Narayanswami vs State Of Maharashtras on 30 April, 1971

Equivalent citations: 1971 AIR 1789, 1971 SCR 588

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Grover

PETITIONER:
NARAYANSWAMI

Vs.

RESPONDENT:
STATE OF MAHARASHTRAS

DATE OF JUDGMENT30/04/1971

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
GROVER, A.N.

CITATION:
1971 AIR 1789 1971 SCR 588
1971 SCC (2) 182

ACT:
Code of Criminal Procedure, 1898-Section 479A sub-section (1)-- Reasonable opportunity of being heard contemplated by section not mandatory.

HEADNOTE:
The requirement under sub-section (1) of section 479A of the Code of Criminal Procedure, of giving the witness an opportunity of being heard after the recording of the necessary findings and before making the complaint is not mandatory. That step is required to be taken only if the court thinks fit-a matter left to the discretion of the trial court. The prosecution of the appellant is therefore not vitiated because such an opportunity was not given. [594F-G]
Dr. B. K. Pal Chaudhry v. The State of Assam, [1960] 1 S.C.R. 945 and Dr. Kuppa Goundan and Anr. v. M.S.P. Rajesh, [1966] Supp S.C.R. 373, distinguished.
Rukmani Bai v. G. R. Govindaswamy Chetty, [1963] M.L.J. 421 and Re: Javvaji Uthanna, A.I.R. 1964 A.P. 368, referred

to.
[In the instant case adequate opportunity was given to the appellant, before the findings were recorded to show cause why he should not be prosecuted. Therefore the Court did not find it necessary to express any opinion as to the correctness of the observations of the Madras and Andhra Pradesh High Courts in Rukmani Bai v. Govindaswamy Chetty and In re Javvaji Uthanna that even though sub-section (1) does not mandatorily require that any opportunity should be given to the person complained against there is no reason why the principle of audi alteram partem should not apply.] [595D-E]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 3 of 1969.

Appeal by special leave from the Judgment and Order dated September 2, 4, 1968 of the Bombay High Court, Nagpur Bench in Criminal Appeal No. 74 of 1968.

W. S. Barlingay and A. G. Ratnaparkhi, for the appellant. P. K. Chatterjee and S. P. Nayar, for the respondent. The Judgment of the Court was delivered by Hegde, J.--The only substantial question that arises for decision in this appeal by special leave is as to whether the requirements of Section 479-A of the Code of Criminal Procedure have been complied with before instituting the complaint from which this appeal arises and if they have not been complied with whether the prosecution is vitiated ?

In July 1965, there was a dacoity within the limits of Rail- way Police Station, Nagpur. Several properties belonging to the Railways were stolen in the course of that dacoity. During the investigation of that offence, the Railway Police sought the assistance of the local police. Inspector Khandagale (D. W. 1) who was incharge of the Tehsil police station directed the appellant, the Sub-Inspector working under him to assist the Railway Police in the investigation of the case. Part of the investigation was carried on by the appellant. Two of the persons arrested in connection with that dacoity were Ambadas and Deorao. They are said to have made certain statements on July 21, 1965. It is further alleged that in pursuance of the information given by Deorao, the police in the presence of the Panchas recovered certain properties. The concerned panchnama was attested by two witnesses viz. Pochanna and Abdul Gani. After the investigation a charge-sheet was filed against several persons including Ambadas and Deorao accusing them of the commission of an offence under Section 395, I. P. C. After preliminary enquiry the case was committed to the court of Sessions, Nagpur and was tried before the Additional Sessions Judge, Nagpur as Sessions Trial No. 8 of 1966 on his file. The trial of the case commenced on June 6, 1966. Pochanna, one of the Panch witnesses was examined on June 9, 1966. He did not support the prosecution. Abdul Gani, the other Panch witness also had been cited as a witness but he was not present in court on June 9, 1966. On June 10, 1966, one person who claimed himself to be Abdul Gani, who had attested the panchnama. was examined. He deposed that he had attested the panchnama and that he was present at the time

the recoveries were made. On June 11, 1966, the appellant was examined. The appellant deposed that the person examined on the previous day was Abdul Gani and that person had attested the panchnama in question. Thereafter the case took a new turn. It appears that the accused came to know that the person examined on June 10, 1966 was not Abdul Gani but one Dilawar and that the real Abdul Gani had migrated from Nagpur and settled down at Rajnandgaon. On enquiry their Counsel, Mr. Ingle came to know that Dilawar who posed himself as Abdul Gani was involved in a criminal case pending in the Munsiffs court in Nagpur. After ascertaining all the facts. Mr. Ingle filed an application before the learned trial Judge alleging that the witness who posed himself as Abdul Gani and spoke in support of the recovery panchnama was an imposter and that he was not the real attestor to the panchanmma Therein he further stated that the name of that person was Dilawar and be was the son of one Munirsha. Thereafter the learned trial judge recalled the said witness and further examined him on June 14, 1966, At that time the witness confessed that he was not Abdul Gani and that he did not attest the panchnama, but he had been compelled by the appellant to depose falsely. After the examination of this witness, the learned trial judge being prima facie of the opinion that the appellant had given perjured testimony and that he has fabricated false evidence, issued a notice to the appellant to show cause why he should not be prosecuted for perjury and for fabricating false evidence for the purpose of the case. The appellant showed cause on June 16, 1966. In the statement filed by him he again asserted that the person examined on June 10, 1966 was Abdul Gani, the attestor of the panchnama. He denied the fact that the said witness is Dilawar. He went further and averred that the witness had been purchased by the accused and that he has deposed falsely that he is not Abdul Gani. Thereafter the appellant was recalled and further examined. During the course of his examination he reiterated the stand taken by him in his written statement. In the course of his cross-examination, it was elicited from him that he knew the person concerned for over three years, thereby the possibility of the appellant giving incorrect evidence due to misconception was ruled out. After the appellant was reexamined, the accused produced a person in court who according to them was the real Abdul Gani. That person deposed that he is Abdul Gani and that he was the person who had attested the panchnama. The learned trial Judge took his sample signatures and compared the same with the signature found on the panchnama. He found them to tally with one another. After the conclusion of the trial, the learned trial judge acquitted all the accused and directed the prosecution of Dilawar and the appellant under Sections 195 and 196, I. P. C. At this stage it may be noted that in the course of his judgment in the dacoity case, the learned trial judge gave a finding that Dilawar and the appellant intentionally gave false evidence in the case and further the appellant had intentionally fabricated false evidence for the purpose of being used in that case. He also opined that for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice it is expedient that Dilawar and the appellant should he prosecuted for the offences committed by them. On the basis of that complaint, the appellant and Dilawar were tried, convicted and sentenced to suffer rigorous imprison- ment for three years. The appellant was convicted both for perjury as well as for fabricating false evidence. Under each head, he was awarded a sentence of three years rigorous imprisonment but the two sentences were ordered to run concurrently. Dilawar did not appeal against his conviction and sentence. The applellant appealed against to the High Court of Maharashtra. His appeal was summarily dismissed. Thereafter he appealed to this Court after obtaining special leave. In that appeal this court came to the conclusion that the High Court should not have :summarily dismissed the appeal as arguable questions of fact and law arose for consideration. It accordingly set aside the order of the High Court

and remitted the case to the High Court with a direction tore-admit the appeal and dispose of the same according to law. Accordingly the appeal was again heard by the Nagpur Bench of the Maharashtra High Court. The appeal has again been dismissed by the High Court. We have now to consider the correctness of the decision of the High Court.

So far as the merits of the case are concerned, there is little to be said in favour of the appellant's case. There is hardly any doubt that Dilawar had posed himself as Abdul Gani. It is also clear from the evidence on record and from the circumstances of the case that the appellant was responsible for inducing Dilawar to pose as Abdul Gani. All that was said in favour of the appellant by Dr. Barlingay, his learned Counsel was that the possibility of the appellant innocently thinking that Dilawar was the real Abdul Gani cannot be ruled out. We are unable to accept this contention. It is clear from the admissions made by the appellant during the Sessions Trial which admissions have been brought on record as evidence in the present case that he knew Abdul Gani very well. Therefore there was no occasion for him to make any mistake. The appellant had strongly asserted in his statement in reply to the show cause notice as well as in his deposition in court that the person who was examined on June 10, 1966 was the real Abdul Gani and that he was the person who had attested the panchnama. Under these circumstances, the plea that the appellant gave evidence under an erroneous impression cannot be entertained. It is clear that the appellant has no regard for truth.

We also do not find any merit in the contention that the explanation given by the appellant in the dacoity case as well as his evidence in that case are inadmissible, in the present proceedings. Admissions made in the explanation given and in the deposition are relevant and admissible in the present case. An admission is a substantive evidence, though it is open to the person who made the admission to show that the fact admitted is not correct. In the absence of any such proof the admission has to be considered as an important piece of evidence.

As mentioned at the outset the only important question for decision in this appeal is whether the requirements of Section 479- A. Code of Criminal Procedure have been complied with before filing the present complaint. Section 479-A was incorporated into the Code of Criminal Procedure by Act 26 of 1955. That section reads :

> "479-A. Procedure in certain cases of false evidence.
>
> (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 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 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 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 com- plaint 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 sub- section, a Presidency Magistrate shall be deemed to be a Magistrate of the 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 sub-section(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 com-

plaint 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.

(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 sub-section (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 Section 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".

This section was introduced into the Code with the idea of eradicating to the extent possible the evils of perjury and fabrication of false evidence a widespread evil that is corroding our judicial system. The then existing procedure in the matter of prosecuting those who give false evidence or use fabricated evidence in judicial proceedings was found to be tardy and ineffective. Therefore power was given both to the trial court as well as to the appellate court to forthwith complain against witnesses guilty of perjury or fabricating false evidence without having recourse to the procedure laid down in Sections 476 to 479 of the Code of Criminal Procedure. But at the same time the

legislature felt that before proceeding against those persons the court must form an opinion that the witness has either given intentionally false evidence or has intentionally fabricated false evidence and further must form an opinion that it is expedient in the interests of justice that the witness should be prosecuted for the offence committed by him. It is clear from the findings given by the learned trial Judge in the dacoity case that he had come to a prima facie conclusion that the appellant had given false evidence and further that he had intentionally fabricated false evidence for the purpose of being used in that case. He had also come to the conclusion that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it was expedient that the appellant should be prosecuted for the offences committed by him. Thus far there is no difficulty. But according to the appellant, the complaint is vitiated because after arriving at the findings in question and before filing the complaint, the learned Sessions Judge had not given him an opportunity to show cause why complaint should not be filed against him. As seen earlier he had given an opportunity to the appellant at an earlier stage to show cause why he 38-1 s. c. India/71 should not be prosecuted for giving false evidence and for fabricating false evidence. But we are told that the requirement of giving a notice to show cause why a complaint should not be filed. after the required findings are given and before making the complaint is mandatory and failure to do so has vitiated the prosecution. Let us now proceed to consider whether this contention is well founded. The material portion of Clause (1) of Section 479-A is :

> "..... 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 therefore and may if it so thinks fit, after giving the witness an opportunity of being heard make a complaint thereof in writing..... it (emphasis supplied) This provision clearly shows that what is mandatory is that the judge must give a finding that the witness has intentionally given false evidence in the proceeding before him or has intentionally fabricated false evidence for purposes of being used in that 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 the witness should be prosecuted for the offence in question. Giving of an opportunity to the witness to show cause against the contemplated complaint is not mandatory. That step is required to be taken only if the court thinks fit-a matter left to the discretion of the trial court. This position is made further clear when we go to sub- section (5) of Section 479-A. This sub-section empowers the appellate court to make a complaint against a witness whom it thinks is guilty of perjury or guilty of fabricating false evidence to be used in the proceedings before it. It provides that where the appellate court proposes to make a complaint "the provisions of sub-section (1) shall apply accordingly but no such order shall be made without giving the person affected thereby an opportunity of being heard".

(emphasis supplied) In other words in the case of the trial court a discretion is given as to whether an opportunity should be given or not before filing a complaint to show cause against the proposed complaint but so far as the appellate court is concerned the giving of an opportunity to the witness to show cause against the contemplated complaint is made mandatory. The reason for this distinction is understandable. So far as the trial court is concerned, it is the court that has seen the witness and observed his demeanour. Therefore the legislature evidently thought that the question whether a witness should be given a further opportunity to show cause why complaint should not be filed against him may be left to the discretion of that court but the appellate court having no such opportunity, the legislature evidently thought that an opportunity should be given to the witness to show cause against the contemplated complaint. The conclusion arrived at by us accords with the view taken by the High Court of Madras in Rukmani Bai v. G. R. Govindaswamy Chetty(1) and by Andhra Pradesh High Court in Rc. Javvaji Uthanna(2). In those two decisions even after coming to the conclusion that Clause (1) of Section 479-A does not mandatorily require that any opportunity should be given to the person complained against to show cause against the contemplated complaint, the courts took the view that all the same notice should be issued as there is no reason why the well-known and well accepted principle of audi alteram partem should not apply. In this case it is not necessary to express any opinion as to the correctness of these observations. As seen earlier adequate opportunity had been given to the appellant to show cause against the proposed complaint. Dr. Barlingay, learned Counsel for the appellant placed reliance on two decisions of this Court namely in Dr. B. K. Pal Chaudhry v. The State of Assam(3) and Kuppa Goundan and anr. v. M. S. P. Rajesh(4) in support of his contention that after giving the, ;findings required under Section 479-A(1) and before filing the complaint, the court is bound to give the person concerned an opportunity to show cause against the proposed complaint against him. Neither of the two decisions bear on the question of law in issue. In Dr. B. K. Pal Chaudhry's case(1), the complaint was filed by the appellate court and not by the trial court. All that was held by this Court in that case is that it was the duty of the court acting under sub-sections 1 and 5 of Section 479-A of the Code of Criminal Procedure to record a finding that in its opinion intentionally false evidence has been given and for the eradication of the evils: of perjury and in the interests of justice, it (1) [1963] M.L.J. 421; (2) A.I.R. 1964 A.P. 368. (3) [1960] 1 S.C.R. 945. (4) [1966] Supp. S.C.R. 373, is expedient that there should be a prosecution for the offence and also to give the person against whom it is intended to proceed a hearing before making the complaint in respect of the offence.

In Kuppa Goundan's case(5) the scope of sub-section (6) of Section 479-A, Code of Criminal Procedure came up for consi- deration. That case has nothing to do with the scope of sub-section (1) of Section 479-A. The observations made in those cases. must be read in the context in which they were made. In those cases this Court did not consider the scope of Section 479-A(1).

In the result this appeal fails and the same is dismissed.

K.B.N. Appeal dismissed.
(1) (1966) Supp. S.C.R. 373.