

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE  
SOUTHERN DIVISION OF THE NORTHERN DISTRICT OF CALIFORNIA.

First Division.

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

RAM CHANDRA, et als.,

Defendants.

No. 6133

Now comes the defendant in the above entitled action,

DHIRENDRA NATH SARKAR.

and demurs ~~and each of them demurs~~ to the indictment and true bill presented and filed in the above-entitled action on the 7th day of July, 1917, as follows:

1. That said indictment does not state facts sufficient to, and is insufficient to, and does not charge an offense under the laws, or any law of the United States of America.
2. That said indictment does not allege facts sufficient to, and is insufficient to, and does not charge an offense under the laws, or any law, of the United States of America, against the above named defendants, or any of them.

3. That said indictment is uncertain, unintelligible, ambiguous, and insufficient in law, and insufficient to and does not apprise the above named defendants, or any of them, of the nature of the charge urged against them or any of them, and is insufficient to compel said defendants, or any of them, to answer thereto, and is insufficient to enable said defendants, or any of them, to judge whether the facts stated or alleged in said indictment constitute or amount to any crime in law, or any violation of the laws, or any law of the United States of America.

4. That said indictment does not charge any offense of any kind or character against Section 37 and Section 13 of the U. S. C. C., or either of said sections, or any part thereof.

5. That said indictment does not charge any offense of any kind or character against these defendants, or any of them, in that it is too general, vague, indefinite and uncertain to inform said defendants, or any of them, of the nature and cause of the accusation made against them, or any of them, or to apprise them, or any of them, with such reasonable certainty of the offense with which they, or any of them is, charged, or what they, or any of them, may expect to meet upon the trial, as to enable them, or any of them, to make their defense, or any defense, thereto.

6. That said indictment does not charge any offense of any kind or character against the laws, or any law, of the United States, and more particularly against said Sections 37 and 13 of the United States Criminal Code, or either of them, or any part thereof, in that:

(a) In said indictment said defendants are charged with having knowingly and fraudulently conspired and agreed



together and with divers other persons to knowingly, wilfully and feloniously begin and set on foot, and provide and prepare the means for a military enterprise, to be carried on from and within the territory of the United States against India, but it is not alleged therein what the character or nature of said conspiracy or agreement was, or to do or perform what act or acts, or to accomplish what purpose or purposes, said defendants conspired or agreed, or whether the character or nature of said conspiracy or agreement was such that if carried out it would begin or set on foot, or result in the beginning or setting on foot, or provide or prepare, or result in providing or preparing the means, or any means for any military enterprise or enterprises, to be carried on from or within the territory or jurisdiction of the United States against said India, or any territory of the King of the United Kingdom of Great Britain and Ireland, or any other foreign place or country.

(b) That in said indictment said defendants are charged with having conspired, combined, confederated and agreed together, and with divers other persons, to be knowingly, wilfully, unlawfully and feloniously begin and set on foot and provide and prepare the means for a certain military enterprise to be carried on from within the territory of the United States against India, the territory and Dominion of the King of the United Kingdom of Great Britain and Ireland and the Emperor of India; but nowhere is it alleged in said indictment what it was said defendants, or any of them, conspired, combined, confederated, or agreed to do, or whether said defendants, or any of them, conspired, combined, confederated or agreed to combine or band together a number, or any number, of individuals, or any individuals, at all, or to create any military or other organization, or to organize a number, or any number, of individuals into a group or body, with a common hostile intent or purpose.

or any intent or purpose, or otherwise, should proceed to said India, or any part thereof, to engage there in carrying on, or participating in, armed, or any, hostilities, either by themselves, or in co-operation with any other force, or otherwise, or at all, against said King of the United Kingdom of Great Britain and Ireland, and the Emperor of India, or any other King, or any foreign prince or against said India, or against any foreign country.

(c) In said indictment said defendants are charged with having conspired, combined, confederated and agreed together and with divers other persons to knowingly, wilfully, unlawfully and feloniously begin and set on foot, and proceed and prepare the means for, a certain military enterprise to be carried on from within the territory of the United States against the Territory and Dominion of the King of the United Kingdom of Great Britain and Ireland, and Emperor of India; but it is nowhere alleged therein what was the character of the undertaking which defendants combined, conspired, confederated or agreed to carry on, or of what such undertaking, if any, should consist, or whether such undertaking was one of hazard or arduous attempt, and if so what the character of such hazard or arduous attempt was.

(d) In said indictment it is alleged that said defendants knowingly, wilfully, and feloniously conspired and agreed to begin and set on foot, and provide and prepare the means for, a military enterprise to be carried on from within the territory of the United States against India, which was the Territory and Dominion of the King of the United Kingdom of Great Britain and Ireland, and Emperor of India; but nowhere in said indictment is it alleged, and it is impossible for the defendants to ascertain therefrom, what act or acts said defendants or any of them, conspired or agreed to do, to begin, or set on



8 6133  
foot said military enterprise, or what preparation, if any, said defendants, or any of them, intended making for the purpose of beginning, making, or setting on foot said military enterprise or what, if anything, said defendants agreed to do in order to begin or set on foot said military enterprise.

(e) In said indictment it is alleged that said defendants knowingly and feloniously conspired and agreed together and with certain other persons, among other things, to provide and prepare the means for a certain military enterprise to be carried on from within the territory of the United States against India, which was the Territory and Dominion of the King of the United Kingdom of Great Britain and Ireland, and Emperor of India, a foreign prince; but it is nowhere alleged in said indictment and it is impossible for defendants, or any of them, to ascertain therefrom what means, if any, defendants conspired and agreed to provide or prepare, or what act was or what acts were agreed to be done by defendants, or any of them, or any of said other persons, in providing or preparing the means for said military enterprise, or what it was that said defendants, or said other persons, or any of them, intended to do in order to provide or prepare, or in providing or preparing the means for said military enterprise.

(f) In said indictment said defendants are charged with having knowingly and feloniously conspired and agreed to gether, and with divers other persons, to knowingly, wilfully, and feloniously begin, set on foot, and provide and prepare the means for a military enterprise to be carried on from within the territory of the United States against India, which was the Territory and Dominion of the King of the United Kingdom of Great Britain and Ireland, and Emperor of India, a foreign prince in said indictment it is further alleged that the purpose and object of said enterprise was to incite mutiny and armed

8. 6133  
rebellion in India by the native subjects of said King against his government and authority there; to overthrow and destroy said Government and authority; to hinder and oppose the military operations of said King against the Emperor of Germany; and to aid and assist in the military operations of said Emperor of Germany in his war with the said King of the United Kingdom of Great Britain and Ireland; but nowhere in said indictment is it alleged, nor is it possible for the defendants or any of them to ascertain therefrom:

(1) What it was said defendants, or any of them, conspired or agreed to do; or whether said defendants, or any of them, conspired or agreed that said men to be so sent from the United States to India, or any of them, whether in leaving the United States or in entering India, or any other time, should combine or band themselves, or any of them, together; or whether said defendants, or any other persons, or any of them, in going from the United States to India, or in entering said India, or at any other time, should combine or band themselves, or any of them, together; or whether in leaving the United States for India, or in entering India, or at any other time, said persons to be so sent into India, or said defendants, or said other persons with whom it is alleged that they so combined and agreed or any of them, should so leave said United States, or enter said India in groups, or in any group, or collectively, or singly or as individuals, or meet in India in groups, or in any group, or collectively, or singly, or as individuals, or whether said defendants and said other persons, with whom it is alleged they so combined and agreed, or said other persons, to be sent into India, or any of them, in leaving said United States, or in entering India, should go, or arrive in India, or while in India should act as a military or other organization, or should leave the United States or enter said India, or while in India should



act with a common hostile intent or purpose; or whether any two or more of said defendants, or said other persons, were at any time to act together or were to be under the leadership or command of any of said defendants, or said other persons or any person or persons whomsoever, who was, or who were, to be selected or appointed or act as such leader or commander or leaders or commanders; or whether at any of said times any of said defendants, or any of said other persons referred to in said indictment, was to act in concert with or secure co-operation from any of said defendants, or said other persons, or with any or from any other person, or persons, whomsoever, or whether in engaging in said alleged military enterprise, or to effect the alleged object, or objects, purpose, or purposes, or any of them, of said alleged conspiracy, said defendants or any or them, or said other persons, or any person or persons, whomsoever, were to act together, or to act in concert with each other, or as a military or other organization, or to combine or band together, or to act collectively, or to co-operate with each other

(2) How many men said defendants combined or agreed to procure within the United States were to give military training, or training in the use of explosives, to, or to furnish with arms, ammunition, supplies, or money; or what proportion of such money should be money belonging to the Imperial German Empire; or how many men should be furnished with transportation from the United States to India; or upon what steamships such men should be so transported; or how many men should be sent from the United States to India and in what way, or by what means said men should travel to said India; or how, or in what manner said alleged seditious literature was to be sent from the United States to India; or the character of said literature and of what said literature was to consist; or how many vessels were

to be purchased or chartered within said United States; or how many men, how much money, or what quantity of munitions were to be so transported, or upon what vessels, or any of them; or, whether said men or any of them, or said defendants, or any of them, or said persons so alleged to have conspired and agreed, or any of them, were to leave said United States, or to be transported to India, or into India, or act while in India as individuals or collectively, or were to be banded into a group together or by themselves, or with others, or with concert of action, or under the leadership or command of any individual or individuals, or as a military or other organization; or whether any of said persons were to co-operate with each other, or with any other person or persons;

(3) Whether said defendants or any of them, or said other persons with whom it is alleged they so combined and agreed or any of them, or said men who were to be so sent or transported to India, or any of them, were to meet together in said India; or whether, in carrying out the said alleged objects, aims, and designs of said alleged conspiracy, or any of them, said defendants, or any of them, or said other men, or any two or more of them were to meet together on any of said vessels or in said India, or while in India were to act as a military, or other organization, under any leadership or commander, or by concert of action, or collectively, or with a common purpose or intent.

(4) Whether said defendants or any of them, or said other persons with whom it is alleged they so combined and agreed or any of them, in procuring said men, or any of them, to be given said military training or training in the use of explosives or furnishing said men, or any of them, with ammunition, arms, supplies or money, or in furnishing said men or any of them with transportation from the United States to India, or in sending a said man or any of them from the United States to India, or in



going themselves from the United States to India; or in sending from the United States to India said seditious literature; or in provisioning or furnishing any vessel within the said United States, or in transporting, or shipping, from said United States to India, either to act together or individually, or whether any of them were to act together, or whether any of them were to cooperate with each other, or whether any of said defendants or said other persons was to cooperate with the other, or with any of said men, or whether any of said men were to co-operate with each other or any of the defendants or said other persons, or said men, was to be subject to the command or direction of any leader or commander.

(g) Said indictment attempts to charge said defendants with having combined and agreed together to knowingly, willfully and feloniously begin and set on foot and provide and prepare the means for a certain military enterprise to be carried on from and within the territory of the United States against India, the Territory and Dominion of the King of the United Kingdom of Great Britain and Ireland, and the Emperor of India, a foreign prince, with whom the United States then was, ever since, has been and now is at peace. It is further alleged in said indictment that the end, object and purpose of said enterprise was to incite mutiny and armed rebellion in India by the native subjects of said King in India against his government and authority; to hinder and oppose the military operations of said King against said Emperor of Germany, and to aid and assist in the military operations of said Emperor of Germany in said war with said King of the United Kingdom of Great Britain and Ireland, and said Emperor of India; that such alleged offence, if an offence at all, is not in violation of any law of the United States of America, and that neither said acts or any of them, nor any

act or acts alleged in said indictment, if committed, or the end, object or purpose of said enterprise, or of said alleged conspiracy, was or could be within the contemplation of said Sections 13, and 37 U.S.C.G., or either of them, or any part thereof, or any other law of the United States.

7. That none of the overt acts alleged to have been committed by any of the defendants herein is, or constitutes an overt act done to effect the object of the conspiracy or agreement alleged in said indictment.

8. That said indictment is uncertain in each and every of the following particulars:

(a) Said defendant hereby refers to Paragraph 6 of this Demurrer, and each and every subdivision thereof, wherein it is claimed that said indictment does not state any offense of any kind or character against the law, or any law of the United States, and hereby makes said grounds of his demurrer a part and portion of this paragraph of said demurrer as though said grounds were expressly herein incorporated.

(b) That said indictment is uncertain in this, that it cannot be ascertained or determined therefrom:

(1) How, by what means, or in what manner mutiny or armed rebellion in India by the native subjects of said King against his government or authority was to be incited.

(2) How said government and authority of said King was to be overthrown or destroyed.

(3) How, by what means, or in what manner said military operations against said King of the United Kingdom of Great Britain and Ireland, and the Emperor of India, by said Emperor of Germany were, or any of them was to be hindered or opposed.

(4) How, by what means, or in what manner, the military operations of said Emperor of Germany in said war



with said King of the United Kingdom of Great Britain and Ireland, and the Emperor of India were, or any of them was, to be aided or assisted.

(5) How, by what means, or in what manner men were to be procured within the United States, or were to be given military training, or training in the use of explosives.

(6) How, by what means, or in what manner said men were or any of them was, to be furnished with arms, munitions, supplies or money.

(7) How, by what means, or in what manner, said men were, or any of them was, to be furnished with transportation from within the United States to India, or upon what steamship, or steamships such transportation would be furnished.

(8) How, by what means, or in what manner said men were, or any of them, would be sent from said United States to India.

(9) How, by what means, or in what manner said defendants were, or any of them was, to go from said United States to India.

(10) How, by what means, or in what manner said seditious literature was to be sent from said United States to India, or in, and of, what said literature would consist; or in what character of language it would be composed, or how said literature would be seditious, or how said literature or any part thereof, would incite rebellion in said India.

(11) How, by what means, or in what manner said vessels within the United States were, or any of them was, to be purchased or chartered.

(12) How, by what means, or in what manner said men, money and munitions, or men money or munitions, or any of them would be transported or shipped from said United States to India, or upon what vessel or vessels.

8. 6133

(13) How, by what means, or in what manner said persons so trained, furnished, supplied and (or) transported to India as alleged in said indictment should incite said native subjects, or any native subjects, in India to mutiny or rebel against said established government, or authority or said King.

(14) How, by what means, or in what manner said defendants or any of them, or said other persons, or said men or any of them, would engage in such mutiny, rebellion or revolution.

(15) How, by what means, or in what manner said military training would be provided for the use of said native subjects, or any of them, in carrying on such alleged rebellion.

(16) How, by what means or in what manner said men, arms, munitions, or money for the use of said natives subjects, or any of them, in India in carrying on such alleged rebellion would be furnished.

9. That said indictment is ambiguous in each and every of the respects and particulars set forth in paragraph 8 of this demurrer, wherein it is alleged that said indictment is uncertain.

10. That said indictment is unintelligible in each and every of the respects and particulars set forth in paragraph 8 of this demurrer, wherein it is alleged that said indictment is uncertain.

11. That said indictment is duplicitous in each and every of the respects and particulars set forth in paragraph 8 of this demurrer, wherein it is alleged that said indictment is uncertain.


12. That said indictment does not allege facts sufficient to charge any offense under the laws, or any law, of the United States against the above named defendants. (12)



or any of them in this; That the laws of the United States do not, nor does any law thereof, recognize or denounce as an offense or crime a conspiracy, agreement or combination to begin or set on foot, or provide or prepare the means for a military enterprise, to be carried on from within the territory of the United States against any other territory, or against any foreign prince or otherwise, or at all, and further that, it does not appear from or in the indictment wherein, nor can it be ascertained therefrom that any conspiracy as therein sought to be alleged was entered into by the defendants or either or any of them, and that if any offense of any kind was committed by the defendants or either or any of them, or by any of the other persons referred to in said indictment, such an offense was but an offense committed by a plural number participants, not indictable as a conspiracy.

WHEREFORE, said defendant DHIRENDRA NATH SARKAR pray that this demurrer be sustained, and that they have judgment in their favor, and that they be acquitted and discharged of said indictment, and that their bail be exonerated.

Dated September 29th 1917.

  
Attorney for Defendants.

As the Attorney for the Defendant DHIRENDRA NATH SARKAR I hereby certify the foregoing demurrer is in my opinion well founded in point of law, and that the same is not interposed for the purpose of delay.



Dated September 29th, 1917.