

Messrs  
Gopi Nath-  
Madan Gopal  
v.  
The State  
of Punjab  
and another  
—  
Grover, J.

it should be taken to be intended by the Legislature that the rule-making authority would have the power to make provisions for collection of the duty before any revision is entertained against an order imposing that duty. I am unable to accede to that contention because the Legislature would have made an express provision in section 12 itself, if it had been intended that the party filing a petition for revision should deposit the amount of duty imposed before the revision is entertained. There seems to be a good deal of substance in the argument of the learned counsel for the petitioner that the omission in section 12 is deliberate as is clear from other legislation of the same type in which specific provisions exist to that effect. It may be that revision and appeal stand on somewhat different footing as in one case there is a substantive right to approach the Appellate Authority, whereas in the case of revision it is for the Revisional Authority to satisfy itself as to the legality and propriety of the order. Nevertheless the sub-rule, as framed, purports to stand in the way of that power being exercised as provided by the statute and it must be struck down on that ground.

In the result, I allow this petition and quash the impugned order of the Excise and Taxation Commissioner, dated 28th October, 1960. I further direct the respondents to treat sub-rule (3)(a) of rule 36 as illegal and *ultra vires* and to decide the revision or revisions of the petitioner without insisting on compliance with that sub-rule. In the circumstances I leave the parties to bear their own costs.

K.S.K.

REVISIONAL CRIMINAL

Before P. D. Sharma, J.

DALIP SINGH,—Petitioner

versus

MAHLA RAM AND OTHERS,—Respondents.

Criminal Revision No. 1004 of 1961.

1962  
March, 20th  
Code of Criminal Procedure (Act V of 1898)—Sections 195, 476 and 479-A(6)—Whether Court can make

*complaint of an offence, under section 209, I.P.C., if no action taken under section 479-A(6).*

*Held*, that sub-section (6) of section 479-A, of the Code of Criminal Procedure, 1898, prohibits the taking of proceedings under sections 476 to 479 inclusive in those cases only where a person is to be prosecuted for giving or fabricating false evidence and not in other cases mentioned in section 195. A complaint for an offence under section 209, read with section 109 of the Indian Penal Code, is, therefore, not precluded and can be made.

*Petition under section 439 of the Criminal Procedure Code for revision of the order of Shri E. F. Barlow, Sessions Judge, Bhatinda, dated 7th June, 1961, convicting the petitioner.*

TIRATH SINGH, ADVOCATE, for the Petitioner.

M. R. MAHAJAN. AND D. S. NEHRA, ADVOCATES, for the Respondents.

#### JUDGMENT

SHARMA, J.—Mahla Ram filed a suit for the recovery of Rs. 1,466.75 nP. on the basis of a pronote, dated 9th October, 1955, against Dalip Singh. The suit was tried by the Subordinate Judge 1st Class, Bhatinda. Hans Raj, Lakhi Ram and Ramji Dass appeared as witnesses for the plaintiff in that Court. The first two named were the marginal witnesses and the third scribe of the pronote. They deposed in favour of the plaintiff. The suit was dismissed on the ground that the pronote was a forged document. The appeal was dismissed by the District Judge, Bhatinda, on 20th January, 1961. Thereafter, Dalip Singh, who was defendant in the civil suit, filed an application under section 476, Criminal Procedure Code, on 18th March, 1961, in the Court of the District Judge with the prayer that a complaint might be lodged under section 209 or 193 or both read with section 109, Indian Penal Code, against Mahla Ram, Hans Raj, Lakhi Ram, Karam Chand, and Ramji Dass. The learned District

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Judge dismissed the application on the short ground that the proceedings against the above respondents could have been taken under the provisions of section 479-A, Criminal Procedure Code, and that they could not be subsequently proceeded against under section 476, Criminal Procedure Code. Dalip Singh has come up in revision against the above order.

I have heard the learned counsel for the parties in detail. Section 195, Criminal Procedure Code, provides for prosecution for contempt of lawful authority of public servants, the relevant portion of which is reproduced below :—

“(1) No Court shall take cognizance—

- (a) .....
- (b) of any offence punishable under any of the following sections of the same Code, namely, sections 193, ..... 209,.....228, when such offence is alleged to have been committed in, or in relation to any proceedings in any court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate;.....”

Section 476, Criminal Procedure Code runs:

- “(1) When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in section 195, sub-section (1), clause (b) or clause (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 signed by the presiding officer of the Court, and shall forward the same to

a Magistrate of the first class having jurisdiction and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over and person to appear and give evidence before such Magistrate .....

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According to sub-section (6) of section 479-A, Criminal Procedure Code, no proceedings are to 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. It will thus be seen that sub-section (6) of section 479-A prohibits the taking of proceedings under sections 476 to 479 inclusive in those cases only where a person is to be prosecuted for giving or fabricating false evidence and not in other cases mentioned in section 195. The petitioner in the instant case has not only moved the Court for lodging a complaint under section 193, Indian Penal Code, but also for initiating criminal proceedings against the respondents under section 209 read with section 109 of the same Code, which do not fall within the orbit of sub-section (6) of section 479-A, Criminal Procedure Code. The learned District Judge was, therefore, not correct in disallowing the petitioner's prayer for lodging a complaint under section 209 read with section 109 of the Indian Penal Code by stating that he was precluded from doing so as laid down in sub-section (6) of section 479-A, Criminal Procedure Code. The ruling of this Court given in *Parshotam Lal Vir Bhan v. Madan Lal Bashambar Dass* (1), relied upon by him is not applicable to the facts of the present case because there the prosecution of the respondent was sought for giving or fabricating false evidence, which is not the same thing as dishonestly making false claim in Court, which is

(1) A.I.R. 1959 Punj. 145.

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punishable under section 209 of the Indian Penal Code.

For the above reasons, the order of the learned District Judge, dated 7th June, 1961, declining to entertain Dalip Singh's application for lodging a complaint under section 209 read with section 109 of the Indian Penal Code because of the directions contained in section 479-A, Criminal Procedure Code, is set aside. He should now dispose of this part of the petitioner's prayer on merits. The revision petition is decided accordingly.

B.R.T.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

NITYA NAND,—Petitioner

versus

THE ESTATE OFFICER, CAPITAL PROJECT,  
CHANDIGARH AND ANOTHER,—Respondents.

Civil Writ No. 1952 of 1960,

1962

March, 26th

*Punjab Land Revenue Act (XVII of 1887)—Section 42—Spontaneous growth of trees and bushes on Government land—Sale of—Sale price whether recoverable as arrears of land revenue.*

*Held, that the Government derives revenue by sale of spontaneous growth of trees and bushes on its land and the revenue thus accruing falls within the terms of section 42 of the Punjab Land Revenue Act. The sale-proceeds are, therefore, recoverable as arrears of land revenue.*

*Case referred by Hon'ble Mr. Justice Dua, dated 25th October, 1961, to a larger Bench, for decision owing to the important legal question involved in the case and finally decided by a Division Bench consisting of Hon'ble Mr. Justice Dulat and Hon'ble Mr. Justice Pandit, on 26th March, 1962.*