(1964) CriLJ 489 : (1964) 3 SCR 980

Supreme Court of India

Case No: Appeal (crl.) 44 of 1961

Raghubir Prosad Dudhewalla		APPELLANT
	Vs	
Chamanlal Mehra and Another		RESPONDENT

Date of Decision: May 10, 1963

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 193, 476, 477, 478, 479
- Penal Code, 1860 (IPC) - Section 120

Citation: (1964) CriLJ 489 : (1964) 3 SCR 980

Hon'ble Judges: P. B. Gajendragadkar, J; K. N. Wanchoo, J; K. C. Das Gupta, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Das Gupta, J.
This appeal by special leave is against a decision of the Calcutta High Court.

2. The appellant was examined as a witness for the prosecution in the court of the Additional Chief Presidency Magistrate, Calcutta, in a case instituted by one Mayadas Khanna against the respondent. Chamanlal Mehra and two other persons under Sections 504 and 506 of the Indian Penal Code. That case ended in the acquittal of the accused persons on May 10, 1957. One June 28, 1957 an application was made in the Magistrate''s court under s. 476 of the Code of Criminal Procedure alleging that this appellant and some of the other witnesses, including Mayadas Khanna, examined for the prosecution in that case had "given false evidence and/or have fabricated false evidence for the purpose of being used in proceedings before the Court and have used false and or fabricated evidence as genuine and/or have forged document and/or have used as genuine forged document and each of the accused had abetted others in commission of these offences," and praying that after the necessary enquiry a complaint be made to the

Chief Presidency Magistrate against them for the offences committed by these acts. It appears that the learned Magistrate Mr. Jahangir Kabir who had disposed of the criminal case against Chamanlal Mehra was no longer available and the application under s. 476 was transferred by the Chief Presidency Magistrate to the file of Mr. J. M. Bir, Presidency Magistrate, for disposal. For this purpose the Chief Presidency Magistrate nominated Mr. J. M. Bir as successor of the trying Magistrate. Mr. Bir was of opinion that s. 479A of the Code of Criminal Procedure was a complete bar against any action being taken by him in respect of this appellant and others who were merely witnesses on the side of the complaint in the criminal case. He therefore directed a complaint to be lodged only against Mayadas Khanna, the complainant, in the criminal case under s. 504 and s. 506 of the Indian Penal Code and rejected the application as against the rest.

3. On appeal by Chamanlal Mehra against the Magistrate''s refusal to make complaint against the other persons the High Court of Calcutta held that s. 479-A of the Code of Criminal Procedure had no application to the offence of committing forgery or being a party to a criminal conspiracy to commit forgery. The High Court considering it expedient in the interests of justice that a complaint should be made against this appellant in respect of an offence under s. 467 and s. 467/120-B of the Indian Penal Code that he appeared to have committed, set aside the order of the Magistrate in respect of this appellant and made an order that such a complaint be made.

4. The correctness of the High Court''s view that s. 479A has no application to offences under s. 467 and s. 467/120B and does not bar an action being taken against a witness under s., 476 of the Code of Criminal Procedure for such offences is challenged before us. The relevant portion of s. 479A which was inserted in the Code of Criminal Procedure by the Amendment Act or 1955 runs thus :-

"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 proceedings or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that, off 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 therefore 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 and same to a Magistrate of the first class having jurisdiction....."

5. There is divergence of judicial opinion on the question whether if action could have been taken by the criminal court under s. 479A but was not taken action can still be taken under s. 476 of the Code of Criminal Procedure. But that question does not arise for

consideration before us. The question here is : Assuming that where action could have been taken under s. 479A of the Code of Criminal Procedure but was not taken by the criminal court concerned, for offences of giving false evidence in any stage of a judicial proceeding or for intentional fabrication of false evidence for the purpose of being used in any stage of a judicial proceeding, no action can be taken under s. 476 of the Code of Criminal Procedure, is it further correct to say that no such action under s. 476 of the Code of Criminal Procedure can be taken even in respect of offences of forgery or conspiracy to commit forgery ?

6. We do not see any reason why this should be so. The special procedure of s. 479A is prescribed only for the prosecution of a witness for the act of giving false evidence in any stage of a judicial proceedings or for fabrication of false evidenced for the purpose of being used in any stage of a judicial proceeding. There is nothing in the section which precludes the application of any other procedure prescribed by the Code in respect of other offences. In applying the principle that a special provision prevails over a general provision, the scope of the special provision must be strictly construed in order to find out how much of the field covered by the general provision is also covered by the special provision. Examining the special procedure prescribed by s. 479A in that light, it is important to notice that the act of intentionally giving false evidence in any stage of a judicial proceeding and the act of fabricating false evidence for the purpose of being used in any stage of a judicial proceeding mentioned in s. 479A of the Code of Criminal Procedure are the acts which are made punishable under s. 193 of the Indian Penal Code and cognate sections Chapter XI.

7. It appears clear to us therefore that it is prosecution in respect of s. 193 of the Indian Penal Code and cognate sections in Chapter XI that is dealt with under s. 479A. If the legislature had intended that the special procedure would apply to offences other than offence under s. 193 of the Indian Penal Code and cognate sections in Chapter XI it would have used clear words to that effect. It will be unreasonable to read into s. 479A the meaning that where a person who appears to have committed an offence under s. 193 of the Indian Penal Code - by giving false evidence or fabricating false evidence - appears to have committed some other offence also, say, forgery, for the very purpose of fabricating false evidence, complaint for such other offence also can be made under s. 479A of the Code of Criminal Procedure.

8. We are therefore of opinion that s. 479A has no application to prosecution for offences other than an offence under s. 193 and cognate sections in Chapter XI and that as regards other offences Sections 476, 477, 478 and 479 continue to apply even after the enactment of s. 479A.

9. Whether the High Court is right or wrong in its view that the appellant appeared prima facie to have committed offences under s. 467 and s. 467/120B of the Indian Penal Code has not been argued before us and we express no opinion either way on that matter.

10. The appeal is dismissed.

11. Appeal dismissed.