

Emperor Vs. Biharilal Kalacharan

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Court : Mumbai

Decided On : Jan-06-1949

Reported in : (1949)51BOMLR564

Judge : M.C. Chagla, C.J. and; Gajendragadkar, J.

Appeal No. : Criminal Appeal No. 550 of 1948

Appellant : Emperor

Respondent : Biharilal Kalacharan

Disposition : Appeal dismissed

Judgement :

M.C. Chagla, C.J.

1. [His Lordship, after dealing with questions of fact arising in the case, proceeded :] Mr. Lulla has then raised a rather interesting point of law. According to him even assuming that the prosecution have established their case against the accused no offence in law has been committed. According to Mr. Lulla under Section 213 it is only when the accused actually screens any person from legal punishment that the offence is complete. According to him the mere promise to screen a person from legal punishment and to receive gratification for that promise does not constitute an offence. We are unable to accept that contention. Looking to the plain meaning of the section, apart from any authority, it seems to us that the mischief that is

aimed at by the Legislature is the accepting of a gratification for concealing an offence or screening any person from legal punishment or not proceeding against any person for the purpose of bringing him to legal punishment, and not the actual concealing of an offence, or the screening of any person from legal punishment or not proceeding against any person for the purpose of bringing him to legal punishment. Once a person accepts a gratification and if the consideration for accepting that gratification is his concealing the offence or screening the person from legal punishment, the offence is complete. The consideration may be either a promise to conceal an offence or screen the person from legal punishment or it may be a past consideration, the person having already concealed the offence or screened the person from legal punishment and receiving gratification for having rendered that service. It is unnecessary to state that in law a consideration may be as much a promise as something actually done or achieved. Mr. Lulla contends that the Legislature does not enact that if a person receives gratification in consideration of his agreeing or promising to conceal an offence or screen any person from legal punishment, he would be guilty of an offence. According to Mr. Lulla if the Legislature intended to punish even an agreement or promise to conceal or screen, then those words should have found a place in the section. In our opinion there is very good reason why those words do not find a place in the section. Because if those words had been placed there by the Legislature then the consideration would have referred only to something to be done in future. It would not have covered the case of past consideration. The neutral word used by the Legislature 'consideration' is wide enough to cover both cases, the case of something having been done or achieved in the past and also the case of something to be done in Futuro. The other difficulty that arises if we were to accept the interpretation put upon the section by Mr. Lulla is as to the point of time when it could be said that the offence was complete. If we accept Mr. Lulla's interpretation, then the offence would not be complete when the accused received the gratification, but it would only be complete when the offence was concealed or a person was screened from legal punishment. Therefore if the accused took a gratification after having promised to conceal the offence or screen the person giving gratification from legal punishment if he chose to break his promise and not stand by his agreement then no offence would be committed, although he received

both the gratification and committed a breach of the agreement quae the person who gave him the money. But the offence according to Mr. Lulla would only be committed if he received the gratification and further went on to keep his promise and abide by his agreement. Unless the words of the section were clear and plain and compelled us to place that interpretation upon it, we think that the interpretation suggested by Mr. Lulla results in serious difficulties and anomalies and should not be accepted.

2. Reliance is placed on a decision of this Court in *Emperor v. Sanalal Lallubhai* I.L.R. (1913) Bom. 658 : 15 Bom. L.R. 694 Mr. Justice Batchelor and Mr. Justice Shah were considering a case where one Gordhandas gave certain jewellery to one Manilal by way of jangad and Manilal pledged the same with one Sanalal under circumstances which constituted such pledging an offence of criminal breach of trust. The jewellery was later returned by Sanalal to Gordhandas on the latter undertaking not to prosecute Manilal for the offence of criminal breach of trust. Manilal was tried for the offence of criminal breach of trust with regard to the jewellery and was acquitted. Sanalal and Gordhandas were then tried for offences under Sections 213 and 214 and the charge against them was that they offered and took restitution of property in consideration of screening an offence, and the two learned Judges held that the accused must be acquitted in that the offence of criminal breach of trust had not been proved and therefore no offence could be committed under Sections 213 and 214. Now, really that case has not much bearing upon the facts that we have to consider because there it was found that there was no offence whatsoever which could be concealed or in respect of which any person could be screened. Once the person who offered the bribe was acquitted and it was held that he had committed no offence, then the person accepting the bribe and promising to screen him from legal punishment could not naturally be convicted under Section 213. Because it could not be said that he had received any gratification in consideration of his concealing an offence or screening any person from legal punishment as there was no offence to conceal and no person to screen from legal punishment. The very basis of Section 218 is that there must be an offence committed which can be concealed and there must be an offender who has to be protected from legal punishment.

3. The case most strongly relied upon by Mr. Lulla is a decision of the Calcutta High Court reported in *Hemchandra Mukherjee v. Emperor* (1924) 1 Q.B.D. 141. That is a case directly in point and there a Divisional Bench of that Court consisting of Mr. Justice Nowbould and Mr. Justice Mukerji came to the conclusion that there must be an actual concealment of an offence, or screening of a person from legal punishment, or abstention from proceeding criminally against a person in order to attract the application of Section 213. There would be no offence if a gratification was accepted merely on a promise to conceal, screen or abstain and nothing more. Now, with very great respect to these two learned Judges, we are unable to accept that decision as a correct decision. Mr. Justice Mukerji realised the difficulty in which he found himself in giving that construction to the section, because at the bottom of p. 156 the learned Judge says :

Actual concealment or screening even for a short time may be sufficient, but there must be some concealment or screening actually proved.

Now, why 'some concealment or some screening actually proved' If the construction is, what the learned Judges of the Calcutta High Court suggest the correct construction of Section 213, then it is not the case of 'some concealment' or 'some screening' to be proved. Full and complete concealment or screening, and effective concealment or screening would have to be established before it could be said that the offence was committed under Section 213. It is difficult to see how there can be any half way house between the two interpretations. Either the actual concealment or screening has nothing to do with the commission of the offence, the commission of the offence being complete as soon as the gratification is received; or the law intended that the offence was only committed after the offence was concealed or the person was screened from legal punishment. In the latter case the prosecution would have to establish the actual and complete concealing of the offence, equally the actual and complete screening of the person from legal punishment. Mr. Justice Mukerji also points out that the Legislature has not used the words 'agreeing or promising to conceal.' As we have pointed out earlier, there is very good reason why the Legislature did not use that expression.

4. There is also an English case to which our attention has been drawn by the Government Pleader. Of course there is no question of construing a section of the Code in England since the criminal law is based upon common law. But the principle enunciated in this case is of some assistance to us in construing this section. The decision is *The Queen v. Burgess* (1885) 6 Q.B.D 141 In that case there was an indictment for compounding a felony and it was urged that the accused was entitled to an acquittal because the indictment did not alleged that he had desisted from prosecuting the offender, or, in other words, that he had fulfilled his promise on the basis of which, he had received the illegal gratification, and Lord Coleridge C.J. in his judgment points out that to accept the contention of the defence that there could be no offence unless there was actual desisting from prosecuting the felon would result in enormous difficulties and the pertinent question the learned Chief Justice asks is : When could the offence be said to be complete He gives the illustration of a man who might conceivably make an illegal agreement not to prosecute and abstain from prosecuting for six years and then might turn round and prosecute after all in breach of the agreement. According to the contention of the accused he could not be guilty of the offence because he did ultimately prosecute, and if so it is difficult to see when such an offence could be said to be complete. He also refers to the extraordinary position which would arise if that construction was accepted, namely, that if the maker of an agreement kept the agreement, he was guilty of an offence; but if, in addition to making such an illegal agreement he is guilty of the further fraud towards the other party of breaking it, he was guilty of no offence at all. It is unnecessary, without very strong reason, to put oneself on the horns of such an extraordinary dilemma, and we do not think that the language of Section 213 drives the Court necessarily to those horns. We therefore are of the opinion that Section 213 does not require the actual concealment of an offence or the screening of any person from legal punishment or the actual forbearing of taking any proceedings, It is sufficient if an illegal gratification is received in consideration of a promise to conceal an offence or screen any person from legal punishment or desist from taking any proceedings.

5. The other argument urged by Mr. Lulla is that on the facts of this case it could not be said that there was any screening, or any promise to screen the complainant from legal punishment. Mr. Lulla says that screening in this context

can only mean that the accused must physically keep away the complainant from the arm of the law, or he must again physically destroy some evidence on which the prosecution relies. Mere abstention from giving evidence or mere keeping away from a Court of law would not be sufficient to constitute screening. For this purpose Mr. Lulla has drawn our attention to the language of Sections 217 and 218 where the language used is not screening any person from legal punishment, but saving any person from legal punishment, and it is urged that the Legislature has used these two different expressions with deliberate intent, that in the case of saving any act on the part of the accused would be sufficient even by his refusing to give evidence, but in the case of screening something more than that would be necessary. Now, it is perfectly true that which the Legislature uses two different expressions in a statute, the Court must try, if possible, to attribute to each one of such expressions a different legal connotation and by ordinary canon of construction it would be necessary to try and determine what the difference was between screening and saving, two different expressions used by the Legislature. But there are occasions when the Legislature does use two different expressions without meaning to make any distinction between them. And when we turn to the Oxford English Dictionary because the Legislature has not chosen to define screening or saving, we find that as far as the English language is concerned, although it boasts of having no synonyms, there is hardly any difference between the two words screening and saving. The Oxford Dictionary gives the various meanings of the word screen, and one of them which is pertinent to the question before us is this :

To shield or protect from hostility or impending danger; especially to save; (an offender) from punishment or exposure; to conceal (a person's offence).

Therefore, when you are screening a person from punishment, or exposure, screening-is the same as saving a person from punishment of an offence or exposure. Therefore we do not think there is any force in the contention that mere abstention from giving evidence is not necessarily screening a person from legal punishment. It is not so much a question of law as a question of fact. In this particular case the accused was the complainant in the pugree case. He had offered the pugree to the complainant. He would undoubtedly be a most material

witness for the prosecution and the chances of the conviction of the complainant would indeed be rather remote if the complainant made himself scarce, left Bombay and went away to Delhi. Therefore on the facts of this case it cannot be said that if the prosecution has established that the accused promised not to give evidence in the pugree case he would not be screening the complainant from legal punishment.

6. The result is the appeal fails and the conviction and sentence must be confirmed. The accused to surrender to his bail.

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