
(1963) 02 GUJ CK 0001
In the Gujarat High Court

Jadedda Meramanji Pragji and Another	APPELLANT
Vs	
State of Gujarat	RESPONDENT

Date of Decision : 07-02-1963

Acts Referred:

Penal Code, 1860 (IPC) — Section 120A, 120B, 420, 465, 467

Citation : (1963) CriLJ 713 : (1964) GLR 263

Hon'ble Judges : V.B. Raju, J

Bench : Single Bench

Judgement

V.B. Raju, J.—This revision application arises out of the following facts: The applicants were charge-sheeted u/s 120B, I. P. Code, read with Sections 465, 467 and 468, I. P. Code in the Court of the J. M. F. C. Mandvi, Kutch. After the receipt of the charge sheet the learned Magistrate fixed a date for holding a committal inquiry u/s 207-A, Cri. P. C. On that date applications were given on behalf of the accused saying that the learned Magistrate was not competent to take cognizance in view of the provision of Section 196-A, Cri. P. C. The learned Magistrate dismissed the application of the accused u/s 196-A, Cri. P. C. and ordered that the committal inquiry u/s 207-A, Cri. P. C. should proceed against the accused for the offences punishable u/s 120B read with Sections 420, 465, 467 and 468, I.P.C. The learned Sessions Judge, in revision, confirmed this order and rejected the revision application before him. Hence the present revision application before the High Court.

2. Section 196-A, Cri. P. C. reads as follows: "The Court shall take cognizance of the offence of criminal conspiracy punishable u/s 120B of the Indian Penal Code.

1. In a case where the object of the conspiracy is to commit either an illegal act other than an offence, or a legal act by illegal means or an offence to which the provisions of Section 196 apply unless upon complaint made by order or under authority from the State Government or some officer empowered by the State Government in this behalf or.

2. In a case where the object of the conspiracy is to commit any non-cognisable offence, or a cognisable 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:

Provided that where the criminal conspiracy is one to which the provisions of Sub-section (4) of Section 195 apply no such consent shall be necessary.

Offences under Sections 465, 467 and 468, I. P. Code are non-cognisable offences and offence u/s 420, I. P. Code is a cognisable offence punishable with imprisonment for seven years.

3. Section 196-A, Cri. Pro. Code, provides that no Court shall take cognisance of an offence of criminal conspiracy punishable u/s 120B of the Indian Penal Code if the object of the conspiracy is that mentioned in that section taking cognisance of offences is referred to in Section 190 Cri. P. C, which reads as follows:

(1) Except as hereinafter provided, any Presidency Magistrate. District Magistrate or Sub-divisional Magistrate and any other Magistrate specially empowered in this behalf may take cognisance of any offence:

(a) upon receiving a complaint of facts which constitute such offence:

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer or upon his own knowledge or suspicion that such offence has been committed....

If upon receiving a report in writing made by a police officer the Magistrate fixes dates for a committal inquiry, he clearly takes cognisance of the offence referred to in the chargesheet.

4. The next question is as to the meaning of the words "criminal conspiracy". "Criminal conspiracy" is defined in Section 120A, I. P. Code, which reads as follows:

Where two or more persons agree to do, or cause to be done.

1. an illegal act, or

2. an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

The essence of a criminal conspiracy is, there-fore an agreement between two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. What they agree to do or cause to be done is the object of a conspiracy. There is no question of intention in a conspiracy. If the object of a conspiracy is to commit an act falling under Sections 465 and 467 or Section 468, I. P. Code, then the provisions of Section 196A, Criminal P. C. would be

applicable and cognisance cannot be taken of such an offence of criminal conspiracy unless the conditions in Section. 196A, Criminal P. C. are satisfied. It is clear that these conditions have not been satisfied in this case and therefore the learned Magistrate was wrong in taking cognisance of the offence of a criminal conspiracy, where the object of the criminal conspiracy falls under Sections 465 and 467 or Section 468, I. P. Code. But so far as the object of the criminal conspiracy falls u/s 420, I. P. Code, Section 196 A, Cri. P. C. has no application because the offence of cheating is punishable with imprisonment for seven years.

5. So far as the learned Magistrate has taken cognisance of the offence of a criminal conspiracy. the object of which falls u/s 465 and Section 467 or Section 468, I. P. Code, the taking of cognisance is set aside and quashed. But if the chargesheet relates to a criminal conspiracy, the object of which falls u/s 420, I. P. Code the learned Magistrate was right in taking cognisance. The learned Magistrate should, therefore see whether the chargesheet discloses an offence of a criminal conspiracy the object of the criminal conspiracy being to cheat or to commit an offence u/s 420, 1. P. Code. If it does the learned Magistrate would be right in taking cognisance of the offence of a criminal conspiracy where the object of the criminal conspiracy was to commit an offence u/s 420, I. P. Code. The learned Magistrate is directed to continue the proceedings. If the chargesheet relates also to substantive offences under Sections 465, 467 and 468, I. P. Code, it is open to the learned Magistrate to take cognisance of them.