

**Sital Singh Vs. Emperor**

**Sital Singh Vs. Emperor**

**SooperKanoon Citation :** [sooperkanoon.com/856621](http://sooperkanoon.com/856621)

**Court :** Kolkata

**Decided On :** Aug-26-1918

**Reported in :** (1919)ILR46Cal700

**Judge :** Teunon and ;Cuming, JJ.

**Appellant :** Sital Singh

**Respondent :** Emperor

**Judgement :**

**Teunon, J.**

1. I respectfully submit that the class of cases of illegal pardon and illegal withdrawal was in express terms distinguished (reads passage on p. 724). In fact the true question in such class of cases was stated, at page 724, to be 'whether several persons having been placed on their trial together, the proceedings as against one of them, have come to an end so as to remove the impediment to his being examined as a witness.' This is just my present contention and I rely on the passage which clearly supports my contention. This ruling was cited by me on the application of the Rule, and Richardson J., who was a member of the Court which decided it, also was a member of the Bench which granted this Rule, showing that in his opinion it did not cover the present matter. If the ruling applies here, it is in conflict with Paban Sing v. Emperor (1906) 10 C.W.N. 847 and Banu Singh v. Emperor (1906) I.L.R. 33 Calc. 1353, and the point should be referred to a Full

Bench. Though the last two cases related to illegal pardon, there is no distinction in principle between them and the present case. As to the next ground of the rule, the evidence of cocaine and gambling cases is excluded by Section 54 of the Evidence Act. It is also excluded by Section 10 as relating to acts done before the existence of the conspiracy. Further Sital, having been acquitted on appeal, must be deemed innocent, as laid down in *Rex v. Plummer* [1902] 2 K.B. 339 which has been followed in several Calcutta decisions, and hence such evidence was inadmissible against him on this ground also. The prosecution case or suggestion that the cocaine and gambling business became too risky, and led to the hatching of the present conspiracy, does not render evidence of the former matters admissible. The connection is too remote in time and there is a great difference in the nature of the two transactions. The suggestion was a mere pretext to let in evidence of bad character, and to raise an atmosphere of prejudice against the petitioners. The cocaine dens were not situated in the centres of the conspiracy, as found by the Magistrate, except one--viz, Bhujan Pandit's house, where, however, the scheme was only proposed. The conspiracy was matured in the house of Moti's mistress and carried on in other places. Besides the members of the conspiracy were not all connected with the dens. Except as being calculated to create prejudice, this evidence has no value. The third ground of the rule does not affect Sital.

2. [Crim. Rev. No. 605.] Mr. Camell (with him Babu Panna Lal Chatterjee), for Ujagir. I adopt the arguments on the first two grounds of the Rule. Ujagir's case is quite different to that of the rest: he was not implicated in any overt act. The evidence of his association with the members of the conspiracy is not conclusive.

3. [Crim. Rev. No. 606.] Babu Satindra Nath Mukerjee and Maulvi A.K. Fazlul Huq, for Ganesh Kalwar and four others.

4. [Crim. Rev. No. 607.] Babu Manmatha Nath Mukerjee for Jaiju, Mahadeo and two others. I take the same objections as to Ramraj and the evidence of bad character. As to the third ground, Ex. 32 is not a confessional statement, and hence not admissible under Section 30 of the Evidence Act, nor can it come under Section 10, as it was made after arrest: see *Emperor v. Abani Bhushan*

Chuckerbutty (1910) I.L.R. 38 Calc. 169 and Pulin Behary Das v. King-Emperor (1912) 15 C.L.J. 517.

5. [Crim. Rev. No. 608.] Babu Panna Lal Chatterjee, for Arjun Misser and nine others.

6. The Deputy Legal Remembrancer (Mr. Orr), for the Crown. I rely on Akhoy Kumar Mookerjee v. Emperor (1917) I.L.R. 45 Calc. 720. The evidence of the cocaine and gambling cases was admissible as showing how they became first associated, and that they met at the dens in connection with the present conspiracy. Even if this evidence be excluded, there is other evidence, to support all the convictions. Ex. 32 was not relied on by the Magistrate or the Judge, and there is other evidence of the guilt of the petitioners.

### **Teunon and Cuming, JJ.**

7. In these five connected cases the twenty petitioners have been convicted under Section 420 read with Section 120B of the Indian Penal Code. In the Rules issued at their instance the questions raised are three, namely, (i) whether the evidence of an accomplice of the name of Ramraj was properly admitted, (ii) whether evidence regarding certain cocaine and gambling dens should have been admitted, and (iii) whether the statement made before trial but after arrest by a co-accused of the name of Baijnath was admissible in evidence.

8. It appears that the petitioners, the accomplice Ramraj, and others were placed on trial together on a charge of the offence of which the petitioners have been convicted. After the case had been opened, on the 14th of June 1917, the pleader appearing for the Crown, one Nagendra Nath Banerjee, with the consent of the Court, withdrew from the prosecution of Ramraj who was thereupon discharged. He was thereafter examined as a witness.

9. Nagendra Nath Banerjee was not a public prosecutor appointed by the Governor-General in Council or the Local Government, though he was in fact acting under the directions of the public prosecutor duly appointed for the district. The contention then is that he was not competent to withdraw from the prosecution

whether under Section 494 or Section 495 (2) and that the position of Ramraj as a co-accused remained unaltered.

10. We need not, however, consider the question of the authority of the pleader appearing for the Crown. With him was a Court sub-inspector who joined with the pleader in applying for the permission of the Court and in withdrawing from the prosecution. That he is a public prosecutor appointed in the manner specified in Section 494 is conceded, but it is suggested that his signature to the written application is a subsequent addition. For this suggestion there is in effect no foundation, and against it we have the statement of the trying Magistrate.

11. But this also is immaterial. Whether the case against Ramraj was properly withdrawn or improperly withdrawn, the fact remains that the Magistrate, by discharging him, separated his case from the case of his co-accused. He ceased to be on trial with his accomplices and he, therefore, became a competent witness. As this question was fully discussed in the decision of *Akhoy Kumar Mookerjee v. Emperor* (1917) I.L.R. 45 Calc. 720, we need not enter into it more fully here.

12. The second contention is that the evidence given regarding gambling and cocaine dens and the raids thereupon should have been regarded as evidence of bad character, and, therefore, as inadmissible under Section 54 of the Evidence Act.

13. But the case being that the accused or some of them were first thrown together by their frequenting or running such dens, and that for the purpose of their criminal organisation, they continued to meet at such places, their evidence, though doubtless affording indications of bad character, could not be excluded. So also the evidence of the excise sub-inspector as to his raids upon these places, though given in too great detail, leads up to the admissions said to have been made to him.

14. Lastly, the statement made by the co-accused Baijnath, on the 1st of January, which we have read, is not a confession. It was no doubt admissible as against Baijnath himself but not under Section 30 of the Evidence Act against the others. On the authority of the decisions of *Emperor v. Abani Bhushan Chuckerbutty*

(1910) I.L.R. 38 Calc. 169 and Putin Behary Das v. King-Emperor (1912) 15 C.L.J. 517, it was also not admissible under Section 10. No doubt, therefore, the Courts below erred in using this statement against any one other than Baijnath. We find that in the case of certain of the petitioners reference was made to the statement, but no stress was laid upon it and the error, therefore, does not vitiate the result. For the reasons given we discharge these Rules.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**