

In Re: L.N. Mukerjee and ors.

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Court : Chennai

Decided On : Apr-14-1960

Reported in : AIR1961Mad126; (1960)2MLJ340

Judge : Ramaswami and ;Anantanarayanan, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 177 and 180

Appeal No. : Criminal Misc. Petition Nos. 246 and 274 of 1960

Appellant : In Re: L.N. Mukerjee and ors.

Advocate for Def. : Adv. General and ;Public Prosecutor

Advocate for Pet/Ap. : G. Gopalaswami, ;A.S. Sivakaminathan and ;Lakshmi Panikar, Advs.

Disposition : Petitions dismissed

Judgement :

1.Our learned brother was not inclined to accept the view of the law in these decisions, and preferred instead the decision of a single Judge of the Allahabad High Court in Bachan Pande v. State . which took a view Opposite to the Madras eases. In the context of the importance of this question and the conflict of authority.: be made , a reference for placing the papers before a Bench in consequence of which these petitions are now before us.

2. The matter has now been extensively argued with citation of authorities, both by the learned Advocate General and the learned Public Prosecutor for the State, and the learned Counsel for the petitioners (Sri G. Gopalaswami). We are indebted to the arguments of the learned Counsel for the elucidation and also for bringing to our notice the available and relevant authorities.

3. The argument of the learned Advocate General has really two limbs or branches, but they are inter-related and not distinct. It could even be said that one branch leads to the other. The learned Advocate General presses the thesis that the court of Sessions, Madras, would certainly have jurisdiction to try both the offences of criminal conspiracy committed in Calcutta, and the further offences committed in Madras in pursuance of that conspiracy at a single trial held at Madras.

According to the learned Advocate General the earlier decision of this Court in AIR 1936 Mad 317, was, not correctly decided, as it totally overlooked Section 180, Cr.P.C. which applies to the facts. Admittedly, the other decision in AIR 1929 Mad 839, is not so directly relevant upon the question of the jurisdiction of the court of Session, Madras to try the accused for both sets of offences here. The learned Advocate General would develop his argument thus: Section 177 Cr.P.C. which is the ordinary rule as to jurisdiction, itself adopts the English Common Law rule as to venue, which is a broad and fundamental principle.

But that principle is subject to exceptions, whether statutory or springing from interpretation by case law. It is for this reason that Section 177 Cr.P.C. itself significantly declares that.

Every offence shall ordinarily be enquired into and tried by a court within the local limits of whose jurisdiction it was committed.

This common law principle as to venue will be found stated in Halsbury's Laws of England, 3rd Edn. Vol. 10, Section 595 page 325. But, as will be clear from Section 607 (page 329) of the same authority, criminal conspiracy itself has always been recognised as an exception with regard to the question of venue. The proposition on this matter is of some Importance and is set forth in Halsbury as

follows:

Conspiracy may be tried in the place where the conspirators agreed to do the wrongful act which is the object of the conspiracy, but as the place of agreement is often unknown conspiracy is generally a matter of inference deduced from criminal acts of the accused persons which are done in pursuance of any criminal purpose, and are often not confined to one place; a charge of conspiracy may consequently be laid at common law in any country where one of these criminal acts is committed.

This is upon the authority of a very early English case *R.v. Brisao*, (1803) 4 East 164. We might also refer here to Archbold's "Criminal Pleading Evidence and Practice" 33rd Edn. pages 1480-1481. The learned author therein points out that the venue may be laid in any country in which the accused persons did an act in furtherance of the common objects of the conspiracy. The principle could also relate to the conspiracy alleged to have been entered into on the high seas; *R.v. Kohn*, (1864) 4 F and F 68. Also see Russell on "Crime" Vol. 1, 11th Edn. p. 679.

4. The next step of the argument is that the criminal conspiracy and the acts or offences committed in pursuance of that conspiracy, form a single transaction. This was laid down in a Bench decision of this Court (*Sundaram Chetti and Pakenham Walsh JJ.*) in *Venkata Hanumantha Rao v. Emperor* ILR 57 Mad 545 : AIR 1934 Mad 88. It was confirmed by the Privy Council in *Babulal Chaukhani v. Emperor* 1938 All LJ 382 : AIR 1938 PC 130. Hence it is contended that, with reference to Section 235(1) Cr.P.C. also to be read with Section 239(a) Cr.P.C. the accused could be tried at a single trial for both the offences of the criminal conspiracy hatched at Calcutta in the present case, and the further acts of cheating etc., in pursuance of that conspiracy alleged to have been committed within the jurisdiction of the court of Session, Madras. This is the first branch or limb, of the argument.

5. But this argument has been met by the learned Counsel for the petitioners (*Sri Gopala-swami*) in the following form, which accepts the substance of the contentions set forth above, but nevertheless attempts a valid distinction. Learned Counsel urges that the point is not that there could be not a single trial in this

respect, but that Section 235 Cr.P.C. and Section 239 Cr P. C both occur in Ch. XIX of the Code dealing with the "charge" which is clearly subject to and governed by Section 177 Cr.P.C. laying down the broad rule as to jurisdiction.

In other words, the court of Session, Madras, could no doubt try the present petitioners both for the offence of criminal conspiracy and the further offences committed in pursuance of the conspiracy at a single trial. But it is essential that the court should have first jurisdiction to try both sets of offences, and it lacks jurisdiction to try the offence of criminal conspiracy, which occurred at Calcutta. The matter was put in this form by Das Gupta, C.J. in *Jiban Banerjee v. State*. Incidentally, we may state that this is also one of the decisions referred to by our learned brother Somasundaram, J.

But it is not really in point for It does not bear on the question whether the court which has jurisdiction to try the offences committed in pursuance of a criminal conspiracy which occurred elsewhere cannot also try the accused for the criminal conspiracy at the same trial. It is authority for the converse proposition that the court which has jurisdiction in try the offence of Criminal conspiracy, has no jurisdiction to try offences committed in pursuance of that conspiracy, outside the local limits of the jurisdiction of that court.

We are not now troubled with this converse proposition. But, in the course of the decision, Das Gupta, C.J. observed:

The correct position in law, in my opinion, is that the provisions as regards joint trial as provided in Sections 235 and 239 will have application only if the court concerned has jurisdiction under other provisions of law to try the offences sought to be tried together.

This is the gist of the argument, as urged by Sri Gopalaswami for the petitioners.

The learned Advocate-General would counter this argument by accepting the qualified form in which the proposition is stated, and by emphasising that Section 180, Cr.P.C. is the complete answer to the argument. Hence we are immediately led to the consideration whether Section 180, Cr.P.C. would not clothe the Madras

court with jurisdiction to try both the offences committed in pursuance of criminal conspiracy within its local limits, and the offence of Criminal conspiracy which occurred at Calcutta. It is in this sense that the first branch of the argument of the learned Advocate General leads to the second branch, based on Section 180, Cr.P.C.

6. This depends upon a construction of the precise language and the content of meaning of Section 180, Cr.P.C. particularly in the light of the illustrations to that section. I make no apology therefore, for reproducing the section verbatim here:

When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first mentioned offence may be enquired into and tried by a court within the local limits of whose jurisdiction either act was done.

We shall first analyse the section itself, and the manner in which the clauses are related, before proceeding to the case law upon this aspect. Clearly, the section contemplates two offences, of which one category is designated as "the first mentioned offence". According to the learned Advocate General, the illustrations are sufficient to show that the relation between the 'first mentioned offence' and other offences referred to in the section, is a logical relationship, not a chronological sequence.

In other words, either offence may be anterior in point of time. But the principle of the section is this. The act must be an offence by reason of its relation to any other act which is also an offence. For the purpose of this analysis, we may omit the clause "or which would be an offence if the doer were capable of committing the offence," which does not concern us on the present facts. Where such an act which is an offence by reason of its relation to any other act which is also an offence is committed, and the other act which is an offence is also committed, a charge of the 'first mentioned offence' may be tried by the court within the local limits of whose jurisdiction either act was done.

The illustrations make the meaning dear. Where an abetment of an offence occurs, and the offence itself is also committed, the charge of abetment may be

tried either by the court which has territorial jurisdiction to try that charge, or by the court which has similar jurisdiction to try the charge of commission of the offence abtten, Similarly, where theft occurs, and also the offence of receiving or retaining stolen goods with guilty knowledge, the charge under Section 411, I.P.C. which is an offence only by reason of its relation to some other act which is an offence (theft), may be tried by either court of territorial jurisdiction in the same sense.

The third illustration similarly relates to the offences of kidnapping and wrongful concealment of the person known to have been kidnapped. Upon the very same logic where the offence of criminal conspiracy occurs, which is an offence solely by reason of its relation to some other act which is an offence and an offence in pursuance of criminal conspiracy is also committed the offence of criminal conspiracy which is the 'first mentioned offence' within the meaning of Section 180, C.P.C., may be tried either at Calcutta where the offence itself occurred, or at Madras where the offence or offences in pursuance of the conspiracy occurred. This is the substance of the interpretation of the learned Advocate General.

7. As we shall see later, the opposite view has been adopted upon grounds which far from being compelling, do not even seem to be valid. The opposite view was adopted in *Emperor v. Persumal Gerimal* AIR 1938 Sind 108, mainly upon the ground that

conspiracy is a substantive offence in itself. It is not given in one of the illustrations to Section 180, Cr.P.C. as one of the offences which is an offence because of its relation to another offence." We are quite unable to see why the fact that conspiracy is a substantive offence in itself should take the offence of criminal conspiracy out of the ambit of Section 180. Cr.P.C. Undoubtedly, the offence of criminal conspiracy is complete when the conspiracy is hatched and there is an agreement but it is equally indisputable that criminal conspiracy is in the strict sense an offence by reason of its relation to any other act which is also an offence.

In the same manner, abetment of an offence is within this category (illustration A) and it may likewise be a completed offence even before the offence abetted is committed. The second ground given in the decision, which we find also stated in a commentary to Section 177, Cr.P.C in Vol. 1 of Ramanatha Iyer's Criminal

Procedure Code, 3rd Edn. overlooks the significant fact pointed out by the learned Public Prosecutor. Section 180, Cr.P.C. and the illustrations thereto appear to have been foamed, prior to the enactment of the sections relating to criminal conspiracy as part of the Indian Penal Code.

8. Turning to the decisions, we find that K.S. Menon, J. does not give any grounds for his view in AIR 1936 Mad 317. He merely pointed out that the offence of conspiracy was complete when the parties entered into an agreement to commit the further acts of cheating which is an unassailable proposition. He then observed that the court would not be clodied with jurisdiction merely because criminal conspiracy and the further acts of cheating might form part of the same transaction.

But the learned Judge totally overlooked the provisions of Section 180 Cr.P.C. which would specifically clothe the court trying the further offence of cheating with jurisdiction to try the accused for the offence of criminal conspiracy also, if the terms of the section applied. In the single Judge who gave that decision specifically observed that the Madras case in AIR 1936 Mad 317, did not consider Section 180 Cr.P.C. and the learned Judge also dissented from AIR 1938 Sind 108.

The matter was considered more fully and by an analysis of the term of Section 180 Cr.P.C. by Raman Nayar, J. in Banwarilal v. Union of India . The learned Judge was unable to follow the Madras and Sind decisions referred to and was of the same view as that expressed in AIR 1957 All 130. He considered that the offence of criminal conspiracy was very similar to the offence of abetment, for the purpose of Section 180 Cr.P.C. and that illustration A to that section showed that the court which has jurisdiction to try the further offences committed in pursuance of the conspiracy could also try the charge of criminal conspiracy itself. Once this jurisdiction is so invoked it cannot be doubted that the acts form together one transaction, so that a single trial would be competent.

9. The argument of Sri Gopalaswami for the petitioners upon this aspect is a somewhat subtle one. Learned Counsel urged that what Section 180 Cr.P.C. really contemplates is that an act must be an offence strictly by reason of its relation to

some 'other act which is also an offence', which does not mean an act in mere contemplation or which is juristically defined as an offence, but an act which actually occurs or has occurred. Upon this interpretation, therefore, learned Counsel would argue that the offence of criminal conspiracy is excluded, because the offence is complete by the hatching of the conspiracy, and does not require a further act or an offence, committed in pursuance of it.

But the same argument would apply to the offence of abetment (Illustration A) and this is precisely what Raman Navar T. pointed out and stressed in . In other words, the offences of

criminal conspiracy or abetment would" be relevant to the scope of Section 180 Cr.P.C. only where any further offence is committed in pursuance of the conspiracy, or where the offence abetted is also committed. We agree with the Interpretation of the learned Advocate General that the first part of Section 180 Cr.P.C. is so worded as to imply that the "first mentioned offence" really refers to an act which is an offence by reason of its relation to any other act which may be contemplated, and which is juristically defined as an offence.

In any event, upon the logic which would specifically include both abetment, which may be completed offence by itself, and the offence abetted (Illustration A) within the scope of the section, it must certainly be held that both the offence of criminal conspiracy and the offence committed in pursuance of it would properly fall within its ambit. Since the "first mentioned offence" can refer to the charge of criminal conspiracy alone, the court which has jurisdiction to try the offence committed in pursuance of it, can also try the offender or offenders upon the charge of conspiracy.

We would hence hold that the prior decisions of this Court in AIR 1929 Mad 839 (only to the extent to which this decision may be relevant upon this aspect) and AIR 1936 Mad 317, have to be differed from. It follows that the petitions to quash the commitments are liable to be dismissed, and we accordingly direct that they be dismissed.