

THE
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APPELLATE CRIMINAL.

Before Mr. Justice Broadway and Mr. Justice Moti Sagar.

THE CROWN—Appellant

versus

MIHAN SINGH—Respondent.

Criminal Appeal No. 453 of 1923.

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July 23.

Indian Criminal Law Amendment Act, XIV of 1908, sections 15 and 17—Instigating the formation of an unlawful Association and contributing towards it—Abetment of an offence—by a class of persons exceeding ten—Indian Penal Code, 1860, sections 107, 108, 117.

The facts found against the accused-respondent were that he visited village Bagrian and addressed the people at the village gate. He stated that the British *Raj* had come to an end or at any rate was about to do so, and exhorted the people to hold a *Divan* and take steps to establish an independent State at Bagrian, etc. After staying at Bagrian for two or three days he went away and immediately after his departure an unlawful association was formed of which his son was made the Secretary, and his brother, the Vice-President, other office-holders being also appointed. The accused also told the people that he had given Rs. 2,000 towards the movement which had been paid to his son and people could go to the latter to have their names registered. It appeared that Rs. 860 had actually been paid by the accused to his son at that time, which payment was apparently made as a subscription and for the purpose of being utilized for the objects of the association, the formation of which accused was advocating. The question was whether the accused's words and actions constituted an offence under the Criminal Law Amendment Act, or the Penal Code.

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Held, that the accused's act did not come within the purview of either of clauses (1) or (2) of section 17 of the Criminal Law Amendment Act, as he did not contribute to the funds or assist in the management of an *existing* association.

Held however, that the accused "instigated" the formation of an association which was unlawful under section 15 (2) (a) of the Criminal Law Amendment Act, and therefore abetted its formation, *vide* sections 107 and 108 of the Indian Penal Code—and as any one becoming a member of that association or contributing funds to it would be guilty of an offence under section 17 (1) of the Criminal Law Amendment Act, accused's act amounted to an abetment of an offence.

In re Lakshminarayana Aiyar (1), referred to.

Held further, that as this abetment was of the commission of an offence by a class of persons clearly exceeding 10, accused had brought himself within the *ambit* of section 117 of the Indian Penal Code and was liable to the punishment provided therein.

Appeal from the order of Rai Sahib Lala Topan Ram, Sessions Judge, Ludhiana, dated the 6th February 1923, reversing that of J. C. Ghose, Esquire, Magistrate, 1st Class, Ludhiana, dated the 19th December 1922, and acquitting the respondent.

GOVERNMENT ADVOCATE, for Appellant.

DASAUNDHA SINGH, for Respondent.

The judgment of the Court was delivered by—

BROADWAY J.—*Sardar Bahadur* Mihan Singh, his brother Sobha Singh, his son Hari Singh and four other persons were tried together on a charge under section 17 (2) of the Criminal Law Amendment Act, XIV of 1908. They were all convicted by the trying Magistrate and an appeal to the learned Sessions Judge was dismissed so far as all the appellants other than *Sardar Bahadur* Mihan Singh were concerned. The learned Sessions Judge, while holding that the unlawful

association which formed the subject matter of the trial had come into existence at, and through, the instigation of *Sardar Bahadur* Mihan Singh, held that Mihan Singh had not become a member of the said unlawful association and came to the conclusion that he had not brought himself within section 17 (1) or (2) of the Criminal Law Amendment Act. Without any real discussion of the oral evidence produced by the prosecution he held it to be unreliable. *Sardar Bahadur* Mihan Singh having been acquitted an appeal under section 417, Criminal Procedure Code, has been filed by the Crown. The learned Government Advocate has been heard in support of the appeal while Mr. Dasaundha Singh represented *Sardar Bahadur* Mihan Singh.

The facts are detailed in the judgments of the Courts below and briefly stated are as follows :—

During the winter of 1921-22 a number of *Akali Diwans* were held at various villages in the Ludhiana District. *Sardar Bahadur* Mihan Singh has certain ancestral property in Bagrian. He is also a grantee of land in Hanumangarh in the Multan District. Apparently he lives at Hanumangarh although he draws a pension of about Rs. 150 a month from the post office at Malerkotla, the nearest post office to Bagrian. His ancestral property which is, apparently, not of any great value is looked after by his son Hari Singh. It is in evidence that towards the end of December 1921 or the beginning of January 1922 *Sardar Bahadur Bhai* Arjan Singh of Bagrian learnt that certain persons in his village contemplated holding a political *Diwan* there. He accordingly sent for the leading spirits and remonstrated with them and was under the impression that he had succeeded in persuading them to give up the idea.

About the 17th of January 1922 *Sardar Bahadur* Mihan Singh came to Bagrian and, according to the evi-

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dence for the prosecution addressed the people at the village gate. He is said to have stated that the British *Raj* had come to an end, or at any rate was about to do so, and exhorted the people to hold a *Diwan* and take steps to establish an independent State at Bagrian. He called on them to refuse to pay land revenue and to decide all disputes among themselves without reference to the Courts of law. After staying at Bagrian for two or three days *Sardar Bahadur* Mihan Singh went away and immediately after his departure an unlawful association was formed of which Hari Singh, the son of the *Sardar*, was made the Secretary, and Sobha Singh, the *Sardar's* brother, the Vice-President, other office-holders being also appointed. It is also said that when he was exhorting the people to form this independent State he had told them that he had himself contributed Rs. 2,000 towards the movement which had been given to his son and the people could go to his son to have their names registered. Subsequent to the formation of this unlawful association *Diwans* were held of a political nature, and there can be no doubt whatever that this association and its subsequent activities came within the purview of section 17 (2) of the Criminal Law Amendment Act. The questions for decision are whether the prosecution has proved that *Sardar Bahadur* Mihan Singh was in the village on the 17th January 1922, secondly whether he made the statements attributed to him at the village gate, and, finally whether his action in so doing amounts to an offence under the Criminal Law Amendment Act or the Indian Penal Code.

As to the first point, *Sardar Bahadur* Mihan Singh has strenuously denied having gone to Bagrian on the 17th January 1922. The evidence on the record, however, leaves no doubt whatever that he did go to Bagrian on that date. The evidence for the prosecution as to *Sardar Bahadur* Mihan Singh's presence is really in-

controvertible and the fact that he made a certain payment there on the 17th January 1922 to his son Hari Singh is beyond doubt. The story told by the *Sardar* that he was on bad terms with Hari Singh and that his daughter-in-law had sent a message to him at Multan through one Harnam Singh that she stood in need of money and that he had thereupon gone with Harnam Singh to Malerkotla and drawn his pension which he had made over to Harnam Singh to be conveyed to his daughter-in-law is utterly improbable and is further negatived by the fact that in Hari Singh's pocket book there is an entry dated the 17th January 1922 in which it is distinctly stated that his father (the *Sardar*) had brought his pension and money from the *chak* to the extent of Rs. 860.

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As to the second point, there is evidence to show that the *Sardar* exhorted the people to combine and establish an independent *Raj*, refuse to pay revenue and to register their names with his son to whom he had paid a contribution of Rs. 2,000. Doubtless some of the witnesses are partisans of *Bhai* Arjan Singh, nevertheless I am unable, after carefully examining their depositions, to see any reason to doubt the truth of their story, and in my opinion it has been established that the *Sardar* did exhort the people to combine for the purposes stated above. It has been argued very strenuously that it has not been proved that he paid Rs. 2,000 to his son. That is so, but that does not to my mind negative the story told by the witnesses, for not a single witness professes to have seen any payment made and whether the payment of Rs. 860 to his son on the 17th January was or was not intended as a contribution is not of importance at this stage. It is not the fact of the contribution so much as the assertion that it had been made that is of importance in this connection. I think therefore that it has been established on

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the record as held by the Magistrate that *Sardar Bahadur* Mihan Singh did as a matter of fact instigate the formation of this association, an association which when formed was undoubtedly an unlawful one as defined by section 15 of the Criminal Law Amendment Act.

In arriving at the above conclusions the defence evidence has not been lost sight of. That evidence is, however, wholly unworthy of credence and cannot be considered sufficient to rebut the prosecution evidence. Neither of the Courts below have been able to accept it and Mr. Dasaundha Singh obviously placed very little faith in it himself. Though he felt constrained to read it out and refer to it, he was unable to ask for its acceptance with any degree of conviction.

As to the actual payment of a contribution by the *Sardar*, as stated above, there is no direct evidence. That he announced his having subscribed Rs. 2,000, I have no doubt, and I think there is some force in the learned Government Advocate's contention that the statement that the subscription amounted to Rs. 2,000 was probably a little exaggeration.

The entry in Hari Singh's pocket book under date 17th January 1922 showing a receipt from Mihan Singh of Rs. 860 is of considerable importance in this connection and the palpably false evidence of this payment to Hari Singh is significant. There can be no doubt at all that father and son were on the best possible terms, and the payment to Hari Singh of this sum of Rs. 860 on that date, coupled with the announcement that a contribution of Rs. 2,000 had been made, point very strongly to the payment having been made as a subscription and for the purpose of being utilized for the objects of the association, the formation of which Mihan Singh was advocating. It was strongly urged that having regard to his previous excellent record in the Army,

It was highly improbable that Mihan Singh would have spoken and acted as stated by the prosecution witnesses. Now Mihan Singh's record of service in the Army is an exceptionally good one, nevertheless as pointed out by the learned Government Advocate, the situation was such that there is nothing really surprising in a man in Mihan Singh's position adopting the line of conduct attributed to him. The *Akali* agitation was in full vigour and Sobha Singh and Hari Singh had obviously come under its influence and it is therefore by no means improbable that he was carried away by the same forces that had influenced his brother and son.

The next point for consideration is whether Mihan Singh's words and actions constitute an offence either under the Criminal Law Amendment Act or the Indian Penal Code.

It was contended by the learned Government Advocate that by instigating the formation of the unlawful association which actually came into existence a few days after the 17th January 1922 and by contributing to its funds Mihan Singh became liable under section 17 (1) and (2) of the Criminal Law Amendment Act. He urged that section 17 (2) was applicable for the reason that by contributing to the funds of the said association he "assisted in the management" of the unlawful association and that the same facts also rendered him punishable under section 17 (1).

On the other hand Mr. Dasaundha Singh contended that as, admittedly, no unlawful association was in existence at the time when the alleged instigation and payment of the contribution took place, neither clause (1) nor clause (2) of section 17 had any application.

So far as section 17 (2) is concerned, it seems clear that the phraseology postulates the existence of an unlawful association at the time when assistance in its

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management is rendered and therefore I do not think that this section has any application.

Section 17 (1) runs as follows :—

- “ Whoever (a) is a member of an unlawful association,
(b) or takes part in meetings of any such association,
(c) or contributes or receives or solicits any contribution for the purpose of any such association,
(d) or in any way assists the operations of any such association,” shall * * *

(a) and (b) clearly postulate an unlawful association being already in existence and I think that the same applies to (d). The position in regard to (c) is not quite so clear. A man who instigates the formation of an association, the purposes of which are such as to render that association unlawful and contributes to and solicits contributions for that association may, broadly speaking, be considered to have contributed to and solicited contributions for the purpose of such association, but a penal Statute has to be construed strictly and it may also be argued that before an association can have a purpose it must be in existence and that any contribution to or solicitation for such an association prior to its formation cannot render a person amenable to section 17 (1) and after a careful consideration of the section in its entirety I think that the intention of the Legislature was to render punishable only such contributors, etc., who contributed or solicited contributions for the purpose of an *existing* association.

In my opinion therefore Mihan Singh cannot be held to have committed an offence either under clause (1) or clause (2) of section 17 of the Criminal Law Amendment Act.

Mr. Jai Lal next contended that inasmuch as an association “ which encourages or aids persons to commit acts of violence or intimidation or of which the

members habitually commit such acts " is an " unlawful association " [section 15 (2) (a)], the instigation to the formation of such an association and the contribution and solicitation of money for the purpose of such an association amount to abetment of the offences made punishable by section 17 (1) (2), Criminal Law Amendment Act ; and further, inasmuch as the abetment in this case was the abetment of an offence by a number or class of persons *exceeding ten*, the offence committed was one falling within the purview of section 117, Indian Penal Code.

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Now a person abets the doing of a " thing " who instigates a person to do that thing (section 107, Indian Penal Code) and if the "thing" instigated is an offence, the instigator abets an offence (section 108, Indian Penal Code) and if the offence is committed in consequence of the abetment, and no express provision is made by the Indian Penal Code for the punishment of such abetment, he is liable to the punishment provided for the offence.

A person is said to " instigate " another to an act when he actively suggests or stimulates him to the act, by any means or language direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement (*1 Russ. 164*). Again it has been held that the word " instigate " means—urge on, incite, bring about by persuasion, provoke [*In re Lakshminarayana Aiyar (1)*].

In the present case I have no hesitation in holding that Mihan Singh did instigate the formation of an association and therefore abetted its formation. Further inasmuch as the objects and purpose of this association were clearly (and to his knowledge) of such a character as to constitute it an unlawful one, and as

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any one becoming a member of it or contributing funds to it would be guilty of an offence under section 17 (1), Criminal Law Amendment Act, Mihan Singh's act amounted to an abetment of an offence. Again, as this abetment was of the commission of an offence by a class of persons clearly exceeding ten Mihan Singh has brought himself within the ambit of section 117, Indian Penal Code, and has rendered himself liable to the punishment provided therein.

I would, therefore, accept this appeal and convict Mihan Singh of an offence under section 117, Indian Penal Code. Having regard to his previous excellent record and the fact that he has not been shown to have taken any further part in this affair and refrained from joining or taking part in any such movement in the Multan District, where he, for the most part, resides, I think a sentence of fine would meet the situation. I would therefore sentence him to pay a fine of two hundred rupees or in default to undergo rigorous imprisonment for six months.

Moti Sagar J.—I concur.

C. H. O.

Appeal accepted.