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Bawa Harigir v. Assistant Custodian, Evacuee Property, Bhopal

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when it was pointed out to him that in *Rabia Bai* v. *The Custodian-General of Evacuee Property* (1), this Court has upheld the order of the Custodian refusing to confirm the transfer on the ground that the evacuee had effected it in bad faith.

The last contention of learned counsel is that he has been discriminated against by the Custodian in the matter of confirmation of the transaction. He said that prior to the sale of the land to him by Rehmatullah, the latter had sold a house to some nurses and that that sale was found to be for inadequate consideration but in spite of that it was confirmed by the Custodian while the sale in his favour, though found to be for an adequate consideration was not confirmed. We would repeat that the order of the Custodian is a judicial order and merely because he may have gone wrong in dealing with one case we cannot hold that the petitioner has been discriminated against. The petition is wholly without basis and is accordingly dismissed without costs.

Petition dismissed.

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March 8.

THE STATE OF ANDHRA PRADESH

v.

KANDIMALLA SUBBAIAH AND ANOTHER

(B. P. SINHA, C. J., J. R. MUDHOLKAR and T. L. VENKATARAMA AYYAR, JJ.)

Criminal Trial—Accused persons charged with more than three offences in the course of the same transaction, if could be jointly tried—Large number of charges spread over long period—Framing of—Duty of Judge or Magistrate—Conspiracy if distinct from abetment—Special Judge appointed under Criminal Law Amendment Act, if could try offences under Criminal Procedure Code, at the same trial—Indian Penal Code, 1860 (Act XLV of 1860), ss. 109, 120B, 463—Code of Criminal Procedure, 1898 (Act V of 1898), ss. 234, 239—Criminal Law Amendment Act (46 of 1952), ss. 6, 7—Prevention of Corruption Act, 1947 (II of 1947), s. 5.

(1) [1961] 3 S.C.R. 448.

The High Court quashed the charges framed against the respondents. The charge sheet stated that accused 1 to 9 had committed offences under s. 120B of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act, 1947, and that accused No. 1 had committed offences under ss. 5(1)(c) and 5 (1)(d) of the Prevention of Corruption Act and ss. 463, 464 of the Indian Penal Code and accused 2 to 8 abetted all the offences and each of the accused in addition had committed offences under s. 420 of the Indian Penal Code. The High Court directed the Special Judge to frame fresh charges *inter alia* on the ground that charge No. 1 was an omnibus charge containing as many as 203 offences and that it was direct violation of ss. 234, 235 and 239 of the Code of Criminal Procedure. Further that the Special Judge had no jurisdiction to try the offences under s. 120B read with ss. 466, 467 and 420 of the Indian Penal Code because he was appointed a Special Judge under the Criminal Law Amendment Act, only for trying offences under Prevention of Corruption Act. The question was whether all the accused persons could be jointly tried in respect of all these offences.

Held, that when several persons had committed offences in the course of the same transaction, they could jointly be tried in respect of all those offences under s. 239 of the Code of Criminal Procedure and the limitation placed by s. 234 of the Code could not come into operation, but the charges should be suitably split up so that the accused persons would not be prejudiced in answering the charges and defending themselves.

Held, further, there is no analogy between s. 120B and s. 109 of the Indian Penal Code. There may be an element of abetment in a conspiracy which is an offence by itself but conspiracy is something more than abetment for which a person could separately be charged. Offences created under ss. 109 and 120B of the Indian Penal Code are quite distinct and there is no warrant for limiting the prosecution to only one element of conspiracy, that is, abetment when the allegation is that what a person did was something over and above that. If the alleged offences flow out of the conspiracy the appropriate form of charge would be a specific charge in respect of each of those offences along with the charge of conspiracy.

Held, further, that the introduction of a large number of charges spread over a long period was a question of propriety and it should be left to the Judge or the Magistrate trying the case to adopt the course which he thought to be appropriate in the facts and circumstances of the case.

Held, also, that while a special Judge appointed under s. 6 of the Criminal Law Amendment Act has jurisdiction to try cases under s. 5 of the Prevention of Corruption Act he can under s. 7(3) of the Criminal Law Amendment Act try other offences under the Criminal Procedure Code for which the accused can be charged at the same trial.

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The State of Andhra Pradesh v. Kandimalla Subbaiah & Another

In re Venkataramaiah, A.I.R. 1938 Mad. 130, disapproved.

S. Swaminatham v. *State of Madras*, A.I.R. 1957 S.C. 340, *R.* v. *Dawson*, [1960] 1 All E.R. 558 and *Durgadas Tulsiram Sood* v. *State*, I.L.R. 1954 Bom. 554, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 109 of 1960.

Appeal by special leave from the judgment and order dated April 18, 1958, of the Andhra Pradesh High Court in Criminal Misc. Petition No. 1421 of 1957.

H. J. Umrigar and *T. M. Sen*, for the appellant.

The respondent did not appear.

1961. March 8. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—The State of Andhra Pradesh has come up in appeal against the order passed in revision by the High Court of Andhra Pradesh quashing the charges framed against nine persons by Mr. Syed Firasath Hussain, Special Judge, Vijayawada. The revision petition was preferred by only two of those persons.

The accused no. 1 Parthasarathi, who was a lower division clerk in the Central Excise Circle Office at Narasaraopet was in charge of the TP 1 permit books (transport permit) intended for issue to Central Excise Officers for granting permits to persons applying *bona fide* for licences to transport tobacco. According to the prosecution two of those books containing 25 permit forms each were found missing from the aforesaid office. The allegation is that Parthasarathi sold those books to the remaining accused for a consideration of Rs. 400. It was found during the investigation that seven permit forms from out of these books had been used for transport of non-duty paid tobacco after blanks in those forms had been filled and the signatures of certain Central Excise Officers forged on them. Further, according to the prosecution, accused nos. 2 to 8 got authorisation letters prepared with the help of accused no. 9 by forging the signatures of the supposed consignors of the tobacco. With the help of

these documents the accused nos. 2 to 8 are said to have transported tobacco to the licensed premises of certain persons and received payments for the tobacco delivered to them.

The prosecution alleged that all this was done by all the accused by entering into a conspiracy, the object of which was to procure and utilise blank TP 1 forms, fill them in, forge the signatures of Central Excise Officers and use them as genuine for the purpose of transporting tobacco without paying duty upon it. The charge sheet states that the accused nos. 1 to 9 have committed the offence under s. 120 B, Indian Penal Code read with s. 5(2) of Prevention of Corruption Act, 1947 (II of 1947). It further states that the accused no. 1 had committed offences under s. 5(1)(c) and 5(1)(d) of Prevention of Corruption Act, 1947 as also offences under ss. 420, 463 and 464, Indian Penal Code. The accused nos. 2 to 8 are said to have abetted all these offences. Each of these accused is in addition said to have committed offences under s. 420, Indian Penal Code.

The Subordinate Judge, Vijayawada was appointed as Special Judge under the provisions of s. 6 of the Criminal Law Amendment Act, 1952 (II of 1952) to try offences under the Prevention of Corruption Act, 1947. He framed the following charges:

"CHARGE NO. 1.

That you, Accused 1 to 9 on or about 19-9-1953 to 5-11-53 agreed to do by illegal means to wit, A-1 being a public servant in the Central Excise Department dishonestly sold two blank T.P. 1 books for Rs. 350 to one late Jogayya and obtained pecuniary advantage for himself and A-2 to A-8 and that A-9 forged 7 T.P. 1 forms, out of the above two books, which forged T.P. 1s were used by A-2, A-3, A-5, A-7, A-8 with the assistance of A-4 and A-6 and cheated the merchants of Markapur and Cumbum by using the said forged T.P. 1s for the above purpose of cheating; and that the above acts were done by all of you in pursuance of a conspiracy and that thereby you A-1 have committed an offence punishable under Section 120B of the I.P.C. read with

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Sec. 5(1)(c) and (d) punishable under Sec. 5(2) of the Prevention of Corruption Act and also under Sec. 109 I.P.C. read with Sec. 420, 466 and 467 of the I.P.C. and that you, A-2 to A-9 under Sec. 120 B read with Sec. 5(1)(c) and (d) punishable under Sec. 5(2) of Act II of 1947 and Sec. 420, 466 and 467 and 471 I.P.C. and within my cognizance.

CHARGE NO. II.

That you A-1, being a public servant in the Central Excise Department, being a Lower Division Clerk in the office of the Superintendent of Central Excise, Narasaraopet Circle, since 1951 and in such capacity were entrusted since 1951 with blank T.P. 1 books, dishonestly sold two of the above said T.P. 1 books under your control to one late Jogayya for Rs. 350, in or about the month of April, 1953 and dishonestly, fraudulently misappropriated the said amount and thereby committed the offence of misconduct punishable under Section 5(2) read with Sec. 5(1)(c) of the Prevention of Corruption Act, II of 1947 and within my cognizance.

CHARGE NO. III.

That you A-1, in the above capacity, by corrupt and illegal means, and by abusing your position as a public servant, obtained for yourself an amount of Rs. 350 being the sale proceeds of the two Blank T.P. 1 books, from one late Jogayya and obtained for A-2 to A-8, a pecuniary advantage of Rs. 10,120-14-0, the amount of revenue due to the Central Government and thereby committed the offence of Criminal misconduct punishable under Sec. 5(2) read with Sec. 5(1)(d) of the Prevention of Corruption Act II of 1947 and within my cognizance.

CHARGE NO. IV.

That you, A-9, on or about the days between September and November, 1953 forged 7 blank T.P. 1s Nos. 610432, 610443, 610460, 610448, 61044, 610468, 610446 as if they are documents to have been made by the Central Excise Officials in their official capacity by filling up the same within false particulars and fixing the signatures of different

Central Excise Officials so as to show that they are genuine T.P. 1 permits that you thereby committed an offence punishable under Section 466 I.P.C. and within my cognizance.

CHARGE No. V.

That you, A-p, on or about the days between September and November, 1953 forged the 7 T.P. 1 permits mentioned in Charge No. IV purporting to be valuable securities with intent and that they may be used for transporting tobacco as duty paid tobacco and that you thereby committed an offence punishable under Section 467 of the I. P. C. and within my cognizance.

CHARGE No. VI.

That you, A-2 to A-8, on or about the days between 12-9-53 and 5-11-53 at Chodavaram, Satulur, Velpur and Tenali dishonestly used the above seven forged T.P. 1s mentioned in Charge No. IV as genuine, which you know at the time you used them as forged documents and transported 26,989 lbs. non-duty paid tobacco as duty paid tobacco by quoting the above fictitious documents as proof of payment of duty and that you thereby committed an offence punishable under Section 465 and 471 of the I.P.C. and within my cognizance.

CHARGE No. VII.

That you, A-2 to A-8, on or about the days between 19-9-53 and 5-11-53 at Cumbum and Markapur cheated (1) B. Ranga Subbayya of Cumbum (2) P. Ch. Venkata Subbaiah and (3) Shri B. Seshaiah of Markapur and thereby dishonestly inducing them to deliver you, Rs. 10,994-10-3, was the property of the above said persons; and that you thereby committed an offence punishable under Section 420 I.P.C. and within my cognizance."

While seven of the accused persons were content with the charges, two preferred an application for revision before the High Court which, as already stated, accepted it and quashed the charges and directed the Special Judge to frame fresh charges on the lines indicated in the judgment.

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Mr. Umrigar, who appears for the State of Andhra Pradesh, while conceding that Charge No. 1 as it stands, is involved and obscure and requires to be reframed takes exception to the observation of the High Court that the charge is bad for multiplicity. It is not quite clear what the High Court meant. If it meant that separate charges should be framed for different offences there can be no objection; but if it meant that all these accused cannot be tried at the same trial then we have no doubt that it was in error. The High Court pointed out that this is an omnibus charge containing as many as 203 offences and that it is in direct violation of ss. 234, 235 and 239 of the Code of Criminal Procedure. No doubt, sub-s. (1) of s. 234 provides that not more than three offences of the same kind committed by an accused person within the space of 12 months can be tried at the same trial. But then s. 235(1) provides that if in any one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. Therefore, where the alleged offences have been committed in the course of the same transaction the limitation placed by s. 234(1) cannot operate. No doubt, the offence mentioned in charge no. 1 is alleged to have been committed not by just one person but by all the accused and the question is whether all these persons can be jointly tried in respect of all these offences. To this kind of charge s. 239 would apply. This section provides that the following persons may be charged and tried together, namely:

(1) persons accused of the same offence committed in the course of the same transaction;

(2) persons accused of an offence and persons accused of abetment or an attempt to commit such an offence;

(3) persons accused of different offences committed in the course of the same transaction.

Clearly, therefore, all the accused persons could be tried together in respect of all the offences now comprised in charge no. 1. We, however, agree with

Mr. Umrigar that it would be desirable to split up charge no. 1 suitably so that the accused persons will not be prejudiced in answering the charges and in defending themselves.

The learned Judge has held, following a decision of a single Judge in *In re Venkataramaiah* (1) that no charge of conspiracy is permissible for committing which the conspiracy was entered into and which had actually been committed. In that case the learned Judge had observed as follows at p. 132:

> "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 are wholly irrelevant. Conspiracy, it should be borne in mind, is one form of abetment (see s. 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 s. 109 I.P.C. The Explanation to s. 109 makes this quite clear. An offence is said to be committed in consequence of abetment, when it is committed in pursuance of the conspiracy, and the abettor by conspiracy in made punishable (under s. 109) with the punishment provided for the actual offence."

We are unable to accept this view. Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There is no analogy between s. 120B and s. 109 I.P.C. There may be an element of abetment in a conspiracy; but conspiracy is something more than an abetment. Offences created by ss. 109 and 120B, I.P.C. are quite distinct and there is no warrant for limiting the prosecution to only one element of conspiracy, that is, abetment when the allegation is that what a person did was something over and above that. Where a number of offences are committed by

(1) A.I R. 1938 Mad. 130, 132.

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several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as with the offence of conspiracy to commit those offences. As an instance of this we may refer to the case in *S. Swaminatham* v. *State of Madras* (1). Though the point was not argued before this Court in the way it appears to have been argued before the Madras High Court and before the High Court of Andhra Pradesh, this Court did not see anything wrong in the trial of several persons accused of offences under s. 120B and s. 420 I.P.C. We cannot, therefore, accept the view taken by the High Court of Andhra Pradesh that the charge of conspiracy was bad. If the alleged offences are said to have flown out of the conspiracy the appropriate form of charge would be a specific charge in respect of each of those offences along with the charge of conspiracy.

Before leaving this point we would like to refer to the decision in *R.* v. *Dawson* (2) which Mr. Umrigar very fairly brought to our notice, respondents being *ex parte*. In that case Finnemore J. who delivered the judgment of the Court observed:

> "Now with regard to the first count for conspiracy.....this court feels it is desirable to say something. This court has more than once warned of the dangers of conspiracy counts, especially these long conspiracy counts, which one counsel referred to as a mammoth conspiracy. Several reasons have been given. First of all if there are substantive charges which can be proved, it is in general undesirable to complicate matters and to lengthen matters by adding a charge of conspiracy. Secondly, it can work injustice because it means that evidence, which otherwise would be inadmissible on the substantive charges against certain people, becomes inadmissible. Thirdly, it adds to the length and complexity of the case so that the trial may easily be well nigh unworkable and impose a quite intolerable strain both on the Court and on the jury...".

The learned Judges in fact quashed the conviction

(1) A.I.R. 1957 S.C. 340, 343, 344. (2) [1960] 1 All. E.R. 558, 563.

for conspiracy in the case before them. We agree that it is not desirable to charge the accused persons with conspiracy with the ulterior object of letting in evidence which would otherwise be inadmissible and that it is undesirable to complicate a trial by introducing a large number of charges spread over a long period. But then this is only a question of propriety and it should be left to the Judge or the magistrate trying the case to adopt the course which he thinks to be appropriate in the facts and circumstances of the case. It cannot be said as a matter of law that such a trial is prohibited by the Code of Criminal Procedure.

The High Court has further held that the learned Special Judge had no jurisdiction to try the offences under s. 120B read with ss. 466, 467 and 420 because he was appointed a Special Judge under the Criminal Law Amendment Act only for trying offences under the Prevention of Corruption Act. No doubt, he was appointed in the circumstances stated by the High Court, and therefore he will have that jurisdiction which he is competent to exercise under the Prevention of Corruption Act or the Criminal Law Amendment Act. Section 6 of the former provides that the State Government may appoint a Special Judge to try the following offences:

> (a) an offence punishable under section 161, section 165 or section 165A of the Indian Penal Code (Act XLV of 1860) or sub-section (2) of section 5 of the Prevention of Corruption Act, 1947 (II of 1947);
>
> (b) any conspiracy to commit or any attempt to commit or any abetment of any of the offences specified in clause (a).

Sub-s. (1) of s. 7 provides that notwithstanding anything contained in the Code of Criminal Procedure, 1898 or in any other law the offences specified in sub-s. (1) of s. 6 shall be triable by special judges only.

Sub-s. (3) of s. 7 provides that when trying any case, a special judge may also try any offences other than an offence specified in s. 6 with which the accused may under the Code of Criminal Procedure, 1898 be charged at the same trial.

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Clearly, therefore, accused no. 1 could be tried by the Special Judge for offences under s. 120 B read with ss. 466, 467 and 420 I.P.C. Similarly the other accused who are said to have abetted these offences could also be tried by the Special Judge. The view of the High Court is thus erroneous and its directions with respect to these offences are set aside.

The High Court has further held that the provisions of s. 196A(2) of the Code of Criminal Procedure have not been complied with and therefore the charges in respect of offences under ss. 466 and 467 could not be enquired into by the Special Judge. S. 196A(2) of the Code of Criminal Procedure reads thus:

> "No Court shall take cognizance of the offence of criminal conspiracy punishable under section 120B of the Indian Penal Code,
>
> .....
>
> (2) in a case where the object of the conspiracy is to commit any non-cognizable offence, or a cognizable offence not punishable with death, imprisonment for life or rigorous imprisonment for a term of two years, or upwards, unless the State Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the State Government, has, by order in writing, consented to the initiation of the proceedings: .....".

Offences under ss. 466 and 467 are admittedly non-cognizable and, therefore, it would seem from the plain language of sub-s. (2) that for the offences under s. 120 B read with ss. 466 and 467, I.P.C. the sanction of the Government will be necessary. Mr. Umrigar referred us to the decision in *Durgadas Tulsiram Sood* v. *State* (1) and said that since the object of the conspiracy was to cheat the Government, that is, to commit an offence under s. 420 I.P.C. and the offences under ss. 466 and 467 were only means to that end, the trial was not vitiated simply because no sanction was obtained for prosecuting the accused for offences of criminal conspiracy to commit non-cognizable offences under ss. 466 and 467 I.P.C. We do not think it necessary to say anything on the point because in

(1) I.L.R. 1954 Bom. 554.

any case the case has to go back to the Special Judge for re-framing the charges and there is time enough for the Government to consider whether it should accord sanction to the prosecution of the various accused for the non-cognizable offences alleged to have been committed by them in pursuance of conspiracy, assuming of course, that sanction is necessary.

In the result we allow the appeal and set aside the order of the High Court and direct the Special Judge to frame fresh charges and proceed with the trial. The matter has been pending for a long time and we direct that the trial will proceed with all expedition.

Appeal allowed.
Retrial ordered.

JAGANNATH AGARWALA

v.

STATE OF ORISSA

(J. L. KAPUR, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Act of State—Duration of—State allowing claims to be preferred and enquired into—Act of State, if at an end—Administration of Mayurbhanj State Order, 1949, cl. 9.

The appellant had two money claims against the Maharaja of Mayurbhanj State. From January 1, 1949, the State merged with the Province of Orissa. Clause 9 of the Administration of Mayurbhanj State Order, 1949, promulgated by the Government of Orissa, provided for the issuing of a notification for calling upon all persons having pecuniary claims against the Maharaja to notify the same to an officer authorised in that behalf. After issue of the notification the appellant preferred his two claims before the Claims Officer. The Claims Officer made a report substantially accepting the claims. This report was submitted to the Member (third), Board of Revenue. Without giving the appellant any hearing the claims were rejected on the ground that they were barred by limitation. The appellant applied for a review and submitted the documents on which he relied but again without giving the appellant a hearing the Board of Revenue declined to review the matter. The appellant contended