

Yash Pal Mittal

Vs

State of Punjab

Criminal Appeal No. 81 of 1973

(Goswami, J.)

03.11.1977

JUDGMENT

GOSWAMI, J. -

1. The criminal case, out of which this appeal arises, goes back to the year 1961. On July 1, 1967, the Special Judicial Magistrate, Punjab, camp Jullundur, committed the appellant along with several others to stand trial in the Court of Session under various charges, such as under Sections 465, 471/466, 476/466, 417, 419, read with Section 120B, IPC. Apparently it took nearly three years for the trial to commence. On objection being raised by the accused with regard to the sanction under Section 196A(2) Cr. P.C., 1898, the trial Court on June 6, 1970, rejected the same by holding that no sanction was necessary in the case. The trial Court, however, held that the particular sanction accorded under Section 196A(2), Cr. P.C. was invalid, the correctness of which was not challenged before us.

2. That led to a revision application by the accused before the High Court of Punjab and Haryana. That was also rejected on March 24, 1972. The appellant obtained special leave against the order of the High Court on April 5, 1973.

3. Even such a short matter, as it is, where no records are required to be prepared, has come up for hearing before us after well over four years. True, the accused profits by the delay in many ways but the State should have been vigilant to apply for an expeditious hearing of such a short matter since the trial has been inordinately delayed on account of this. The methodology of disposal of such a matter, like the pattern we have been recently adopting, may suitably be to dispose of the whole matter within a month after notice of motion to the State at the time of hearing of the special leave petition.

4. The only question raised before us by Mr. Frank Anthony is with regard to the invalidity of the trial under Section 120B, IPC in absence of sanction under Section 196A(2), Cr. P.C., 1898.

5. In order to appreciate the objection we may at once turn to the charges framed in the trial. The appellant faces only one charge along with 11 others as follows :

Firstly : That you all during the period January, 1961 to May, 1962 in the State of Punjab, at Bombay and at Calcutta were party with the following accused persons who are absconding, namely :

(1) Julman Singh, s/o Kishen Singh, village Mazara Navabad, District Jullundur,

(2) Gurdev Singh, s/o Munshi Ram, village Cheekahi, District Jullundur,

(3) Minder, s/o Sucha Singh, village Sarhala, District Jullundur,

(4) Harnam Singh, s/o Udham Singh, village Pathlave, District Jullundur,

and with one Jodh Singh, son of Vir Singh, 8 Modern Colony, District Jullundur and others to a criminal conspiracy to do or cause to be done certain illegal acts, namely to prepare or to be prepared spurious Government of India Passports booklets, to forge or cause to be forged entries and endorsements therein and to use or cause to be used such forged passports as genuine, knowing or having reason to believe, them to be forged, in order to facilitate travel of persons abroad including yourselves and thereby to cheat the Embarcation Authorities at Airports by inducing such authorities to believe that the passports were valid and genuine and upon such belief permit the travel abroad. And thereby committed an offence punishable under Section 120B, IPC, read with Sections 465, 476/466 and 419, IPC and within the cognizance of the Court of Session.

The first charge in which all accused are named including the appellant is the principal charge describing the nature and object of the conspiracy in which a number of persons including absconders and some unknown persons were involved. With regard to the twelve other remaining charges, although the appellant was not charged under any of them, his other companions were charged and in eight of these charges, specific mention was made of various offences being committed "in pursuance of the said conspiracy". Some of the accused persons are charged under substantive offences which are connected with the object of the conspiracy. The Court could have added in the remaining charges also that the offences were committed in pursuance of the said conspiracy but much cannot be made of its non-mention at this stage at any rate.

6. Mr. Anthony submits very strenuously that the first and the only charge in which the appellant is involved speaks merely of "cheating" which is an offence under Section 417, IPC punishable with imprisonment for one year. When pointed out that the charge does refer specifically to Section 419, IPC he submits that the mention of the offence is not decisive when the recitals in the charge do not notify to the accused "cheating by personation". He relies strongly on the decision of this Court in *Bhanwar Singh v. State of Rajasthan* [(1968) 2 SCR 528 : AIR 1968 SC 709 : 1968 Cri LJ 867] as his main plank of attack. He draws our attention to the observation therein that "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".

7. It is not possible to accede to the above submission of Mr. Anthony. The aforesaid observation cannot be called in aid at the threshold of a trial divorced from the context. That was a case where the accused were convicted at the trial and the appeal by special leave was dismissed. The Court was in a position to ascertain in that case as to whether the accused had proper notice of the charge with the definite object of conspiracy and whether there was any prejudice to the accused in any manner affecting the trial. We are, however, called upon to examine the matter at the threshold. We have carefully read the first charge and although the words "cheating by personation" were not mentioned therein, no valid objection could be made as the entire recitals are clear and are also followed up by a specific mention of the offence under Section 419, IPC. We are not required to ascertain the object of the conspiracy from mere mention of Section 419, IPC but from the recitals in the charge. The decision in *Bhanwar Singh* (supra) does not come to the aid of Counsel in this case. Since an

objection like this has been made, it will be even open to the trial Court to alter the words of the charge by specifically mentioning "cheating by personation."

8. Besides, the other charges levelled against the alleged co-conspirators also throw sufficient light on the object of the conspiracy and it is not necessary that the appellant should figure or for the matter of that all accused should figure in all the charges.

9. The offence of criminal conspiracy under Section 120A is a distinct offence introduced for the first time in 1913 in Chapter V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participants in the main object of the conspiracy. There may be so many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or overshooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under Section 120A is brought out pithily by this Court in *Major E.G. Barsay v. The State of Bombay* [(1962) 2 SCR 195, 228 : AIR 1961 SC 1762 : (1962) 2 Cri LJ 828] thus :

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy.

10. The main object of the criminal conspiracy in the first charge is undoubtedly cheating by personation. The other means adopted, inter alia, are preparation or causing to be prepared spurious passports; forging or causing to be forged entries and endorsements in that connection; and use of or causing to be used forged passports as genuine in order to facilitate travel of persons abroad. The final object of the conspiracy in the first charge being the offence of cheating by personation, as we find, the order offences described therein are steps, albeit, offences themselves, in aid of the ultimate crime. The charge does not connote plurality of objects of the conspiracy. That the appellant himself is not charged with the ultimate offence, which is the object of the criminal conspiracy, is beside the point in a charge under Section 120B, IPC as long as he is a party to the

conspiracy with the end in view. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial Court.

11. The principal object of the criminal conspiracy in the first charge is thus "cheating by personation", and without achieving the goal other acts would be of no material use in which any person could be necessarily interested. That the appellant himself does not personate another person is beside the point when he is alleged to be a collaborator of the conspiracy with the object. We have seen that some persons have been individually and specifically charged with cheating by personation under Section 419, IPC. They were also charged along with the appellant under Section 120B, IPC. The object of criminal conspiracy is absolutely clear and there is no substance in the argument that the object is merely to cheat simpliciter under Section 417, IPC.

12. Section 196A(2), Cr. P.C. provides that no Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code,

(2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government has, by order in writing, consented to the initiation of the proceedings.

* * * *

13. Since the object of the criminal conspiracy is cheating by personation under Section 419, IPC punishable with imprisonment which may extend to three years, Section 196A(2) is no bar to the present trial in absence of a sanction. The fact that the accused are charged with other non-cognizable offences in the same trial cannot affect the validity of the trial. There is no merit in this appeal which is dismissed. The records shall be despatched immediately to the trial Court which will dispose of the case at an early date.

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