

Karam Singh Vs. the State

Karam Singh Vs. the State

SooperKanoon Citation : sooperkanoon.com/750677

Court : Rajasthan

Decided On : Dec-08-1955

Reported in : 1957CriLJ234

Judge : Dave, J.

Appellant : Karam Singh

Respondent : The State

Judgement :

ORDER

Dave, J.

1. This reference comes on the report of the learned Additional District Magistrate Jodhpur, dated the 17th of January 1955. He has made a recommendation that the offence of Criminal conspiracy under Section 120B alleged against the accused Karamsingh was committed in Phagwara in Pepsu State, that the Extra First Class City Magistrate has, therefore, no jurisdiction to enquire into the matter and so the proceedings should be quashed.

2. It appears that the question of jurisdiction was raised by the accused Karamsingh in the court of the Extra Magistrate First Class, Jodhpur, but it was held by him that the facts alleged by the prosecution disclosed a case under Section 109 of the Indian Penal Code and, therefore, he had jurisdiction to

proceed in the matter.

3. It is alleged by the prosecution that one Meharsingh wanted to go out of India, but the Patiala Government had refused to give him the required permission in February 1952. He was however, very anxious to go to a foreign country, and therefore, he sought the help of the accused Karamsingh, who promised to obtain a passport for him for Rs. 4,500/-.

According to the prosecution, Maharsingh gave Rs. 4,500/- to the accused Karamsingh after mortgaging his land. Thereafter, the accused somehow obtained an old passport which was once issued in the name of one Kansingh. Kansingh was dead and so this passport was obtained from his son Arjunsingh. Having obtained this passport, Meharsingh's name was put in there.

His photo was also affixed. On 11th of January 1954, Meharsingh was trying to go out of India by a plane from Jodhpur, but somehow suspicions of police officers were aroused and when they made an inquiry, it was found that the passport whereby Meharsingh wanted to go out was a faked one.

He was therefore off landed from the plane. After investigation, the police challaned Karamsingh, Mahendrasingh and Meharsingh for offences under Sections 490, 466, 467, 471, 472, 474 and 120B of the I. P. C, One of the accused namely, Kartarsingh was absconding and, therefore, he was not challaned along with these accused. I learn that he has been subsequently arrested and challaned. for the same offences.

4. It was urged by learned Counsel for the accused Karamsingh before the learned Magistrate that the offence of conspiracy under Section 120B, I. P. C., was complete at Phagwara in Pepsu and, therefore, the courts in Rajasthan had no jurisdiction to try this case.

This argument was repelled by the Magistrate. The accused, however, went in revision to the Additional District Magistrate. The learned Additional District Magistrate is of opinion that this argument is correct and, therefore, he has made the recommendation as mentioned above.

5. Learned Counsel for the petitioner has supported the reference and cited - 'Emperor v. Pursumal Gerimal' AIR 1938 Sind 108 (A), and 'In re, Dani' AIR 1936 Mad 317 (B), in support of his contention. Learned Deputy Government Advocate, on the other hand, contends that it was wrong on the part of the police officers submitting the challan to say that this was a mere case of criminal conspiracy.

According to him, it was a case of abetment against the accused because all other offences mentioned in the police report were committed in pursuance of that conspiracy.

6. It may be observed that the recommendation made by the learned Additional District Magistrate would have been correct if this was a case of mere criminal conspiracy and no offence were committed in pursuance thereof. In - 'Emperor T. Pursuml Gerimal', (A)_ relied upon by learned Counsel for the petitioner, five accused were tried by the Sessions Judge under Section 120B and they were acquitted because the offence of conspiracy was completed outside the jurisdiction of the court and no offence of abduction for which the conspiracy was made was committed within the jurisdiction of that court.

It was in those circumstances that it was held that conspiracy is a substantive offence in itself and it could not be tried like an offence of abetment as provided in Section 180 of the Criminal P. O. This case is obviously of no help to the petitioner in the circumstances of the present case.

7. Similarly the facts 'In re Dani (B)', were very different and the observation made therein is not applicable to the present case,

8. 'In re Venkataramiah' AIR 1938 Mad 130 (C), it was held that Section 120B applies where any other crime has not been actually committed. It was further observed that

Where the matter has gone beyond the stage of mere conspiracy and offences are alleged to have been actually committed in pursuance thereof these two Sections 120A, 120B are wholly irrelevant. Conspiracy, it should be borne in mind, is one form of abetment (see Section 107, I. P. C.) and where an offence is alleged to

have been committed by more than two persons, such of them as actually took part in the commission should be charged with the substantive offence, while those who are alleged to have abetted it by conspiracy should be charged with the offence of abetment under Section 109, I. P. C.

In the present case, it is not alleged by the prosecution that there was a mere conspiracy to obtain a passport between the accused Karamsingh and Meharsingh, but there is a further allegation that in pursuance of that conspiracy, Meharsingh actually tried to go outside India on a faked pass-port and but for the vigilance on the part of the police authorities, he would have been successful in going away from India on that passport.

Thus, it is alleged that several other offences under Sections 419, 466, 467, 471, 472 and 474 of the Indian Penal Code were committed in pursuance Of that conspiracy. The real charge, therefore, against the accused Karamsingh is not merely one of Section 120B, but of abetment of so many offences.

According to Section 180, Illustration (a), Cr. P. C., a charge of abetment may be inquired into or tried either by the court within the local limits of whose jurisdiction the abetment was committed or by the Court within whose Jurisdiction ill* offence abetted was committed. It is alleged by the prosecution in this case that the offences abetted by the petitioner were committed at Jodhpur in Rajasthan and therefore the Magistrate Jodhpur has jurisdiction to inquire into the matter.

Under the circumstances, the recommendation made by the learned Additional District Magistrate is not correct and cannot be accepted. This should not however be taken to mean that the trial court would not be able to change its view if after the evidence is recorded, the facts are disclosed otherwise. For the present there seems to be no room for interference.

9. The reference is therefore rejected.