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Court : Kolkata

Decided On : Jul-08-1924

Reported in : (1925)ILR52Cal151

Judge : Newbould and ;Mukerji, JJ.

Appellant : Hemchandra Mukherjee

Respondent : Emperor

Judgement :

Mukerji, J.

1. This Rule has been is sued to show cause why the conviction of, and the sentence passed upon, the petitioners should not be set aside on the first four grounds stated in the petition.
2. The petitioners have been convicted under Section 213 of the Indian Penal Code, and each of them has been sentenced to undergo rigorous imprisonment for two months. The grounds referred to above raise the question whether, for a conviction under Section 213 of the Penal Code, it is necessary to establish that there has been a concealment of an offence, or the screening of a person from legal punishment, or the abstention from proceeding against a person for the purpose of bringing him to legal punishment.

3. The question is one not altogether free from difficulty, and may be investigated from several points of view; moreover, as far as can be ascertained, it is not covered by any authority.

4. Section 213 occurs in Chapter XI, which is headed 'Of false evidence and offences against public justice' An examination of the different sections to be found in this Chapter shows that the intention of the Legislature was to punish acts, including of course omissions, which do, or have a tendency to, or are likely to, affect public justice. Sections 191 to 200 deal with false evidence, declarations or certificates which admittedly come within the aforesaid category. Section 201 deals with the causing of disappearance of evidence of an offence, or giving false information to screen an offender. Section 202 relates to the intentional omission to give information of an offence by a person bound to give information thereof. Section 203 relates to the giving of false information respecting an offence which has been committed. Section 204 deals with the destruction of a document to prevent its production as evidence. Section 205 deals with false personation in relation to a suit or a criminal prosecution. Sections 206 to 211 relate to offences which on the face of them affect the proper administration of justice. Section 211 deals with false charge of an offence made with an intent to injure. Sections 212, 216, 216A and 216B relate to the harbouring of offenders. Sections 217 to 223 deal with acts or omission on the part of public servants which affect public justice. Sections 224 to 225B relate to resistance, obstruction or omission in the matter of lawful apprehension. Section 226 deals with unlawful return from transportation. Section, 227 refers to violation of a condition of remission punishment. Section 228 deals with intentional insult or interruption to a public servant sitting in & judicial proceeding. Section 229 relates to the personation of a juror or assessor. All these sections, therefore, deal with what may be deemed to be offences against public justice. Under Section 215 the taking, or agreeing or consenting to take, a gratification under pretence or on account of helping any person to recover moveable property, of which he has been deprived by an offence under the Code, is not punishable if the person taking, agreeing or consenting, as aforesaid, has used all means in his power to cause the offender to be apprehended and convicted of the offence. However immoral the conduct of the person in question may be, and it certainly is highly immoral and reprehensible if he does so under a

pretence of helping, it is not punishable if public justice has not been affected. Can it be imagined that the Legislature intended to lay down a different standard of morality when enacting Section 213, and to make punishable the mere acceptance or attempt to obtain, or agreement to obtain, gratification, or restitution of property, where in fact there has been no concealment or screening or abstention such a is referred to in the section. Such conduct may in some cases not even amount to an infringement of the code of morality, and it is absurd to suppose that the Legislature intended to punish it. It is obvious that only when public justice has been affected, that is to say there has been a concealment or screening or abstention, and as a consideration for the same, gratification or restitution has been accepted, or attempted to be obtained or agreed to be accepted, that the penal law takes notice of the conduct and makes it punishable. Similar considerations apply to Section 214, which makes the conduct of the person who gives, or causes or offers, or agrees to give or cause, the gratification or restoration. The position of the section in Chapter XI lends considerable assistance in interpreting it. When there has been no concealing, screening or abstention, no act or omission has been done affecting Public Justice; the mere acceptance of, or attempt to obtain, or agreement to-accept, the gratification or restitution is not an offence against property. If the accused has no intention to fulfil his part of the transaction, it would amount to an offence of cheating; if he has the intention, but does not carry it out, he does not commit any offence-in law, however immoral his conduct may be.

5. A very strong argument in support of this view is afforded by the language of the section itself, and a comparison of it with the language of some of the other sections of the Code. Section 213 says 'in consideration of his concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment,' and not in consideration of his agreeing or promising to conceal, etc. That the Legislature was not unaware of the distinction between the two positions is not imaginable, and is further evident from the language used in the first part of the section itself. Similar language has been used in Section 214; while in Section 215 the words are 'under pretence or on account of helping, etc.' Upon the plain words of Section 213, therefore, a promise or agreement or pretence of concealing

or screening is not punishable.

6. To adopt the contrary view will lead to certain anomalies. On a reference to the first part of Section 212 it will appear that the harbouring or concealment of an offender, if the offence is punishable with death, is punishable with rigorous imprisonment for five years; while an offence under Section 213 or 214 in respect of a similar offence or offender is punishable with rigorous imprisonment for seven years. This undoubtedly suggests that Sections 213 and 214 contemplate graver offences than Section 212. Can it be conceived on what principle the offence of an accused who actually harbours or conceals a murderer with the intention of screening him from legal punishment would be considered less heinous than that of one who does nothing in the shape of screening or concealing but merely agrees to accept a gratification promising to do so? Then again, as observed above, under Section 215 even the taking of a gratification under pretence of helping a person to recover moveable property of which he has been deprived by an offence under the Code is not punishable under the section if the taker has used all means in his power to cause the offender to be apprehended and convicted of the offence, and, when punishable, is only so with rigorous imprisonment for two years.

7. In my opinion the offence constituted by Section 213 or 214 consists in the corrupt motive which Ls brought into play as much as in the delay to criminal justice. It consists in the compounding of an offence by some agreement not to bring the criminal to justice, and these sections intend to punish those who make a profit out of a public wrong. If the facts found in the case prove that there has been an actual compounding of an offence, and there is super-added to it an acceptance of, or attempt to obtain, or agreement to accept, a gratification or restitution as a consideration for the compounding, the offence is made out. Actual concealment or screening even for a short time may be sufficient, but there must be some concealment or screening actually proved. If such is proved, and there is further the acceptance of, or attempt to obtain, or agreement to accept the gratification or restitution as a consideration for the same, the offence is complete. The fact that the very same person subsequently did prosecute even to conviction would not purge the offence.

8. The precise question which we have to deal with in this case does not seem to have been raised in any of the reported cases, at least in none of those that have been cited before us. There are, however, some observations in some of the reported judgments which proceed on the assumption that there must be either concealment or screening or at any rate an attempt at concealment or screening. The latter expression to my mind conveys the idea of an ineffective concealing or screening, or at any rate some overt act or omission done towards concealment or screening; and where nothing has been done, there is obviously no attempt. In the case of *Girish Myte v. Queen-Empress* (1896) I.L.R. 23 Cal. 420 it was observed that Section 213 would seem to be applicable only when it is proved that the person 'screened' or 'attempted to be screened' from legal punishment has been guilty of an offence. In the case of *Queen-Empress v. Saminatha* (1890) I. L. R. 14 Mad. 400., which was a case under Section 214 of the Penal Code, it was observed that the words 'concealing an offence' and 'screening any person from legal punishment for any offence' appear to pre-suppose the actual commission of an offence or the guilt of the person 'screened' from punishment. In *Emperor v. Sanalal Lallubhai* (1913) I. L. R. 37 Bom. 658 in dealing with a case under Section 214 of the Penal Code, it was observed that the only thing which is made punishable is 'the screening of an offence,' and if it cannot be made to appear that an offence has been committed, then there has been no screening of the offence. These cases, it is true, do not deal with the precise point now raised before us; but they, to my mind, seem to proceed upon the assumption that what is made punishable is the concealment of the offence or the screening of the offender; and if neither of these elements is present, the offence, to my mind, is not established. I am unable to agree in the view taken by the Madras High Court in the case of *Re Karuppannen* (1882) 1 Weir 194., where the mere offer of a bribe to a Magistrate, by a person who has committed an offence, to let him go, has been held to be an offence under Section 214 of the Penal Code. The facts are not set out in the judgment and no reasons are given.

9. In the present case the learned Sessions Judge has found that the two accused had the intention of releasing Tara and Badal, but did not do so, as the matter had become public and the sum paid was not sufficient. It does not appear that anything was done by either of them which may be regarded even as an attempt

to conceal the offence or screen the offenders, and consequently their convictions under Section 213 of the Penal Code are entirely unjustified.

10. The Rule must, therefore, be made absolute and the convictions of and the sentences passed upon the petitioners set aside. The petitioners should now be discharged from bail.

Newbould J.

11. I agree.

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