

The Law of Criminal Conspiracy Section 120A & 120B of Indian Penal Code

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Abstract: The gradual evolution of the law of conspiracy, its widened scope and general application can be traced in close association with the law of principal and accessory.i At Common law, Conspiracy had its origin primarily as a civil wrong. It was originally used to explain the acts of agreement of those who combined to carry on legal proceedings in a vexatious or improper way.ii

Keywords: Law of Criminal Conspiracy, Section 120A, Section 120B, Indian Penal Code

I. INTRODUCTION

In India the Law relating to criminal Conspiracy is contained by Indian Penal Code, 1860. The function of the Code is to define the offence and thereafter to prescribe its punishment. The provision was inserted by virtue of Criminal Law (Amendment) Act, 1913. Conspiracy under the Indian penal code originally was punishable only in two forms:-

1. Conspiracy by way of abetment
2. Conspiracy involved in certain offence.

In former an act or illegal omission must take place in pursuance of conspiracy in order to be punishable while in the latter membership suffices to establish the charge of conspiracy. However the law of conspiracy was widened in 1870 by insertion of Section 121A, IPC. Under Section 121A, it is an offence to conspire to commit any of the offences punishable by section 121 of the Indian Penal Code, or to conspire (to deprive the government or any part thereof) to overawe by means of criminal force, or the show of criminal force, the Government of India, or any local government. Under this section it was not necessary that any act or illegal omission should take place in pursuance thereof, where as section 107 abetment includes the engaging with one or more persons in any conspiracy for the doing of a thing, if an act or illegal omission take place in pursuance of that conspiracy, and in order of doing that thing. In short except in respect of the offences particularized in section 121A, conspiracy per se was not an offence under the Indian Penal Code until Criminal Law Amendment Act of 1913.iii

II. DEFINING AND EXPLAINING CONSPIRACY

Under Indian Penal Code 1860, Section 120A as contained in Chapter V-A defines the offence of criminal conspiracy. Section 120A reads as under:-

120A. Definition of criminal conspiracy:- When 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. Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation attached to the Section provides that it is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

According to the Halsbury's Laws of England:- iv

The essence of the offences of both statutory and common law conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is therefore the agreement for the execution of the unlawful conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or in the same place; it is necessary to show a meeting of minds, a consensus to affect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.

The English law on 'conspiracy' has been succinctly explained in the following passage:

The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se enough.

In *R. v. Murphy*,¹ *Coleridge J*; has explained 'conspiracy' in the following words:-

I am bound to tell you, that although the common design is the root of the charge, it is not necessary to prove that these two parties came together and actually agreed in terms to have this common design, and to pursue it by common means, and so to carry it into execution. This is not necessary, because in any cases of the most clearly established conspiracies there are no means of proving any such thing and neither law nor common sense requires that it should be proved. If you find that these two persons pursued by their acts the same object, often by the same means, one performing one part of an act, and the other another part of the same act, so as to complete it, with a view to the attainment of the object which they were pursuing, you will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object. The question you have to ask yourselves is, 'had they this common design, and did they pursue it by these common means the design being unlawful?'

Lord Brampton of the House of Lords in *Quinn v. Leatham*,² had aptly defined conspiracy which definition was engrafted in Sections 120A and 120B IPC. Following was stated by the House of Lords:-

A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more, to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful; and punishable if for a criminal object, or for the use of criminal means.

III. PURPOSE OF INSERTION OF SECTION 120A & 120B IPC, 1860

The underlying purpose for the insertion of Sections 120A and 120B IPC was to make a mere agreement to do an illegal act or an act which is not illegal by illegal means punishable under law. The criminal thoughts in the mind when take concrete shape of an agreement to do or cause to be done an illegal act or an act which is not illegal by illegal means than even if nothing further is done an agreement is designated as a criminal conspiracy. The proviso to Section 120A engrafts a limitation that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some

act besides the agreement is done by one or more parties to such agreement in pursuance thereof.³

IV. INGREDIENTS OF CRIMINAL CONSPIRACY

In *Pratapbhai Hamirbhai Solanki v. State of Gujarat and another*,⁴ the Hon'ble Supreme Court has explained the ingredients of criminal conspiracy as under: -

The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or a series of acts, he would be held guilty under Section 120-B of the Penal Code, 1860.

Further citing *Ram Narayan Popli v. CBI*,⁵ under Para 22 of its verdict it was observed that the elements of a criminal conspiracy have been stated to be (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. It has been further opined that the essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. It was

¹ (1837) 173 ER 508

² (1901) AC 495

³ *Mukesh & Anr v. State for NTC of Delhi & Ors*, Criminal Appeal No : 609 -610 / 2017, Decided on 05.05.2017, Supreme Court of India

⁴ (2013) 1 SCC 613

⁵ (2003) 3 SCC 641

further stated that for an offence punishable under Section 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. It has been highlighted that in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing by illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.

Perusal of definitions, explanations and purpose of criminal conspiracy under section 120A of Indian Penal Code shows that in order to constitute an offence of criminal conspiracy, two or more persons must agree to do an illegal act or an act which if not illegal by illegal means. The Hon'ble Supreme Court has also on several occasions has explained and elaborated the element of conspiracy as contained in our penal law. In **Noor Mohammad Mohd Yusuf Momin v. State of Maharashtra**,⁶ the Supreme Court has observed that – that Criminal conspiracy postulates 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. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested, quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. In **E.G. Barsay v. State of Bombay**⁷, the following was stated:-

The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Indian Penal Code, an act would

be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable.

A three-Judge Bench in **Yash Pal Mittal v. State of Punjab**⁸ had noted the ingredients of the offence of criminal conspiracy and held that the main object of the criminal conspiracy in the first charge is undoubtedly cheating by personation. The other means adopted, inter alia, are preparation or causing to be prepared spurious passports; forging or causing to be forged entries and endorsements in that connection; and use of or causing to be used forged passports as genuine in order to facilitate travel of persons abroad. The final object of the conspiracy in the first charge being the offence of cheating by personation, as we find, the other offences described therein are steps, albeit, offences themselves, in aid of the ultimate crime. The charge does not connote plurality of objects of the conspiracy. That the appellant himself is not charged with the ultimate offence, which is the object of the criminal conspiracy, is beside the point in a charge under Section 120-B IPC as long as he is a party to the conspiracy with the end in view. Whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial court. It was further held that the principal object of the criminal conspiracy in the first charge is thus “cheating by personation”, and without achieving that goal other acts would be of no material use in which any person could be necessarily interested. That the appellant himself does not personate another person is beside the point when he is alleged to be a collaborator of the conspiracy with that object. We have seen that some persons have been individually and specifically charged with cheating by personation under Section 419 IPC. They were also charged along with the appellant under Section 120-B IPC. The object of criminal conspiracy is absolutely clear and there is no substance in the argument that the object is merely to cheat simpliciter under Section 417, IPC.

V. CONCLUSION

From the above discussion, it becomes clear that the prosecution must adduce evidence to prove that:-

1. the accused agreed to do or caused to be done an act;
2. such an act was illegal or was to be done by illegal means within the meaning of IPC;
3. Irrespective of whether some overt act was done by one of the accused in pursuance of the agreement.

⁶ AIR 1971 SC 885

⁷ AIR 1961 SC 1762

⁸ (1977) 4 SCC 540

Under Section 120A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is legal act by illegal means overt act is necessary. Offence of criminal conspiracy is exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only has the intention but there had to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused had the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever, horrendous it may be, that offence be committed. As already stated, in a criminal conspiracy, meeting of minds of two or more persons for doing an illegal act is the *sine qua non* but proving this by direct proof is not possible. Hence, conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. Moreover, it is also relevant to note that conspiracy being a continuing offence continues to subsist till it is executed or rescinded or frustrated by the choice of necessity. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the

intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime.⁹

A person who is found to be the guilty of committing criminal conspiracy shall be punished as per section 120B which prescribes punishment for the same to a person Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. And whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both

ⁱ Russell on crime, 12th Edn, (1964) Vol. 1, p 200 -203

ⁱⁱ Sir James Fitzjames Stephen, A History of the Criminal Law of England, 227 (Macmillan and Co. London, 1883),

ⁱⁱⁱ Gaur K.D, The Indian Penal Code, 212 (Universal Law Publication , 4th edn , 2009, Delhi)

^{iv} Halsbury's Laws of England, 73, (5th Edn., Vol.25)

⁹ State through Superintendent of Police, CBI/SIT v. Nalini and others, (1999) 5 SCC 253