promotion to the rank of Headmasters and even a junior man could be selected in preference to a senior one on the basis of his academic qualifications and the consistent good service record. It can also not be said that the possession of academic qualifications has no nexus with the teaching which the Lecturers and the Masters have to do. Therefore, the classification on the basis of higher academic qualifications is fully justified under Article 14 of the Constitution in view of the dictum laid down by their Lordships of the Supreme Court in the *State of Mysore and another* v. *P. Narasinga Rao* (3) (supra). It will, however, be for the Government to prescribe the channel of promotion for Masters and the Lecturers and this Court only hopes that while providing the channel of promotion due regard shall be paid to the interests of the members of both the services.

(9) The learned counsel for the respondents raised a preliminary objection to the effect that the writ petition was liable to be dismissed on the ground that necessary parties likely to be affected by the decision have not been impleaded meaning thereby that 829 Lecturers, who have since been appointed have not been made parties to this petition although they will be directly affected by the decision therein. Since I have found no merit in this petition, I need not decide this objection, particularly because the learned counsel for the petitioners stated that he would be satisfied with the declaration of the rights of the petitioners claimed in the petition.

(10) For the reasons given above there is no merit in this petition which is accordingly dismissed, but without any order as to costs.

N. K. S.

CRIMINAL MISCELLANEOUS

Before H. R. Sodhi and Manmohan Singh Gujral, JJ.

STATE (on behalf of the Court),—*Petitioner.*

versus

KANWAL SINGH,—*Respondent.*

Criminal Misc. No. 1091-M of 1968.

May 5, 1970.

Code of Criminal Procedure (V of 1898)—Section 479-A—Action for perjury under—Specific findings by the Court as envisaged in the section—Whether essential—General remarks about the witness giving false evidence—Whether enough.

Held, that the conditions for the exercise of powers under section 479-A of the Code of Criminal Procedure must be fulfilled before a Court can direct prosecution for the category of offences referred to in the said section and it is not enough that a Civil, Revenue or Criminal Court trying a cause, or any Court of appeal, is just of the opinion that a witness has intentionally given false evidence at any stage of judicial proceedings or fabricated any such evidence for the purpose of being so used. A Court desiring to prosecute a person has, therefore, to record findings in clear terms to the following effect:—(i) that in the opinion of the Court, the witness has intentionally given false evidence in a judicial proceeding or intentionally fabricated such evidence for the purpose of being so used and (ii) that for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice, it is expedient that such witness should be prosecuted for the offence which appears to the Court to have been committed by him. If the Court after recording such a finding thinks fit to give an opportunity to the witness for being heard before actually the complaint is filed, it may do so, but there is no such absolute obligation. Prosecution is not necessary and in public interest in every case and that is why a Court delivering a judgment or final order must at that stage apply its mind fully to the desirability of launching a prosecution by recording findings as enjoined in section 479-A. No right of appeal is given to a person against whom an order is passed under section 479-A whereas such a right is available to one against whom proceedings are taken under section 476-A of the Code.

(Para 3)

Case taken up under section 193 *Criminal Procedure Code on behalf of the Court arising out of Criminal Appeal* 288 *of* 1966 *decided by a Division Bench consisting of Hon'ble Mr. Justice J. S. Bedi and Hon'ble Mr. Justice A. D. Koshal on* 11*th July*, 1968, *for taking proceedings against the respondent in changing their statements without fear of any legal consequences.*

R. A. SAINI, ADVOCATE, for A. G. (H), for the petitioner.

MUNISHWAR PURI, ADVOCATE, for the respondent.

JUDGMENT

H. R. SODHI, J.—This criminal Miscellaneous Application 1091-M of 1968 has arisen out of Criminal Appeal 288 of 1966 decided by a Bench of this Court on 11th July, 1968. Ram Singh and Dhuman, sons of Sondhu of village Barauna, Tahsil and District Rohtak, were convicted by the Sessions Judge under section 302/34, Indian Penal Code, for having committed the murder of one Kali Ram in the jurisdiction of village Silana, Police Station, Sampla and each of them sentenced to imprisonment for life. Criminal Appeal 288 of 1966 filed by them in this Court was dismissed.

(2) The deceased and the convicts belonged to village Barauna. It was alleged that the deceased had gone to the Rest House in Silana in connection with the hearing of security proceedings against him before the Sub-Divisional Magistrate, Rohtak, who was on the day of the occurrence holding his Court there. Kali Ram was said to have been murdered by the convicts on his way back after attending the Court. Kanwal Singh respondent, was one of the eye witnesses who is a rope maker and lives in the vicinity of Police Station Kharkhoda, and according to the prosecution, was returning that day from village Silana where he had gone to purchase jute for preparing ropes, but could not do so as it was not available. He made two statements before the committing Magistrate, one on 18th September, 1965, and the other on 31st January, 1966. In both these statements, he implicated the accused. At the trial which took place on 10th March, 1966, he went back on his previous statements and completely denied that he ever witnessed the occurrence. It was stated by him that he had made the previous statements before the committing Magistrate under police pressure. The Sessions Judge transferred his statements before the committing Magistrate to his own file under section 288, Criminal Procedure Code, and found them to be true as they supported the other eye-witnesses. The Bench hearing the appeal affirmed the findings of the Sessions Judge and upheld the convictions and sentences. The learned Judges while dismissing the appeal made some observations about Kanwal Singh, respondent, which it is necessary to reproduce in extenso:—

> "In the end, we are constrained to remark that witnesses of the type of Kanwal Singh (P.W. 17), who have no hesitation in changing their statements without fear of any legal consequences, should be properly dealt with. We also feel that it is an appropriate case in which proceedings against Kanwal Singh should be taken under section 193 of the Indian Penal Code, as laid down in section 479.A(5) of the Criminal Procedure Code, and the notice contemplated by which shall issue to him."

A notice was accordingly issued to the respondent to show cause why a complaint be not filed against him for his having intentionally given false evidence in judicial proceedings. He has appeared through Mr. Munishwar Puri, an Advocate of this Court. In the reply filed by him it is stated that notice issued by this Court does not comply

with the requirements of section 479.A(5) of the Code of Criminal Procedure, and that the respondent is a young man of 25 years who appeared for the first time as a witness under pressure of A.S.I. Niranjan Singh, who was then attached to Kharkhoda. It is stated by him that his shop is situate in front of the police station and he was called by the Assistant Sub-Inspector to give evidence on behalf of the prosecution though he never witnessed any occurrence. Mr. Puri strenuously contended before us that the Bench hearing the appeal did not form any definite opinion at the time the judgment was delivered, that the respondent had committed the offence of intentionally giving false evidence and, that for the eradication of the evils of perjury and in the interest of justice, it was expedient that such witness should be prosecuted for the offence which appeared to have been committed by him. The contention is that in the absence of recording of the *prima facie* opinion in the judgment in the main appeal, there was no strict compliance with the requirements of section 479.A(5) with the result that the rule issued against the respondent has to be discharged.

(3) The next submission of the learned counsel is that the respondent was just a poor labourer who was set up as a chance eye-witness by the police though he had no business to be at the place of the occurrence and that it cannot be safely said that his statement before the Sessions Judge was false and that it was for this reason that the trial Judge did not order his prosecution. He has invited our attention to *Dr. B. K. Pal Chaudhry* v. *State of Assam* (1), *Shabir Hussain Bholu* v. *State of Maharashtra* (2), *Parshotam Lal L. Vir Bhan* v. *Madan Lal Bashambar Dass* (3), *Bahadurmal* v. *The State* (4), and *Rattan Chand and others* v. *Shri P. C. Bhatia and another* (5), and submitted that specific findings as envisaged in section 479.A(1) were necessary if the respondent was to be prosecuted for an offence under section 193, Indian Penal Code, and that the general observations as made in the judgment of this Court in the criminal appeal are not enough. It is not necessary to discuss the facts of these cases. Their Lordships of the Supreme Court in the cases of *Dr. B. K. Pal Chaudhry* (1) (supra)

(1) A.I.R. 1960 S.C. 133.
(2) A.I.R. 1963 S.C. 816.
(3) A.I.R. 1959 Pb. 145.
(4) A.I.R. 1965 Raj. 224.
(5) 1960 P.L.R. 608.

and *Shabir Hussain Bholu* (2) (supra) has laid down that the conditions for the exercise of powers under section 479-A must be fulfilled before a Court can direct prosecution for the category of offences referred to in the said section and it is not enough that a Civil, Revenue or Criminal Court trying a cause or any Court of appeal, is just of the opinion that a witness has intentionally given false evidence at any stage of judicial proceedings or fabricated any such evidence for the purpose of being so used. A Court desiring to prosecute a person has, therefore, to record findings in clear terms to the following effect:—

(i) that in the opinion of the Court, the witness has intentionally given false evidence in a judicial proceeding or intentionally fabricated such evidence for the purpose of being so used, and

(ii) that for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice, it is expedient that such witness should be prosecuted for the offence which appears to the Court to have been committed by him.

If the Court, after recording such a finding thinks fit to give an opportunity to the witness for being heard before actually the complaint is filed, it may do so, but there is no such absolute obligation. As observed by Harbans Singh J., in *Ram Piara* v. *Ram Lal* (6), "the provisions of section 479-A of the Code are clear and there is no escape from them and the mere fact that they are very technical and stringent and that they defeat their object of arming the Court with powers to take action against persons guilty of perjury in Court, would not be strong enough for us to disregard the clear provisions in the Code". The requirement of recording specific findings has an object behind it inasmuch as a Court is expected to scrutinize the testimony of a witness and to *prima facie* form a positive opinion that he (witness) is intentionally giving false evidence and that to curb the evil of perjury it is in the interest of justice and expedient to prosecute him. Courts have to separate grain from chaff in order to sift truth and many a time the statement of a witness may not be true in all its particulars. As observed by their Lordships of the Supreme Court in *Ugar Ahir and others* v. *The State of Bihar* (7), hardly one

(6) Cr. Misc. 695-M of 1969.

(7) A.I.R. 1965 S.C. 277.

comes across a witness whose evidence does not contain a grain of untruth or at any rate exaggerations, embroideries or embellishments. Prosecution cannot be said to be necessary and in public interest in every case and that is why a Court delivering a judgment or final order must at that stage apply its mind fully to the desirability of launching a prosecution by recording findings as enjoined in section 479-A. No right of appeal is given to a person against whom an order is passed under section 479-A, whereas such a right is available to one against whom proceedings are taken under section 476-A. Bearing in mind the pre-requisites for an order under section 479-A, we have to consider the preliminary objection of Mr. Puri and decide whether the aforesaid observations made in the judgment in the criminal appeal comply with section 479-A or not. We have given our careful thought to the matter and have no choice, but to hold that these observations fall short of findings as contemplated in section 479-A. It is observed that the respondent had no hesitation in changing his statement without fear of any legal consequences and should be dealt with suitably. It is not possible to read in these words that this Court has recorded a finding that Kanwal Singh respondent had intentionally given false evidence. The observations are more in the nature of condemnation of the witness rather than a finding about his intentionally having given false evidence. It is next said in the judgment that the case is an appropriate one in which proceedings against Kanwal Singh, should be taken under section 193, Indian Penal Code, as laid down in section 479-A. Again, these observations cannot be equated with a finding that for the eradication of the evils of perjury and in the interest of justice, it is expedient to prosecute the respondent. The remarks are of a general nature and no specific findings as visualised in section 479-A can be said to have been given. There is thus force in the objection of Mr. Puri, that the requirements of law are not satisfied and no prosecution of the respondent Kanwal Singh, can be ordered under section 479-A. Since notice had gone to the respondent to show cause, we have also heard him on merits. We are satisfied that it is not necessary in the interest of justice or even expedient to prosecute the respondent for the offence of perjury.

(4) For the foregoing reasons, the rule issued by this Court against the respondent on 11th July, 1968, is discharged.

MANMOHAN SINGH GUJRAL, J.—I agree.

K. S. K.