Bhanwar Singh & Anr.

Vs

State of Rajasthan

Criminal Appeal No. 137 of 1967

(M. Hidayatullah, C. A. Vidialingam JJ)

05.12.1967

JUDGMENT

VAIDIALINGAM, J. -

The two appellants, in this appeal, by special leave, challenge their conviction, by the Additional Sessions Judge, No. 1, Jaipur City, for offences under Ss. 120B, 420, 420 read with 511, and 467 read with 471, I. P. C., as confirmed by the High Court of Rajasthan, at Jodhpur. Bhanwar Singh has also been convicted, for an offence under s. 380, I. P. C. Both of them have been sentenced to various terms of imprisonment and fine, for these offences, and the sentences of imprisonment have been directed to run concurrently.

The two appellants, along with two others, who have since been acquitted, were tried by the learned Sessions Judge, for various offences, as indicated below. There was a common charge of criminal conspiracy, under s. 120B, IPC, to do, or cause to be done, illegal acts viz., offences of theft, cheating, forgeries, etc., against all the four accused. Under this head, the allegation was that the four accused agreed, among themselves, to commit theft and pilferage, of Indian and British postal orders and bank cheques, belonging to different persons, which were in transmission, by post and that, after such pilfering, the names of the original payees and the names of the paying post offices were erased and forgery was committed by writing the names of fictitious persons, or the names of some of the accused, and of different post offices. The further allegation was that the accused agreed to use, as genuine, all such pilfered and forged postal orders and cheques, which the accused knew, or had reasons to believe, were forged documents. There was also an allegation that all the accused had also agreed to present, such pilfered and forged postal orders and cheques, for encashment at the post offices and banks at Ajmer and Jaipur, through the two appellants and Yasoda Devi, 4th accused, pretending to be either the original payees or the substituted payees. It was further alleged that the accused had agreed to cheat, or attempt to cheat, the postal authorities and banks, at Ajmer and Jaipur, by dishonestly inducing them to make payment to the appellants and Yasoda Devi, in respect of the pilfered and forged postal orders and cheques. It was also stated that the accused committed the various acts, in pursuance of the agreement, regarding the postal orders and cheques, details of which were given under that charge. Appellant Bhanwar Singh was also further charged that, in pursuance of the conspiracy, during October 1956 and December 1957, he committed theft of various postal orders and cheques, belonging to various persons and that he also forged certain postal orders, which were valuable securities, by removing the names of the original payees and inserting his own name and that he thereby cheated the postal authorities at Jaipur, by dishonestly inducing them to deliver certain amounts against such postal orders, which were really payable to a third party, and thereby he committed offences of theft, forgery and cheating under Ss. 380, 467 and 420, I. P. C. There were also certain further charges, for offences punishable under s. 471; and of an

attempt to commit cheating in respect of a cheque, punishable under s. 420 read with s. 511, IPC.

Similarly, against Kishanlal, the 2nd appellant, there were additional charges, framed under Ss. 467, 420, 420 read with 511 and 471, I. P. C. Kapoorchand was also charged under Ss. 380 and 467 I. P. C., and Yasoda Devi, under Ss. 467, 471, 420 and 419 I. P. C.

The case of the prosecution, in brief, was as follows. Bhanwar Singh and Kapoorchand were constables in the C. I. D., Ajmer Zone, during 1956-57. In the course of their duties of censoring postal mail, these two constables, after having opened the mail, for the purpose of censoring, pilfered certain Indian postal orders and British postal orders and cheques and, after erasing the names of the original payees, as also the names of the post offices or banks, where payment was to be made, inserted their own names or some fictitious names and got the postal orders or cheques encashed at different post offices and banks. According to the prosecution, Bhanwar Singh and Kapoorchand had entered into a conspiracy, with Kishanlal and Yashoda Devi, whose services were utilised for getting the moneys from the Banks. The matter came to light when the payees did not receive the cheques or the postal orders intended for them and lodged complaints with the post offices and banks. On investigation, the four accused were charged, as detailed above.

The accused denied the charges levelled against them. The learned Sessions Judge came to the conclusion that the charge of criminal conspiracy was established, against all the four accused. The first appellant was found to be the main accused and he was convicted under Ss. 380, 467/471, 420/511 read with s. 120B I. P. C. The second appellant and Yashoda Devi were convicted under Ss. 467, 471 and 420 read with s. 120B IPC. Kapoorchand was however convicted only for offences under Ss. 380 and 467 read with 120-B, IPC. The learned Sessions Judge sentenced all of them to various terms of imprisonment, and fine, for the different offences, as stated already.

All the four accused challenged their conviction, for these offences and the sentences passed against them, before the High Court of Rajasthan. Two contentions were raised by the accused; (i) that the trial held by the Sessions Judge was illegal and void, inasmuch as the prosecution had been conducted, without obtaining the necessary sanction, under s. 196A of the Code of Criminal Procedure, in respect of the charge under Ss. 467 and 471 read with s. 120B IPC; (ii) that the evidence adduced by the prosecution, did not establish the guilt of the accused. Both these contentions have been negatived by the High Court, so far as the appellants herein are concerned. The High Court, however, acquitted Yashoda Devi, holding that the prosecution evidence did not establish her guilt, beyond reasonable doubt. The High Court also acquitted Kapoorchand holding that the trial against him was void, because the necessary sanction had not been obtained, under s. 196A of the Code of Criminal Procedure.

On behalf of the appellants, Mr. Jain, learned counsel, raised the same two contentions before us. Counsel urged that inasmuch as the accused were prosecuted for non-cognizable offences under Ss. 467/471 read with s. 120B, IPC., the trial was illegal and void, inasmuch as the necessary sanction, under s. 196A of the Code had not been obtained. Learned counsel further urged that the mere fact that the accused were also tried for the offence of cheating, under s. 420 IPC, which is cognizable and for which punishment by way of imprisonment extending to 7 years could be imposed, and for which no sanction was necessary, would not make the trial valid. Under such circumstances, the joint trial for cognizable and non-cognizable offences was illegal and void.

Mr. Khanna, learned counsel for the State, met this contention, on behalf of the appellant, by pointing out that the main object of the conspiracy was to cheat the banks and the post offices, by

obtaining money from them; the forgeries committed by the accused on the cheques and postal orders were only incidental to achieve the main object of the conspiracy, viz., to commit the offence under s. 420 IPC. Under those circumstances, Mr. Khanna pointed out, it was not necessary to obtain sanction under s. 196A of the Code and therefore there was no illegality, which would vitiate the trial, held by the Sessions Judge.

We have already indicated the offences for which the appellants and the other two accused, who have since been acquitted, were tried. It is enough to note that there was a charge under s. 120B, read with s. 467/471 and 420 IPC. The offences under s. 467 and 471 are non-cognizable, but the offence under s. 420 is a cognizable one for which the punishment could be imprisonment extending to 7 years. Therefore, if the object of the conspiracy, under s. 120B, was to commit a non-cognizable offence, under s. 467 or 471 I. P. C., the obtaining of sanction, from the authorities mentioned in sub-s. (2) of s. 196A, was absolutely necessary, and the absence of such sanction would vitiate the trial, for such offences. Similarly, if the object of the conspiracy, under s. 120B, was to commit a cognizable offence under s. 420 IPC, which is punishable with imprisonment for a term above 2 years, no sanction is necessary under s. 196A. The question is, whether sanction was necessary in the case before us, when there was a trial for offences under s. 467/471 and 420 IPC, read with s. 120B.

In the instant case, it is admitted that no sanction was obtained.

In The State of Andhra Pradesh v. Kandimalla Subbaiah [[1962] 1 S. C. R. 194] the question arose, before this Court, whether sanction under s. 196A of the Code was necessary when there was a trial for offences under s. 120B, read with Ss. 466, 467 and 420, IPC. It was argued, on behalf of the State, that since the object of the conspiracy was to cheat the Government i.e., to commit an offence under s. 420 IPC, and as the offences under Ss. 466 and 467 were only means to that end, the trial was not vitiated simply because no sanction was obtained for prosecuting the accused, for offences of criminal conspiracy to commit non-cognizable offences, under Ss. 466 and 467 IPC. But, in that decision, this Court did not express any opinion on this point, as the matter was sent back to the trial Court, for framing fresh charges and proceeding with the trial, after observing that it was for the Government to consider whether it should accord sanction for prosecution of non-cognizable offences, assuming that such sanction was necessary. The question, that was thus left open, in that decision, arises for consideration, now, in the instant case before us.

On behalf of the appellant, reliance has been placed on three decisions, in support of the contention that under such circumstances, the trial is illegal and void. Those decisions are : Subbaiah, In re : [I. L. R. 1958 A. P. 791], of the Andhra Pradesh High Court; Jadeda Meramanji v. State of Gujarat [(1963) 2 Cr. L. J. 713], of the Gujarat High Court; and Nibaran Chandra v. Emperor [A.I.R. 1929 Cal. 754], of the Calcutta High Court.

The decision of the Calcutta High Court does not assist the appellant, because the charge that was framed was of criminal conspiracy, under s. 120B read with s. 384 IPC. The object of the conspiracy having been to commit an offence, under s. 384 IPC, which is a non-cognizable offence, it was held by the Calcutta High Court that the Magistrate could not take cognizance of the offence, without the necessary sanction, under s. 196A; and, on this ground, the High Court held that the trial was void.

In the decisions of the Andhra Pradesh and Gujarat High Courts, referred to above, it has been held that in respect of a prosecution, for criminal conspiracy, under s. 120B, read with Ss. 466 and 467

IPC., under which sections the offences are non-cognizable, the consent, contemplated under s. 196(A)(2) is a pre-requisite to any Court taking cognizance of that offence; it has also been held that sanction is not necessary to prosecute a case of criminal conspiracy to commit an offence under s. 420 IPC. The legal proposition, stated as such, is unexceptionable. But it is not clear from the discussion, contained in the two judgments, as to what was the object of the conspiracy. It is also to be stated that the said two decisions had no occasion to consider the question whether sanction, under s. 196(A)(2), Cr. P.C., is still necessary when a trial is held for offences under s. 120B read with s. 466, 467 and 420 IPC., and when the case of the prosecution is that the object of the conspiracy is to commit the offence of cheating, and non-cognizable offences have been committed for the purpose of effecting the object of the conspiracy.

We may also point out that our attention has been drawn to the decision of this Court in Madan Lal v. State of Punjab [A.I.R. 1967 S.C. 1590]. We have gone through that decision and it does not, in our opinion, assist the appellant.

The view of the various High Courts, to which we will refer presently, and with which view we agree, is that no sanction is necessary, under s. 196A(2) Cr. P.C., when the object of the conspiracy is to commit the offence of cheating (420 IPC), but, forgery of documents (467 IPC) and similar non-cognizable offences are also committed, as merely steps taken, by one of other of the accused, for the purpose of effecting the main object of the conspiracy. A trial, under such circumstances, for offences under s. 120B, read with s. 467/471 and 420 IPC., without obtaining sanction, is neither illegal, nor void.

It is necessary to keep in mind the difference between the object of a conspiracy and the means adopted for realising that object. Even if the object of the conspiracy, viz., of cheating, is sought to be attained by resort to non-cognizable offences, as in the case before us, sanction under s. 196A of the Code is not necessary. This principle emerges from the following decisions : Ramachandra Rango v. Emperor [A.I.R. 1939 Bom. 129]; Durgadas Tulsiram v. State [A.I.R. 1955 Bom. 82]; Abdul Kadar v. State [A.I.R. 1964 Bom. 133]; Paresh Nath v. Emperor [A.I.R. 1947 Cal. 32]; Golam Rahman v. The King [A.I.R. 1950 Cal. 66]; Kannan, In re [(1949) 2 M.L.J. Short Notes p. 52 (Crl. M.P. 2686/1949)]; and Vadlamudi v. State of A.P. [A.I.R. 1961 A.P. 448].

The object of the conspiracy has to be determined, not only by reference to the sections of the penal enactment, referred to in the charge, but on a reading of the charges themselves. On a perusal of the charges, framed against the appellants, we are satisfied that the only object of the conspiracy was to cheat the banks or the post offices, referred to in the charges, which is an offence under s. 420, read with s. 120B, IPC, for which no sanction is necessary. No doubt there are also charges of committing forgery of valuable security and using such forged documents, which are offences under Ss. 467 and 471 IPC, and non-cognizable. But a reading of the charges, as a whole, makes it clear that it is not the case of the prosecution that committing forgery of the Indian and British postal orders or the cheques, or using such forged documents, was the object of the conspiracy. The accused would not be satisfied by merely entering into a conspiracy to forge the postal orders or the cheques, or even to use such forged documents. The forging of the documents and using such forged documents, were only means adopted by the accused for realising the object, of the conspiracy, which was to cheat the postal and bank authorities, at the places mentioned in the charge, by dishonestly inducing them to part with money. Therefore the trial of these accused, for offences under Ss. 120B read with s. 467/471 and 420 IPC., and other allied offences, cannot be held to be illegal, on the ground that sanction under s. 196A(2) of the Code, had not been obtained.

Before closing the discussion, on this point, it is necessary to refer to the reliance placed, by the counsel for the appellants, on the acquittal, by the High Court, of Kapoorchand, on the ground that the trial was void, because the necessary sanction had not been obtained, under s. 196A, of the Code. It will be seen that the said accused also was tried for an offence under s. 120B read with s. 420 IPC., as also on certain other charges. As will be seen from the judgment of the High Court, it has taken the view that the said accused has not been convicted, by the trial Court, for an offence, under s. 120B read with s. 420 IPC., and hence the trial is vitiated, for lack of sanction.

Mr. Khanna, learned counsel for the respondent, has pointed out that the said accused was also tried for the offence of cheating, but he was convicted only for certain other offences; and, in this connection, he referred us to the finding of the trial Court that all the accused were guilty of the offence of cheating also. It is not necessary to pursue this matter further, because, it will be seen from the judgment of the trial Court that the said accused was also prosecuted for an offence under s. 120-B read with s. 420 IPC.

In view of what is stated above, the first contention of the learned counsel for the appellants, has to be rejected.

So far as the second contention is concerned, that really relates to merits. Both the learned Sessions Judge, as well as the High Court, have very elaborately gone into the evidence regarding the appellants, and have found them guilty of the offences, for which they were punished. We do not see any error, committed by the High Court, or the Sessions Judge, in the appreciation of the evidence, in the case, and there is no justification for any interference, by this Court.

The result is that the appeal fails, and is dismissed.

Appeal dismissed.

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