

Yash Pal Mittal vs State Of Punjab on 3 November, 1977

Equivalent citations: 1977 AIR 2433, 1978 SCR (1) 781, AIR 1977 SUPREME COURT 2433, (1978) 1 SCR 781, 1978 SC CRI R 55, 1977 CRI APP R (SC) 407, (1977) 4 SCC 540, (1978) 1 SC WR 349, 1978 ALLCRIC 10, 1978 ALLCRIR 23, 1978 SCC(CRI) 5

Author: P.K. Goswami

Bench: P.K. Goswami, N.L. Untwalia, D.A. Desai

PETITIONER:

YASH PAL MITTAL

Vs.

RESPONDENT:

STATE OF PUNJAB

DATE OF JUDGMENT 03/11/1977

BENCH:

GOSWAMI, P.K.

BENCH:

GOSWAMI, P.K.

UNTWALIA, N.L.

DESAI, D.A.

CITATION:

1977 AIR 2433

1978 SCR (1) 781

1977 SCC (4) 540

ACT:

Penal Code (Act 45 of 1860), sec. 120A and 120B-Object and scope of.

Criminal Procedure Code (Act V of 1898), sec. 196A(ii)-sec. 196 of 1973 Code-Object of criminal conspiracy, if clear from the charge itself, whether trial is vitiated for want of sanction under s. 196A(2).

HEADNOTE:

A criminal case was filed in 1961 against the appellant under s. 120B of the Penal Code while in respect of others for various offences under ss. 465, 471/ 466, 476/466, and 419 read with s. 120B, Penal Code. The Special Judicial Magistrate, Punjab Camp Jullundur framed charges under the

aforesaid sections against the accused. An objection, "that for want of sanction under s. 196A(2) of the Criminal Procedure Code 1898 the trial under s. 120B, I.P.C. was invalid," raised by the accused appellant was rejected by the Trial Court on 6-6-1970 holding that no sanction was necessary in the case. A revision application filed against the said orders was dismissed by the Punjab High Court on 24-3-1972. The appellant thereafter obtained special leave on 5-4-1973 from this Court.

'Dismissing the appeal the Court,

HELD:(1) The very agreement, concert or league is the ingredient of the offence of criminal conspiracy under s. 120A introduced for the first time in 1913 in Chapter VA of the Penal Code. 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 misfire or over-shooting 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.

[784 F-H, 785 A]

Major B. G. Barsav v. The State of Bombay [1962] 2 SCR 195 at 228, followed.

(2) That an accused himself is not charged with the ultimate offence which is the object of the criminal conspiracy is besides the point in a charge under s. 120B I.P.C. 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. [785 F] (3)

In the instant case :

(a)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 passport as genuine in order to facilitate travel of IF persons abroad. The final object of the conspiracy in the first charge being the offence of

cheating by personation, the other offences described therein are steps albeit offences themselves in and of the ultimate crime. Without achiev-

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ing that 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 that object. [785D-E-F]

(b)Although the word "cheating by personation" was not mentioned in the charge, 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 s. 419, I.P.C.

[783 H 784 A]

Bhanwar- Singh & Anr. v. State of Rajasthan [1968] 2 SCR 528, distinguished.

(c)The object of criminal conspiracy is absolutely clear, the object is not cheating simpliciter under s. 417, I.P.C.

[785 H]

(d)Since the object of criminal conspiracy is cheating by personation u/s. 419 I.P.C. punishable with imprisonment which may extend to three years, section 196A(2) is no bar to the present trial in the absence of a sanction. The fact that the accused are charged with other non-cognisable offences in the same trial cannot affect the validity of the trial [786 C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeal No.81 1973.

Appeal by Special Leave from the Judgment and Order dated 24-3-1972 of the Punjab & Haryana High Court in Crl. Revision No. 739 of 1970.

Frank Anthony and D. N. Mishra for the Appellant. R. L. Kohli and R. N. Sachdev for the Respondent. The Judgment of the Court was delivered by GOSWAMI, J.-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 Sessions 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.

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. 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 the of hearing of the special leave petition.

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 tinder section 196A(2) Cr. P. C., 1898.

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

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

1. Julman Singh s/o Kishen Singh v. Mazara Navabad, Distt. Jullundur.
2. Gurdev Singh s/o Munshi Ram v. Cheekahi, Distt. Jullundur.
3. Minder s/o Sucha Singh v. Sarhala Distt. Jullundur.
4. Harnam Singh s/o Udham Singh v. Pathlave, Distt. 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 Em- barkation Authorities at Air Ports 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 u/s 120-B IPC read with sections 465, 476/466 and 419/IPC and within the cognizance of the court of Sessions".

The first charge in which all accused. are, named including tile appellant is tile 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 tinder

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.

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 charges do 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 & Anr. v. State of Rajasthan*(1) 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".

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". 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.

The offence of criminal conspiracy under section 120A is a distinct offence introduced for the first time in 1913 in Chapter VA 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 misfire or over-shooting 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 (1)[1968] 2 S.C.R. 528.

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 B. G. Darsay v. The State of Bombay*.⁽¹⁾ thus:

"The gist of the offences 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 s. 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 have 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. 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, and we find, the other offence 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.

The principal object of the criminal conspiracy in the first charge is thus "cheating by personation" and without achieving that 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 that 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. (1)[1962] 2 S.C.R. 195 at 228.

Section 196A(2) Cr. P. C. provides that "no court shall take cognizance of the offence of criminal conspiracy punishable under section 120 B 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."

x x x x 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 the 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.

S.R.

Appeal dismissed'.