

## ORIGINAL CIVIL.

*Before Buckland J.*

H. C. GANTI

v.

F. L. HARCOURT.\*

1930

March 31.

*Complaint—False evidence before arbitrator—Procedure—Application before High Court, Original Side—Preliminary enquiry—Notice—Code of Criminal Procedure (Act V of 1898), s. 476—Indian Penal Code (Act XLV of 1860), s. 193.*

Where a person gives false evidence before an arbitrator appointed under schedule II of the Civil Procedure Code, application under section 476 should be made to the court in which the suit was filed.

Whether in such an application a preliminary enquiry should be made, or not, depends on the facts and circumstances of each particular case. In a case, where the court is satisfied as to the case on examination of documents before it, it is unnecessary to have any further preliminary enquiry.

The practice of giving an opportunity, to be heard, to the person against whom an enquiry is directed, is generally to be deprecated, and it is not necessary to give notice to such person in an application under section 476 of the Criminal Procedure Code.

APPLICATION by co-defendant under section 476, Criminal Procedure Code.

The facts of the case are sufficiently stated in the judgment.

*A. K. Roy* for the petitioner.

BUCKLAND J. This is an application under section 476 of the Code of Criminal Procedure, the circumstances of which are as follows:—

In July, 1928, a shareholder of the name of Ganti in the International Trading Co., Ltd., a private company incorporated under the Indian Companies Act, 1913, instituted a suit, being suit No. 1623 of 1928, in this Court, against the company and the present petitioners, who also are shareholders in the company and Frederick Lionel Harcourt and Mrs. Harcourt, for a declaration that the shares standing

\*Application in Suit No. 1623 of 1928.

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in the names of the two persons last mentioned were invalid and that neither of them had paid or advanced any money to the company to entitle them to receive such shares and that the register of the company should be rectified. At that time, F. L. Harcourt was shown in the company's share register as the holder of 73 ordinary shares and Mrs. Harcourt of 75 ordinary shares and 275 preference shares.

On the 30th July, 1929, by consent, a reference was ordered under the schedule to the Civil Procedure Code to the arbitration of Mr. S. C. Bose, a member of the bar. That gentleman after a number of sittings filed an award, on the 10th January, 1930, and on the 10th February, 1930, the award was confirmed by a decree of this Court. The effect of the award was that F. L. Harcourt had no shares and that Mrs. Harcourt had 45 ordinary shares and 275 preference shares.

It appears that, in the course of the reference before the arbitrator, Harcourt made the following statements:—

(1) When I got the discharged promissory notes, I used to endorse the source from which the money was received and gave instructions to the accountant to credit them to the proper source. These parts of the documents were executed in favour of the Bank.

(2) All these notes were discharged from money received from Mrs. Harcourt. That fact could have appeared if the other halves of these documents were forthcoming.

This second statement, I understand, refers to the promissory notes to which Harcourt referred in the first statement quoted and which, I am informed, were not produced before the arbitrator. He also made the following further statements:—

(3) The payments would appear from the books of the company that Mrs. Harcourt advanced the money in respect of these documents.

(4) Books of account for the year 1917 to 1920 will show that these payments were advanced by Mrs. Harcourt.

The applicants, in their affidavit, say that, during the course of this month of March, 1930, the petitioner Manuel, as a director of the company, was examining the old books and records of the company and, in the course of such investigation, found the original promissory notes, to which the evidence of Harcourt

referred. Copies of the promissory notes have been annexed to his petition and I have been shown the originals in the course of this application.

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It appears from the documents shown to me and according to the statement of the petitioners that no endorsements were made on the promissory notes. The petitioner also states that an examination of the cash book of the company for the years 1917 to 1919 also showed that no entries for any such payments as falsely alleged by Harcourt were ever made in the book.

With that, the materials, upon which this application is based, are sufficiently stated, and the application is that a finding to the effect that it is expedient in the interests of justice that an enquiry should be made into offence under section 193 of the Indian Penal Code alleged to have been committed by Harcourt and Mrs. Harcourt should be recorded and a complaint thereof should be made in writing and dealt with as the section provides.

The first point to be considered is as to the preliminary enquiry: I do not think it is an overstatement to say that, by far the largest number of cases in which the section is employed by the Judges of this Court exercising Original Jurisdiction, arises out of cases in which the Judge has heard the evidence in the course of the trial by himself. In those circumstances, there is no need for another or further preliminary enquiry. This matter arises in a different manner. I am satisfied that, in the circumstances, it is necessary that an application to this Court should be made under section 476, but, as regards preliminary enquiry, I need express no opinion as to what the practice should be, for that is unnecessary and it must depend upon the facts and circumstances of each particular case.

An application such as this may relate to matters which can only be proved by oral evidence or it may relate to matters which can be proved or supported by documents. This application falls within the latter

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category and, in the circumstances, it does not appear to me that any further preliminary enquiry beyond that which I have had to make on the materials now before me is necessary.

There is the further question whether the person, against whom the application is made, should be given an opportunity of being heard upon the preliminary enquiry, but this, in my judgment, is generally to be deprecated. It might result, in some measure, in converting the enquiry into an enquiry not dissimilar from that which it would be the duty of a magistrate to make and it might involve the person against whom the order is sought in himself giving evidence on oath by affidavit or otherwise which would be contrary to the spirit of the criminal law in this country. I do not, therefore, consider that it is necessary that notice should be given to the person against whom the order is sought on an application such as this. He will, moreover, have every opportunity of being heard by the magistrate upon whom the duty will be cast of proceeding according to law if a complaint is made. I find that it is expedient in the interest of justice that an enquiry should be made into the offences specified in the petition in respect of the statements of Harcourt, which I have quoted, and I direct that a complaint thereof in writing shall be prepared for signature as required to be forwarded to the Chief Presidency Magistrate for him to proceed in accordance with the law.

The practice in these matters was considered by my learned brother Page J. in proceedings which arose out of the suit, *Moolji Sicca & Co. v. Ramjan Ali* (1), in which there was an appeal: *Ramjan Ali v. Moolji Sicca & Co.* (2). I refer to these for the purpose of tracing the orders and complaint which will furnish a useful precedent. The procedure which my learned brother followed has been approved by an appeal Bench of this Court and such practice should be followed in this case.

(1) (1928) O.C. 2178 of 1927, decided (2) (1929) I. L. R. 56 Calo. 932,  
 on 26th July. 934, 938-9.

The applicant also seeks for a similar order against Mrs. Harcourt. With regard to her, the only statement to which my attention has been drawn, upon which any proceeding could possibly be founded is a statement "that the other portions of these documents "were in my favour" where she refers to the promissory notes. Later, I observe she says she left everything to her husband and the matter was entirely in his hands. In those circumstances, I do not think any order should be made as regards Mrs. Harcourt.

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*Application allowed.*

Attorney for petitioner: *C. C. Ghose.*

S. M.