

PETITIONER:
DARSHAN SINGH RAM KISHAN

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT 02/09/1971

BENCH:
SHELAT, J.M.
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SHELAT, J.M.
DUA, I.D.
ROY, SUBIMAL CHANDRA

CITATION:
1971 AIR 2372 1972 SCR (1) 571
1971 SCC (2) 654

ACT:
Code of Criminal Procedure (Act 5 of 1898), s. 196A(2)-
Charge sheet by police-No reference to or allegation of
criminal conspiracy-Magistrate framing charges for offences
including under s. 120-B, I.P.C. Whether prior consent under
s. 196A(2), Cr.P.C., necessary.

HEADNOTE:
The police filed a charge-sheet against the appellant and
another for various offences in connection with the
fabrication of a British passport. The offences mentioned
in the charge-sheet against the appellant were ss. 419/109,
468 and 471, I.P.C., and against the other accused ss. 419
and 471 read with s. 468. The Magistrate did not examine
any witnesses, but after perusing the charge-sheet and other
documents filed before him under s. 173, Cr.P.C., framed
charges against the two accused and committed them for trial
before the Sessions Court. The charges against the accused
included the offence under s. 120B, I.P.C., the object of
the conspiracy being, to commit the non-cognizable offence
of forging the passport.

The appellant filed an application in the High Court for
quashing the committal order on the ground that no consent,
as required by s. 196A(2), Cr.P.C., having been obtained,
the Magistrate had no jurisdiction to take cognizance of the
offence of conspiracy. The High Court dismissed the
application.

Dismissing the appeal to this Court,
HELD : (1) Cognizance takes place when the Magistrate takes
judicial notice of an offence. Therefore, when a Magistrate
takes cognizance of an offence under s. 190, Cr.P.C. upon a
police report, prima facie he does so of the offences
alleged in the report. [573 H; 574 A]

In the present case the charge-sheet did not refer to or
charge either of the accused with criminal conspiracy. The
cognizance which the Magistrate took was therefore, only, of
the offences alleged in the chargesheet, and it was only at
the later stage of passing the committal order that he
considered that a charge under s. 120B was more appropriate
than that of abetment. [574 F-H]

(2) Even on the basis that it is not the sections referred

to in the charge-sheet that matter, but the offence prima facie disclosed by the allegations, in the present case the offence 'primarily and essentially disclosed in the charge-sheet and other documents was one of abetment of forgery and of the false impersonation. [575 F-H]

Therefore, the Magistrate did not take cognizance of the offence under s. 120B, I.P.C., and hence, consent under s. 196A(2) Cr.P.C., was not a condition precedent. [576 B-C]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 100 of 1969.

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Appeal by special leave from the judgment and order dated January 8, 1969 of the Bombay High Court in Criminal Application No. 1341 of 1968.

C. L. Sareen and J. C. Talwar, for the appellant.

P. K. Chatterjee and S. P. Nayar, for the respondent.

The Judgment of the Court was delivered by

Shelat, J. The appellant and one Bakshi Singh Sunder Singh were accused No. 2 and accused No. 1 respectively in the committal proceedings before the Presidency Magistrate, 28th Court, Greater Bombay. This appeal, by special leave, is directed against the judgment of the High Court of Bombay refusing to quash the order of committal passed by the learned Magistrate.

The facts relevant to this appeal are few and may first be stated.

On October 31, 1963, one Jivansingh Uttam Singh obtained a British passport bearing No. 183459 at Nairobi. On the strength of that passport he was returning to India with his family. On his way he died on board the ship. According to the prosecution that passport came into the hands of the appellant. Bakshi Singh desired to go to the United Kingdom, but had no passport. The appellant agreed to arrange his journey and also for that purpose to obtain a passport for him.

The allegation was that the appellant prepared an application for a visa in the name of Bakshi Singh. It was further alleged that with a view to procure the said visa the photograph of the said deceased Jivansingh was removed from the said passport and that of Bakshi Singh substituted. The visa having in this fashion been obtained, Bakshi Singh journeyed to the United Kingdom having on his way made some intermediate halts. The British authorities suspected that the passport was a forged document and repatriated Bakshi Singh to India. On his arrival he was handed over to the Special Police, Bombay.

The Special Police carried out investigation in the course of which they recorded statements of certain witnesses including that of Tanna Singh, the younger brother of Bakshi Singh. On completion of the investigation, the police filed a charge-sheet before the learned Magistrate. That charge-sheet is not before us. But counsel for the appellant informed us that Bakshi Singh was therein charged under secs. 419 and 471 read with sec. 468, and the appellant was charged under secs. 419/109, 468 and 471 of the Penal Code. Counsel also informed us- that the Magistrate did not examine any witnesses, during the committal

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proceedings but on a perusal of the charge-sheet and the documents filed before him under sec. 173 of the Code of Criminal Procedure he framed the charges and committed, by

his order dated September 13, 1968, Bakshi Singh and the appellant for trial before the Sessions Court. By that order he directed the said Bakshi Singh to stand his trial under secs. 120B, 419, 467 and 471 read with sec. 467, and the appellant under secs. 120B and 467 of the Penal Code. The offence of criminal conspiracy charged under sec. 120B was that the said Bakshi Singh and the appellant had conspired to forge the said passport for the use of the said Bakshi Singh.

In the High Court various contentions were raised on behalf of the appellant in support of his application under sec. 561A of the Code of Criminal Procedure including that under sec. 196A (2). That contention was that no consent as required by sec. 196A(2) having been first obtained, the Magistrate had no jurisdiction to take cognizance of the offence of conspiracy, and therefore, the committal order was without jurisdiction and had to be quashed. In this appeal we are concerned only with that contention as the special leave granted to the appellant has been limited to that ground alone.

Sub-sec. 2 of sec. 196A, which is relevant to the present case, provides that no court shall take cognizance of the offence of criminal conspiracy punishable under sec. 120B of the Penal Code in a case 'inter alia where the object of such conspiracy is to commit any non-cognizable offence. There is no doubt that the charge, as framed by the Magistrate and for which he committed the appellant and Bakshi Singh to stand their trial before the Sessions Court, was for criminal conspiracy, the object of which was to forge the said passport, a non-cognizable offence. In respect of that offence, sec. 196A(2) would undoubtedly apply. What that section prohibits is taking cognizance of an offence of criminal conspiracy unless consent to the initiation of proceedings against the person charged with it has been first obtained.

As provided by sec. 190 of the Code of Criminal Procedure, a Magistrate may take cognizance of an offence either (a) upon receiving a complaint, or (b) upon a police report, or (c) upon information received from a person other than a police officer or even upon his own information or suspicion that such an offence has been committed. As has often been held taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance, therefore, takes place at a point when a magistrate first takes judicial notice of an offence. This is the position whether the magistrate takes

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cognizance of an offence on a complaint or on a police report, or upon information of a person other than a police officer. Therefore, when a magistrate takes cognizance of an offence upon a police report, prima facie he does so of the offence or offences disclosed in such report.

It is not in dispute that the charge-sheet submitted by the police officer for the purpose of initiation of proceedings by the magistrate was for offences under sees. 419 and 471 read with sec. 468 against Bakshi Singh and under sees. 419/109, 471 and 468 against the appellant. The charge-sheet admittedly did not refer to or charge either of them with criminal conspiracy under sec. 120B. Prima facie it is not possible to say that at the stage when the police filed the charge-sheet the Magistrate took cognizance of the offence, under sec. 120B, for, that was not the offence alleged in the charge-sheet to have been committed by either of the two accused persons.

True it is that the Magistrate ultimately drew up charges which included the offence under sec. 120B, the object of which was to forge the passport, an offence under sec. 467. The Magistrate also did not consider it necessary to examine any witnesses and frame the charges on a perusal of the charge-sheet submitted to him by the police, the statement of witnesses recorded by the police during their investigation and such other documents as were filed under sec. 173 of the Code of Criminal Procedure & before him. The materials before him, therefore, were the same as were before the police officer who had filed the charge-sheet. But while drawing up the charges and passing his order of committal, the Magistrate considered that though the charge-sheet filed before him alleged the commission of offences under secs. 419/109, 471 and 468, the proper charge on the materials before him, although they were the same as before the police officer, warranted a charge of criminal conspiracy for forging a passport. It is quite clear, however, that the cognizance which he took was of the offences alleged in the charge-sheet because it was in respect of those offences that the police had applied to him to initiate proceedings against Bakshi Singh and the appellant and not for the offence under sec. 120B. It was at a later stage, i.e., at the time of passing the committal order that he considered that a charge under sec. 120B was the more appropriate charge and not a charge under sec. 109 of the Penal Code. That being so, it must be held that the Magistrate took cognizance of the offence of abetment of an offence of forgery and impersonation so far as the appellant was concerned and not of the offence of criminal conspiracy, and therefore, sec. 196A(2) did not apply. Counsel in this connection relied on certain observations made in a minority judgment of S. K. Das, J., in *Pramatha Nath*

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Taluqdar v. Saroj Ranjan Sarkar. (1) The question involved there was, whether a second complaint could be entertained by a magistrate who or whose predecessor had on the same or similar allegations dismissed a previous complaint, and if so, in what circumstances should such a complaint be entertained. Arising out of this question a contention was raised whether on the complaint, as it was framed, the Magistrate had the jurisdiction to, take cognizance of the offences alleged in the complaint in the, absence of a sanction under sec. 196A. The second complaint alleged offences under secs. 467 and 471 read with sec. 109 of the Penal Code. But in para 5 thereof, there was an allegation as to criminal conspiracy and it was on the basis of that allegation that sec. 196A(2) was sought to be involved. It was in this connection that the learned Judge at page 315 of the report, observed :

"It would not be proper to decide the, question of sanction merely by taking into consideration the offences mentioned in the heading or the use of the expression "criminal conspiracy" in para, 5. The proper test should be whether the allegations made in the petition of complaint disclosed primarily and essentially an offence or offences for which a consent in writing would be necessary to the initiation of the proceedings within the meaning of s. 196A(2) of the Code of Criminal Procedure. It is from that point of view that the petition of 'complaint must be examined."

The learned Judge ultimately held that though the offence of criminal conspiracy was alluded to in para 5 of the said complaint, the offence "primarily and essentially" charged was abetment by conspiracy under sec. 109 of the Penal Code, and therefore, no consent under sec. 196A(2) was required. In *Birao Sardar v. Ariff* (2) the view also taken was that it is not the sections referred to which matter but the offence prima facie disclosed. Following that decision, the High Court of Bombay in *Ramchandra v. Emperor* (3) observed that the question whether sanction is necessary or not depends not on the sections referred to in a complaint but the offence prima facie disclosed'. by the facts alleged in it.

It is clear from the charge-sheet submitted to the magistrate that the offence of criminal conspiracy was not even referred to. The offence "primarily and essentially" alleged therein was one of abetment of forgery under secs. 468 and 471 and of false,

(1) [1962] Supp. 2 S.C.R. 297. (2) A.I.R. 1925 Cal. 579.

(3) A.I.R. 1939 [Bom.] 129.

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impersonation under sec. 419 read with sec. 109. Assuming that the Magistrate before taking cognizance had persued the statements of witnesses recorded by the police during investigation, it was conceded by counsel, after he himself had gone through them from the record, that none of the witnesses had alleged therein either directly or indirectly of the appellant having entered into a criminal conspiracy with Bakshi Singh for forging the passport. It cannot be disputed that the charge-sheet also prima facie disclosed the offence of abetment. That being so, it is impossible to sustain the argument that the Magistrate took cognizance of the offence under sec. 120B, and therefore, consent under sec. 196A(2) was required as a condition precedent or that the committal order and the proceedings for committal which be took were vitiated for want of such consent.

The appeal, therefore, fails and is dismissed.

V.P.S. Appeal dismissed.

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