Supreme Court of India
Abhayanand Mishra vs The State Of Bihar on 24 April, 1961
Equivalent citations: 1961 AIR 1698, 1962 SCR (2) 241
Author: R Dayal
Bench: Dayal, Raghubar

PETITIONER:
ABHAYANAND MISHRA

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT:
24/04/1961

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
SUBBARAO, K.

CITATION:
1961 AIR 1698 1962 SCR (2) 241
CITATOR INFO :
R 1961 SC1782 (9)
R 1973 SC2655 (4)
F 1977 SC1174 (5,7)
E 1980 SC1111 (13,29)

ACT:
Criminal Law-Attempt to cheat-Getting admission card from University on false representation-Preparation to commit offence and attempt to commit offence, differences--Admission card, if Property-Indian Penal Code (Act 45 of 1860), ss. 420, 511.

HEADNOTE:
The appellant applied to the Patna University for permission to appear at the 1954 M. A. Examination in English as a private candidate representing that he was a graduate having obtained his B. A. Degree in 1951 and that he had been teaching in a certain school. Believing his statements the University authorities gave him the necessary permission, and on his remitting the requisite fees and sending copies of his photograph, as required, a proper admission card for him was dispatched to the Headmaster of the School. As a result of certain information received by the University, an investigation was made and it was found that the appellant

was neither a graduate nor a teacher as represented by him and that in fact he had been de-barred from taking any University examination for a certain number of years on account of his having committed corrupt practice at a University examination. He was prosecuted and convicted under s. 420 read with s. 511 of the Indian Penal Code, of the offence of attempting to cheat the University by false representations by inducing it to issue the admission card, which if the fraud had not been detected would

31

242

have been ultimately delivered to him. The appellant contended that on the facts found the conviction was unsustainable on the grounds (1) that the admission card had no pecuniary value and was therefore not property under S. 415, and (2) that, in any case, the steps taken by him did not go beyond the stage of preparation for the commission of the offence of cheating and did not therefore make out the offence of attempting to cheat.

Held, that under s. 511 of the Indian Penal Code a person commits the offence of attempting to commit a particular offence, when he intends to commit that particular offence and, having made preparations and with the intention to commit that offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing such offence. It is not necessary for the offence under s. 511 that the transaction commenced must end in the crime or offence, if not interrupted.

The observations to the contrary in The Queen v. Ramsarun Chowbey, (1872) 4 N. W. P. 46, In the matter of the Petition of Raisat Ali, (1881) I.L.R. 7 Cal. 352 and In re Amrita Bazar Patrika Press Ltd., (1920) I.L.R. 47 Cal. 190, not approved.

In the matter of the Petition of R. MacCrea, (1893) I.L.R. 15 All. 173, approved.

In re T. Munirathnan Reddi, A.I.R. 1955 And. Prad. 118, explained.

Held, further that an admission card issued by the University for appearing at the Examination held by it, though it has no pecuniary value, has immense value to the candidate and is property within the meaning Of S. 415 Of the Indian Penal Code.

Queen Empress v. Appasami, (1899) I.L.R. 12 Mad. 151 and Queen Empress v. Soski Bhusan, (1893) I.L.R. 15 All. 210, relied On.

In the present case, the preparation was complete when the appellant had prepared the application for the purpose of submission to the University, and the moment he despatched it, he entered the realm of attempting to commit the offence of cheating. Accordingly, the appellant was rightly convicted of the offence under s. 420 read with S. 511 of the Indian Penal Code.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 226 of 1959.

Appeal by special leave from the judgment and order dated September 23, 1958, of the Patna High Court in Criminal Appeal No. 87 of 1957.

H. J. Umrigar, P. Rana and M. K. Ramamurai, for the appellant.

H. R. Khanna and T. M. Sen, for the respondent. 1961. April 24. The Judgment of the Court was delivered by RAGHUBAR DAYAL, J.-This appeal, by special leave, is against the order of the High Court at Patna dismissing the appellant's appeal against his conviction under s. 420, read with s. 511, 'of the Indian Penal Code.

The appellant applied to the Patna University for permission to appear at the 1954 M. A. Examination in English as a private candidate, representing that he was a graduate having obtained his B.A. Degree in 1951 and that he had been teaching in a certain school. In support of his application, he attached certain certificates purporting to be from the Headmaster of the School, and the Inspector of Schools. The University authorities accepted the appellant's statements and gave permission and wrote to him asking for the remission of the fees and two copies of his photograph. The appellant furnished these and on April 9, 1954, proper admission card for him was despatched to the Headmaster of the School.

Information reached the University about the appellant's being not a graduate and being not a teacher. Inquiries were made and it was found that the certificates attached to the application were forged, that the appellant was not a graduate and was not a teacher and that in fact he had been de-barred from taking any University examination for a certain number of years on account of his having committed corrupt practice at a University examination. In consequence, the matter was reported to the police which, on investigation, prosecuted the appellant. The appellant was acquitted of the charge of forging those certificates, but was convicted of the offence of attempting to cheat inasmuch as he, by false representations, deceived the University and induced the authorities to issue the admission card, which, if the fraud had not been detected, would have been ultimately delivered to the appellant. Learned counsel for the appellant raised two contentions. The first is that the facts found did not amount to the appellant's committing an attempt to cheat the University but amounted just to his making preparations to cheat the University. The second is that even if the appellant had obtained the admission card and appeared at the M. A. Examination, no offence of cheating under s. 420, Indian Penal Code, would have been committed as the University, would not have suffered any harm to its reputation. The idea of the University suffering in reputation is too remote. The offence of cheating is defined in s. 415, Indian Penal Code, which reads:

"Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or

intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omis- sion causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation.-A dishonest concealment of facts is a deception within the meaning of this section." The appellant would therefore have cheated the University if he had (i) deceived the University; (ii) fraudulently or dishonestly induced the University to deliver any property to him; or (iii) had intentionally induced the University to permit him to sit at the M.A. Examination which it would not have done if it was not so deceived and the giving of such permission by the University caused or was likely to cause damage or harm to the University in reputation. There is no doubt that the appellant, by making false statements about his being a graduate and a teacher, in the applications he had submitted to the University, did deceive the University and that his intention was to make the University give him permission and deliver to him the admission card which would have enabled him to sit for the M.A. Examination. This card is 'Property'. The appellant would therefore have committed the offence of 'cheating' if the admission card had not been withdrawn due to certain information reaching the University.

We do not accept the contention for the appellant that the admission card has no pecuniary value and is therefore not 'property'. The admission card as such has no pecuniary value, but it has immense value to the candidate for the examination. Without it he cannot secure admission to the examination hall and consequently cannot appear at the Examination.

In Queen Empress v. Appasami (1) it was held that the ticket entitling the accused to enter the examination room and be there examined for the Matriculation test of the University was 'property'.

In Queen Empress v. Soshi Bhushan (2) it was held that the term 'property' in s. 463, Indian Penal Code, included the written certificate to the effect that the accused had attended, during a certain period, a course of law lectures and had paid up his fees.

We need not therefore consider the alternative case regarding the possible commission of the offence of cheating by the appellant, by his inducing the University to permit him to sit for the examination, which it would not have done if it had known the true facts and the appellant causing damage to its reputation due to its permitting him to sit for the examination. We need not also therefore consider the further question urged for the appellant that the question of the University suffering in its reputation is not immediately connected with the accused's conduct in obtaining the necessary permission.

Another contention for the appellant is that the facts proved do not go beyond the stage of reparation for the commission of the offence of `cheating' and do not make out the offence of attempting to cheat. There is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, he has committed the offence; if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore, can be said to begin when the

preparations (1) (1889) I.L.R. 12 Mad. 151.

(2) (1893) I.L.R. 15 All. 210, are complete and the culpit commences to do something with the intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence. This is clear from the general expression 'attempt to commit an offence' and is exactly what the provisions of s. 511, Indian Penal Code, require. The relevant portion of s. 511 is:

> "Whoever attempts to commit an offence punish- able by this Code..... or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished....."

These provisions require that it is only when one, firstly, attempts to commit an offence and, secondly, in such attempt, does any act towards the commission of the offence, that he is punishable for that attempt to commit the offence. It follows, therefore, that the act which would make the culprit's attempt to commit an offence punishable, must be an act which, by itself, or in combination with other acts, leads to the commission of the offence. The first step in the commission of the offence of cheating, therefore, must be an act which would lead to the deception of the person sought to be cheated. The moment a person takes some step to deceive the person sought to be cheated, he has embarked on a course of conduct which is nothing less than an attempt to commit the offence, as contemplated by s.

511. He does the act with the intention to commit the offence and the act is a step towards the commission of the offence.

It is to be borne in mind that the question whether a certain act amounts to an attempt to commit a particular offence is a question of fact dependent on the nature of the offence and the steps necessary to take in order to commit it. No exhaustive precise definition of what would amount to an attempt to commit an offence is possible. The cases referred to make this clear.

We may refer to some decided cases on the construction of s. 511, Indian Penal Code.

In The Queen v. Ramsarun Chowbey (1) it was said at p. 47:

> "To constitute then the offence of attempt under this section (s. 511), there must be an act done with the intention of committing an offence, and for the purpose of committing that offence, and it must be done in attempting the commission of the offence.

Two illustrations of the offence of attempt as defined in this section are given in the Code; both are illustrations of cases in which the offence has been committed. In each we find an act done with the intent of committing an offence and immediately enabling the commission of the offence, although it was not an act which constituted a part of the offence,, and in each we find the intention of the

person making the attempt was frustrated by circumstances independent of his own volition.

From the illustrations it may be inferred that the Legislature did not mean that the act done must be itself an ingredient (so to say) of the offence attempted.....

The learned Judge said, further, at p. 49: "I regard that term (attempt) as here employed as indicating the actual taking of those steps which lead immediately to the commission of the offence, although nothing be done, or omitted, which of itself is a necessary constituent of the offence attempted". We do not agree that the 'act towards the commission of such offence' must be 'an act which leads immediately to the commission of the offence'. The purpose of the illustration is not to indicate such a construction of the section, but to point out that the culprit has done all that be necessary for the commission of the offence even though he may not actually succeed in his object and commit the offence. The learned Judge himself emphasized this by observing at p. 48:

> "The circumstances stated in the illustrations to (1) (1872) 4 N.W.P. 46.
>
> s. 51 1, Indian Penal Code, would not have constituted attempts under the English law, and I cannot but think that they were introduced in order to show that the provisions of Section 51 1, Indian Penal Code, were designed to extend to a much wider range of cases than would be deemed punishable as offences under the English Law".

In In the matter of the petition of R. MacCrea (1) it was held that whether any given act or series of acts amounted to an attempt which the law would take notice of or merely to preparation, was a question of fact in each case and that s. 511 was not meant to cover only the penultimate act towards the completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, and were done with the intent to commit it and done towards its commission. Knox, J., said at p. 179:

> "Many offences can easily be conceived where, with all necessary preparations made, a long interval will still elapse between the hour when the attempt to commit the offence commences and the hour when it is completed. The offence of cheating and inducing delivery is an offence in point. The time that may elapse between the moment when the preparations made for committing the fraud are brought to bear upon the mind of the person to be deceived and the moment when he yields to the deception practiced upon him may be a very considerable interval of time. There may be the interposition of inquiries and other acts upon his part. The acts whereby those preparations may be brought to bear upon her mind may be several in point of number, and yet the first act after preparations completed will, if criminal in itself, be beyond all doubt, equally an attempt with the ninety and ninth act in the series.
>
> Again, the attempt once begun and a criminal act done in pursuance of it towards the commission of the act attempted, does not cease to be a criminal attempt, in my opinion, because the person (1) I.L.R. 15 All. 173.

committing the offence does or may repent before the attempt is completed". Blair, J., said at p. 181:

"It seems to me that section (s. 511) uses the word 'attempt' in a very large sense; it seems to imply that such an attempt may be made up of a series of acts, and that any one of those acts done towards the commission of the offence, that is, conducive to its commission, is itself punishable, and though the act does not use the words, it can mean nothing but punishable as an attempt. It does not say that the last act which would form the final part of an attempt in the larger sense is the only act punishable under the section. It says expressly that whosoever in such attempt, obviously using the word in the larger sense, does any act, etc., shall be punishable. The term 'any act' excludes the notion that the final act short of actual commission is alone punishable."

We fully approve of the decision and the reasons therefor.

Learned counsel for the appellant relied on certain cases in support of his contention. They are not much to the point and do not in fact express any different opinion about the construction to be placed on the provisions of s. 511, Indian Penal Code. Any different view expressed has been due to an omission to notice the fact that the provisions of s. 511, differ from the English Law with respect to 'attempt to commit an offence'.

In Queen v. Paterson (1) the publication of banns of marriage was not held to amount to an attempt to commit the offence of bigamy under s. 494, Indian Penal Code. It was observed at p. 317:

"The publication of banns may, or may not be, in cases in which a special license is not obtained. a condition essential to the validity of a marriage, but common sense forbids us to regard either the publication of the banns or the procuring of the license as a part of the marriage ceremony."

(1) I.L.R. 1 All. 316.

The distinction between preparation to commit a crime and an attempt to commit it was indicated by quoting from Mayne's Commentaries on the Indian Penal Code to the effect:

"Preparation consists in devising or arranging the means or measures necessary for the commission of the offence; the attempt is the direct movement towards the commission after the preparations have been made."

In Regina v. Padala Venkatasami (1) the preparation of a copy of an intended false document, together with the purchase of stamped paper for the purpose of writing that false document and the securing of information about the facts to be inserted in the document, were held not to amount to an attempt to commit forgery, because the accused had not, in doing these acts, proceeded to do an act towards the commission of the offence of forgery. In In the matter of the petition of Riasat Ali (2)

the accused's ordering the printing of one hundred receipt forms similar to those used by a company and his correcting proofs of those forms were not held to amount to his attempting to commit forgery as the printed form would not be a false document without the addition of a seal or signature purporting to be the seal or signature of the company. The learned Judge observed at p. 356:

> "..... I think that he would not be guilty of an attempt to commit forgery until he had done some act towards making one of the forms a false document. If, for instance, he had been caught in the act of writing the name of the Company upon the printed form and had only completed a single letter of the name, I think that he would have been guilty of the offence charged, because (to use the words of Lord Blackburn) 'the actual transaction would have commenced, which would have ended in the crime of forgery, if not interrupted'."

The learned Judge quoted what Lord Blackburn said in Reg. v. Chessman (3):

(1) (1881) I.L.R. 3 Mad. 4.

(2) (1881) I.L.R. 7 Cal. 352.

(3) Lee & Cave's Rep. 145.

> "There is no doubt a difference between the preparation antecedent to an offence and the actual attempt; but if the actual transaction has commenced, which would have ended in the crime if not interrupted, there is clearly an attempt to commit the crime.", He also quoted what Cockburn, C. J., said in M'Pher son's Case (1):
>
> "The word 'attempt' clearly conveys with it the idea, that if the attempt had succeeded, the offence charged would have been committed. An attempt must be to do that which, if successful, would amount to the felony charged."

It is not necessary for the offence under s. 511, Indian Penal Code, that the transaction commenced must end in the crime or offence, if not interrupted.

In In re: Amrita Bazar Patrika Press Ltd. Mukherjee, J., said at p. 234:

> "In the language of Stephen (Digest of Criminal Law, Art. 50), an attempt to commit a crime is an act done with an intent to commit that crime and forming part of a series of acts which would constitute its actual commission if it were not interrupted. To put the matter differently, attempt is an act done in part execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime; in other words, an attempt consists in the intent to commit a crime, combined with the doing of some act adapted to, but falling short of, its actual commission; it may consequently be defined as that which if not prevented would

> have resulted in the full consummation of the act attempted: Reg. v. Collins This again is not consistent with what is laid down in s.

511 and not also with what the law in England is. In Stephen's Digest of Criminal Law, 9th Edition, attempt' is defined thus:

(1) Dears & B. 202. (2) (1920) I.L.R. 47 Cal. 100. (3) (1864) 9 Cox. 497.

> "An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts, which would constitute its actual commission if it were not interrupted.

The point at which such a series of acts begins cannot be defined; but depends upon the circumstances of each particular case.

An act done with intent to commit a crime, the commission of which in the manner proposed was, in fact, impossible, is an attempt to commit that crime.

The offence of attempting to commit a crime may be committed in cases in which the offender voluntarily desists from the actual commission of the crime itself." In In re: T. Munirathnam Reddi (1) it was said at p. 122:

> "The distinction between preparation and attempt may be clear in some cases, but, in most of the cases, the dividing line is very thin. Nonetheless, it is a real distinction. The crucial test is whether the last act, if uninterrupted and successful, would constitute a crime. If the accused intended that the natural consequence of his act should result in death but was frustrated only by extraneous circumstances, he would be guilty of an attempt to commit the offence of murder. The illustrations in the section (s. 511) bring out such an idea clearly. In both the illustrations, the accused did all he could do but was frustrated from committing the offence of theft because the article was removed from the jewel box in one case and the pocket was empty in the other case."

The observations 'the crucial test is whether the last act, if uninterrupted and successful, would constitute a crime' were made in connection with an attempt to commit murder by shooting at the victim and are to be understood in that context. There, the nature of the offence was such that no more than one act was necessary for the commission of the offence.

(1) A.I.R. 1955 And. Prad. 118.

We may summarise our views about the construction of s. 511, Indian Penal Code, thus: A personal commits the offence of 'attempt to commit a particular offence' when (i) he intends to commit that particular offence; and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission; such an act need not be the penultimate act towards

the commission of that offence but must be an act during the course of committing that offence.

In the present case, the appellant intended to deceive the University and obtain the necessary permission and the admission card and, not only sent an application for permission to sit at the University examination, but also followed it up, on getting the necessary permission, by remitting the necessary fees and sending the copies of his photograph, on the receipt of which the University did issue the admission card. There is therefore hardly any scope for saying that what the appellant had actually done did not amount to his attempting to commit the offence and had not gone beyond the stage of preparation. The preparation was complete when he had prepared the application for the purpose of submission to the University. The moment he dispatched it, he entered the realm of attempting to commit the offence of 'cheating'. He did succeed in deceiving the University and inducing it to issue the admission card. He just failed to get it and sit for the examination because something beyond his control took place inasmuch as the University was informed about his being neither a graduate nor a teacher.

We therefore hold that the appellant has been rightly convicted of the offence under s. 420, read with s. 511, Indian Penal Code, and accordingly dismiss the appeal. Appeal dismissed.