

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

SOUTHERN DIVISION.

FIRST DIVISION.

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

JODE SINGH, et al.,

Defendants.

No. 6183.

MOTION TO WITHDRAW PLEA OF GUILTY.

Comes now JODE SINGH, a defendant herein, and moves this Honorable Court for permission to withdraw the plea of guilty entered herein upon the 27th day of November, 1917, upon the ground that the said plea was entered through inadvertence and mistake upon the part of the said defendant, owing to the confusion and mental stress under which the defendant was laboring at said time, and under a misconception or lack of accurate knowledge of the meaning and difference between the plea of guilty and the plea of not guilty, as applied to the charge as explained to the defendant by the Clerk of the Court, the said defendant understanding merely by said plea of guilty to identify himself as one of the defendants who were opposed to British rule in India, and who was in favor of representative government by which the Indian natives of their country might have some voice in its management and affairs, and that he might make common cause and with his co-defendants stand trial in said cause.

Said motion will be based upon a copy of the proceedings had in this Honorable Court upon the said 27th day of November, 1917, a copy of which is herewith annexed, and the affidavit of George A. McGowan, Esquire, attorney for the said JODE SINGH, defendant as aforesaid, and the affidavit of the said defendant JODE SINGH, both of which are submitted herewith.

Dated, San Francisco, California, December 1, 1917.

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA FOR THE

Geo. A. Gowan

Attorney for Defendant.

Jadh Singh

Defendant.

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

Before HON. WM. C. VAN FLEET,

JUDGE.

UNITED STATES OF AMERICA

No. 6133

vs.

FRANZ BOPP, Et Al.,

Vol. 3

Defendants.

TUESDAY, NOVEMBER 27, 1917.

THE COURT: You may proceed, Gentlemen.

MR. PRESTON: I will call Jodh Singh.

THE CLERK: Raise your right hand and be sworn, Mr. Singh.

JODH SINGH: I would like to say a few words before I
take the oath.

MR. PRESTON: Who do you want to talk to?

JODH SINGH: I want to talk to the gentlemen of the
jury and the honorable Judge.

MR. PRESTON: First, you will have to take the oath.

JODH SINGH: I don't believe in the oath.

MR. PRESTON: Then you may affirm.

THE COURT: Yes, you may affirm.

JODH SINGH: Yes, I will affirm.

JODH SINGH,

called for the United States;

Affirmed.

MR. PRESTON: Shall I make a statement about the line of
testimony this witness is supposed to follow?

THE COURT: It would perhaps make it more intelligible to

the jury.

MR. ROCHE: Well, I think, may it please your Honor, that in view of the testimony given by the witness who preceded this witness, the probability is that everybody will know about what he will testify to.

THE COURT: You can state, in a general way, what it relates to.

MR. PRESTON: Well, the testimony of this witness will relate to his trip from Rio de Janeiro to Berlin by way of Genoa, and his association in what is known as the Berlin-India Committee, or certain members of it, and his trip from Berlin to New York, and his association with Gupta and others at New York, and his trip from there to Chicago and his association with the German Consul, and Wehde, and Boehm, and others at that place, and his trip from there to San Francisco and his association with the German Vice-Consul here and with Ram Chandra and others, and then his trip to Manila, to Amoy, to Swatow and to Bangkok, and his various relations with persons already mentioned at those places; also, he will tell the different names he went under, and the different kinds of passports he had, and so on, and where he got his finances.

Q. How old are you, Mr. Singh? A. Well, I want to say a few words before I can testify in this case.

THE COURT: Q. Before you testify? A. Yes.

Q. What is it you want to say?

A. I have a few notes to which I want the answers, and if the answers are satisfactory then I will testify, otherwise not.

THE COURT: Is this man one of the defendants?

MR. PRESTON: Yes, he is a defendant, but he is not on trial.

Q. Have you got it written out? Who are you expecting to get your answers from?

A. I want the answers from the honorable Judge and the gentlemen of the jury.

THE COURT: You cannot have any answers from the judge; you cannot have any from the jury; the jury is not here to answer questions, except the final question. You had best consult either your lawyer or the United States Attorney.

MR. PRESTON: Q. You should have submitted those things to me before. I didn't know whether you had anything to ask.

A. I would like to say a few words before I testify. I would like to state them here.

THE COURT: You cannot state them here.

MR. PRESTON: You can submit to me what you have, if you want to.

THE WITNESS: All right. (Handing)

MR. PRESTON: Well, I don't think these are any questions that would be allowed here. You can see them if you want to, Mr. Roche. (Handing)

MR. ROCHE: I think that his Honor on the bench could answer these-- one of these questions, I suppose, the witness is entitled to have answered.

MR. PRESTON: All right, let the court answer them, then.

MR. MCGOWAN: It is the fourth question, your Honor--

MR. PRESTON: Just let the court see them.

THE COURT: Let me see that paper; don't read it out. If you had taken the trouble to ask the United States Attorney he would have informed you of that. There is really nothing but what the court may answer here.

MR. PRESTON: Well, your Honor can answer them. I am not going to make him any promises.

THE COURT: I mean the court can answer them.

MR. PRESTON: He can just get off the witness stand and get in the box with the other fellows.

THE COURT: You ask "Is this a free country in whose court I have been brought to-day as a witness on behalf of the United States."

Well, I don't doubt but what you know, as well as any of us, that this is a free country in the sense in which you ask the question.

The third question is: "If it is free, shall I be allowed to stay in this country as a free man after this case is over?"

That is something that does not rest with this court. It is something that depends, I doubt not, solely upon yourself and the attitude of the government toward men who are under question as to their previous conduct.

The fourth question is: "Have I a right to have an attorney for me?"

The United States Attorney or the court, either, at any time during the previous proceedings in this case would have told you instantaneously, and I don't doubt that you were told, you were entitled to an attorney when you were brought here for your plea.

MR. PRESTON: He has never been arraigned, your Honor; he has not entered any plea.

THE WITNESS: But I have been detained here as a prisoner; this card shows it.

MR. PRESTON: That is not a prisoner's card; that is a subpoena.

THE COURT: You have a perfect right to have an attorney if you wish one. So far as this last question is concerned, that is not anything with which you are concerned, whether your countrymen are to be allowed here while you are testifying here as a witness.

MR. PRESTON: Q. The whole question is, Do you want to testify in the case? If you don't, just say so.

A. No sir, I don't want to testify.

THE COURT: Very well.

MR. PRESTON: Very well, get off the stand.

THE COURT: What was that? What was that noise?

RAM.CHANDRA: Mr. Jodh Singh is our brother.

THE COURT: It doesn't make any difference who he is; I don't want any disturbance here.

MR. PRESTON: I ask that he be arraigned.

THE COURT: Has he been present during the proceedings thus far?

MR. PRESTON: No, your Honor, but he can be arraigned.

THE COURT: Yes, he can be arraigned. I will appoint Mr. Sidney Robertson to represent him as his attorney.

THE CLERK: Come around here and be arraigned, Mr.Singh.

THE COURT: Just a moment. I thought Mr. Robertson was in the courtroom. I will appoint Mr. McGowan. You have a number of these defendants, Mr. McGowan. Will you undertake the defense of this man?

MR. MCGOWAN: Certainly.

THE CLERK: And on behalf of the defendant you waive the formal reading of the indictment, do you?

MR. MC GOWAN: Except that I want you to state to him the general nature of the indictment.

THE COURT: This indictment charges you with having entered into a conspiracy to foment an insurrection and revolt in India against the British rule, and with having been concerned in the commission of a number of acts intended to carry that out.

JODH SINGH: I am very glad to hear, your Honor, that I am a defendant, and not a witness in this court. I will protest as much as I can.

THE COURT: You had an opportunity to know all this beforehand.

MR. MC GOWAN: Do you want to plead to this indictment now?

JODH SINGH: Yes, I am ready to plead.

THE CLERK: What is your plea, guilty or not guilty?

JODH SINGH: That will be known through my attorney.

THE COURT: You have to enter your plea yourself, whether you are guilty or not guilty.

JODH SINGH: I am guilty.

MR. PRESTON: I ask that it go over until Saturday, and that the defendant be committed.

THE COURT: Very well.

MR. PRESTON: The bail has already been fixed, I believe. We have sent out for another witness, if your Honor please; it may be five or ten minutes before he gets here. He is at his hotel.

THE COURT: Have you no other witness within call?

MR. PRESTON: They are at the hotel. It may be five or ten minutes before I have a witness here.

MR. MC GOWAN: The defendant Jodh Singh has sent for me and wants to talk to me, if I may be excused for a moment.

THE COURT: Very well, we will take a short recess until a witness arrives.

(After a recess of about ten minutes the following proceedings were had:)

MR. MC GOWAN: If your Honor please, on behalf of the defendant, Jodh Singh, who was called to the stand by the Government as a witness in this matter and to represent whom your Honor just appointed me, I desire at this time to make a motion upon his behalf for permission to withdraw the plea--

THE COURT: Let the matter go over until Saturday.

MR. MC GOWAN: If your Honor please, I wanted to couple that

with a suggestion which your Honor might deem advisable to hear--

THE COURT: I want to get along with this case as fast as I can.

MR. MC GOWAN: This would facilitate it, your Honor, and it is this: Your Honor will remember that in the beginning of this case one of the defendants, Mr. Craig, was not present in court, but by stipulation of his counsel and the government the court permitted the record to show the presence of that defendant, and the case went on as to him. Now, then, as respects this present defendant, Jodh Singh, this man is embraced as a defendant in this case; he didn't know what his rights were as a defendant, and in the stress of the moment, when I told him he could plead this or that, he caught the word "guilty" and said "guilty". He desires to have a plea of not guilty entered, so that he might take his place with the defendants and have the case proceed as to him.

THE COURT: Let the matter go over until Saturday and I will inquire into it. I am not inclined to think that he was ignorant of his rights.

MR. MC GOWAN: The reason I make the request is that I wish to couple with that the offer of a stipulation on his behalf that--

THE COURT: That could be as well done to commence on Monday or Tuesday, for instance.

MR. MC GOWAN: That is true, your Honor, but there will be three or four days intervening in which the rights of this defendant will be--

THE COURT: I will take the matter up further on Saturday, Mr. McGowan. Proceed with the case.

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THE COURT: Proceed. Mr. Preston and Mr. McGowan,

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with reference to this man who has just entered a plea of guilty, I wish both of you to be ready on Saturday to lay before me the circumstances ²⁴to this man, from which I will be able to determine whether he was ignorant of his rights or whether he was making a play here.

MR. PRESTON: He just speaks five languages, and he has testified before and has made five or six statements.

THE COURT: I don't care about any such maneuvers as this, unless they grow out of something that is entirely regular; I don't care for any such play as that.

MR. MC GOWAN: Your Honor will appreciate my embarrassment in this case because of representing other defendants in this case and knowing the way the government had treated this man, he was their witness, and I quite naturally regarded his arraignment more as an informal matter.

THE COURT: I ²⁴~~am~~ inclined to think from the witness' manner and the character of his questions, that he was entirely aware of his rights, and I am inclined to think so yet; therefore, I will want to have that question laid before me fully before acting upon the motion that you have just suggested. Proceed with the case.

That your affiant is firmly convinced and believes that the plea of guilty of the said defendant was inadvertently entered by said defendant, and did not represent the attitude of the defendant which he wished to make known to the Court, which was that he protests his innocence to violating the laws of the United States, and decided to take his place with the defendants upon trial and meet the charge made against him. As evidence pointing to and supporting the opinion and conclusion of your affiant, attention is directed to the fact that the said JOSE SINGH immediately upon being informed that he was a defendant in the case stated as follows: "I am very glad to hear, your honor, that I am a defendant, and not a witness in this case. I will protest as much as I can." and presumably upon being called upon for a plea the said JOSE SINGH stated:- "That will be known through my attorney" which your affiant believes was his method of stating that he wanted to consult with his attorney upon his plea, but being further directed by the court that he would have to enter his plea himself, whether guilty or not guilty, he in his mental stress and confusion stated "I am guilty," and that the said JOSE SINGH immediately upon entering the plea which he understood identified him with the defendants, went over and took his seat with them. Immediately thereupon the Marshal sought to remove JOSE SINGH from the Court room to which he protested. Upon reaching the corridor the said JOSE SINGH caused the Marshal to send the Secretary of the Judge of this Honorable Court to your affiant with the statement that the defendant JOSE SINGH wished to see your affiant, and it was then that your affiant acquainted the court of this fact, and asked permission to retire and consult the said JOSE SINGH. Immediately upon going into the corridor just outside of the court room door, your affiant saw the said JOSE SINGH with the Marshal, and in the presence of the Marshal

the said JODH SINGH stated that he wanted to be with the defendants and be treated with them, and did not understand why he was taken out of the court room, and was surprised to learn that by saying guilty he had forgone his right to have the question of his innocence or guilt passed upon by a jury, and that he was confused and made his plea inadvertently and mistakenly, and had not been advised of the effect or meaning of the plea of guilty, and that the said plea was therefore inadvertently and mistakenly made by the said defendant. Thereupon your affiant entered the court room, and immediately upon the re-convening of court from said recess, your affiant addressed the court, as is shown in the said record. That when your affiant spoke to the said JODH SINGH in the presence of the Marshal, the said JODH SINGH gave into the possession of your affiant a document in his own handwriting which he had just finished, and certain extracts therefrom preclude any doubt but what this defendant decided to have the facts of this case passed upon by the jury, for the purpose of determining whether the laws of the United States had been violated as the following quotations will show:

"Gentlemen this is the U.S. of America. This is a Country where Democratic government was established by one of the Mahatmas of the world who is known as George Washington. This is the country where men of high and low class have almost equal rights.

This is a serious case and I expect fair and square deal from the gentlemen of the jury as regards to its thorough investigation & judgment.

I have been sent for from Singapore to appear in the different courts of the U.S. by the government of the U.S.

Until now I have not understood what rights has the government of the U.S. to bring me in this country as a prisoner without issuing any legal warrants against me either in India or the U.S. and then expect testimony in this world-wide intrigue". *****

I am glad to see they have got the system of jury in this country by which majority of such like cases are decided. I am also glad to know that my countrymen are going to be tried in America, where we find there is more justice than we have today in India, a land of misery, famine and oppression owing to the Mis-Rule as described by Kair Hardie in his book on India.

The British Government has tried their best to have all the Hindus in America & elsewhere deported to India, where they could give them a nominal trial and put them on gallows on evidence or no evidence.

Why so, gentlemen. The British Govt. is thirsty of the blood of the Asiatics. You know, gentlemen, you may have read or heard in books, etc. that such like cases are tried in

India by three Englishmen, sometimes with a native who has

no voice in the case, and who receive orders from the British government to convict such and such men, and give such and such judgment, before the defendants are brought to court.

As far as I know the American government has never done so, neither I hope she will ever do. They have regular courts here, investigate criminal cases thoroughly, and then lay the result before the gentlemen of the jury. They give to a defendant several chances to escape punishment, while the British Government in India seeks only the least chance to punish an Asiatic for an ordinary crime." *****

Gentlemen, since August 1st, 1915, I have been in the hands of the English people, have suffered much in my life while in English jails and do not feel happy anymore because our sacred cause has been betrayed because I am used by the B. Govt. as a tool and story teller in the courts of the world mere a medium of punishing the Germans and other nationalities in the world. Since the Lahore and Mandalay cases have been tried, I have been put before the world as the punishment of the people convicted to death, etc. *****

If the court does not consent me the condition of liberty as I have said before I would most humbly request them to give me place among the rest of defendants, with whom I have recently joined for the common cause, and with whom I am ready now to share their punishment & their sufferings."

Your affiant further deposes and says that the said defendant claimed that he did not know/that he was a defendant in this case prior to being informed so upon his appearance as a witness, and that he did not know his legal status, and that he did not know his legal rights in the premises and in this connection your affiant directs the attention of the court to the witness who was called to the stand immediately following the calling of this defendant, that is the witness K. H. Mookjee, who testified that he was an attorney at law formerly practicing in Bangkok, Siam. It developed upon the cross examination of this witness that he did not previously know that he was a defendant in this case, and there was presented in the said witness an example of a defendant not

apprised of the fact that he was charged with a crime, and made to take the stand and testify as a witness in utter ignorance of the fact that such a criminal charge was pending against him.

And in connection with this plea your Affiant desires to direct the attention of this Honorable Court to the calamitous consequences and effect of the confession of guilt upon the part of the defendant JOSE SINGH. The defendant denies that he intended to plead guilty. A plea of guilty from his lips would render him not only liable to punishment by this court, but would render him liable to be deportation-
ed to India, where he would be liable to summary execution as a traitor to the British Government, and your affiant expresses it as his opinion that it is unreasonable to conclude that this defendant knowing these facts would have knowingly entered a plea of guilty herein, particularly in view of the fact that the mental attitude of this defendant as made known to your affiant, was that he did not object to taking the stand as a witness, except that he desired to know that he was removed from the fear of execution ^{at} ~~and~~ the hands of the British Government which he felt would be imminent in the event that the testimony which he gave in this case should not prove satisfactory to them. And in other words, that the said defendant desired to be released from all force of mental coercion, so that if he did take the stand as a witness in this case, his mind would be free from the terror of the thought of future execution, so that he might simply tell the facts within his knowledge, and not testify as he feels he would have to testify to save himself from execution by the British authorities, if he was left within their jurisdiction.

In presenting the foregoing opinions and conclusions,

your affiant has endeavored to faithfully present the mental attitude of the said defendant JOHN SINGER as made known to your affiant, his counsel.

Leo H. Howard

Subscribed and sworn to before me this 1st day of December, 1917.

J. L. Brown

Notary Public, in and for the City and County of San Francisco, State of California.

DEPUTY CLERK U. S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

STATE AND NORTHERN DISTRICT OF CALIFORNIA

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CITY AND COUNTY OF SAN FRANCISCO

JOSE SINGH, being first duly sworn upon oath, according to law, deposes and says:

That your affiant is a defendant in the above-entitled action. That your affiant did not know prior to being brought into court as a witness in the above-entitled case, that he was a defendant with the rights of a defendant in the said case. That when your affiant was advised that he was a defendant, and might take his place with the defendants, it was his belief and understanding that all he needed to do was to simply go and take his place with the defendants, and that the trial might proceed with himself among those on trial. That your affiant did not have an attorney and had never had an opportunity to consult an attorney to represent him in said case, and that upon the Court appointing counsel for your affiant, and the reading of the indictment being waived and the Court on stating the charge against your affiant, did not state that the conspiracy with which your affiant was charged was for a violation of American neutrality by attempting to begin, or set on foot or provide and prepare the means for a military enterprise to be set on foot from the United States against British rule in India. That the statement of the charge against your affiant was not sufficiently clear to prevail over the excitement and confusion of your affiant, and that when your affiant was called upon to plead guilty or not guilty by the clerk, he did not know the legal significance of what was expected of him, and so stated that his plea would be made known through his attorney, and that when the court at once stated that he would have to state his plea himself of guilty or not

guilty your affiant was in a quandary, and did not know what to say, and in the stress of the moment having heard the word guilty as mentioned by the court, stated "I am guilty". That your affiant immediately thereafter went and took his seat among the defendants believing that the trial was then to proceed with himself among those on trial. That your affiant now understanding the legal distinction of a plea of guilty or not guilty realizes that in his confusion and mental stress he did not enter the plea which would have the legal effect for placing your affiant on trial, which was the result your affiant sought for.

Your affiant farther deposes and says, that he is not guilty of being a member of the conspiracy to violate the neutrality of the United States by beginning or setting on foot or providing or preparing the means for a military enterprise to proceed from the United States and directed against what is popularly known as British rule in India, and that what is technically known as a plea of not guilty is what your affiant thought he has caused to be entered in said action. That immediately upon being apprised of the mistake your affiant had made, and before any additional proceedings had been made by the court, your affiant sought to correct the same, and have his attorney make all necessary stipulations upon his behalf so that he might at once be incorporated with the defendants on trial.

That the stress and fear under which your affiant was acting was intensified by the belief on the part of your affiant that should he ever again set foot on British territory, he would be proceeded against for treason against the British Crown and summarily executed, and his reluctance to give testimony in this proceeding was that he wished to know that he was free from immediate necessity of being returned to British authority

Subscribed and sworn to before me
this 1st day of December, 1917.

J. L. Baldwin *J. L. Baldwin*, Notary Public, North West, Calif. 29