

Labh Singh v. The State of Punjab (Suri, J.)

revenue and civil Courts, stands barred, commends to me, as it would enable to give effect simultaneously to both the provisions of sections 55 and 82 of the Act. In this view of the matter, I hold that the Registrar of the Co-operative Societies was competent to initiate the criminal proceedings against the petitioner with regard to the offence of embezzlement and the criminal Court was competent to entertain criminal proceedings regarding the said offence against the petitioner.

(11) For the reasons stated above, finding no merit in this criminal revision petition, I dismiss the same.

B.S.G.

REVISIONAL CRIMINAL

Before C. G. Suri, J.

LABH SINGH,—*Convict Petitioner.*

versus.

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 187 of 1970.

October 7, 1971.

Penal Code (Act XLV of 1860)—Sections 108, 109 and 111—Principal Offender acquitted for want of proof of identity—Abettor to the offence—Whether can be convicted.

Held, that where principal offender who is tried along with the abettor of the offence is acquitted because of the failure of the prosecution to adduce enough evidence to establish his identity, it is not always that the abettor cannot be convicted. The conviction or the acquittal of the abettor will depend upon the facts and circumstances of each case. Indian Penal Code has itself noticed two exceptions, one is illustration (a) under Explanation 3 to Section 108 and the other is illustration (a) under the proviso to Section 111. It cannot, therefore, be laid down as a general rule that there can be no conviction of an abettor where the person arraigned as principal offender has been acquitted. (Para 3)

Petition under Sections 435/439 Cr. P.C. for revision of the order of Shri Udham Singh, Sessions Judge, Patiala, dated 6th February 1970,

affirming that of Shri S. K. Jain, Special Judicial Magistrate 1st Class, Punjab, Patiala, dated 15th May, 1969, convicting the appellant.

Kirpal Singh, Advocate, for the petitioner.

M. P. Singh Gill, Assistant—Advocate General, Punjab, for the respondent.

M. L. Nanda, Advocate, for C.B.I.

JUDGMENT

SURI, J.—(1) Labh Singh petitioner, who was Clerk in the Sub-Post Office at Khanna, has been convicted and sentenced by the Special Judicial Magistrate, Patiala, under sections 420, 468 and 471, read with section 109 of the Indian Penal Code, for having abetted the commission of offences of cheating, forgery and use of a forged document as genuine by his co-accused. Two other persons, who had been tried jointly with Labh Singh, had been acquitted by the Magistrate as their identity as accomplices of the petitioner had not been established.

(2) During the hearing of the appeal filed by the petitioner in the Court of Session at Patiala, all the facts alleged against him had been admitted and there were no arguments on the merits of the case. The only point of law urged on behalf of the appellant before the Sessions Judge was that as the principal offenders had been acquitted, there could be no question of the conviction of the abettor. Reliance had in this connection been placed by the petitioner's counsel on the Supreme Court ruling in *Faguna Kanta Nath v. The State of Assam* (1), where the Hon'ble Judges had been pleased to observe as follows:—

“According to S. 107, a person abets the doing of a thing when he instigates any person to do a thing or engages with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aids, by any act or illegal omission the doing of that thing. In either of the first two cases it is immaterial for the conviction of the abettor whether the person instigated commits the offence

(1) A.I.R. 1959 S.C. 673.

or not or the persons conspiring together actually carry out the objects of the conspiracy.

In the case of abetment by aid, a person can be said to abet by aiding only when by the commission of an act he intends to facilitate the commission of the offence and does facilitate the commission thereof. Therefore, where a person is charged with abetment by aid of an offence under S. 161 and the person charged with the offence is acquitted on the ground that he had not committed the offence, no question of intentionally aiding by any act or omission the commission of that offence arises. Therefore, whether the acquittal is right or wrong the conviction of the abettor also cannot be allowed to stand in the circumstances."

(3) The rule laid down was obviously intended to dispose of that particular case and was not meant to be of general application in all cases. Two exceptions to this rule may appear to have been noticed in the statute itself as illustration (a) under Explanation 3 to Section 108 and illustration (a) under the proviso to Section 111 of the Indian Penal Code. It cannot, therefore, be laid down as a general rule that there could be no conviction of an abettor where the person arraigned as the principal offender had been acquitted. The application or non-application of this rule would depend upon the facts and circumstances of each case. In *Gallu Sah v. State of Bihar* (2), the Hon'ble Judges of the Supreme Court had convicted the abettor even though the person charged with the commission of the offence abetted had been acquitted. It was observed that a witness could be believed with regard to a part of his evidence and disbelieved with regard to another part relating to the co-accused. The maxim of *falsus in uno, falsus in omnibus* was not applied. It was held that there was no violation of any rule of law in not accepting the evidence of the witnesses in so far as they said that 'B' had set fire to the hut and accepting the same evidence in so far as they said that it was the accused who had ordered 'B' to set the hut on fire. This Supreme Court ruling was then cited with approval by the Hon'ble Judges of the Supreme Court in *Madan Raj Bhandari v. The State of Rajasthan* (3). It was recognised that there could be exceptions to the general

(2) A.I.R. 1958 S.C. 813.

(3) A.I.R. 1970 S.C. 436.

rule laid down by the Calcutta High Court in *Umadasi Dasi v. Emperor* (4), that a charge of abetment must fail when the substantive offence was not established against the principal.

(4) There was no finding in the case in hand by the Special Judicial Magistrate that the main offences of cheating, forgery and use of a forged document as genuine had not been committed. The finding only was that the identity of the persons committing those main offences was known only to the petitioner and that the prosecution had not been able to adduce enough evidence to connect the persons arraigned before it as principal offenders with the commission of the main crime. The petitioner had also admitted before the Sessions Judge during the hearing of the appeal that these offences had been committed. Certain amounts had been withdrawn from the savings fund account of Bhagat Singh, P.W. 10, on the basis of forged withdrawal forms. The petitioner had identified the persons who had impersonated the depositor on different occasions. The petitioner had identified these unknown persons as Bhagat Singh. There could, therefore, be no doubt that the offences of forgery and cheating, etc., had been committed by someone known only to the petitioner. The petitioner, who had identified those main offenders as Bhagat Singh depositor, was keeping the information to himself and the prosecution had failed to establish the identity of the principal offenders. If the real culprit has got off because of the non-cooperative attitude of the petitioner, it would not mean that the petitioner had not abetted the commission of the main offence. The Supreme Court ruling in *Faguna Kanta Nath's case* (supra) is not of any help to the petitioner as the finding in that case was that no offence had been committed by the principal accused and that there could, therefore, be no abetment of an offence if it had never been committed. In the case in hand, the main offences of cheating and forgery had admittedly been committed by some persons unknown to us and if they have got off because we could not trace them out correctly that would be no reason for acquitting the abettor when his identity was not at all a matter of any doubt and when the abettor had enabled the main offenders known only to himself to cheat by impersonating the depositor Bhagat Singh, P.W., and by forging the depositor's signatures on some application forms for withdrawal of money from the Saving Bank account of Bhagat Singh, P.W.

Surjit Singh Sud, v. The State of Punjab etc. (Tuli, J.)

(5) Under the circumstances, the petitioner may appear to have been rightly convicted for the abetment of the main offences, even though the main offenders have got off because their identity could not be established by the prosecution.

(6) The appellant's convictions and sentences are, therefore, maintained and the revision petition is dismissed.

B.S.G.

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

SURJIT SINGH SUD,—Petitioner.

versus

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ No. 3183 of 1971.

October 8, 1971.

Punjab Town Improvement Act (IV of 1922)—Sections 5, 10, 17, 18 and 73(1) (iii)—Employment, Suspension, Removal and Conduct of Officers and Servants of the Trust Rules (1945)—Rules 17 to 19—Whether apply to Chairman and Trustees of an Improvement Trust—Removal of a Chairman from office—State Government—Whether bound to follow procedure under rule 19—Section 5—Whether ultra vires Article 14, Constitution of India for vesting absolute power in the State Government and being more disadvantageous than Section 10.

Held, that from a reading of Sections 17 and 73(1) (iii) of the Punjab Town Improvement Act, 1922, together, it irresistibly follows that the Employment, Suspension, Removal and Conduct of Officers and Servants of the Trust Rules, 1945, for the framing of which power has been vested in the State Government, relate to the officers and servants who can be employed by the trust itself and not to the Chairman and trustees who are appointed by the Government or the Municipal Committee concerned. Section 18 makes the position further clear because the power of appointing, promoting and granting leave to officers and servants of the trust and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, vests in the chairman of the trust or the trust itself. The power of appointment and removal of a Chairman has been expressly vested in the State Government