SUPREME COURT OF INDIA

Darshan Singh Ram Kishan

Vs.

State of Maharashtra

Crl.A.No.100 of 1969

(J. M. Shelat, I. D. Dua and S. C. Roy, JJ.)

02.09.1971

JUDGEMENT

SHELAT, J.:-

1. The appellant and one Bakshi Singh Sunder Singh were accused No. 2 and accused No. 1 retrospectively in the committal proceedings before the Presidency Magistrate, 28th Court, Greater Bombay. This appeal, by special leave, is directed against the judgment of the High Court of Bombay refusing to quash the order of committal passed by the learned magistrate.

2. The facts relevant to this appeal are few and may first be stated.

3. On October 31, 1963, one Jivansingh Uttamsingh obtained a British passport fearing No. 183459 at Nairobi. On the strength of that passport he was returning to India with his family. On his way he died on board the ship. According to the prosecution that passport came into the hands of the

appellant. Bakshi Singh desired to go to the United Kingdom, but had no passport. The appellant agreed to arrange his journey and also for that purpose to obtain a passport for him.

4. The allegation was that the appellant prepared an application for a visa in the name, of Bakshi Singh. It was further alleged that with a view to procure the said visa the photograph of the said deceased Jivansingh was removed from the said passport and that of Bakshi Singh substituted. The visa having in this fashion been obtained, Bakshi Singh journeyed to the United Kingdom having on his way made some intermediate halts. The British authorities suspected that the passport was a forged document and repatriated Bakshi Singh to India. On his arrival he was handed over to the Special Police, Bombay.

5. The Special Police carried out investigation in the course of which they recorded statements of certain witnesses including that of Tanna Singh, the younger brother of Bakshi Singh. On completion of the investigation, the police filed a chargesheet before the learned Magistrate. That charge-sheet is not before us. But counsel for the appellant informed us that Bakshi Singh was therein charged under sections 419 and 471 read with section 468, and the appellant was charged under sections 419/ 109, 468 and 471 of the Penal Code. Counsel also informed us that the Magistrate did not examine any witnesses, during the committal proceedings but on a perusal of the chargesheet and the documents filed before him under sec. 173 of the Code of Criminal Procedure he framed the charges and committed, by his order dated September 13, 1968, Bakshi Singh and the appellant for trial before the Sessions Court. By that order he directed the said Bakshi Singh to stand his trial under sections 120B, 419, 467 and 471 read with sec. 467, and the appellant under sections 120B and 467 of the Penal Code. The offence of criminal conspiracy charged under sec,120B was that the said Bakshi Singh and the appellant had conspired to forge the said passport for the use of the said Bakshi Singh.

6. In the High Court various contentions were raised on behalf of the appellant in support of his application under sec. 561A of the Code of Criminal Procedure including that under sec. 196A (2). That contention was that no consent as required by sec. 196A (2) having been first obtained, the Magistrate had no jurisdiction to take cognizance of the offence of conspiracy, and therefore, the committal order was without jurisdiction and had to be quashed. In this appeal we are concerned only with that contention as the special leave granted to the appellant has been limited to that ground alone.

7. Sub-section (2) of sec. 196A which is relevant to the present case, provides that no court shall take cognizance of the offence of criminal conspiracy punishable under sec. 120B of the Penal Code in a case inter alia where the object of such conspiracy is to commit any non-cognizable offence. There is no doubt that the charge, as framed by the Magistrate and for which he committed the appellant and Bakshi Singh to stand their trial before the Sessions Court, was for criminal conspiracy, the object of which was to forge the said passport, a noncognizable offence. In respect of that offence, sec. 196A (2) would undoubtedly apply. What that section prohibits is taking

cognizance of an offence of criminal conspiracy unless consent to the initiation of proceedings against the person charged with it has been first obtained.

8. As provided by sec. 190 of the Code of Criminal Procedure,. a Magistrate may take cognizance of an offence either (a) upon receiving a complaint or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held, taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance therefore, takes place at a point when a magistrate first takes judicial notice of an offence. This is the position whether the magistrate takes cognizance of an offence on a complaint, or on a police report, or upon information of a parson other than a police officer. Therefore, when a magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.

9. It is not in dispute that the charge-sheet submitted by the police officer for the purpose of initiation of proceedings by the magistrate was for offences under sections 419 and 471 read with sec. 468 against Bakshi Singh and under sections 419/109, 471 and 468 against the appellant. The charge-sheet admittedly did not refer to or charge either of them with criminal conspiracy under sec. 120B. Prima facie it is not possible to say that at the stage when the police filed the charge-sheet the Magistrate took cognizance of the offence under sec. 120B, for, that was not the offence alleged in the charge-sheet to have been committed by either of the two accused persons.

10. True it is that the Magistrate ultimately drew up charges which included the offence under section 120B, the object of which was to forge the passport, an offence under see. 467. The Magistrate also did not consider it necessary to examine any witnesses and framed the charges on a perusal of the chargesheet submitted to him by the police, the statement of witnesses recorded by the police during their investigation and such other documents as were filed under see, 173 of the Code of Criminal Procedure before him. The materials before, him therefore, were the same as were before the police officer who had filed the charge-sheet. But while drawing up the charges and passing his order of committal, the Magistrate considered that though the chargesheet filed before him alleged the commmission of offences under Ss. 419/109, 471 and 468, the proper charge on the materials before him, although they were the same as before the police officer, warranted a charge of criminal conspiracy for forging a passport. It is quite clear, however, that the cognizance which he took was of the offences alleged in the charge-sheet because it was in respect of those offences that the police had applied to him to initiate proceedings against Bakshi Singh and the appellant and not for the offence under sec. 120B. It was at a later stage, i.e., at the time of passing the committal order that he considered that a charge under section 120B was the more, appropriate charge and not a charge under S, 109 of the Penal Code. That being so, it must be held that the Magistrate took cognizance of the offence of abetment of an offence of forgery and impersonation so far as the appellant was concerred and not of the offence of criminal conspiracy, and therefore, section 196A (2) did not apply.

11. Counsel in this connection relied on certain observations made in a minority judgment of S. K. Das, J., in Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar, (1962) Supp 2 SCR 297 = (AIR 1962 SC 876). The question involved there was, whether a second complaint could be entertained by a magistrate who or whose predecessor had on the same or similar allegations dismissed a previous complaint, and if so, in what circumstances should such a complaint be entertained. Arising out of this question a contention was raised whether on the complaint, as it was framed, the Magistrate had the jurisdiction to take cognizance of the offences alleged in the complaint in the absence of a sanction under section 196A. The second complaint alleged offences under sections 467 and 471 read with sec. 109 of the Penal Code. But in para 5 thereof, there was an allegation as to criminal conspiracy and it was on the basis of that allegation that sec. 196A (2) was sought to be invoked. It was in this connection that the learned Judge at page 315 of the report observed:

"It would not be proper to decide the question of sanction merely by taking into consideration the offences mentioned in the heading or the use of the expression "criminal conspiracy" in para 5. The proper test should be whether the allegations made in the petition of complaint disclosed primarily and essentially an offence or offences for which a consent in writing would be necessary to the initiation of the proceedings within the meaning of S. 196A (2) of the Code of Criminal Procedure. It is from that point of view that the petition of complaint must be examined."

The learned Judge ultimately held that though the offence, of criminal conspiracy was alluded to in para 5 of the said complaint, the offence "primarily and essentially" charged was abetment by conspiracy under sec. 109 of the Penal Code, and therefore, no consent under sec, 196A (2) was required. In Biroo Sardar v. Y. C. Ariff, AIR 1925 Cal 579 the view also taken was that it is not the sections referred to which matter but the offence prima facie disclosed. Following that decision, the High Court of Bombay in Ramchandra Rango v. Emperor AIR 1939 Bom 129 observed that the question whether sanction is necessary or not depends not on the sections referred to in a complaint but the offence prima facie disclosed by the facts alleged in it.

12. It is clear from the chargesheet submitted to the magistrate that the offence of criminal conspiracy was not even referred to. The offence "primarily and essentially" alleged therein was one of abetment of forgery under sections 468 and 471 and of false impersonation under sec. 419 read with sec. 109; Assuming that the Magistrate before taking cognizance had perused the statements of witnesses recorded by the police during investigation, it was conceded by counsel after he himself had gone through them from the record, that none of the witnesses had alleged therein either directly or indirectly of the appellant having entered into a criminal conspiracy with Bakshi Singh for forging the passport. It cannot be disputed that the charge-sheet also prima facie disclosed the offence of abetment. That being so, it is impossible to sustain the argument that the Magistrate took cognizance of the offence under sec. 120B, and therefore, consent under sec. 196A (2) was required as a condition precedent or that the committal order and the proceedings for committal which he took were vitiated for want of such consent.

13. The appeal, therefore, fails and is dismissed.

Appeal dismissed.