

A SUDHIR KUMAR MUKHERJEE AND SHAM LAL SHAW

v.

STATE OF WEST BENGAL

September 24, 1973

[H. R. KHANNA AND A. ALAGIRISWAMI, JJ.]

B *Indian Penal Code (Act 45 of 1860), s. 511—Scope of.*

The first appellant was an employee in a firm and the second appellant was a supplier of lime stone to the firm. The procedure in respect of the supply was that the second appellant would bring four bags of lime stone every day to the first appellant and present a chalan to him. The first appellant would then send the chalan to P.W. 2 who would initial it and send it back to the first appellant. Thereupon, the first appellant would put a seal and his signature on it and the second appellant would present it to the concerned department and receive payment for the supply made. On complaints that the first appellant was in the habit of signing the chalan without actually receiving the goods, P.W. 2 was asked to make a physical verification. On the day the verification was made, the first appellant, as usual sent the chalan to P.W. 2. After initialling it, P.W. 2 verified the stock and not finding the four bags of lime stone questioned the two appellants. They were then prosecuted and were convicted for offences under s. 120B read with s. 420 and s. 511 read with s. 420, I.P.C.

D On the question whether there was only a preparation and not an attempt to cheat,

HELD : Under s. 511, I.P.C., a person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence and (ii) he, having made preparations and with the intention of committing the offence, does an act towards its commission : such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence. The provisions of the section differ from English law in that it is not necessary for the offence under s. 511 that the transaction commenced must end in the crime, or offence, if not interrupted.

[740 E-G]

When the chalan is sent by the first appellant for initials of P.W. 2 the first appellant takes upon himself the responsibility of assuring P.W. 2 that the lime stone had been received. In the present case, the chalan had been prepared and the initials of P.W. 2 obtained. This is the most important and crucial step towards cheating though it is not the penultimate step. Towards this end both the accused had co-operated. Therefore, the accused did not stop at the stage of preparation but had reached the stage of attempt.

F [739 B-C, D-E; 740 G-H; 741 A-B]

Abhayanand Mishra v. State of Bihar, [1962] 2 S.C.R. 241, followed.

[No opinion was expressed on the question of conspiracy as there had been only a single instance.] [739A]

G **CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 60-61 of 1970.**

Appeal by special leave from the judgment and order dated July 15, 1969 of the Calcutta High Court in Criminal Appeals Nos. 423 and 390 of 1960 respectively.

H *R. L. Kohli and S. K. Gambhir*, for the appellant (in both the appeals).

P. K. Chatterjee and G. S. Chatterjee, for the respondent (in both the appeals).

The Judgment of the Court was delivered by

ALAGIRISWAMI, J. The two appellants were tried before the Presidency Magistrate, 4th Court, Calcutta for offences under s.120B read with s.420 and s.511 read with s.420 of the Indian Penal Code. The learned Presidency Magistrate held them guilty of both the offences and imposed a sentence of 1 year's imprisonment and a fine of Rs. 200 on each of the accused on the first charge and considered that no separate sentence was necessary in respect of the second, and the appeals filed by them in the High Court of Calcutta were summarily dismissed. The facts giving rise to these appeals are as follows :

Appellant Sudhir Kumar Mukherjee was an employee in charge of soda lime department of M/s Gluconate Limited, Calcutta, and appellant Sham Lal Shaw was the supplier of lime stone to the said firm. It appears that four bags of lime stone were needed every day. The procedure in respect of the supply was that Shaw used to bring the bags to Sudhir and present a chalan to him. Thereupon Sudhir would send the chalan to P.W. 2, Ardendu Sekhar Goswami, who used to initial it and send back to Sudhir. Thereupon Sudhir would put a seal on it as also his signature, and Shaw would present that chalan to the concerned department and receive payment for the supply made. It appears that the Managing Director of the company, Amarendra Nath Haldar, P.W.1 had heard certain complaints that Sudhir was in the habit of signing the chalan without actually receiving the goods. He therefore asked PW 2 to make a physical verification of the lime stone to be received on 4-3-1968. On that day Sudhir sent the chalan to PW 2 for his signature through PW 3. PW 2 initialled it and after informing PW 1 about his having initialled the chalan went down to verify the stock. As the four bags of lime stone were not there he asked Sudhir and he stated that the quantity received had been spent. PW 1 sent for Sudhir and he first told him that the lime stone received had been used up and later changed his statement and said that he might have signed the chalan through mistake. Shaw was then sent for by PW 1. When questioned he denied having received any chalan or having made any supply of lime stone on that day. But when he was told that he would be sent to the police, he produced the chalan which bore PW 2's initials. It should also be mentioned that PW 5 was also asked by PW 1 to make a physical verification and to him Sudhir denied having any knowledge of the matter and Sham Lal Shaw told him that he had not supplied any goods on that day. It is on these facts that the prosecution was instituted and the conviction and sentence imposed as mentioned earlier.

Sudhir's contention was that he had been falsely implicated as he was the Assistant Secretary of the labour union. Shaw contended that about Rs. 3,000/- was due to him for the supply of lime stone, that he had made a demand for it, that PW 1 asked him to reduce the rate, that on 4-3-1968 Sudhir asked him to take back the goods as it was not required and he did so.

There is no doubt that the facts as narrated earlier have been amply proved by the evidence in this case. The question therefore is whether there was a conspiracy and whether there was an attempt at cheating

- A or whether as contended on behalf of the appellants there was only a preparation and not an attempt. In the circumstances of this case we would prefer not to express any opinion on the question of conspiracy as there has been only a single instance involved. But we consider that the evidence of attempting to cheat has been amply established. We are unable to accept the argument on behalf of the appellants that there was only preparation and not an attempt. The chalan, Ext. 1 mentions that the four bags of lime stone were received from Sham Lal Shaw and it bears the initials of PW 2. It is established that it was the duty of accused Sudhir after receiving the lime stone to send up the chalan for PW 2's initials. It means that when the chalan is sent up by Sudhir for being initialled by P.W. 2, Sudhir takes upon himself the responsibility of assuring P.W. 2 that the lime stone has been received. This practice is spoken to by PWs 1 and 2. PW 3 gave evidence about having taken the chalan to PW 2 for his initials at the instance of accused Sudhir. Though his evidence has been held to be unreliable this part of his evidence is corroborated by PW 2's evidence. Though the subsequent stage of affixing a stamp to the chalan and signing of it by accused Sudhir has not been completed that does not make any difference. Admittedly quite a good amount of money was due to Shaw from the company. That money could be received only by producing the relevant chalans. So this chalan also could be produced for payment after it was stamped and signed by accused Sudhir at his own leisure. The most important step of getting PW 2's initials on the chalan has been carried out and thereafter it was only a matter between the two accused. In the circumstances the question is whether there has been an attempt to cheat or merely a preparation.

- E The dividing line between a preparation and an attempt is no doubt very thin, and though the principle involved is well established the difficulty arises in drawing the line in the particular circumstances of a case. The relevant portion of s. 511 is :

- F "Whoever attempts to commit an offence punishable by this Code . . . or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished."

The law on this point was elaborately discussed with reference to all the decided cases by this Court in its decision in *Abhayanand Mishra v. State of Bihar*⁽¹⁾. We will confine ourselves to stating a few relevant extracts therefrom. It was pointed out in that decision that :

- G "The moment a person takes some step to deceive the person sought to be cheated, he has embarked on a course of conduct which is nothing less than an attempt to commit the offence as contemplated by s. 511. He does the act with the intention to commit the offence and the act is a step towards the commission of the offence."

- H The decision in *The Queen v. Ramsarun Chowbey*⁽²⁾ was referred to and this Court specifically laid down that the act towards the commission of such an offence need not be an act which leads immediately

(1) [1962] (2) S. C. R. 241

(2) (1872) 4 N. W. P. 46

to the commission of the offence. The decision *In the matter of the petition of R. MacCrea*⁽¹⁾ was also referred to. The purport of that decision was explained to be that s. 511 was not meant to cover only the penultimate act towards the completion of an offence; acts precedent, if those acts are done in the course of the attempt to commit the offence, and were done with the intent to commit it and done towards its commission were also covered. In that decision Knox, J. said :

“Again, the attempt once begun and a criminal act done in pursuance of it towards the commission of the act attempted, does not cease to be a criminal attempt, in my opinion, because the person committing the offence does or may repent before the attempt is completed.”

This Court cited with approval the statement of Blair, J.

“It seems to me that that section (s.511) uses the word ‘attempt’ in a very large sense; it seems to imply that such an attempt may be made up of a series of acts, and that any one of those acts done towards the commission of the offence, that is, conducive to its commission, is itself punishable, and though the act does not use the words, it can mean nothing but punishable as an attempt. It does not say that the last act which would form the final part of an attempt in the larger sense is the only act punishable under the section. It says expressly that whosoever in such attempt, obviously using the word in the larger sense, does any act, etc., shall be punishable. The term ‘any act’ excludes the notion that the final act short of actual commission is alone punishable.”

This Court also referred to certain other decisions and pointed out that any different view expressed has been due to an omission to notice the fact that the provisions of s. 511 differ from the English Law with respect to ‘attempt to commit an offence’, and that it is not necessary for the offence under s. 511, Indian Penal Code, that the transaction commenced must end in the crime or offence, if not interrupted. This Court finally summarised its views about the construction of s. 511 thus:

“A person commits the offence of ‘attempt to commit a particular offence’ when (i) he intends to commit that particular offence, and (ii) he, having made preparations and with the intention to commit the offence, does an act towards its commission : such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence.”

With respect we concur in this view. In the present case the chalan has been prepared and the initials of P.W. 2 obtained. That is most important and crucial step towards cheating. Towards this end both the accused have cooperated. Thereafter it only remained for the appellant Sudhir to affix the stamp and put his signature. Accused Shaw could then have presented it to the company’s office and received payment. This

(1) I. L. R. 15 All. 173.

(*Alagiriswami, J*)

A is a definite step towards the commission of the offence of cheating though it is not the penultimate step. We hold that the acts of the accused did not stop at the stage of preparation but had reached the stage of attempt. We, therefore, uphold the conviction of the appellants under s. 511 read with s. 420 I.P.C. The appeals are disposed of accordingly.

B It is, however, stated that the appellants have already suffered the sentence imposed by the Presidency Magistrate and it is not necessary to say or do anything further about it.

V.P.S.