

Rex Vs. Alimuddln and ors.

Rex Vs. Alimuddln and ors.

SooperKanoon Citation : sooperkanoon.com/449842

Court : Allahabad

Decided On : Aug-04-1949

Reported in : AIR1950All77

Judge : Harish Chandra and ;Wanchoo, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 221, 223, 226 and 227; Indian Penal Code (IPC) - Sections 109 and 120B

Appeal No. : Criminal Revn. No. 710 of 1949

Appellant : Rex

Respondent : Alimuddln and ors.

Advocate for Def. : C.S. Saran, Adv.

Advocate for Pet/Ap. : Government-Advocate

Disposition : Revision allowed

Judgement :

Wanchoo, J.

1. This is a revision by the Provincial Government against the order of the Assistant Sessions Judge of Banaras by which he dropped the charge of conspiracy under Section 120B, Penal Code against the five opposite parties and,

instead, substituted a charge under Section 109, Penal Code.

2. The facts which led to the prosecution of the opposite parties may be narrated here briefly. The Deputy Town Rationing Officer (Cloth), Banaras, Shri P. D. Dhoondiyal while inspecting the special permits cloth shop of one Ram Chander in Banaras city on 20th April 1946 discovered that a cloth permit No. 6996 issued from permit book No. 170 was forged inasmuch as the signature which purported to be his was not really in his handwriting. An enquiry then started for permit book no. 170 which had been in the custody of Jagdish Prasad opposite-party and it was found that it was missing from the office. It was also found that thirteen permits had been issued from this book which were all forged, but had been used as genuine and cloth had been obtained on the basis of them from the special permits cloth shops of Ram Chander, Munna and Thakur Prasad of Banaras city. The matter was then investigated by the Anti-corruption Department. Police and resulted in the prosecution of the five opposite parties. During the investigation, the house of one of the opposite parties, namely, Alim Uddin, was searched and the permit book No. 170 is said to have been recovered from there. Further investigation is said to have revealed that there was a conspiracy between the five opposite parties and three others, the object of which was to forge permits from Book No. 170 and use those permits as genuine and take cloth from Special Permits cloth dealers of Banaras. Consequently the five opposite parties were prosecuted under Sections 420, 467 and 471, Penal Code read with Section 120B of the same Code. Besides this Alim Uddin was further prosecuted under Section 411 and Jagdish Prasad under Section 409, Penal Code with respect to the Permit Book. The committing Magistrate committed all the five opposite parties under Sections 420, 467 and 471 read with Section 120B, Penal Code and further committed Alim Uddin under Section 411, Penal Code and Jagdish Prasad under Section 409 of the same Code, to the Court of Sessions. When the case came to the Court of Sessions, the Assistant Sessions Judge re-drafted the charges. This was necessary because the charges as drafted by the committing Magistrate, were rather confused. The Assistant Sessions Judge kept the charges under Sections 409 and 411, Penal Code as they were against Jagdish Prasad and Alim Uddin respectively. He framed a charge under Section 471, Penal Code read with Section 467 and under Section 420 of the same Code against Salik Ram with

respect to one of the permits only, namely Ex. p. 9. He also framed a charge under Section 471, Penal Code read with Section 467 and under Section 420 of the same Code against Madan Lal with respect to another permit, namely, EX. P-2. It appears that he was also framing a further charge under Section 120B, Penal Code against all the five opposite parties for conspiracy, but there was some objection to this framing this charge. After argument, he decided not to frame a charge under Section 120B, but, instead, framed a charge under Section 109, Penal Code only. It is against this' order that the Provincial Government has come up in revision to this Court.

3. The contention, on behalf of the Provincial Government, is that it was not open to the Assistant Sessions Judge to drop the charge of conspiracy under Section 120B and substitute in, its place a charge under Section 109, Penal Code and that he had no power to do so. It is, therefore, urged that that charge should be restored. The application has been opposed on behalf of the opposite parties. The contention, on their behalf, is that the Assistant Sessions Judge cannot be deemed to have dropped the charge under Section 120B, Penal Code and that what he has done is merely to substitute a charge under Section 109 in place of the charge under Section 120B and that he had full power to do so.

4 The relevant sections of the Code of Criminal Procedure, in this connection, are Sections 226. and 227. Under Section 226, when any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges. Under Section 227, any Court may alter or add to any charge at any time before judgment is pronounced, or in the case of trials before the Court of Sessions before the verdict of the jury is returned or the opinions of the assessors are expressed.

5. The contention, on behalf of the opposite parties, is that the word 'alter' in Section 227, empowers the Assistant Sessions Judge even to withdraw a charge and that, even if such power is not there, the Assistant Sessions Judge, in this, case, merely substituted one charge for another and this he could always do under Section 227.

6. I shall first consider the question whether it is open to the Sessions Court to withdraw a charge which has been framed by a Magistrate against a person committed for trial. In this connection, reliance has been placed by the opposite parties as well as the Assistant Sessions Judge on the case of Dwarka Lal v. Mahadeo Rai, 12 ALL. 551: (1890 A. W. N. 178). In that case, it was held that the word 'alter' in Section 227, Criminal P. C., includes withdrawal by a Sessions Judge of a charge added by him to the charge on which the commitment had been made. This case, therefore, in my opinion, is no authority for the proposition that a Sessions Court can withdraw or drop a charge which has been framed by the committing Magistrate. The *raison detre* of Dwarka Lal's case (12 ALL. 551: 1890 A. W. N. 178) is clear. Under Section 227, the Sessions Court has power to add a charge to the charges framed by the committing Magistrate. If the Sessions Judge frames such a charge, he can, at any time, withdraw that charge without, in any way, affecting the charges on which the accused person was committed for trial. The basis of the decision in Dwarka Lal's case, (12 ALL. 551: 1890 A. W. N. 178) was that the charge which was being withdrawn by the Sessions Court was a charge framed by the Sessions Judge himself under powers given to him under Section 227 and just as the Sessions Judge could add a charge under Section 227, he could also withdraw the charge which he himself had framed. The decision, therefore, in Dwarka Lal's case, (12 ALL. 551: 1890 A. W. N. 178) does not mean that the Sessions Court is at liberty to drop or withdraw the charges framed by the committing Magistrate.

7. There are two other provisions in the Code which go to show that the Sessions Court cannot withdraw or altogether drop a charge which has been framed by the committing Magistrate, Section 215, Criminal P. C., forbids the quashing of commitment by any Court other than a High Court. The withdrawal, for ex-ample, of one out of a number of charges by the Sessions Court amounts to the quashing of the commitment with respect to that charge and that power is vested only in the High Court under Section 215 subject to the limitation mentioned therein. Further Section 273 provides that:

'(1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or

any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

(2) Such entry shall have the effect of staying proceedings upon the charge, or portion of the charge, as the case may be.'

Thus even a High Court has not the power to withdraw the charge or to drop it. If the Legislature, therefore, did not intend to give this power even to the High Court, it is not possible to so interpret the language of Section 227 as to infer this power in the Sessions Court, simply because the word 'alter' has been used in that section. I am, therefore, clearly of the opinion that the Sessions Court has no power to withdraw or drop altogether a charge framed by the committing Magistrate,

8. The next point that has been urged, on behalf of the applicant, is that it cannot be held that the Assistant Sessions Judge has dropped the charge under Section 120B, Penal Code because what he has done is merely to substitute a charge under Section 109 for a charge under Section 120B. We are of opinion that this argument is untenable. The charge under Section 120B is about a substantive offence described in that section. The charge under Section 109, cannot take the place of a charge under Section 120B. Further I should like to point out that what the Assistant Sessions Judge has done, in this case, is to frame a charge under Section 109, Penal Code in vacue. Now a charge under Section 109, when framed, is along with the charge of some substantive offence. But as I read the order of the learned Assistant Sessions Judge, I find that the charge framed by him under Section 109 will read as follows :

'That you (Alim Uddin, Jagdish Prasad, Abdul Hamid, Salik Earn and Madan Lal) between February and April, 1947, at Banaras agreed and conspired among and between yourselves, Sardar Singh, approver, Dwarika and Lakshmi who have since died to do or cause to be done illegal acts, namely :

(a) to forge cloth permits,

(b) to issue and obtain forged cloth permits on fictitious applications or without applications,

(c) dishonestly using such forged permits as genuine knowing them to be forged and

(d) to dishonestly and fraudulently obtain cloth on the basis of the said forged permits and thereby you committed an offence punishable under Section 109, Penal

Code and within my cognizance.'

Now it is not possible to frame a charge under Section 109 alone because that section has, for its application, to be read with some other section defining the offence, say, Section 420 read with Section 109 or Section 467 read with Section 109 and so on. In my opinion, therefore, what the Assistant Sessions Judge has done is not to substitute a charge under Section 120B by a charge under Section 109, but withdraw or drop altogether the charge under

Section 120B and, in its place, frame a charge under Section 109 which would be perfectly useless, as he has framed it. I am, therefore, of opinion that the Assistant Sessions Judge had no power to withdraw or drop altogether the charge under Section 120B which he was proceeding to frame when objection was taken.

9. Lastly it was urged that it was not proper to frame a charge under Section 120B when the necessities of the case would be met by a charge of an offence read with Section 109. In this connection, reliance has been placed on a number of cases, for example, (1) Jugeshwar Singh v. Emperor A. I. R. (23) 1936 Pat. 346; (37 Cr. L. J. 893); (2) Goloke Behari v. Emperor : AIR1938 Cal51 In re Venkataramiah A. I. R. (25) 1938 Mad. 130 : (39 Cr. L. J. 266.). I should, however, like to point out that in the Patna case, the conspiracy was with respect to the forging of an unregistered usufructuary mortgage deed for the purpose of defence in a case under Section 447, Penal Code. The persons concerned in the forgery were prosecuted under Sections 193, 467 and 471 and a charge of conspiracy under Section 120B was also added. The Calcutta case was about a conspiracy to

murder a doctor. There were charges under Sections 302 and 201, Penal Code and a charge of conspiracy under Section 120B of the same Code was also added. The Madras case related to a conspiracy about extortion hatched between six persons. Four of them were charged under Section 386, Penal Code, while all the six were charged under Section 120B. In these cases, observations were made by the Court that it was not proper to frame a charge under Section 120B in the circumstances of those cases. The reason for those observations appears to be this. In these cases, the conspiracy was to commit a single act. The persons concerned could have been charged with actual commission of the offence or with abetment of the offence, as abetment includes abetment by conspiracy. The entire case would have been covered by framing a charge of the offence or of its abetment. In such cases, it may be improper and certainly unnecessary to frame a charge of conspiracy separately. But in a case like the present, it seems to me that a charge of conspiracy was very necessary and quite proper. The specific charges were only about two permits, one relating to Ex. P-9 against Salik Bam and another relating to Ex. 2 against Madan Lal. But the charge of conspiracy was not with respect to these two permits only. It was with respect to eleven other permits about which, perhaps, it was not possible to get the same kind of evidence as it was possible to get in the case of Exs. p-2 and p 9. Under these circumstances, the entire case could not have been covered by merely framing a charge of abetment and a charge of conspiracy under Section 120B against all the five opposite parties was properly framed.

10. I would therefore, allow this revision and set aside the order of the Assistant Sessions Judge, dated 18th February 1949 by which he dropped the charge under Section 120B, Penal Code against the five opposite parties and, instead, framed a charge under Section 109 of the same Code against them. The Assistant Sessions Judge will proceed with the trial of the case on the charges framed by the committing Magistrate including one under Section 120B, Penal Code, though, of course, he will be at liberty to redraft the charges in such suitable form as he may consider necessary.

Harish Chandra, J.

11. I agree.

12. The application is allowed and the order of the Assistant Sessions Judge dated 18th February 1949 by which he dropped the charge under Section 120B, Penal Code against the five opposite parties and, instead framed a charge under Section 109 of the same Code against them, is set aside. The Assistant Sessions Judge will proceed with the trial of the case on the charges framed by the committing Magistrate including one under Section 120B, Penal Code, though of course, he will be at liberty to redraft the charges in such suitable form as he may consider necessary.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com