

M.N. Bhatia Vs. State of U.P.

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Court : Allahabad

Decided On : Jan-04-1966

Reported in : 1968CriLJ555

Judge : M.H. Beg, J.

Appellant : M.N. Bhatia

Respondent : State of U.P.

Judgement :

M.H. Beg, J.

1. The appellant was tried and convicted by an Additional Sessions' Judge of Saharanpur on charges framed as follows:

Firstly: That, you, on or about the 16th day of September, 1959 in Delhi, abetted the commission of the offence of cheating, by sending accused H.N. Chowdhry to Saharanpur to realise money from the public for the purpose of Kashmir Belief Fund in the name of Central Belief and Social Welfare Committee Delhi by falsely representing himself to be the Vice President of the said Committee and the Hon'ble Prime Minister of India as the Chief Patron of the said Committee, and in consequence of your abetment, accused H.N. Chowdhry cheated and collected Rs. 2/2/ and 1/- from Bagohi, Harnam Singh and Dr. Mohan Lal respectively and that you thereby committed an offence punishable under Sections 169 and 420,

Penal Code and within the cognizance of the Court of Sessions.

Secondly: That, you, on the same date time and place, abetted the commission of the offence of using forged documents as genuine by sending accused H.N. Chowdhry to Sabaranpur to realise money by using as genuine Identity Card and Receipt Ex. ka. 1, which you knew or had reason to believe to be forged, and in consequence of your abetment H.N. Chowdhry committed the offence and you thereby committed an offence punishable under Bs. 109 and 471, Penal Code and within the cognizance of the Court of Sessions.

2. It is evident, from a perusal of the above mentioned charges, that the appellant was not charged at all with the formation of a spurious committee for the purpose of collecting 'Kashmir Belief Fund,' but he was charged only with the abetment of offences said to have been committed by his accused H.N. Chowdhry, who was acquitted by the learned Sessions Judge. The main charges were against H.N. Chowdhry for offences punishable under Sections 420 and 467 and 471, Penal Code. It was alleged that H.N. Chowdhry had cheated Sri Bagchi (P.W. 7) and Sri Harnam Singh (P.W. 5) and Dr. Mohan Lal (P.W. 6) by representing to them that he was the Vice President of the 'Central Belief and Social Welfare Committee,' established at Delhi under the patronage of the Prime Minister of India. The charge against the appellant was in respect of acts which were intended to help Sri H.N. Chowdhry, the co-accused, in the commission of the above mentioned offences of cheating and using a forged document fraudulently. The appellant was found guilty of abetment punishable under Section 109, Penal Code, which applies only 'where the act abetted is committed in consequence,' but, H.N. Chowdhry, the principal accused, was acquitted by the learned Sessions Judge on the ground that H.N. Chowdhry himself had been cheated by the appellant. It was held that H.N. Chowdhry had committed no offence of cheating himself as he was acting under a bona fide belief that he was doing, quite properly whatever he did for a registered and recognised society under instructions from the appellant.

After discussing evidence in paras 8 to 6, the judgment proceeded:

7. The charges for abetment in the present case are, in my opinion, so closely connected with the offences of cheating and of using a forged document

fraudulently, alleged to have been committed by Chowdhry, that a charge for abetment of these offences cannot succeed when the principal offender was held to be innocent. As was pointed out by their Lordships of the Supreme Court, in *Faguna Kanta Nath v. State of Assam* : 1959 CriLJ917 , there are three kinds of abetment denned in Section 107, Penal Code. Firstly, abetment consists of instigation to commit a crime, and this would be an offence whether the crime abetted is committed or not. Secondly, there is abetment by means of a conspiracy which in itself is an offense. Thirdly, there are abetments by aiding the actual commission of an offence. Here, if the act which is alleged to have been facilitated is not an offence, there can be no abetment of an offence. Obviously, the charge against the appellant was for an abetment which could not be an offence if what was abetted was not an offence. If the charge could fall under one of the first two classes of abetment, it could bean offence quite apart from the criminality or otherwise of what was said to be abetted.

8. Their Lordships of the Supreme Court pointed out, in *Faguna Kanta Nath's* case, AIR 1959 S O 678 (Supra):

There then remains the third part of Section 107, that is abetment by aid. A person abets by aiding when, by the commission of an act; be intends to facilitate and does facilitate the commission thereof. By the acquittal of Khalilur-Rahman, the High Court must be deemed to-have held that there was no offence under Section 161. But, it was contended on behalf of the respondent that the acquittal of Khalilur Rahman was wrong and this Court should hold that a wrong acquittal does not prevent the conviction of the appellant for the offence of abetment.if Khalilur Rehman is acquitted, and, therefore the offence under Section 161 is held not to have been committed, then, in this case, no question of intentionally aiding by any act or omission the commission of the offence arises.

9. The learned Sessions Judge, who tried the-appellant, thought that the appellant was guilty of abetment of offences of cheating and of use of forged documents as genuine by reason of Explanation 1 to Section 107, I.P.C. which provide:

A person who by wilful misrepresentation or by wilful concealment of a material fact which he is bound to disclose voluntarily causes or procures or attempts to

cause or procure a thing to be done, is said to instigate-the doing of that thing.

He overlooked that the law provides punishment, only for the abetment of an offence and not for abetment of mere acts which are not offences. Moreover, the appellant has been charged and convicted under Section 109. I.P.C. which applies only when the offence abetted is committed. It was not the prosecution case that the appellant was guilty of some abetment which was an independent offence even though the offence' abetted was not committed. The particulars of wilful misrepresentations mentioned in the charges framed against the appellant were of supposed wilful misrepresentations of Chowdhry to others and not of any representations of the appellant to Chowdhry:

(After further discussion of evidence the judgment proceeded):

10-11. For the reasons given above, the charges, as framed against the appellant, cannot succeed. As regards starting of a bogus organisation, the acts revealed by the prosecution evidence are those shown to have been committed in Delhi exclusively. It was urged, on behalf of the State that a retrial should be ordered with a proper charge framed from the offence and that the retrial could take place at Saharanpur in view of 8, 179, Criminal P.C. which reads as follows:

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

12. The illustration to Section 179, Criminal P.C. elucidates the meaning of the language used. The section is only applicable where the act and its consequence, both of which have to be proved to constitute the offence, have taken place in two different local areas in such an event, the alleged offence may be tried either where the act took place or where its consequence ensued. It is also clear that the 'consequence' here is part of the offence to be established. It is by virtue of the consequence that the act becomes a complete offence. In the present case the act of cheating of H.N. Chowdhry by the appellant, which is the assumption underlying the findings of the trial Court, and other acts relating to the starting of

the organization, took place at Delhi. No act of the appellant was shown to have taken place at Saharanpur. Therefore, only Section 179, Criminal P.C. could not be properly used for adopting the course suggested on behalf of the State.

18. The appellant also contended that he had been unable to produce a number of witnesses and was hampered in his defence by reason of the trial having taken place at Saharanpur. My attention was drawn to the application made by the appellant for summoning some defence evidence which was disallowed by the trial Court. The application was certainly made at a state when it was not obligatory upon the trial Court to summon the defence witnesses. Moreover, the trial Court seems to have been of the opinion that the application was being made only in order to delay the trial. It cannot be held that the trial Court erred in the exercise of its discretionary power. I mention this aspect only in order to come to the conclusion that this is not a fit case in which a retrial at Saharanpur upon charges properly framed should be ordered even if this had been legally possible. It is left to the prosecuting authorities to take appropriate proceedings for the offences said to have been committed by the appellant at Delhi. It is remarkable that, although the Central Intelligence Officers were concerned with the investigation of this case, the prosecuting agencies did not select a more appropriate venue for proceedings against the appellant at Delhi for whatever he may have done there. The appellant can still be tried for acts for which he was not really tried at all at Saharanpur.

14. The result is that I set aside the convictions and sentences of the appellant under Sections 420/109, I.P.C. and Sections 471/199, I.P.C. The appellant was granted bail in this case, although he is in jail as a result of proceedings in other cases elsewhere so that he had to be brought to this Court in custody as he desired to be personally present at the hearing of his appeal in this Court and was given a personal bearing. So far as this case is concerned, the appellant's bail bonds are cancelled.