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State Vs. Parasmal and ors.

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Court : Rajasthan

Decided On : Aug-24-1968

Reported in : AIR1969Raj65; 1969CriLJ437

Judge : V.P. Tyagi, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 511

Appeal No. : Criminal Revn. No. 186 of 1967

Appellant : State

Respondent : Parasmal and ors.

Advocate for Def. : S.K. Jindal and; Champalal, Advs.

Advocate for Pet/Ap. : G.M. Mehta, Deputy Govt. Adv.

Disposition : Revision allowed

Judgement :
ORDER

V.P. Tyagi, J.

1. This is a revision application filed by the State against the order of the learned Sessions Judge, Jodhpur, dated 1st December, 1966, whereby, the learned Judge dismissed the revision application of the State which was filed to challenge the

order of the Munsiff Magistrate, Bilara, dated 27th June, 1966 discharging accused Purasmal, Shantilal, Durga Ram and Rooparam of the chargesunder Section 420 read with Section 513 and Section 23(c) of the Petroleum Act 1934.

2. The facts giving rise to this litigation are as follows:Pukhraj, father of accused Shantilal and Parasmal, had a diesel pump at Bilara. Prahlad Ram, resident of Lamba village went to purchase diesel from that pump on 22nd July, 1965. He was told by Shantilal that the diesel was not available as the tank was empty, but he asked Prahlad Ram to come next day when he would make a supply of diesel to him. It appears that Prahlad Ram suspected a foul play to be practised by the dealers and, therefore, he chose to sleep at the diesel pump. At about 10 in the night Prahlad Ram saw that the four accused persons came to the diesel tank with the tins containing kerosene oil and started pouring that oil in the tank. Prahlad Ram got up and asked the accused persons not to mix kerosene oil as it was likely to damage the vehicles but they did not pay any heed to the advice given by Prahlad Ram. Prahlad Ram then made a report of this incident to the Pradhan of the Panchayat Samiti, Bilara who referred the matter to the Station House Officer, Police Station, Bilara. The Station House Officer went to the spot and sealed empty tins of kerosene near the diesel tank. He sealed the pump as the owner was not available on the spot and on 24th July, 1965 he took a sample from the diesel tank and sent the same for examination to the Central Forensic Science Laboratory, Calcutta. The result of the examination of the sample, as reported by the Director of the said Laboratory, was that the sample was an admixture of diesel and Kerosene oil. After investigation, a]l the four accused persons were challenged in the court of the Munsiff Magistrate, Bilara to be tried under Section 420 read with Section 511, Indian Penal Code and also Section 23(c) of the Petroleum Act, 1934.

3. The learned Magistrate after examining the accused persons discharged them on the ground that the act of the accused falls within the definition of 'preparation' and not 'attempt' and therefore no case was found to have been made out against them. A revision was filed against that order, but the learned Judge also endorsed the view of the learned Magistrate and dismissed the revision application. It is in this manner that this second revision has been filed before this Court by the State.

4. The facts as mentioned above have not been disputed by learned counsel appearing on behalf of the accused persons. The contention of the learned Deputy Government Advocate is that the circumstances of this case go to showthat an attempt to commit an offence was complete no sooner the kerosene oil was mixed with the diesel in the tank because the accused had already extended an invitation to Prahlad Ram to come to their pump next morning to buy diesel from them. Learned counsel appearing on behalf of the accused, however, urged that an attempt to commit an offence can be made only when the preparation is complete and therefore simply by asking Prahlad Ram to come to the tank next morning to purchase diesel cannot be said to be an attempt unless the preparation to commit an offence was complete when the invitation was extended to Prahlad Ram by the accused for making a purchase of diesel from them next morning.

5. These rival contentions of learned counsel for the parties raise an import* ant question whether in the circumstances of this case can it be said that by extending invitation to Prahlad Ram, the accused attempted to commit an offence though by that time kerosene oil was not mixed with the diesel in the tank.

6. Before a crime is committed, the criminal has to undergo the three stages (1) intention to commit a crime, (2) preparation to commit that crime, and (3) attempt to commit that crime, and when the attempt is successful the crime is complete. There is a difference between the preparation to commit a crime and an attempt to commit a crime. The preparation consists in devising or arranging means or measures necessary for the commission of the offence while the attempt is doing of certain act towards the commission of that offence. The Supreme Court in Abhayanand Mishra v. State of Bihar, AIR 1961 SC 1698 has held that

'there is a thin line between the preparation for and an attempt to commit an offence. Undoubtedly, a culprit first intends to commit the offence, then makes preparation for committing it and thereafter attempts to commit the offence. If the attempt succeeds, then he is said to have committed the offence if it fails due to reasons beyond his control, he is said to have attempted to commit the offence. Attempt to commit an offence, therefore can be said to begin when the preparations are complete and the culprit commences to do something with the

intention of committing the offence and which is a step towards the commission of the offence. The moment he commences to do an act with the necessary intention, he commences his attempt to commit the offence.'

7. Learned counsel for the accused opposite parties urged that in this case an invitation was given to Prahlad Ram to come to the tank next morning to purchase the diesel before the keroseneoil was actually mixed by the accused persons with the diesel, and therefore, it cannot be said that by extending that invitation an attempt was made by the culprits to commit an offence because at that time the diesel was not available in the tank and it was possible that the culprits might have received a fresh supply of diesel and if Prahlad Ram had gone next morning to the tank, they would have supplied him pure diesel or refused to make a supply. In other words, he argued that attempt cannot start before the preparation was complete and since preparation was complete only after mixing the oil with the diesel extending of an invitation to Prahlad Ram cannot be said to be an act which may be termed as an attempt to commit an offence.

Whether any given act or series of acts amounted to an attempt which the law would take notice of or merely such act or series of acts fall within the ambit of preparation is a question of fact in each case and as is observed in the Matter of the petition of R. Maccrea, (1893) ILR 15 All 173, Section 511 of the Indian Penal Code was not meant to cover only the penultimate act towards completion of an offence and not acts precedent, if those acts are done in the course of the attempt to commit the offence, and are done with the intent to commit it and done towards its commission. Knox J. in the above referred Allahabad case said at p. 179:

'Many offences can easily be conceived where, with all necessary preparations made, a long interval will still elapse between the hour when the attempt to commit the offence commences and the hour when it is completed. The offence of cheating and inducing delivery is an offence in point. The time that may elapse between the moment when the preparations made for committing the fraud are brought to bear upon the mind of the person to be deceived and the moment when he yields to the deception practised upon him may be a very considerable interval of time. There may be the interposition of inquiries and other acts upon his part.

The acts whereby those preparations may be brought to bear upon the mind may be several in point of number, and yet the first act after preparation completed will, if criminal in itself, be, beyond all doubt, equally an attempt with the ninety and ninth act in the series.'

Blair J. at p. 181 said like this:

'It seems to me that that section used the word 'attempt' in a very large sense, it seems to imply that such an attempt may be made up of a series of acts, and that any one of those acts done towards the commission of the offence, that is, conducive to its commission is itselfpunishable, and, though the act does not use the words, it can mean nothing but punishable as an attempt. It does not say that the last act which would form the final part of an attempt in the larger sense is the only act punishable under the section. It says expressly that whosoever in such attempt, obviously using the word in the larger sense, does any act, & c.. shall be punishable. The term 'any act' excludes the notion that the final act short of actual commission is alone punishable.'

8. In the instant case, it is true that at the time when Prahlad Ram was asked by accused Shantilal to come next day to take the delivery of diesel, the tank was empty and it is not the case of the accused persons that they had extended that invitation to Prahlad Ram In a hope to Ret a fresh supply of the diesel by the next morning. After inviting Prahlad Ram to purchase diesel from his tank that the kerosene oil was mixed with the diesel oil which was in the tank but before Prahlad Ram could go to purchase that admixture of diesel and kerosene oil which was prepared by the accused persons in the night their action was detected by Prahlad Ram himself and he raised a hue and cry about it. It is also true that by the time Prahlad Ram was asked to make a purchase of diesel oil from the tank next morning, the preparation for the commission of an offence by mixing kerosene oil was not complete but all these facts go to show that the accused persons had mentally prepared themselves to commit that offence by mixing the kerosene oil with the diesel at a convenient time and that is why they completed that work at the night time when they would not be detected by others though they had mentally prepared themselves to do that job at the time when invitation was being

extended to Prahlad Ram to purchase diesel from the tank which really did not contain that much of diesel which was required by Prahlad Ram. In my opinion, the attempt to commit an offence in this case is made up of a series of acts and the first of those acts is to invite Prahlad Ram to come next morning to take the delivery of the diesel oil from the tank which did not contain it. The second of the acts is the mixing of kerosene oil with the diesel in order to deliver the admixture to Prahlad Ram next morning. If without inviting Prahlad Ram to take the delivery of the diesel from that pump Shantilal and other accused persons had mixed the kerosene oil with the diesel in the tank, then this act of the accused persons of mixing kerosene oil would not have gone beyond making a preparation for the commission of an offence, but since the invitation had been issued toPrahlad Ram with alleged criminal intention to deliver the admixture, it changes the complexion of the case and in these circumstances it is difficult for me to accept the contention of Mr. Jindal that the act of Shantilal of inviting Prahlad Ram to take the delivery of the diesel from the pump which undoubtedly did not contain sufficient quantity of diesel was also one in the series of the acts which went to complete the preparation. The act of extending invitation to Prahlad Ram to take the diesel from the pump cannot in any circumstance, be said to fall within the term 'preparation for the commission of the offence.' It is no doubt true that in this particular case the preparation was actually completed by mixing the kerosene oil at the night time after the invitation was already given to Prahlad Ram but this fact hardly makes any difference. It is not necessary that in every case the preparation must precede the penultimate act in the series of the acts which go to constitute the offence which falls within the mischief of the term 'attempt to commit the offence.' If Shantilal had mentally prepared himself before extending an invitation to Prahlad Ram to deliver the admixture of diesel and kerosene, then in that event the act of inviting Prahlad Ram before mixing kerosene with whatever little quantity of diesel was left in the pump would certainly go beyond the stage of preparation for the commission of an offence. When a person intends to commit a particular offence and then he conducts himself in such a manner which clearly indicates his desire to translate that intention into action, and in pursuance of such an intention if he does something which may help him to accomplish that desire, then it can safely be held that he committed an offence of attempt to commit a particular offence. It

is not necessary that the act which falls under the definition of an attempt should in all circumstances be a penultimate act towards the commission of that offence. That act may fall at any stage during the series of acts which go to constitute an offence under Section 511 of the Indian Penal Code. In the present case, it can safely be said on the basis of the circumstances found during the investigation that Shantilal had intended to deliver an admixture of oil and diesel to Prahlad Ram at the time when he extended the invitation to Prahlad Ram to take the delivery of the diesel from his pump which did not contain sufficient quantity to meet the demand of Prahlad Ram. In these circumstances, the act of the accused persons of mixing kerosene oil in the night with a view to deliver the admixture to Prahlad Ram in pursuance of the invitation alreadyextended completes the requirements of Section 511, I. P. C. Therefore, with that intention and with that mental equipment the extension of invitation to Prahlad Ram to make a purchase of diesel from the tank was an attempt to commit an offence though the preparation to commit that offence was actually completed after the invitation was extended. The Supreme Court has laid down in AIR 1961 SC 1698 that it is not the penultimate act towards the commission of the offence which may be made punishable but that act may be any act during the course of the series of acts that go to constitute an offence under Section 511 of the Indian Penal Code. In my opinion, the act of Shantilal inviting Prahlad Ram to purchase diesel from his pump which did not contain sufficient quantity to fulfil the demand of Prahlad Ram and the act of the other accused persons of mixing kerosene with the diesel to deliver that admixture to Prahlad Ram do attract the application of Section 511 of the Indian Penal Code in which the word 'attempt' has been used in a larger sense so as to include any one or the series of acts committed by the accused persons which may go to complete the offence as described in Section 511, Indian Penal Code.

9. In this view of the matter, I aminclined to accept the revision of theState and send the case back to the trialcourt for further proceedings. The revision is accordingly allowed.

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