

Emperor Vs. Abu Hasan

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Court : Mumbai

Decided On : Feb-12-1919

Reported in : (1919)21BOMLR747

Judge : Heaton and ;Shah, JJ.

Appeal No. : Criminal Application Revision Nos. 396 and 397 of 1918

Appellant : Emperor

Respondent : Abu Hasan

Judgement :

Heaton, J.

1. We are hearing these matters in revision, but, as well as the point of law, we have had the evidence laid before us. It is a prosecution under the Defence of India Consolidation Rules of 1915. Under Rule 21A of those Rules it is made an offence to melt any current gold coin. It is urged against the accused No. 1 that he attempted to melt a number of sovereigns, and it is conceded that if he did attempt to melt sovereigns, he is guilty under this rule together with another rule which penalizes attempts. It is provided by Rule 30 that 'no Court shall take cognizance of any offence punishable under these rules' unless certain authorities, amongst whom is the District Magistrate, have 'by order in writing consented to the initiation of the proceedings'. We have in this case the order in writing which purports to be

the consent to the initiation of the proceedings, and that document recites that in the exercise of the authority vested in him by Rule 30 the District Magistrate of Surat hereby consents to proceedings being initiated against Memon Abu Hasan of Surat in the Court of the First Class Magistrate of Surat. The nature of the proceedings is not stated in the order. Memon Abu Hasan is the accused No. 1 in the case. After proceedings had been initiated against him, it transpired that there was another man, accused No. 2 in the case, who, it is alleged, abetted the offence by providing the sovereigns. It is claimed for him that there is no consent in writing to any proceedings against him. That, I think, is so. He might be got at, it seems to me, at most in only two ways, either by entering his name in the written consent, but that was not done; or possibly, (I will not say certainly), by describing the offence in the written consent and thereafter showing that he was concerned in that particular offence. But this has not been done either. There is no offence described in the consent in writing, and the name of accused No. 2 is not mentioned, therefore, it seems to me that accused No. 2 must be acquitted for the reason that I have stated: that the proceedings against him have not been consented to in writing. This is a great deal more than a merely technical matter. We are dealing with an act which has been made an offence by certain rules which are temporary in their nature and are made to meet a special emergency. It is specially provided that there must be consent in writing for the initiation of proceedings. This is intended as a real safe-guard and it must be given full effect to. That has not happened in this case as regards accused No. 2.

2. This rule about a consent in writing is, as I read it, intended to be an undertaking by the Government that no one shall be prosecuted unless his case has been considered by one of the authorities named. This has to be shown by a consent in writing. There is no guarantee here that the case of accused No. 2 received any consideration whatever from the District Magistrate, Therefore to uphold his conviction would cause a breach of an undertaking given by the Government. To that we cannot possibly consent.

3. It is urged also that the consent in writing does not properly cover even the case of accused No. 1 We think, however, that it does cover his case, because he is named and from what happened contemporaneously with the grant of this consent

there is no doubt that the nature of the proceedings to be initiated was known and understood, so that the omission of mention of them in the document does not render that document inoperative as regards accused No. 1. But I must say that the document is very carelessly drawn up, and further that proper care and attention ought to be given to these matters by the responsible officers.

4. I will now turn to the facts. It was proved to the satisfaction of the trial Court and of the Court of appeal that when the police raided the shop of accused No. 1, they found a furnace ready heated and on it a crucible containing molten silver and near it a large number of sovereigns in an open dish or receptacle so placed as to be ready for transfer to the crucible. It is contended that these facts are not established by the evidence, and in particular that it is not shown that there was a crucible on the furnace with molten silver in it. No doubt that fact was disputed before the trial Magistrate and evidence was recorded before him to show that there was no crucible. The Magistrate, however, found that there was a crucible with molten silver in it, and when the matter came up in appeal before the Sessions Judge, he recorded in his judgment, 'It is admitted that when the shop of accused No.1 was raided, a furnace was found burning with a crucible on it containing molten silver'. If that circumstance was admitted before the Court of appeal, I feel no hesitation whatever in accepting it as a fact, sitting here as a Court of Revision. The facts, therefore, are as stated in the judgment of the Sessions Judge, and what those facts mean beyond any doubt to my mind is this: that the sovereigns were there for the purpose of being melted, and that the crucible with the molten silver on it was there for the purpose of having those sovereigns or some of them placed in it.

5. The only point that remains then is to consider whether this does amount to an attempt to melt these sovereigns or some of them. It seems to me that it does. I will take a case that has been referred to-Queen Empress v. Luxman (1889) 2 Bom. L.R, 286, it is stated that Sir Lawrence Jenkins described an attempt in these words:-'An attempt is an intentional preparatory action which fails in object-which so fails through circumstances independent of the person who seeks its accomplishment.' We have another view of what an attempt is stated in the case of Emperor v. Chandkha Salabatkha I.L.R (1913) 37 Bom. 553; 15 Bom. L.R. 564, in

which at page 555 there is a quotation of what Mr. Justice Blackburn said, that '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.' The transaction in this case comprised the heating of the furnace, the placing of the silver in the crucible, the placing of the crucible with the silver in the furnace, the lapse of time required to melt the silver and finally the depositing of the sovereigns in the crucible containing the molten silver. The whole of this somewhat complicated, and by no means brief, transaction had been accomplished except the final act of putting the sovereigns into the molten silver in the crucible. That in my judgment shows, and clearly shows, that there was an attempt to commit this offence. Therefore I think that the accused No. 1 was rightly convicted.

6. But I think that having regard to the circumstance that the melting of coin was formerly not an offence and, we are told, formerly not uncommon and that it has been made an offence by special rules of a temporary character to meet a special purpose and that so far as we know this is the first case of the kind in these parts—certainly the first case that has come before us—we think that the punishment need not be so' severe as that which has been imposed.

7. We therefore change the sentence of imprisonment to imprisonment for that period which the accused No. 1 has already undergone, and we leave the sentence of fine unchanged.

8. Accused No. 2 is acquitted and the fine, if paid, must be refunded.

Shah, J.

9. I agree.