Purushottamdas Dalmia

Vs

The State of West Bengal.

Criminal Appeal No. 51 of 1959

(K. Subha Rao, Raghuvar Dayal JJ)

19.04.1961

JUDGMENT

RAGHUBAR DAYAL, J. -

This appeal, by special leave, is from the order of the Calcutta High Court dated May 16, 1958, summarily dismissing the appeal of the appellant from the order of the learned Single Judge of the High Court convicting him on jury trial of offences under s. 120-B read with s. 471, Indian Penal Code, and on two counts under s. 471 read with s. 466, Indian Penal Code, with respect to two documents. L. N. Kalyanam, who was also tried at the same trial and convicted of the offences under s. 120-B read with s. 471, Indian Penal Code, two counts under s. 466, Indian Penal Code, and of the offence under s. 109, read with S. 471, Indian Penal Code, did not appeal against his conviction.

The brief facts of the prosecution case are that the appellant Purushottamdas Dalmia was one of the partners of the firm known as Laxminarayan Gourishankar which had its head office at Gaya and branch at Calcutta. The Calcutta branch was located at 19, Sambhu Mallick Lane. On April 26, 1952, the appellant applied for a licence for importing rupees one crore worth of art silk yarn. On May 2, 1952, the Joint Chief Controller of Imports, Calcutta, issued a provisional licence. In accordance with the rules, this licence was to be got confirmed within two months by the Deputy or Chief Controller of Imports and on such confirmation it was to be valid for a period of one year. The licence was to be treated as cancelled in case it was not got confirmed within two months of the date of issue. This provisional licence was not confirmed within two months. The appellant was duly informed of the refused to confirm the licence. The appellant's appeal against the refusal to confirm the licence was dismissed in September 1952. The provisional licences issued were returned to the appellant. The letter communicating the dismissal of the appeal and the return of the licence was issued from the office of the Joint Chief Controller of Imports on September 26, 1952.

The letter dated September 29, 1952, from the office of the Chief Controller of Imports, New Delhi, informed the appellant with reference to the letter dated September 4, 1952, that instructions had been issued to the Joint Chief Controller of Imports and Exports, Calcutta, for re-consideration of such cases and that he was advised to contact that authority for further action in the matter. The appellant rightly, did not appear to take this letter to meant that the order of rejection of his appeal was still under further consideration. He did not take any steps to contact the Joint Chief Controller of Imports and Exports on the basis of this letter. Instead, he applied on October 7, 1952, for the return of correspondence. That correspondence was returned to him on October 9, 1952.

Nothing happened up to March 31, 1953, on which date the appellant wrote to the Chief Controller

of Imports, New Delhi, a long letter expressing his grievance at the action of the Joint Chief Controller of Imports and Exports, Calcutta, and requesting for a sympathetic decision. The Chief Controller of Imports and Exports, by his letter dated April 20, 1953, informed the appellant that the order of the Joint Chief Controller of Imports and Exports could not be revised for the reasons mentioned in that letter. This letter gave the wrong number of the appellant's firm. It mentioned its number as '16' instead of the correct number '19'. In other respects the address of this letter was correct. The appellant states that he did not receive this letter.

In August 1953, the appellant met Kalyanam at Calcutta. Kalyanam told the appellant that he could get the licence validated through the good offices of one of his acquaintances, Rajan by name, at Delhi. Both these persons came to Delhi in August, 1953, and visited Rajan. The appellant made over the file containing the licences to Kalyanam who in his turn made over the same to Rajan. Two or three days later Kalyanam returned the licences containing the alleged forged endorsements to the appellant. The forged endorsements related to the confirmation of the licence and its re-validation till May 2, 1954. The confirmation endorsement was purported to be dated July 2, 1952, and the re-validating one purported to be dated April 25, 1953.

Thereafter, orders were placed on the basis of the re-validated licence and when the goods arrived attempt was made to clear them at Madras. The clearing office at Madras suspected the genuineness of the confirmation and re-validating endorsements and finding the suspicion confirmed, made over the matter to the Police. As a result of the investigation and preliminary enquiry, the appellant and Kalyanam were committed to the High Court for trial.

Eight charges were framed. The first charge related to the criminal conspiracy between the two accused and was as follows :

> "That the said (1) Purushottamdas Dalmia and (2) L. N. Kalyanam along with the person or persons name or names unknown between the months of April and December one thousand nine hundred and fifty three at Calcutta, Howrah, Delhi, Madras and other places were parties to a criminal conspiracy to commit an offence punishable with rigorous imprisonment for two years or upwards, to wit, an offence of forgery by certificate or endorsement of confirmation and an endorsement of validation of the Import Trade Control Licence being licence no. 331913/48 (the Exchange Control Copy whereof is Ext. 5 and the Customs Copy whereof is Ext. 6) purporting to be made by public servant, to wit, the officers and staff of the Chief Controller of Imports and Exports and/or the offence of fraudulently or dishonestly using the aforesaid licence containing the aforesaid forged certificates and endorsements as to the confirmation and validation thereof knowing or having reason to believe the same to be forged documents and thereby they the said (1) Purushottamdas Dalmia and (2) L.N. Kalyanam committed an offence punishable under Section 120-B read with s. 466 and/or section 471 read with s. 466 of the Indian Penal Code within the cognizance of this Court."

Charges Nos. 2, 3 and 4 were with respect to the false endorsements on the copy of the licence Ext. 5. The second charge was under s. 466, Indian Penal Code, against Kalyanam alone and charges Nos. 3 and 4 were against the appellant for abetting the offence of forgery by Kalyanam and of using the forged document as genuine. Charges 5, 6 and 7 related to corresponding matters with respect to the licence copy Ext. 6. The eighth charge was against Kalyanam alone and was for his abetting the appellant in his committing the offence of fraudulently and dishonestly using as genuine

the Customs Copy of the said licence, Ext. 6.

The jury returned a verdict of 'not guilty' with respect to charges Nos. 3 and 6 and also with respect to the charge of conspiracy under s. 120-B read with s. 466, Indian Penal Code. The jury returned a verdict of 'guilty' against the appellant on the charge of conspiracy under s. 120-B read with s. 471, Indian Penal Code and the other charges Nos. 4 and 7.

It is not disputed, and cannot be disputed, that forgeries were committed in the two documents Exts. 5 and 6. The following points were raised by learned counsel for the appellant :

(i) The offences of using the forged documents as genuine were committed at Madras and therefore the Courts at Calcutta had no jurisdiction to try these offences under s. 471 read with s. 466, Indian Penal Code.

(ii) Alternative conspiracies could not be charged as they must be the result of different agreements between the conspirators.

(iii) The learned Judge misdirected the jury in putting certain matters before it in the form he had done. The chief criticisms in this connection were that (a) the accused must have known from the ante-dating of the confirmation endorsement that the re-validation of the licence was a forgery; (b) even if the proper officer of the Department had signed the re-validation, it would still be a forgery when it was ante-dated; (c) the letter of the Chief Controller of Imports and Exports dated April 20, 1953, though wrongly addressed, must have reached the appellant; (d) the learned Judge expressed his opinions strongly and this could have unduly affected the mind of the jury and forced it to come to the same conclusions.

The jurisdiction of the Calcutta High Court to try an offence of criminal conspiracy under s. 120-B, Indian Penal Code, is not disputed. It is also not disputed that the overt acts committed in pursuance of the conspiracy were committed in the course of the same transaction which embraced the conspiracy and the acts done under it. It is however contended for the appellant, in view of s. 177 of the Code of Criminal Procedure, that the Court having jurisdiction to try the offence of conspiracy cannot try an offence constituted by such overt acts which are committed beyond its jurisdiction and reliance is placed on the decision in Jiban Banerjee v. State [A.I.R. 1959 Cal. 500]. This case undoubtedly supports the appellant's contention. We have considered it carefully and are of opinion that it has not been rightly decided.

The desirability of the trial, together, of an offence of criminal conspiracy and of all the overt acts committed in pursuance of it, is obvious. To establish the offence of criminal conspiracy, evidence of the overt acts must be given by the prosecution. Such evidence will be necessarily tested by cross-examination on behalf of the accused. The Court will have to come to a decision about the credibility of such evidence and, on the basis of such evidence, would determine whether the offence of criminal conspiracy has been established or not. Having done all this, the Court could also very conveniently record a finding of 'guilty' or 'not guilty' with respect to the accused said to have actually committed the various overt acts. If some of the overt acts were committed outside the jurisdiction of the Court trying the offence of criminal conspiracy and if the law be that such overt acts could not be tried by that Court, it would mean that either the prosecution is forced to give up its right of prosecuting those accused for the commission of those overt acts or that both the prosecution and the accused are put to unnecessary trouble inasmuch as the prosecution will have to produce the same evidence a second time and the accused will have to test the credibility of that

evidence a second time. The time of another Court will be again spent a second time in determining the same question. There would be the risk of the second Court coming to a different conclusion from that of the first Court. It may also be possible to urge in the second Court that it is not competent to come to a different conclusion in view of what has been said by this Court in Pritam Singh v. The State of Punjab [A.I.R. 1956 S.C. 415, 422] :

> "The acquittal of Pritam Singh Lohara of that charge was tantamount to a finding that the prosecution had failed to establish the possession of the revolver Ex. P-56 by him. The possession of the revolver was a fact in issue which had to be established by the prosecution before he could be convicted of the offence with which he had been charged. That fact was found against the prosecution and having regard to the observations of Lord MacDermott quoted above, could not be proved against Pritam Singh Lohara in any further proceedings between the Crown and him."

In these circumstances, unless the provisions of the Code of Criminal Procedure admit of no other construction than the one placed upon them by the Calcutta High Court, they should be construed to give jurisdiction of the Court trying the offence of criminal conspiracy to try all the overt acts committed in pursuance of that conspiracy. We do not find any compelling reasons in support of the view expressed by the Calcutta High Court.

It is true that the Legislature treats with importance the jurisdiction of Courts for the trial of offences. Jurisdiction of Courts is of two kinds. One type of jurisdiction deals with respect to the power of the Courts to try particular kinds of offences. That is a jurisdiction which goes to the root of the matter and if a Court not empowered to try a particular offence does try it, the entire trial is void. The other jurisdiction is what may be called territorial jurisdiction. Similar importance is not attached to it. This is clear from the provisions of ss. 178, 188, 197(2) and 531, Criminal Procedure Code. Section 531 provides that :

> "No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice."

The reason for such a difference in the result of a case being tried by a Court not competent to try the offence and by a Court competent to try the offence but having no territorial jurisdiction over the area where the offence was committed is understandable. The power to try offences is conferred on all Courts according to the view the Legislature holds with respect to the capability and responsibility of those Courts. The higher the capability and the sense of responsibility, the larger is the jurisdiction of those Courts over the various offences. Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular Court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the Court. It is therefore that it is provided in s. 177 that an offence would ordinarily be tried by a Court within the local limits of whose jurisdiction it is committed.

It was said in Assistant Sessions Judge, North Arcot v. Ramaswami Asari [(1914) I.L.R. 38 Mad. 779, 782] :

> "The scheme of Chapter XV, sub-chapter (A) in which sections 177 to 189 appear,

> seems to me to be intended to enlarge as much as possible the ambit of the sites in which the trial of an offence might be held and to minimise as much as possible the inconvenience which would be cause to the prosecution, by the success of a technical plea that the offence was not committed within the local limits of the jurisdiction of the trying Court."

It is further significant to notice the difference in the language of s. 177 and s. 233. Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court except in the cases mentioned in ss. 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open. Its provisions are not peremptory. There is no reason why the provisions of ss. 233 to 239 may not also provide exceptions to s. 177, if they do permit the trial of a particular offence along with others in one Court. On the other hand, s. 233, dealing with the trial of offences, reads :

> "For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in ss. 234, 235, 236 and 239."

The language is very peremptory. There is a clear direction that there should be a separate charge for every distinct offence and that any deviation from such a course would be only in cases mentioned in ss. 234, 235, 236, and 239.

It is true that it is not stated in express terms either in s. 235 or s. 239, that their provisions would justify the joint trial of offences or of persons mentioned therein in a Court irrespective of the fact whether the offences to be tried were committed within the jurisdiction of that particular Court or not. But such, in our opinion, should be the interpretation of the provisions in these two sections. The sections do not expressly state that all such offences which can be charged and tried together or for which various persons can be charged and tried together must take place within the jurisdiction of the Court trying them. The provisions are in general terms. Sub-sections (1) to (3) of s. 235 provide for the offences being charged with and tried at one trial and therefore provide for the trial of those offences at one trial in any Court which has jurisdiction over any of the offences committed in the course of the same transaction. The illustrations to s. 235 also make no reference to the places where the offences were committed. In particular, illustration (c) can apply even when the offences referred to therein were committed at places within the territorial jurisdiction of different Courts. Similarly, s. 239 provides for the various persons being charged and tried together for the same offence committed in the course of the same transaction are accused of different offences committed in the course of the same transaction. Such offences or persons would not be tried together if some of the offences are committed by some of them outside the jurisdiction of the Court which can try the other offences, if the contention for the appellant be accepted and that would amount of providing, by construction, an exception for these sections.

As ss. 235 and 239 of the Code are enabling sections, the Legislature, rightly, did not use the expression which would have made it incumbent on the Court to try a person of the various offences at one trial or to try various persons for the different offences committed in the course of the same transaction together. The omission to make such peremptory provision does not necessarily indicate the intention of the legislature that the Court having jurisdiction to try certain offences cannot try an offence committed in the course of the same transaction, but beyond its jurisdiction.

No definite conclusion about the approval of the legislature to the interpretation put on the provisions of ss. 235 and 239, Criminal Procedure Code, by the Calcutta High Court in Bisseswar v. Emperor [A.I.R. 1924 Cal. 1034] or by the Madras High Court in In re : Dani [A.I.R. 1936 Mad. 317] and in Sachidanandam v. Gopala Ayyangar [(1929) I.L.R. 52 Mad. 991, 994] can be arrived at when it is found that there had been some case which expressed the contrary view. The case law having a bearing on the question under determination is, however, meagre.

In Gurdit Singh v. Emperor [(1917) 13 Crl. L.J. 514, 517] the conspiracy to murder a person was entered into in the district of Montgomery in Punjab and the attempt to murder that person in pursuance of that conspiracy was made within the jurisdiction of the Magistrate at Roorkee in the United Provinces. Broadway, J., said :

> "It appears that, rightly or wrongly, an allegations has been made that the abetment by conspiracy or by instigation took place in the Montgomery District, and that, therefore, the case can be tried either at Roorkee or in Montgomery. Section 180, Criminal Procedure Code, is clear on this point and no further discussion is needed."

In In re : Govindaswami [A.I.R. 1953 Mad. 372, 373] a person murdered A and B, one after the other, in the same night. The houses of A and B were divided by a street which formed the boundary between two districts. The accused was sent up for trial for the murders of A and B to the various Courts having jurisdiction to try the offences of the murder of A and of the murder of B. The learned Judges said :

> "There is a further aspect of the case on which we would like to make some observations. These two cases of alleged murder by the same appellant one after the other that same night brought as they were into the same confession should obviously have been tried by one and the same Sessions Judge. The street between the houses of Govindan Servai and Malayappa Konan appears however to have been a boundary between the districts of Tiruchirapalli and Tanjore and one murder was committed in the jurisdiction of the Sessions division of Tiruchirapalli and the other in the jurisdiction of the Sessions division of Tanjore. This appears to have been the only reason why two separate charge sheets were laid in respect of these murders. The learned Public Prosecutor agrees that there was no impediment to the two murders being tried together under s. 234(1), Cr.P.C., and it is indeed obvious that one Court should have dealt with both these murders."

The two cases could not be tried by any one of the two Sessions Courts if the provisions of s. 234, Criminal Procedure Code, were subject to the provisions of ss. 177 to 188 with respect to the territorial jurisdiction of Criminal Courts.

In Sachidanandam v. Gopala Ayyangar [(1929) I.L.R. 52 Mad. 991, 994] Odgers, J., relying on the case reported as Bisseswar v. Emperor [A.I.R. 1924 Cal. 1034] held that unless the abatement of an offence took place within its territorial jurisdiction, a Court could not avail itself of the provisions of s. 239 to try such abatement along with the principal offence. He observed :

> "I am doubtful about the matter, I must say; but giving the best consideration I can to it, and with this expression of opinion of the Calcutta High Court, I am inclined to think that jurisdiction, being the foundation of the charge, is to be imported or understood as present in all the subsequent procedure set out in the Code; and if that

is so, it clearly must govern s. 239."

The approval of the Legislature of a particular construction put on the provisions of an Act on account of its making no alteration in those provisions is presumed only when there had been a consistent series of cases putting a certain construction on certain provisions.

Lastly, an implied support to the view we are inclined to take is to be obtained from the observations of the Judicial Committee in Babulal Choukhani v. The King Emperor [(1938) L.R. 65 I.A. 158, 175, 176] :

> "Nor is there any limit of number of offences specified in s. 239(d). The one and only limitation there is that the accusation should be of offences 'committed in the course of the same transaction'. Whatever scope of connotation may be included in the words 'the same transaction', it is enough for the present case to say that if several persons conspire to commit offences, and commit overt acts in pursuance of the conspiracy (a circumstance which makes the act of one the act of each and all the conspirators), these acts are committed in the course of the same transaction, which embraces the conspiracy and the acts done under it. The common concert and agreement which constitute the conspiracy serve to unify the acts done in pursuance of it."

This indicates that the only limitation on the jurisdiction of the court to charge and try together various persons in pursuance of the provisions of cl. (a) of s. 239, Criminal Procedure Code, is that the accusation against those persons should be of offences committed in the course of the same transaction. It cannot be disputed that the accusation against the accused with respect to the overt acts committed by them in pursuance of a conspiracy is with respect to offences committed in the course of the same transaction and that therefore persons accused of these offences can be tried together at one trial in pursuance of the provisions of cl. (a) of s. 239. We therefore hold that the Calcutta Court had jurisdiction to try the appellant of the offences under s. 471 read with s. 466, Indian Penal Code, even though those offences, in pursuance of the conspiracy, were committed at Madras.

The second contention for the appellant is really to the effect that the appellant was charged with two conspiracies in the alternative and that such a charge is unwarranted by law. This, however, is not the correct interpretation of the charge of conspiracy framed against the appellant. The charge was one of conspiracy, it being a conspiracy to commit an offence punishable with rigorous imprisonment for two years or upwards. The particular offence to be committed was described in the alternative. One was to commit an offence of forgery and to use the forged document and the other was the offence of fraudulently or dishonestly using the licence containing the forged certificates and endorsements. The expression 'and/or' in the first charge simply meant that the offences they had conspired to commit consisted either of the offence to commit forgery and subsequently to use the forged document as genuine or the object was merely to use the licence with forged endorsements even though there was not any conspiracy to commit forgeries in the licences. In other words, the charge was that the appellant and Kalyanam entered into a conspiracy to commit offences punishable with rigorous imprisonment for two years or upwards and that the offences contemplated to include the offence of using the licence with forged endorsements and may also include the offence of forging the licence. Thus there was no case of two alternative conspiracies. The conspiracy was one and it being doubtful what the facts proved would establish about the nature of offences to be committed by the conspirators, the charge illustrated the offence in this form. In

his charge to the jury the learned Judge said at page 14 :

> "In this case from the circumstances, it may not be very clear whether they actually made an agreement among themselves to do or cause to be done forgery of the document or whether they merely agreed to use it as a genuine document knowing that it was a forged document. Therefore, the charge is in the alternative that either they agreed among themselves to do or cause to be done the forgery of this document or rather, the forgery of the endorsements of confirmation or revalidation; or in the alternative, they agreed among themselves regarding user of such a forged document knowing that it is forged. So both 'and/or' is mentioned in the charge, either they agreed to commit forgery or they agreed to use it knowing it is forged or they agreed to do both, both to commit forgery and use it knowing it to be a forged document."

Such a charge is justified by the provisions of s. 236 of the Code. We are therefore of the opinion that the charge of conspiracy does not suffer from any illegality.

We have carefully considered all that has been said in connection with the alleged misdirections in the charge to the jury and are of opinion that the charge does not suffer from this defect. The Judge has at places expressed in unequivocal language what appears to him to be the effect of certain pieces of evidence. But that, in our opinion, has not been in such a setting that it be held that the jury must have felt bound to find in accordance with that opinion. The Judge has, at various places, stated that the jury was not bound by his opinion, that it had to come to its own conclusion on questions of fact and that it was the function of the jury to decide all questions of fact.

There is nothing wrong in telling the jury that even if the endorsements had been made by the proper departmental officer and they were ante-dated, forgery would have been committed. That is the correct proposition of law. The ante-dated document would be a false document. Knowledge of ante-dating the endorsements, naturally conveyed knowledge of the commission of forgery.

The mistake in the letter dated April 20, 1953, from the Chief Controller of Imports and Exports, is not such as to lead to the conclusion that the letter could not have been delivered to the proper addressee. The appellant's firm is located at 19, Sambhu Mallick Road and the address of this letter gave the number as 16. Shop No. 16 could not have been at much distance from Shop No. 19. The postman delivering letters at the two shops must be the same. Postmen get to know the regular addressees by their names and ordinarily locate them even if there be some slight error or even omission in the address. The letter addressed to the appellant's firm is not proved to have returned to the dead-letter office or to the Chief Controller of Imports and Exports. If it was delivered by the postman at the Shop No. 16, ordinary courtesy requires that that shop would have sent over the letter to the neighbouring Shop No. 19. The appellant's conduct in not taking any action to find out what was the result of his representation to the Chief Controller of Imports and Exports is consistent with the view that he did receive the reply of the Chief Controller of Imports and Exports. In the circumstances, an expression of opinion that the letter would have reached the appellant cannot be said to amount to a misdirection.

The learned Judge is perfectly justified to ask the jury to take into consideration the probabilities of a case, where no definite evidence, in connection with an incidental matter, exists.

We do not consider that the contentions raised do amount to misdirections.

In view of the above, we see no force in this appeal and accordingly dismiss it.

Appeal dismissed.

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