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right. For the reasons given above we hold that the statement made by the judgment-debtor in his objection application amounts to an admission of subsisting liability which was made within limitation. Therefore, in our opinion, the present application was within limitation.

For the reasons given above we allow this appeal, set aside the order of the court below and direct that execution proceedings should proceed. The decree-holder will get his costs in this Court from the respondent.

REVISIONAL CRIMINAL

Before Mr. Justice Rachhpal Singh

EMPEROR *v.* BHOLA NATH*

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April, 12

Criminal Procedure Code, section 337—Tender of pardon—Not illegal if ultimately charge is one triable by a Magistrate—Approver's statement not rendered inadmissible in evidence thereby—Criminal Procedure Code, section 288—Approver's statement in Magistrate's court deliberately varied in Sessions court—Statement in Magistrate's court can properly be acted upon—Evidence Act (I of 1872), section 10—Evidence of conspiracy—"In reference to" the common intention.

All that the Magistrate who can grant a pardon under section 337 of the Criminal Procedure Code has to see is whether on the information at his disposal there is a *prima facie* case of an offence which is triable exclusively by the High Court or court of session, and if that is so he is competent to grant a pardon, although it may eventually turn out at the trial that on the proved facts the offence committed was not one of that kind but was one which could have been tried by a Magistrate. It would be wrong in a case of this description to say that the pardon tendered to the approver was incompetent and that therefore the statement of the approver should not be taken into consideration. It is no part of the duty of the Magistrate to take upon himself the task of making a thorough and searching inquiry in order to find out whether the offence committed is one which will be triable by a court of session or by a Magistrate; as soon as he is informed that the offence is one which

*Criminal Revision No. 554 of 1938, from an order of B. R. James, Sessions Judge of Saharanpur, dated the 25th of April, 1938.

according to the investigating authority is triable exclusively by a court of session he is competent, and it is his duty, to grant pardon to the person put before him and then to record his statement.

Where the statement made by an approver in the court of the committing Magistrate was found to be in the main true, but in his statement before the court of session he deliberately made some incorrect and false statements with a view to help some of his friends among the accused persons, the Sessions Judge was not only competent under section 288 of the Criminal Procedure Code to treat the statement in the Magistrate's court as evidence but also to rely upon it in spite of the false statements deliberately introduced into it in the court of session.

There is a great deal of difference between the English law and the Indian law as regards the admissibility of evidence in conspiracy cases. Under the English law the acts must be "in furtherance of the common design" whereas under the terms of section 10 of the Indian Evidence Act the acts need only be "in reference to their common intention". Under section 10 anything said, done or written "in reference to the common intention" is admissible, and therefore the contents of letters written by one in reference to the conspiracy is relevant against the others even though not written in support of it or in furtherance of it.

Messrs. *G. S. Pathak, Gopalji Mehrotra, K. D. Malaviya* and *B. S. Darbari,* for the applicant.

Mr. *Kedar Nath* (for the Deputy Government Advocate), for the Crown.

RACHHPAL SINGH, J.:—These are four connected revision applications arising out of the same judgment and can therefore be conveniently disposed of together.

Bhola Nath, Bakshi Ram, Salig Ram and Debi Das applicants were tried in the court of the learned Assistant Sessions Judge of Dehra Dun along with several other persons. The accused persons were charged with having committed offences contrary to sections 408, 417, 120B, 467 and 471 of the Indian Penal Code. Eleven accused persons were sent up for trial before the court of the learned Assistant Sessions Judge. Two of them

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were acquitted by him and he found that the case was proved against the remaining nine accused who were convicted and sentenced to various terms of imprisonment. These convicted persons preferred appeals against their convictions and sentences which were heard by the learned Sessions Judge of Saharanpur. He accepted the appeals of Narendra Nath and Gur Datt Singh. In the case of Sri Kishen he confirmed his conviction but reduced the sentence of imprisonment to the term for which he had already been in jail. The appeals of the other accused were dismissed. Four of them named above have preferred revision applications against the order passed by the learned Sessions Judge. Mohan Lal has not preferred an application for revision. One Ram Kishen Singh had filed a revision which was dismissed by a learned Judge of this Court.

The prosecution story which has been believed by the courts below can very briefly be stated as follows. In the month of August, 1935, Babu Ram Chandra Singh, sub-inspector, District Intelligence Staff, was posted at Hardwar. It was alleged that he received some information on the 23rd of August that some people at Hardwar were in the habit of forging used railway tickets so that they might be used again. These tickets were forged and then passed on to various persons. According to the information one Mohan Lal who resided in Hardwar used to receive used railway tickets by post from various persons residing in other stations. On the receipt of this information the sub-inspector named above paid a visit to the post office at Hardwar in order to find out whether any such correspondence could be detected. On the 24th of August, 1935, the sub-inspector paid a second visit to the Hardwar post office. It is said that this time he was successful and that he found in the post office one letter addressed to "Diwan Chand care of Mohan Lal". The letter was opened in the presence of the postmaster and some other persons and the prosecution case was that inside it five used railway tickets were

found. The sub-inspector got these tickets initialled by the postmaster and then they were put back in the letter which was closed and was sent in ordinary course to the addressee thereof. Mr. Ram Chandra Singh received further information that Mohan Lal had received the used tickets referred to above and that some persons would be using those tickets at the railway station of Hardwar. It is alleged that in the evening of the 24th of August, 1935, the sub-inspector proceeded to the railway station of Hardwar and there arrested Mohan Lal and Gur Bachan Singh who were sitting inside a third class compartment. When their persons were searched one genuine ticket was found from the possession of each of them and several used and forged tickets from the possession of Mohan Lal.

On the same date after effecting the arrest of these two persons the sub-inspector went to another part of Hardwar known as Har Ki Pairi. The prosecution case is that it had been arranged by the sub-inspector with the help of Harish Chandra and others to make an attempt to arrest the persons who were in the habit of selling used tickets. That day the sub-inspector had approached Mr. Murari Lal a Deputy Magistrate and had made an application before him showing what his intention was and the result was that a currency note of the value of Rs.5 was initialled by the Deputy Magistrate Mr. Murari Lal and this the sub-inspector kept with him. In the evening the sub-inspector along with certain other persons was near Har Ki Pairi. The note initialled by the Deputy Magistrate had been given by the sub-inspector to Babu Harish Chandra and it had been arranged between the police party that on a given signal the police party would come forward and arrest persons who might be found attempting to sell the used tickets. It is alleged that Harish Chandra saw Sundar Singh approver who was accompanied by Debi Das, and Sundar Singh was asked to sell a ticket. The prosecution case is that Sundar

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Singh in his turn asked Debi Das to hand over one ticket to Harish Chandra on payment of Rs.2. Harish Chandra handed over that initialled currency note to Sundar Singh. He had no change. He asked Debi Das whether he had some change. Debi Das replied that he had none but that he himself had a note of the value of Rs.5 and that he would go and get it changed so that the balance due to Harish Chandra might be paid Thereupon he proceeded to get the note changed. In the meantime at the given signal the police rushed forward and arrested Sundar Singh Immediately afterwards Debi Das, who had gone to change the Rs.5 note, returned and he was also arrested. One used railway ticket Ex. 3 is said to have been found on the person of Debi Das at the time of the search which was made. After this the party of the sub-inspector went to the shop of Mohan Lal. There a search was made but with the exception of two envelopes and a piece of paper Ex. BB nothing else was recovered. When Sundar Singh had been apprehended shortly before, one key which was in his possession had been taken over by the sub-inspector and when his party arrived in the building in which Sundar Singh's quarters were that key was handed over to him and then at a search a number of articles were recovered. They included 22 used tickets, 13 used bits of sand paper, some rubber erasers, sticking matter and some post cards exhibits 49 to 70 and some unused sand papers were also found.

On the following day, that is to say, on the 25th of August, 1935, the sub-inspector recorded the statement of Sundar Singh. On the 29th Sundar Singh was placed before Mr. Murari Lal, Deputy Magistrate, and there he made a long statement under section 164 of the Code of Criminal Procedure. After that a number of arrests were made on the information received from the approver and from other sources. After a pro-

tracted investigation the case was ultimately committed to the court of sessions.

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Learned counsel for the defence argued that, so far as the offence of forgery with which the accused persons were charged was concerned, according to the prosecution case, as understood by the defence, the accused persons had committed an offence under section 488 of the Indian Penal Code and, therefore, in view of the provisions of section 337 of the Criminal Procedure Code the approver could not have been granted a pardon. It is said that the offence of forgery which the accused persons according to the prosecution evidence may have committed was not one which was triable exclusively by the High Court or the court of session. I find myself unable to agree with this contention. Section 337 of the Code of Criminal Procedure enacts that "In the case of any offence triable exclusively by the High Court or court of session, or any offence punishable with imprisonment which may extend to ten years, or any offence punishable under section 211 of the Indian Penal Code with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely, sections 216A, 369, 401, 435 and 477A, the District Magistrate, a Presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into, or the trial of, the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal or abettor, in the commission thereof." It appears to me that all that the officer who can grant pardon under the provisions of this

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section has to see is whether on the information at his disposal there is a *prima facie* case against the person to whom the pardon is going to be tendered for an offence which is exclusively triable by a court of session. If that is so, he is competent to grant a pardon. In my opinion it is no part of the duty of the Magistrate to take upon himself the task of making a thorough and searching inquiry in order to find out whether the offence which has been committed by the person is one which will be triable by the court of session or by a Magistrate. There may be cases in which at the time such a person is produced before a Magistrate there may be, according to the information of the Magistrate a good case which is exclusively triable by the court of session. It may eventually, however, turn out after the case has been tried in the court of session that on the proved facts the offence committed was not one which was exclusively triable by a court of session but could have been tried by a Magistrate. An ordinary instance of that may be given here. A man is charged with an offence under section 302. The investigating authority goes to a Magistrate and says that one of the accused persons was prepared to tell the truth in respect of the offence if he was given a pardon. The Magistrate's duty would be to grant a pardon and then to examine the person put before him. When the trial takes place in the court of session it may be found that the offence committed by the accused persons was one which came within the purview of section 323 of the Indian Penal Code. It will be wrong in a case of this description to say that the pardon tendered to the approver was incompetent and therefore the statement of the approver should not be taken into consideration. If the interpretation put by the defence side on section 337 is accepted then the result would be that it will be difficult for a Magistrate, before whom a person is produced to make a statement, to decide on the spur of the moment whether a pardon should or should

not be given. I have, therefore, no hesitation in holding that as soon as the Magistrate is informed that the offence is one which according to the investigating authority is exclusively triable by the court of session, his duty is to record the statement after granting pardon to the person put before him.

The next important question for consideration is whether the evidence produced in the case establishes a charge of conspiracy against the various applicants. On this question the argument of learned counsel appearing for the defence was that the statement of the approver should be rejected as untrustworthy. Learned counsel further argued that the statement of the handwriting expert examined in the case should also be not relied upon, because there was no corroboration of the handwriting expert's statement. This argument assumed that the statement of the approver was not a reliable evidence. As I have already stated, both the courts below have held that the evidence of the approver is reliable. As I have already stated, I have carefully gone through the statement made by the approver before the learned Assistant Sessions Judge as well as the statement made by him before the committing Magistrate, and I have not the least doubt in my mind that the approver has deliberately made incorrect and false statements in the court of session with a view to help some of his friends among the accused persons. The learned Sessions Judge admitted in evidence the statement of the approver made before the committing Magistrate under the provisions of section 288 of the Code of Criminal Procedure. That section enacts that "The evidence of a witness duly recorded in the presence of the accused under chapter XVIII may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872." The learned Assistant Sessions Judge, in my opinion, was competent to admit in evidence the

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statement made by the approver in the court of the committing Magistrate and to treat it as evidence. It was also open to him under the provisions of the law to hold that the statement made by the approver before the Magistrate was a correct statement and that it should be relied upon in spite of the statements which the approver introduced before him in the court of session. The learned Judge had to be very careful in the matter of scrutinising the evidence of the approver in these circumstances. But I am not prepared to say that in a case like this he was not justified in placing reliance on the statement made by the approver in the court of the committing Magistrate. I have given my anxious consideration to the evidence of the approver and after a deep and careful consideration I have arrived at the conclusion that the view taken by the learned Sessions Judge as well as the trial court about the statement of the approver is correct. I am thoroughly satisfied that the evidence of the approver given in the court of the committing Magistrate in the main was true and I am further satisfied that his statement before the court of the Assistant Sessions Judge was true with this reservation that the approver deliberately introduced false statements with a view to help the accused persons. It is impossible to believe that the approver could possibly have concocted a story of this type which he has stated before the courts. It is very easy to see that the statements made by the approver in the court of session which might go to throw doubt on his evidence were made deliberately with the sole object of introducing complications in the case and with a view to help the defence side. Some of the statements made by the approver are nothing else but clumsy inventions introduced with a view to show that he is not telling the truth. I have referred to some such statements made by the approver above.

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In addition to the statement of the approver, the learned Sessions Judge had before him other evidence which strongly corroborates the approver's story. I refer to the large number of letters which various members of the conspiracy wrote and which are in evidence. The evidence of the approver and the handwriting expert proves these letters. In connection with this matter, it is important to bear in mind the provisions of section 10 of the Indian Evidence Act. This section enacts as follows: "Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it." The section in my opinion is quite comprehensive. The important words in it on which I wish to lay special stress are—"in reference to their common intention". There is a great deal of difference between English and Indian law as regards the admissibility of evidence in conspiracy cases. Now, according to English law every one who agrees with others to effect a common illegal purpose is generally considered in law as a party to every act which either had before been done, or may afterwards be done, by the confederates *in furtherance of the common design*: See *Regina* v. *Murphy* (1). The provisions of section 10 of the Indian Evidence Act are much wider and this section renders admissible in cases of conspiracy such evidence which is not ordinarily admissible under the English law or under the Indian law. Under the English law the acts must be "in furtherance of the common design" whereas under the terms of section 10 of the Indian Evidence Act the acts

(1) (1837) 8 C. & P. 297(311).

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need only be "in reference to their common intention". For instance, under section 10 anything "*said or done in reference to the common intention*" is admissible and therefore the contents of letters written by one in reference to the conspiracy is relevant against the others even though not written in support of it or in furtherance of it. The illustration to section 10 shows the comprehensive nature of the law on the subject. It has been repeatedly laid down that direct evidence is not essential to prove a conspiracy. From the very nature of cases of this description it can be seen that it is not possible for the prosecution to produce a written agreement to show that certain persons entered into a conspiracy. Nor can it be expected that the prosecution could produce oral evidence to prove that a number of persons sat together in the presence of witnesses and decided to form a conspiracy for a particular purpose. The question as to whether or not there was a conspiracy has to be decided in reference to the circumstances which might be proved in the case. I think that no fixed rules can be laid down for proving a conspiracy. In some cases, it may be possible to prove the existence of a conspiracy by producing letters or some writings of the conspirators. In other cases, the existence of a conspiracy may be proved by oral evidence. Then, there may be cases in which the fact may be proved by evidence of surrounding circumstances and by the antecedent and subsequent conduct of the accused persons. Then, there may be cases in which the existence of conspiracy may be inferred from circumstances which raise a presumption of a concerted action. It has been held in a number of ruling cases that in many cases the existence of conspiracy is a matter of inference deduced from the criminal or unlawful acts done in pursuance of a common criminal purpose. The existence of the assent of minds which is involved in a conspiracy may be, and, from the secrecy of the crime, usually must be, inferred from the proof of facts and circumstances which, taken together,

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apparently indicate that they are merely parts of some complete whole. The first thing for the prosecution in a case of this type was to give satisfactory evidence to show a common purpose. On this point, the prosecution produced the approver. His evidence has been believed by the learned Sessions Judge in his very careful and elaborate judgment and I agree with that view. Then the prosecution has proved a large number of letters which would connect various members of the conspiracy. These letters would be admissible against members of the conspiracy though they were no parties to them. It is here that the provisions of section 10 of the Indian Evidence Act come into play. The defence relied on *Bacha Babu* v. *Emperor* (1) in which a Bench of this Court, of which I was a member, laid down that in a conspiracy case "Evidence of association, to be of any value, should suggest something suspicious in such association, and no inference one way or another can be drawn from a mere casual meeting or meetings or conversation between the parties in a public place or park where mere acquaintances frequently meet and talk." If the prosecution in the present case depended on evidence which went to show that some of the alleged conspirators had been seen talking with each other in bazars or a park, then it would not be right to draw any inference from such casual association which is carried on in broad daylight and in open manner. The nature of the evidence in the present case is, however, different. The prosecution does not suggest that an inference of conspiracy should be drawn against the accused persons by mere casual associations. On the other hand, the prosecution relies on circumstances which, if they are believed, would go a very long way to establish the existence of the conspiracy. The members of the conspiracy in the present case, according to the prosecution, were not all residing at one and the same place. From the very nature of the conspiracy it was necessary for its

(1) A.I.R. 1935 All. 162.

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success that it should recruit members at different places. In the present case we find that some members resided in Amritsar and some in Hardwar. The active work of forging the used railway tickets appears to have been carried on at Hardwar under the active supervision of Mohan Lal, Sundar Singh approver and Debi Das. We have in the present case not only the evidence of people who casually saw the accused persons associating with each other but direct evidence which goes to connect some of the accused persons with the conspiracy. For instance, we find that on the 24th of August, 1935, when the approver was arrested Debi Das one of the accused was with him. They were both together when an attempt was made to sell one of the used tickets to Harish Chandra, one of the prosecution witnesses. The evidence of Harish Chandra and other Hardwar witnesses very strongly goes to show that Debi Das, Mohan Lal and Sundar Singh approver associated for a criminal purpose with each other. They were actually seen rubbing used tickets by some of these witnesses. It was from the information conveyed by these Hardwar witnesses that Mr. Ram Chandra Singh sub-inspector came to know the nature of and the existence of this conspiracy. He went to the post office and there a letter addressed to Mohan Lal was opened in the presence of respectable witnesses and in that letter used railway tickets were found. Later on, we find that another letter addressed to Mohan Lal was also received at the post office at Hardwar which subsequently fell into the hands of the above mentioned sub-inspector. Now, a very strong inference can be drawn from this fact that there were some persons who were in the habit of sending Mohan Lal used railway tickets. Then we find that the approver has stated that the members of the conspiracy corresponded and in their letters to each other they used code words. A "green puria" meant a second class railway ticket, "red puria" meant an inter class ticket and *dawaii* similarly referred to used tickets.

In the correspondence to which reference has been made by the learned Sessions Judge in his judgment we have constant references to these code words, and it appears to me that the conclusion is irresistible that Mohan Lal was in the habit of receiving used tickets from some person. Then in the letters produced there is constant reference to the code words and if we read them the conclusion is irresistible that they refer to railway tickets and nothing else. . . . . Having regard to the provisions of section 10 of the Indian Evidence Act, all these proved letters are evidence not only against the writer, but also against other members of the conspiracy. In the end I may state that so far as the present case is concerned, the question as to the existence of conspiracy was one which was a pure question of fact and on that the concurrent findings of both the courts below are final. I am in agreement with the view of the learned Sessions Judge on this question.

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For the reasons given above the revision applications of Bhola Nath, Salig Ram and Bakshi Ram are dismissed. Similarly the conviction of Debi Das is also affirmed but in his case the sentences passed against him under sections 467 and 471 of the Indian Penal Code are directed to run concurrently. In all other respects his revision application is also dismissed. I understand from counsel that with the exception of Debi Das all the other applicants are on bail. They will surrender and serve out the sentences imposed upon them according to law.