(1955) 11 MP CK 0010

In the Madhya Pradesh High Court

Case No : Criminal Revn Applns. No''s. 59 and 60 of 1955

Harol Narmada Prasad Singh and others APPELLANT

Vs

State of Vindhya Pradesh RESPONDENT

Date of Decision : 08-11-1955

Acts Referred:
Evidence Act, 1872 — Section 40, 44
Penal Code, 1860 (IPC) — Section 107, 107, 108, 108, 109

Citation : (1955) 11 MP CK 0010

Hon'ble Judges : Jagat Narayan, J.C.

Bench : Single Bench

Advocate : Bhagwan Das Gupta and Keshava Prasad Shukla and Vakil, s Nos. 2, 7 and 8, for the Appellant; B.D. Boovariwala and Maheshwari Prasad, Govt. Advocate, for the State, for the Respondent

Judgement

Jagat Narayan, J.C.

1. These are connected revision applications by ten persons who are being prosecuted in the Court of Munsiff Magistrate, Nagod, for various criminal offences on a police challan for quashing the proceedings against them. The applications have been opposed on behalf of the State. I have heard the Learned Counsel for the parties and am satisfied that no interference is called for at this stage. So far no evidence has been recorded in the case. The only circumstances in which this Court will ordinarily interfere to quash proceedings at this stage are (1) when the prosecution allegations, even if true, do not disclose any offence and (2) when there is some legal bar to the continuance of the proceedings such as lack of jurisdiction or the bar under S. 403, Cr. P. C.

2. The prosecution case is that all the applicants were parties to a criminal conspiracy for defrauding the Adarsha Bima Co. Ltd. and other Life Insurance Companies by effecting bogus insurances on lives of non-existent persons with the former company and collecting insurance monies in the names of fictitious nominees after declaring that the insured persons had died. It was the practice

of the Adarsha Bima Co. to cover risk above Rs. 10,000/- by reinsuring with other companies. That is how the other companies were also affected. Three fraudulent proposals were submitted to the company.

The first dated 5-12-51 was for a lac of rupees insuring the life of one Surjan Singh. The medical report was completed on 13-12-51. The proposal was accepted and the first premium was paid on 19-3-52. The premium was distributed to the reinsuring companies. On 27-6-52 it was declared that Surjan Singh had died on 21-6-52 and a claim to the insurance money was made. It was sanctioned on behalf of the Adarsha Bima Co. on 24-9-52; and the insuring companies were asked to make payments at an early date. The Bharat Insurance Co., which was one of the reinsuring companies smelled a rat and sent its representative to make a local inquiry at Nagod on 22-10-52. The conspiracy was thereby exposed. On learning about the enquiry the accused persons tried to cover up their tracks and payment of the claim was withheld. The Bharat Insurance Co. informed the other Insurance Cos. about the attempted fraud and all of them asked the Adarsha Bima Co. to lodge a report with the police. When the Adarsha Bima Co. failed to do so the Bharat Insurance Co. Ltd. got a First Information Report lodged with the Nagod police on 24-4-53, and investigation was started. The office of the Adarsha Bima Co. was searched on 12-5-53 and 1-7-53 and a large number of documents were seized. It was during the investigation. that the other two fraudulent proposals were discovered.

The second fraudulent proposal dated 3-3-52 was also for a lac of rupees on the life of one Shankar Lal of village Ganj, District Panna, V. P. The medical report was completed on 4-3-52. The first premium was paid on 18-6-52 and was distributed amongst reinsuring companies. As the conspiracy was exposed when the Bharat Insurance Co. sent its representative in October 1952 inquiring into the first proposal, Shankar Lal''s death was not announced. Nor was the premium for the second year paid. The policy was allowed to lapse. All papers relating to this policy were removed from the office of the Adarsha Bima Co. before the search by the police could take place.

The third fraudulent proposal dated 12-7-52 for Rs. 50,000/- was on the life of one Gajadhar Prasad Tiwari of Nagod. The medical report was completed on 13-7-52 and the proposal was accepted on 23-7-52. Before the first premium was paid on this policy the conspiracy was exposed. All papers relating to this policy also were removed before the search.

3. Harol Narmada Prasad Singh accused 1 is the Managing Director of the Adarsha Bima Company Ltd., which has its head office at Allahabad. Sarju Prasad Namdeo accused 2 is the Chief Agent of the Company for Vindya Pradesh. Both these accused persons are alleged to be close friends, associates, and political coworkers. Jagannath Pandey accused 5 is also said to be an old associate of accused 1. When the latter was Pood and Civil Supplies Minister in V. P. In 1048-49 he got Jagannath Pandey appointed as Assistant Textile Commissioner and Assistant Director Pood and Civil Supplies When that Ministry was dissolved

Jagannath Pandey, also left service in V. P. and went to Allahabad where he took up a job in the Adarsha Bima Company Ltd. as Assistant Manager.

4. The first general election after the coming into force of the new Constitution took place in January, 1952. Both accused 1 and 2 took active part in it on behalf of the Krishak Mazdoor Praja Party of which accused 1 was the President for V. P. It is said that a large amount of money was needed for fighting this election and accused 1 borrowed rupees fifteen lacs from the Maharaja of Rewa for the purpose, which he had to repay. The suggestion is that accused 1 entered into a conspiracy with accused 2 for raising money for the repayment of this loan and the other accused persons joined this conspiracy later on. In pursuance of this conspiracy a large number of criminal offences were committed.

5. As has been mentioned above on 5-12-51 a false document was prepared at Nagod purporting to be a proposal form by Surjan Singh son of Bhura Singh Arhtia of Nagod for insuring his life for one lac of rupees. One Radhika Devi purporting to be the wife of Surjan Singh was shown as his nominee in the form. Jagannath Pander accused 5 attested the signature of Surjan Singh on this form.

The above false document was taken to Allahabad by Sarju Prasad Namdeo on 12-12-51 and he stayed at the house of Harol Narmada Prasad Singh, accused 1. On the same day Dr. Rama Shankar Vyas, accused 2, applied for appointment as an authorised medical examiner of the Adarsha Bima Co. and was appointed as such on 13-12-51. After such appointment he and Dr. Brij Raj Kishore, accused 4 who was not an authorised medical examiner of the company, made a document purporting to be the medical report of Surjan Singh. Either Shiv Sewak Tiwari accused 6, who was a daftri in the office of the Adarsha Bima Co. & who was an old associate of accused 1 impersonated as Surjan Singh at this medical examination or a wholly fictitious medical report was prepared by the two doctors in pursuance of the conspiracy.

Jagannath Pandey accused 5 filled in the address of Surjan Singh on the proposal form as care of Namdeo Ji, Nagod, and prepared a document called "opinion and order slip" in which he deliberately entered false particulars and Information. Anadi Kumar Dutta accused 10 who was the Office Manager of the Adarsha Bima Co. signed this slip.

On 12-2-52 proposals for reinsurance on Surjan Singh''s life were sent to 7 other companies. On 19-3-52 the first premium on Surjan Singh''s policy was paid by accused 2 and it was distributed to other companies. An interim policy was issued in the name of Surjan Singh. Accused 2 was shown as the agent in this policy. It was sent by registered post to Surjan Singh care of accused 2 and was received by the latter on 6-5-52 at Nagod.

On 27-6-52 accused 2 sent an intimation to the Adarsha Bima Co. in the name of Radhika Devi declaring that Surjan Singh had died on 21-6-52. It reached the office of the company on 2-7-52. The address on the envelope is typed with the typewriter of accused 2. Radhika Devi did not give any particulars of her address.

All letters were sent to her by the company care of accused 2.

On 9-7-52 Anadi Kumar Dutta accused 10 sent draft claim papers to Radhika Devi and asked her to send evidence on age of Surjan Singh and also a death certificate. The letter and papers were received by accused 2 through post. Sarju Prasad Namdeo prepared a false document named ''last attendance report'' on 12-8-52 purporting to be by one Ram Sahal Vaid.

A death report was prepared purporting to be by one Ram Singh and an identity form was prepared purporting to be by Sunder Lal Pathak. Jagannath Pandey signed these documents as Ram Singh and Sunder Lal Pathak respectively. He also wrote a covering letter and signed it as Ram Singh and sent all the above claim papers along with the interim policy to the Adarsha Bima Co. The death report and the identity form were verified before Shri Shri Krishna, Honorary Magistrate. Sunder Lal accused 8 impersonated as Sunder Lal Pathak before the Honorary Magistrate & Brijpal Singh accused 9 who is an Inspector in the Adarsha Bima Co. identified Sunder Lal accused as Sunder Lal Pathak before the Magistrate. Sarju Prasad Namdeo accused 2 was also present at the house of the Honorary Magistrate when this was done. Baldeo Dutt Sharma accused 7 attested the signature of Sunder Lal Pathak on the identity form.

Two of the reinsuring companies namely the Asiatic Co. and the Bharat Insurance Co. wrote to the Adarsha Bima Co. to hold an inquiry into the death of Surjan Singh accused 1 deputed accused 2 to hold this inquiry intimating to him that Radhika Devi had informed that her husband Surjan Singh had died on 21-6-52 of cholera. Radhika Devi had not given any such information. Sarju Prasad Namdeo submitted a report on 2-9-52 verifying the death of Surjan Singh at Saleha on 21-6-52 by cholera. This report reached the office of the Company on 4-9-52. Jagannath Pandey then wrote to Radhika Devi asking her to send evidence of age of Surjan Singh supported by an affidavit. Sarju Prasad Namdeo sent a letter on 19-9-52 to the Adarsha Bima Co enclosing a false certificate of age of Surjan Singh purporting to be from the Head Master, Town School, Nagod. The letter was signed by accused 2 as Radhika Devi. On receipt,

Anadi Kumar Dutta prepared and office note for the sanction of the claim on 23-9-52. Accused I sanctioned the claim on 24-9-52 for one lac of rupees in pursuance of the conspiracy. He was only empowered to sanction claims up to Rs. 15.000/-. Jagannath Pandey wrote letters to the reinsuring, companies asking- for payment. In these letters it, was falsely represented that Radhika Devi''s claim had been sanctioned by the Board of Directors.

The Bharat Insurance Co. asked the Adarsha. Bima Co. to send a discharge receipt signed by the claimant. A draft discharge receipt was sent to Radhika Devi who was asked to send it after signing it. It was received by accused 2 on 16-10-52. He signed the discharge receipt as Radhika Devi and sent it by post to the Adarsha Bima Co. on 17-10-52. It was received by the Company on 21-10-52.

6. It is clear from the above narration of the prosecution story as contained in the police challan that criminal offences are made out against all the ten accused persons. It is mentioned in para 16 of the challan that to begin with accused 1 and accused 2 formed a criminal conspiracy to which Dr. Rama Shankar Vyas and Dr. Brij Raj Kishore were also admitted subsequently. Then follows a narration of different acts done by different accused persons in pursuance of the conspiracy. In the last paragraph of the challan an. inference is drawn from the facts and circumstances narrated in the preceding paragraphs that, the remaining accused persons were also parties to the conspiracy the object of which was to raise money by fraudulent insurances. The offence under S. 120B, I. P. C. is thus made out against all the 10 accused persons.

7. The following false documents were made by the accused persons noted against them:

1.

Proposal form-

JagannathPandey accused 5.

2.

Letter dated 27-8-52 alleged to have been sent by Radhika Devi informing about the death of Surjan Singh.

Sarju Prasad Namdeo accused 2.

3.

Last attendance report dated 12-8-52 purporting to be by Ram SahaiVaid.

Sarju Prasad Namdeo accused 2 and

4.

Identity form purporting to be by SutidarLalPathak and attested by BaldeoDutt Sharma accused 7.

JagannathPandey accused 5 and BaldeoDutt Sharma accused 7.

5.

Death report purporting to be by Bam Singh.

JagannathPandey accused 5.

8.

Covering letter enclosing the above papers purporting to be by Ram Singh.

JagannathPandey accused 5.

7.

Certificate of age dated 18-9-52 purporting to be by the Head Master Town School, Nagod and covering letter forwarding it purporting it to be by Radhika Devi.

Sarju Prasad Namdeo accused 2.

8.

Discharge receipt dated 17-10-52 purporting to have been signed by Radhika Devi.

do.

This discharge receipt is on the face of it a valuable security within the meaning of S. 30, I. P. C., or a "document purporting to be an acquittance or receipt acknowledging the payment of money" within the meaning of S. 467, I. P. C. An offence under S. 467, I. P. C., is thus made out against Sarju Prasad Namdeo accused 2. The other documents were forged with the intention of using them for the purpose of cheating. The offence under S. 468 is made out against the accused persons who made those documents. The offences of abetting the offence under Ss. 467 and 468, I. P. C., are made out against the remaining accused persons in view of the provisions of Ss. 107-109, I. P. C.

Section 107: A person abets the doing of a thing, who-

Secondly-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;

Section 108: Explanation 5-It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

Section 109: Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation:-An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Some other offences besides those enumerated above were also committed but it is unnecessary to detail them.

8. The police challan is on the prescribed form. Before giving the facts constituting the offences the Investigating Officer mentioned the "date of occurrence" as "between 5-12-51 and 24-9-52" and the "place of occurrence" as "Nagod". The date 29-10-51 is written alone with the word "Nagod" but it is not clear from the challan what the significance of this date is. The Learned Counsel

for the State explained that in writing the challan the Investigating Officer did not mention specifically what incidents had taken place at Nagod because of the heading'' ''place of occurrence- Nagod" with which he had prefixed it. He has argued that in interpreting the challan it should be assumed that where a different place of occurrence is not given with regard to a particular incident that incident is alleged to have taken place at Nagod unless the contrary appears from the context. The whole challan was read in the light of this explanation and not a single anomaly was discovered. I accordingly find that according to the challan the criminal conspiracy was originally formed at Nagod. The Magistrate at Nagod has therefore jurisdiction to try all the accused persons under S. 120B. I. P. C.

9. The first act done in pursuance of the conspiracy was the making of the false proposal dated 5-12-1951 in the name of Surjan Singh at Nagod. It as mentioned in the challan that accused 1 was at Nagod on 3rd, 4th and 5th Dec. 1951. Accused 2 is a resident of Nagod. The inference from these facts also is that in all probability accused 1 and 2 entered into a conspiracy at Nagod. It is not mentioned in the police challan that accused 2 went to Allahabad on any date before 5-12-1951. It cannot, therefore, be argued on the basis of this challan that the venue of the conspiracy was at Allahabad.

10. Even if there had been any doubt as to whether the conspiracy was hatched at Nagod or at Allahabad S. 182, Cr. P. C., would have come into operation and the Nagod Court would have jurisdiction to try all the accused persons for the offence of criminal conspiracy.

11. There is yet another way of looking at the thing. The existence of a conspiracy is generally a matter of inference from facts and circumstances. The allegations made in the challan leave no doubt that Nagod was an important centre of the conspiracy. On that ground also the Court at Nagod has jurisdiction to try all the accused persons for the offence under S. 120B, I. P. C. In ''Manabendra Nath Roy v. Emperor'', 1933 All 498 (AIR V 20) (A) it was observed :

There can be no doubt whatever from the correspondence and other facts which have been proved that Cawnpore was one of the centres of the conspiracy and that Usmani frequently corresponded with the appellant from Cawnpore and that the appellant addressed letters to Usmani in Cawnpore. The plea therefore that the Sessions Court at Cawnpore had no jurisdiction to try the appellant is without substance.

But as has been mentioned above it is definitely the prosecution case in the challan that the conspiracy was originally formed at Nagod.

12. Under S. 180, Cr. p. C. a charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed or by the Court within the local limits of whose jurisdiction the offence abetted was committed: vide illustration (a). It was argued on behalf of the

applicants that S. 180, Cr. P. C., has no longer any application to cases of abetment by conspiracy as conspiracy itself has been made an offence under S. 120B, I. P. C. I am unable to accept this contention. The offence of abetment by conspiracy as defined in S. 107 I. P. C. was not repealed when S. 120B, I. P; C., was enacted. of course the offence of conspiracy itself will not be triable at a place other than the place which is the venue of the conspiracy by virtue of S. 180, Cr. P. C., as was held in ''Emperor v. Pursumal Gerimal'', 1938 Sind 108 (AIR V25) (B). But as the venue of the conspiracy was at Nagod the Court at Nagod has jurisdiction to try the accused persons for abetment of offences by conspiracy whether the offences themselves took place within its jurisdiction or outside it.

For example if a forged document is used at Allahabad as genuine in pursuance of a conspiracy formed at Nagod the trial for the substantive offence under S. 471, I. P. C, can only be held at Allahabad, but the Magistrate at Nagod can try accused persons for abetting that offence by conspiracy. It will thus be seen that the Magistrate at Nagod has jurisdiction to try all the accused persons.

13. One Radhika Nath Chopra, an employee of the Adarsha Bima Co., filed a private complaint before the Magistrate at Allahabad on 22-7-1953 against Sarju Prasad Namdeo accused 2 Sunder Lal accused 8 and Baldeo Dutt Sharma accused 7 under Ss. 468, 471, 419, 420, 415 and 191 read with Ss. 120B and 511, I. P. C. They were acquitted on 8-5-1954 and it has been argued on their behalf that their trial is barred under S. 403 Cr. P. C.

14. In the Allahabad case no mention was made of the Discharge Receipt in respect of which an offence under S. 467, I. P. C, is made out against Sarju Prasad Namdeo accused 2 and the offence of abetment of it by conspiracy under S. 467 read with S. 109, I. P. C, against the other-accused persons. The offence under S. 467, I. P. C., is exclusively triable by the Court of Session The Magistrate at Allahabad was not competent to try it.

Moreover, an offence under S. 467, I. P. C., is a distinct offence within the meaning of S. 235 (1) Cr. P. C. Section 403 (2), Cr. P. C., lays down that i a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on a former charge under S. 235(1). The trial of accused 2 on a charge under S. 467, I. P. C., and of the other two accused persons under Ss. 467/109, I. P. C., is thus not barred under S. 403, Cr. P. C.

15. So far as the trial of the remaining offences is concerned the prosecution case is that the acquittal was obtained by fraud or collusion and. is a nullity in view of S. 44, Evidence Act. It was conceded before me that S. 44 is applicable both to civil and criminal proceedings. Section 40 which is referred to in S. 44 runs as follows:

The existence of any judgment, order or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial.

The word ''trial'' obviously refers to a criminal trial. On behalf of the applicants it was however argued that fraud or collusion referred to in S. 44, Evidence Act, must be by a party to the criminal trial & that private complainant cannot be regarded as a party to a criminal proceeding. I am unable to accept this contention. A private complainant has a definite role assigned to him under the Code of Criminal Procedure. Under the amended Code which is shortly to come into force different procedures are prescribed for trial of cases brought on private complaint and on police challan.

In cognizable cases the Magistrate no doubt controls the proceedings. But even in such cases it is possible for a private complainant to collude with the accused and obtain an acquittal by perpetrating fraud upon the Court. Whether or not the acquittal in the Allahabad case is a nullity is a question of fact to be determined upon evidence which is yet to be adduced. It is the prosecution case that accused 1 and 2 were the principal architects of the conspiracy and when they discovered that they had been found out and the police was after them they lodged this prosecution in order to save themselves and the other accused persons. The complaint was filed by a subordinate of accused 1.

The main allegation which should have been proved in that case was that no person of the name of Surjan Singh ever lived at Nagod or died at Saleha. This could only be proved by the evidence of persons living at Nagod and Saleha. This was not clone. Even the Sub-Inspector of Saleha, Ram Sahai Vaid. and the Hd. Master of the School at Nagod were not examined as witnesses. The doctors were not asked in examination in chief to look at Sarju Prasad Namdeo accused and say whether they identified the proponent before them. No attempt appears to have been made in that case to prove the charges.

On the other hand questions were put in examination in chief to the witnesses to disprove the allegations made by the police in the present case against Shiva Sewak Tiwari accused 6, Brij Pal Singh accused 9 and Jagannath Pandey accused 5. These questions were not relevant to that case. The Vindhya Pradesh police no doubt failed to produce the documents which the Magistrate had summoned but even if those documents had been produced the charges could not have been proved without producing relevant and oral evidence.

The reinsuring companies kept on pressing the Adarsha Bima Company to lodge a report with the police, but accused 1 who was the Managing Agent of the Company did not do so. It was only when the V. P. Police had seized documents and had started making arrests that the complaint case was filed against three of the culprits and proceeded like a sham fight. Charges were framed by the Allahabad Magistrate without there being prima facie evidence to support them. Yet the accused persons raised no objection to it.

These very accused persons have come up to this Court at a preliminary stage in the present proceedings even when no evidence has been recorded. The above circumstances raise a presumption at this stage that the acquittal might have been obtained by perpetrating fraud upon the Court.

16. I accordingly see no reason to interfere and reject the applications. All the applicants should appear in the Court of the Magistrate at Nagod on 17-11-1955.

