

The Law of Criminal Conspiracy: Section 120 – A, IPC, 1860

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Abstract: Crime is an act or omission which is prohibited by law as injurious to the public and punished by the state. “Disobedience to a command or prohibition made with reference to a matter affecting public peace, order, or good Government to which a sanction is attached, by way of punishment or as a whole, and not by way of compensation for the injury which the act or omission may have caused to an individual.” Certain kinds of wrongs are considered as of a public character because they possess elements of evil which affect the public as a whole and not merely the person whose rights of property or person have been invaded. Such a wrong is called “Crime”. It can be best defined as any act or omission which is forbidden by law, to which a punishment is annexed and which the State prosecutes in its own name. A crime is an act deemed by law to be harmful to society in general, deemed by law to be harmful to society in general, even though its immediate victim is an individual. Section 120A IPC as contained in Chapter V-A defines the offence of criminal conspiracy and further Section 120 B prescribes its punishment.

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1. Introduction

The provision was inserted in the IPC by virtue of Criminal Law (Amendment) Act, 1913. 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. By insertion of Chapter V-A in IPC, the understanding of criminal conspiracy in the Indian context has become akin to that in England. The illegal act may or may not be done in pursuance of an agreement but the mere formation of an agreement is an offence and is punishable.

1.2. Defining Criminal Conspiracy

Section 120 A of the Indian Penal Code defines a Criminal Conspiracy as :- 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- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.”

Coleridge J. in *R. v. Murphy*¹ 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

¹ (1837) 173 ER 508

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?'

In *Quinn v. Leatham*,² Lord Brampton of the House of Lords had aptly defined conspiracy as :-

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'.

1.3. Essential Ingredients of Criminal Conspiracy

Criminal conspiracy is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy. The ingredients of the offence of criminal conspiracy are:³

- (i) an agreement between two or more persons;
- (ii) an agreement must relate to doing or causing to be done either (a) an illegal act; (b) an act which is not illegal in it but is done by illegal means.

In *Ram Narayan Popli v. CBI*,⁴ while dealing with the conspiracy the majority opinion laid down 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.

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 effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.⁵ In *Noor Mohammad Mohd. Yusuf Momin v State of Maharashtra*,⁶ the Hon'ble Supreme Court has observed 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 it was stated by the Supreme Court that 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. In short 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.

1.4 Object behind committing Criminal Conspiracy.

² (1901)AC 495

³ *Mir Nagvi Askari v. Central Bureau of Investigation*, (2009) 15 SCC 643

⁴ (2003) 3 SCC 641

⁵ Halsbury's Laws of England, 5th Edition, Vol 25, Page 73

⁶ AIR 1971 SC 885

⁷ AIR 1961 SC 1762

Explain the object of Criminal Conspiracy 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.

1.5. Proving Criminal Conspiracy

In *Ram Narayan Popli v. CBI*,⁹ it has been highlighted that in 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. In *K. R. Purushothaman v. State of Kerala*,¹⁰ the Court has made the following observations it is not necessary that all the conspirators must know each and every detail of the conspiracy. Neither is it necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. While appreciating the evidence of the conspiracy, it is incumbent on the court to keep in mind the well-known rule governing circumstantial evidence viz. each

and every incriminating circumstance must be clearly established by reliable evidence and the circumstances proved must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn, and no other hypothesis against the guilt is possible. In *Mir Nagvi Askari v. Central Bureau of Investigation*,¹¹ it was observed that the condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution viz. meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. The courts, however, while drawing an inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication.

1.6. Punishment for Criminal Conspiracy

Section 120B of the Indian Penal Code, 1860 prescribes following punishment for committing criminal conspiracy that: - 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. further 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.

1.7. Conclusion

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

⁸ (1977) 4 SCC 540

⁹ (2003) 3 SCC 641

¹⁰ (2005) 12 SCC 631

¹¹ (2009) 15 SCC 643

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. A charge of conspiracy may prejudice the accused because it is forced them into a joint trial and the court may consider the entire mass of evidence against every accused . It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is in contemplation of law, the act of each of them and they are jointly responsible therefore. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done, or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incident to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.