an application to the trial Judge that Parshotam Lal and his witness Satya Parkash had both been guilty of committing perjury and should be prosecuted. Madan Lal pointed out the specific false statement and mentioned the evidence by which he proposed to support the charge of perjury. No order was passed on this application and the suit was decided on 2nd July, 1957. It appears that the Sub-Judge accepted the testimony of Parshotam Lal and his witness Satya Parkash and made no adverse comments on their credibility or veracity. An appeal against the decree has been filed and we are told that the appeal is pending. However, on 15th July, 1957, i.e., a few days after the decree was passed, Madan Lal made a second application to the sub-Judge praying for the prosecution of Parshotam Lal and Satya Parkash for the offence of perjury. This application was made under section 476 of the Code. Parshotam Lal took objection that this application was not competent because the matter not having been dealt with under section 479A (1), no further action could be taken against him and Satya Parkash. The Sub-Judge

repelled this objection and took the view that section 479A did not abrogate the provisions of section 476, Criminal Procedure Code, which remained "alive with full force". He, therefore, directed the applicant (Madan Lal) to produce evidence in support of his application. Parshotam Lal brought the matter up to this Court under the provisions of section 561A of the Code of Criminal Procedure, and when this matter came before Grover, J., sitting singly, he took the view that the scope and effect of the provisions contained in section 479A were of a difficult nature and were likely to be raised in numerous cases that may have to be decided by subordinate Courts or by this Court. He, therefore, directed that the matter be considered by a Division Bench.

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Section 479A which was recently enacted is in the following terms:—

"479A. (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 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

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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, if the accused is present before the Court, take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate:

Provided that where the Court making the complaint is a High Court, the complaint may be signed by such officer of the Court as the Court may appoint.

*Explanation.*—For the purposes of this subsection, a Presidency Magistrate shall be deemed to be a Magistrate of first class.

- (2) Such Magistrate shall thereupon proceed according to law and as if upon complaint made under section 200.
- (3) No appeal shall lie from any finding recorded and complaint made under subsection (1).
- (4) Where, in any case, a complaint has been made under sub-section (1) and an appeal has been preferred against the decision arrived at in the judicial proceeding out of which the matter has arisen, the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred shall be adjourned until such appeal is decided; and the Appellate Court, after giving the person against whom the complaint has been made an opportunity of being heard, may, if it

so, thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of the case is pending.

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- (5) In any case, where an appeal has been preferred from any decision of a Civil, Revenue or Criminal Court but no complaint has been made under sub-section (1), the power conferred on such Civil, Revenue or Criminal Court under the said sub-section may be exercised by the Appellate Court; and where the Appellate Court makes such complaint, the provisions of subsection (1) shall apply accordingly, but no such order shall be made, without giving the person affected thereby an opportunity of being heard.
- (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 relevant portions of this section are the opening sentence "Notwithstanding anything contained in sections 476 to 479 inclusive \* \* \* \*" and subsection (6). The question to consider is whether the provisions of section 476 are abrogated by the newly enacted section in so far as they relate to the prosecution of witnesses who appear in Court and give false evidence. Mr. Mahajan has contended before us that the word "Notwithstanding" clearly means that the preceding sections 476 to 479 must give way to the provisions of section

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479A. He has drawn our attention to subsection (6) which he says is conclusive and whose terms direct that where the case of a person is covered by section 479A, no proceedings can be taken against him under sections 476 to 479. He has drawn our attention to the Statement of Objects and Reasons affixed to the amending Act and some observations of the Supreme Court in *Budhan Choudhry and others v. State of Bihar* (1).

The Supreme Court while considering section 30 *vis-a-vis* sections 28 and 29 of the Code of Criminal Procedure observed at page 194 of the report—

“Further, the text of section 30 itself quite clearly says that its provisions will operate ‘notwithstanding anything contained in section 28 or section 29’. Therefore, the provisions of section 28 and the second schedule must give way to the provisions of section 30.”

Interpreting the opening word “Notwithstanding” of section 479A, in the light of the above observation, it must be held that the previous sections 476 to 479 give way to the provisions of section 479A. Section 479A was intended to deal with a special class of cases falling under the preceding sections. Sections 476 to 479 deal with a large number of offences affecting the administration of justice. From these, a certain class of offences, to wit, the giving of false evidence or fabricating false evidence by any person appearing before a Court as witness, were selected and dealt with under section 479A. The concluding portion of the Statement of Objects and Reasons as printed at page

(1) A.I.R. 1955 S.C. 191

480 of the Code of Criminal Procedure, Volume 4, published by the A.I.R., runs as follows:—

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“The Committee have made it clear that for the prosecution of a person who appears as a witness and gives false evidence, the provisions of this section shall apply and the provisions of sections 476 to 479 inclusive shall not apply.”

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But quite apart from what is said in the Statement of Objects and Reasons, sub-section (6) is quite clear. It clearly lays down that where the case of a person may be dealt with under section 479A, he cannot be proceeded against under sections 476 to 479. In the present instance Parshotam Lal and Satya Parkash could have been dealt with under section 479A. Madan Lal actually made an application with this object in view to the Subordinate Judge. He pointed the nature of false evidence given by the two witnesses and also referred to the evidence which would prove their guilt. The Subordinate Judge, however, chose not to take any action, and believing the two witnesses passed a decree against Madan Lal. Madan Lal, therefore, cannot now claim to take proceedings against the two witnesses under section 476, Criminal Procedure Code.

The matter was considered by Sahai, J., of the Allahabad High Court in *Jai Bir Singh v. Malkhan Singh* (1) and the learned Judge observed as follows:—

“The language of section 479A itself shows that it was not the intention of the Legislature that only those cases where perjury or fabrication of false evidence by

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a witness has been discovered by the time the judgment is pronounced should be dealt with under section 479A and other cases of perjury under section 476. It is true that in this view cases of perjury or fabricating false evidence detected after the judgment or the order has been pronounced would go unpunished, but a Court is not concerned with that when in its opinion the intention of the Legislature is to very promptly deal with cases of perjury and that is why they have made a special self-contained provision for the same."

If I may say so with great respect I agree entirely with Sahai, J.

Mr. Sibal argued that to interpret section 479A in this manner would be to defeat the purpose for which it was enacted, because if the commission of a perjury in the course of a judicial proceeding were discovered after the proceedings have been disposed of, then no action could be taken against the offender. This result may in some cases follow, but the intention of the Legislature appears to be quite clear. Section 479A was enacted for the more expeditious and effective manner of dealing with perjurers. It was meant to be fair to both sides, i.e., to bring a criminal to book promptly and not to harass him after long delays. There is a clear remedy at least in some cases where perjury is discovered after the disposal of the proceedings. When an appeal is taken from the decision of the case, the appellate Court has the same powers to deal with the offender under section 479A as the trial Court.

Mr. Sibal then contended that sub-section (6) was intended to deal with those cases only in which



the trial Court could, on the material before it, hold a witness guilty of perjury. If additional material is discovered subsequently, then the case would fall outside the purview of section 479A and the preceding sections 476 to 479 would come into play. I am clearly of the view that this was not the intention of the Legislature, and in any event in the present case there has been no discovery of additional evidence after the decision of the suit. Madan Lal actually gave details of the evidence which would prove Parshotam Lal's perjury and no further material has been discovered after the decision of the suit.

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I would, therefore, hold that the provisions of section 479A override the provisions of sections 476 to 479, Criminal Procedure Code, in so far as they relate to the giving of false evidence or fabricating false evidence by a person who gives evidence during the course of the judicial proceedings.

The present petition must, therefore, be allowed and the proceedings under section 476 pending before the Sub-Judge quashed.

GURNAM SINGH, J.—I agree.

Gurnam Singh,  
J.

R.S.

APPELLATE CIVIL

*Before Gosain, J.*

GUJJAR MAL AND OTHERS,—*Appellants*

*versus*

PUNJAB STATE,—*Respondent*

First Appeal From Order No. 74 of 1954.

*The Punjab Requisitioning and Acquisition of Immovable Property Act (XI of 1953)—Section 25(2)—Property*

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