

CHAPTER 8

Cases relating of Offences affecting the Administration of Justice and Contempt of Court.

PART A—OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE

1. Under section 195 of the Code of Criminal Procedure, no Court can take cognizance of the offences mentioned in that section, except on the complaint in writing of the public servants or Courts mentioned in the section. The institution of proceedings does not now depend on the discretion of a private individual as was the state of law before the amendment of this section by Act XVIII of 1923.

Only Court or public servant can file complaint.

2. Sections 476 and 479-A are supplementary to Section 195. The Civil, Revenue or Criminal Courts can take action either suo motu or on application. The power to make a complaint is conferred on the Court and not on the particular officer who presides over the Court. Consequently the successor of a Magistrate or Judge is competent to direct prosecution in respect of an offence committed before his predecessor. (Vide I.L.R 4 Lahore 58 and section 559 of the Code).

Successor of an officer before whom offence was committed can lodge complaint.

3. The main point which the Court has to consider in initiating proceedings under section 476 of the Code is whether it is expedient in the interests of justice that an inquiry should be made and a complaint filed (vide, 1954 Supreme Court Reports 1144). The mere fact that there is reason to believe that an offence has been committed is not sufficient to justify a prosecution. It is equally well settled that prosecution should not be ordered unless a prima facie case is made out and unless there is a reasonable chance of conviction. It must be borne in mind in this connection that indiscriminate institution of prosecution does not promote the "interests of justice" as failure of such cases is apt to encourage rather than discourage the offences. Section 476 of the Code gives the Court power to make a preliminary inquiry and this power should be freely used. Notice should ordinarily be given to the persons concerned and any explanation and evidence given by them should be carefully considered before ordering prosecution.

Expediency and interest of Justice the main consideration.

Speedy
procedure for
perjury, etc.

Order not
appealable.

Bar to
Proceed-ing
under Ss. 476
to 479.

Stay
during
appeal.

Powers of
appellate
court.

Opportunity
of being
heard.

Gross cases
to be
brought to
book.

4 Section 479-A has been inserted by Act No. 26 of 1955 to provide a speedy procedure in cases of offences of intentionally giving false evidence in any stage of a judicial proceedings or intentionally fabricating false evidence for the purpose of being used in any stage of a judicial proceeding. When the Court is of the opinion that any person appearing before it as a witness has committed any of the offences mentioned and that for the eradication or the evils of prejury and fabrication of false evidence and for the interests of justice, it is expedient that the witness should be prosecuted for the offence, the court should at the time of the delivery of the judgment or final order record a finding to that effect. The Court should also state the reasons for its opinion. The Court may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint in writing over its signatures setting forth therein the evidence which, in the opinion of the court, is false or fabricated. No appeal lies from any finding recorded or complaint made under sub-section (1) of this section. No proceedings can be taken under sections 476 to 479 of the Code against a person who can be proceeded against Section 479-A. If an appeal has been preferred against the decision arrived at in the judicial proceeding in which the matter has arisen, the hearing of the complaint shall be adjourned until such appeal is decided. The Appellate Court, after giving the person against whom a complaint has been made an opportunity of being heard, may, if it so thinks fit, direct the withdrawal of the complaint. The appellate court, may where the court from whose decision the appeal has been filed has not made any complaint, exercise the powers conferred on the subordinate court for making such a complaint. Where the appellate Court makes such a complaint the provisions of sub-section (1) shall apply and no such order shall be made without giving the person affected thereby an opportunity of being heard.

5. The offences of giving and fabricating false evidence are unfortunately very common in the courts and it may not always be possible to prosecute every person who is guilty of these offences. It is, however, expedient in the interests of justice that all gross or

serious cases of such offences are properly taken notice of and brought to book. The Judges consider that the law against perjury and allied offences should be fully vindicated against all persons who are convicted and Magistrates should impose deterrent sentences when convictions are obtained.

Deterrent sentences

6. When a witness appears to be giving false evidence and there is possibility of his being prosecuted, special care should be taken in recording the evidence in a precise and clear manner reading it over to the witness and bringing it in conformity with what he declares to be the truth. For, ambiguities in the statement often furnish loopholes for plausible explanations and results in failure of justice. It should be noted that when contradictory statements are made before different Courts and it is difficult to decide which of the two statements was false the person making such statements can be charged in the alternative [Vide section 236, Criminal Procedure Code, illustration (b)].

Special care to be taken in recording evidence where a witness appears to be giving false evidence. Contradictory statements and liability of being charged.

7. As stated already, Courts are now required to file a regular complaint when a prosecution is ordered in respect of an offence specified in section 195. Section 487 of the Code precludes the Court from taking cognizance of the offences itself. As in the case of a complaint by a private individual, the complaint must set forth all the material facts constituting the alleged offences. Section 200 of the Code dispenses with the examination of the presiding officer of the Court making the complaint in such cases.

Complaint must set forth or material facts. No examination of complainant.

8. Section 195 provides that when any offence of the kind mentioned therein is committed in or in relation to proceedings in a Court, cognizance of the offence can be taken either on the complaint of that Court or some other Court to which such Court is subordinate. It is laid down in sub-section (3) of that section that for the purposes of the section a Court is to be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such Court and in the case of a Civil Court from whose decrees no appeal ordinarily lies to the principal court of original jurisdiction. It is further provided that where appeals lie

Complaints can be lodged by the court or by appellate court.

to more than one Court the appellate Court of inferior jurisdiction is the Court to which the Court making the complaint is to be deemed to be subordinate for the purposes of the section. As a result, a Subordinate Judge from whose decrees appeals lie to the Senior Sub-Judge as well as the District Judge must be deemed to be subordinate to the former for the purposes of section 195 (c.f, I.L.R. 2 Lahore 57). Similarly a Magistrate empowered under section 30 of the Code from whose decisions appeals lie to the Sessions Court as well as the High Court, would be deemed to be subordinate to the Sessions Court.

It may, however, be pointed out that in view of the new section 479-A, the provisions of law mentioned above have ceased to be applicable to cases of perjury and fabrication of false evidence which may be proceeded against only under the new section.

Appeal
when court
files or
refuses to
file a
complaint

9. Section 476-B provides an appeal to the aggrieved party when the court files or refuses to file a complaint under Section 476. Section 479-A, however, provides that there shall be no appeal from a finding recorded and complaint made under sub-section (1) of that Section and the provisions of the later Section would override the provisions of Sections 476, 476-A, 476-B, 478 and 479 in cases of giving and fabricating false evidence mentioned in Section 479-A.

Complaint of
offence
committed
in course of
commitment
proceedings.

10. When an offence is discovered or is alleged or suspected to have been committed in the course of commitment proceedings the Committing Magistrate should leave the matter in the hands of the Sessions Judge or should at least refrain from taking any, steps until the case is decided by the Court of Sessions.

Prosecution of
Commissioner
appointed by
Court.

11. When any person, who is a Commissioner, appointed by a Court under the provisions of the Code of Civil Procedure, 1908, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his functions as Commissioner, no court shall take cognizance of such offence except with the previous sanction of the court which appointed him as Commissioner. (Section 197-A, deemed to have been inserted in the Code by Punjab Act No. XXVIII of 1949).