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STATE OF MADHYA PRADESH

v.

MUKESH AND ORS.

OCTOBER 19, 2006

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

C

*Railways Act, 1989—Section 143—Unauthorized carrying on of business of procuring railway tickets—Allegation of abetment against reservation clerks—Conviction under—Acquittal by High Court—Legality of—Held: Reservation clerks did not violate any Rules while issuing ticket, as such no illegal omission to constitute abetment—Also no independent evidence adduced by prosecution to show that the clerks intentionally aided the accused—Common questions were framed and asked to all the accused persons which did not subserve the requirements of Section 313 Cr.P.C—Thus, order of High Court does not call for interference—Code of Criminal Procedure, 1973, Section 313—Penal Code, 1860, Section 107—Evidence Act, 1872, Section 30.*

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It is alleged that the respondents-reservation clerks had abetted S in procuring reservation tickets illegally. S and respondents were charged under section 143(1) and section 143(2) of Railways Act, 1989 respectively. S absconded; however, the trial was concluded against respondents and they were held guilty. Respondents filed an appeal which was dismissed. However, revision application was allowed. Hence the present appeal.

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Dismissing the appeal, the Court

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**HELD: 1.1.** A person in view of Section 143 (1) of the Railways Act, 1989 can be said to have committed an offence if he has been carrying on a business. The expression “business” implies continuity. The term ‘abetment’ has not been defined in the Railways Act. Section 107 of Penal Code defines abetment. A person, abets by aiding, when by any act done either prior to, or at the time of, the commission of an act, he intends to facilitate and does in fact facilitate, the commission thereof would attract the third clause of section 107 IPC. Doing something for the offender is not abetment. Doing something with knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment. No illegal omission on the part of respondents has been established. Admittedly in issuing the tickets, respondents have not violated

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any rules. *Ex facie*, they have also not violated any direction contained in any circular issued by an appropriate authority in that behalf. A

[497-C-D; 497-F-H; 498-A]

1.3. The entire prosecution is based on the purported confession of S. A statement of an accused would be admissible against a co-accused only in terms of section 30 of the Evidence Act. Such a statement of co-accused was required to be corroborated by adduction of independent evidence. Prosecution has not adduced any independent evidence to show that respondents had intentionally aided S and thereby abetted him in commission of offence under section 143(1) of the Act. [498-A-C] B

1.4. The circumstances appearing against S and respondents were concededly different. However, one questionnaire common to all was prepared. Not only similar questions had been put, similar answers had been recorded. Strangely enough, even questions required to be put to each of the accused persons separately have been made part of the same questionnaire. Such common questions framed and asked to all the accused persons did not subserve the requirements of section 313 Cr.P.C. Therefore, High Court's observation that all the circumstances appearing against respondents had not been put in their examination under section 313 Cr.P.C. cannot said to be unsustainable. [498-D-F] C D

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1087 of 2006. E

From the Final Judgment and Order dated 7.2.2005 of the High Court of Madhya Pradesh, Indore Bench, in Criminal Revision No. 296 of 2002.

Vibha Datta Makhija for the Appellant. F

P.N. Mishra, Girdhar G. Upadhyay, Syed Ali Ahmad, Syed Tanweer Ahmad, Vinita G. Upadhyay, Awadhesh Kr. Singh and R.D. Upadhyay for the Respondents.

The Judgment of the Court was delivered by G

S.B. SINHA, J. Leave granted.

Respondents were working as reservation clerks. They were posted at Indore Railway Station. The Assistant Sub Inspector of General Railway Police, Indore, on an information received by him that one person had illegally H

A been purchasing tickets from reservation counters, came to the reservation office and in the process apprehended a person named Suresh Shah. He was from Mumbai. From a search conducted, 94 tickets of different trains and some filled up as well as some unfilled reservation demand forms were recovered from him. A sum of Rs. 33,403/- was also found in his possession. A First Information Report was lodged. Allegedly, during investigation of the said case, he was found to have been carrying business in procuring reservation tickets illegally. Respondents herein were said to have abetted in commission of the said offence. On the said charge, Respondents herein with the aforementioned Suresh Shah were prosecuted.

C Whereas the said Suresh Shah was charged under Section 143(1) of the Railways Act, 1989, Respondents herein were charged under Section 143(2) thereof. When the case was at an advanced stage, the said Suresh Shah absconded. The trial, however, was concluded against Respondents. They were found guilty of commission of the offence charged against them and were sentenced to undergo 3 years' rigorous imprisonment and to pay a fine of Rs. 10,000/- in default whereof they were directed to undergo further 6 months rigorous imprisonment. They preferred an appeal thereagainst before the Sessions Judge which was transferred to the Court of 6th Additional Sessions Judge, Indore and registered as Criminal Appeal No. 78 of 1999. The said appeal was dismissed by an order dated 1.05.2002. A revision application was filed before the High Court by them which by reason of the impugned judgment has been allowed. The State of Madhya Pradesh is, thus, before us.

F Ms. Vibha Datta Makhija, learned counsel appearing on behalf of Appellant, principally raised two contentions before us. Firstly, it was submitted that although there is no direct evidence as against Respondents herein but from the circumstantial evidence adduced by the prosecution, it must be held that have been proved that the railway tickets were being clandestinely sold in black market and unless Respondents had abetted the main accused Suresh Shah and could not have been found to be in possession of 80 tickets involving 94 reservations. It was contended that Respondents were found to have issued the tickets and keeping in view the timings of issuance thereof, as has been noticed at paragraph 21 of the judgment of the learned Trial Judge, it would have been impossible for the said Suresh Shah to book so many tickets within a few hours, viz., from 0933 hrs. to 1916 hours.

H It was also submitted that Respondents did not raise any particular defence. The High Court, the learned counsel would submit, also committed

a serious error in opining that Respondents had not been asked about the circumstantial evidence or evidence appearing against them by the learned Trial Judge while examining them under Section 313 of the Code of Criminal Procedure. A

Mr. P.N. Misra, learned senior counsel appearing on behalf of Respondents, on the other hand, supported the judgment of the High Court. B

Before embarking upon the rival contentions of the parties, we may briefly notice the admitted facts. At the relevant time, 11 reservation counters were functioning at the Indore Railway Station. Reservation offices at the said place function from 0800 hours to 1400 hours and then from 1410 hours to 2000 hours. An employee works only for six hours in one reservation counter. Two of the reservation clerks were absent. The offence is said to have taken place on 2nd October, 1995, *i.e.*, just before the ensuing Durga Puja festival. There were long queues. Ordinarily, minimum 2-3 minutes' time was required for issuance of one ticket. C

Indisputably, a circular was issued in terms whereof one reservation form could be given to one person. He, however, would be entitled to ask for reservation of six seats for passengers. If one person intends to obtain more than one reservation form, he is required to take permission from Divisional Commercial Manager. However, indisputably a person intending to obtain reservation for more than six persons can make his associates stand in the queue or come again and again demanding reservation forms. During Diwali, Dussehera and Summer holidays, in view of rush, admittedly at least 20 persons remain in queue in each reservation window. D

Documents maintained in the reservation office had not been seized. No excess amount was found at the cash counter. No extra cash was also found on the person of Respondents. E

In the reservation forms, handwriting of the accused Suresh Shah was allegedly found. It stands admitted that the reservation forms were handled in different counters. Out of the six accused persons, three were in the morning shift and three were in the evening shift. F

From the timings of issuance of tickets, as noticed by the learned Trial Judge at paragraph 21 of its judgment, it appears that two tickets were found to have been issued at the same time from two counters. G

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A The learned Trial Judge in his judgment proceeded on the basis that the accused Nos. 2 to 7 had not acted in good faith as envisaged under Section 186 of the Railways Act.

B The fact that more than one ticket had been issued from different counters at the same time is not disputed. The possibility of the said Suresh Shah to have associates with him who presented reservation forms in different counters cannot, thus, be ruled out. No doubt Respondents while discharging their public duties were required to maintain transparency, but admittedly the Investigating Officer did not conduct any investigation as to whether the said Suresh Shah who allegedly had been carrying on systematic business in C procuring reservation for passengers, had any associate or not. He is a resident of Bombay. According to the prosecution he used to operate from the said place. Nothing has been brought on records to show as to whether he had regularly been operating from Indore or not. The prosecution is silent in regard thereto. Reservation forms might have been filled up by Suresh Shah D but then the possibility that Respondents who were working in three different counters on two different occasions might not have any hands therein cannot be ruled out. They were not expected to verify the handwritings of a person while issuing tickets. They as noticed hereinbefore, were required to deal with a person standing before them very quickly.

E How the handwriting of one person in different forms could have been checked by Respondents is open to guess. Only for bulk tickets, approval was to be taken but as noticed hereinbefore an associate of the same person may stand in the queue and demand reservation forms from the reservation windows on more than one occasion. Once a filled-up form is passed over, the reservation clerks had admittedly no discretion in the matter but to issue F tickets.

Section 143(1) of the Railways Act reads, thus:

“143. *Penalty for unauthorised carrying on of business of procuring and supplying of railway tickets.—*

G (1) If any person, not being a railway servant or an agent authorised in this behalf.—

(a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a H train; or

(b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the ticket which he so procures, supplies, purchases, sells or attempts to purchase or sell:

Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.”

A person in view of the aforementioned provision can be said to have committed an offence if he has been carrying on a business. The expression “business” implies continuity.

The term ‘abetment’ has not been defined in the Railways Act. What would constitute abetment is contained in Section 107 of the Indian Penal Code, which reads, thus:

“107. Abetment of a thing—A person abets the doing of a thing, who

First.— Instigates any person to do that thing; or

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing,

if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.— Intentionally aids, by any act or illegal omission, the doing of that thing.”

A person, it is trite, abets by aiding, when by any act done either prior to, or at the time of, the commission of an act, he intends to facilitate and does in fact facilitate, the commission thereof would attract the third clause of Section 107 of the Indian Penal Code. Doing something for the offender is not abetment. Doing something with knowledge so as to facilitate him to commit the crime or otherwise would constitute abetment. ‘

Admittedly, the first and second part of the said provision has no application. No illegal omission on the part of Respondents has been

A established. Admittedly in issuing the tickets, Respondents have not violated any rules. *Ex facie*, they have also not violated any direction contained in any circular issued by an appropriate authority in that behalf.

B The entire prosecution is based on the purported confession of Suresh Shah. A statement of an accused would be admissible against a co-accused only in terms of Section 30 of the Indian Evidence Act. Such a statement of co-accused was required to be corroborated by adduction of independent evidence. The prosecution has not adduced any independent evidence to show that Respondents had intentionally aided the said Suresh Shah and thereby abetted him in commission of an offence under Section 143(1) of the Indian Railways Act.

C Ms. Makhija may be correct in contending that the High Court has made a wrong observation that all the circumstances appearing against Respondents had not been put in their examination under Section 313 of the Code of Criminal Procedure but its ultimate conclusion on the said issue is not correct.

D We have been taken through the questions asked to all Respondents by the learned Magistrate. The circumstances appearing against Suresh Shah and Respondents were concededly different. However, one questionnaire common to all was prepared. 90% of the questions in the said questionnaire were to be put to Suresh Shah, but strangely the same questions had been put to all Respondents. Except one question, *viz.*, “what you want to say in your defence?”, not only similar questions had been put, similar answers had been recorded. Strangely enough, even questions required to be put to each of the accused persons separately have been made part of the same questionnaire. Such common questions framed and asked to all the accused persons did not subserve the requirements of Section 313 of the Code of Criminal Procedure.

E To the said extent, the High Court’s observations cannot be said to be unsustainable.

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Moreover, it must be borne in mind that we are dealing with a judgment of acquittal passed by the High Court. If two views are possible, ordinarily this Court would not interfere therewith. The State has not been able to show any illegality in the judgment of the High Court. We, therefore, do not intend to interfere therewith. The appeal is dismissed.

G N.J.

Appeal disposed of.