

CONSPIRACY

Under English law conspiracy is said to be committed if two or more person agrees together to do something contrary to law, or wrongful and harmful towards another person, or to use unlawful means in the carrying out of an object not otherwise unlawful, the persons who agree commit the crime of conspiracy.

A criminal conspiracy is the agreement of two or more persons to do an illegal act or to do a legal act by illegal means.

I. Definition of Criminal conspiracy under Section 120-A IPC

“When two or more persons agree to do or cause to be done, an illegal act, or 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.”

Laws pertaining to the conspiracy are deemed to the most complex ones considering the other inchoate offences in the common law. One may find the laws related to conspiracy as arbitrary. Glanville William has opined that:

“If the mere intention of one person to commit a crime is not criminal, why should the agreement of the two people to do it make it criminal? The only possible reply is that the law is fearful of numbers and that the act of agreeing to offend is regarded as such a decisive step as to justify its own criminal sanction.”[1]

Hereunder are certain ingredients that must be satisfied in order to establish conviction under this Section:

Involvement of two or more persons

Existence of an agreement between the two

Such an agreement must be to do or cause to be done an illegal act or a legal act by illegal means

The proviso affixed to the main provision elucidates that merely entering into an agreement would suffice to constitute the offence of criminal conspiracy. Nevertheless, when there is an involvement of illegal means then it is necessary to show that some overt act has been committed by the parties who had entered in an agreement corresponding to the same.

The existence of knowledge of the object regarding the commission of the conspiracy is requisite to commit the offence.[2]

Further, it must be noted that the meaning of the term 'illegal' as provided in Section 43 of IPC,[3] means:

An offence

Forbidden by law

Provides ground for civil liability[4]

The criminalization of the crime of conspiracy becomes a substantive offence as it is established on the fact that a collaborative design of parties provides momentum to the commission of the crime. Regarding the same the Apex court has opined the following:

“Lawmaking conspiracy a crime is designed to curb immoderate power to do mischief which gained by the combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprise possible which, if left to individual effort, would have been impossible, furnish the ground for visiting, conspirators and abettors, with condign punishment.”[5]

II. Nature and Scope of Section 120A

The very agreement between two or more persons to carry out a crime gives origin to the offence of conspiracy irrespective of the fact whether such act has been brought into motion or not.[6]

For establishing a conviction under Section 120A, one is required to prove the existence of an 'agreement' as it is the sine qua non for the commission of an offence of conspiracy. Such a scheme regarding the commission of a crime may be implied or express. What is required is the unity of objects and not necessarily physical unity. A mere entertainment of an evil wish or a coincidence of adverse intentions among certain individuals would not amount to conspiracy.[7]

Neither is it necessary that all the conspirators must be known to one another nor all the details of the conspiracy. Meeting of minds to commit an illegal act or application of illegal means is requisite. After the individuals have gained knowledge of the scheme regarding the commission of the crime, there may be individuals possessing the intention to carry on with the same or drop out of the scheme. The individuals who do not carry forward the plan due to the absence of intention must not be counted in as conspirators unless they act in such a way that the existence of intention can be inferred. In case certain individuals commit a crime or perform certain legal acts through illegal means which is related to the object of the scheme of conspiracy, all of them will be roped in for the commission of conspiracy even if they had not participated actively in perpetuating the offence.[8] Further, conspirators may cease to exist in every phase of the carrying out of the conspiratory scheme.[9]

The Section does not state that for conspiracy to be perpetuated the conspirators must agree to commit a single illegal act and the conviction of the individuals is established when they agree to be a part of one of such illegal acts. In such case, all of them will be convicted under the Section 120A, however other charges may be levelled for committing the individual offences.[10]

The Apex Court in the case of Mohd Hussain Umar Kochra v. KS Dalip Singhji[11] has elucidated on the part played by each member in a conspiracy:

“The agreement is the gist of the offence. In order to constitute a single general conspiracy, there must be a common design and a common intention of all to work in furtherance of a common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the purpose is to be accomplished.

The evil scheme may be promoted by a few, some may drop out and some may join in at a later stage, but the conspiracy continues till it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such designs as may from time to time be found expedient. The common intention of the conspirators is then to work for the furtherance of the common design his group only.”

Commission of conspiracy might not exist when different persons act in the same manner but independently just because of the fact that the methods they applied were similar for committing the illegal act.[12]

Every individual who has participated in the commission of a crime in furtherance of a conspiracy is guilty for all the acts of its co-conspirators if they were directed towards accomplishing a single object.[13]

III. Proof of Conspiracy

It is difficult to adduce primary evidence for proving a charge of conspiracy as it is always planned in secrecy. Only inferences drawn from the illegal omissions committed by the conspirators can lead to a conviction under this section. Therefore, in determining the complicity of an individual it is required to prove the circumstantial evidence existing post and prior to the commission of the crime. Inferences can be drawn from the conduct and circumstances of the accused.

A mere suspicion, without the presence of any direct or indirect evidence instituting the prior meeting of minds, cannot be the grounds for conviction.[14]

The courts are mandated to enquire the existence of independency of the individuals pursuing the common design. If this is proved then conspiracy does not exist. The prosecution does not have the burden to prove an explicit agreement between the parties to the common design of conspiracy and implications would suffice to entertain conviction under Section 120A.

Certain conditions as provided by Section 10 of the Indian Evidence Act, 1872 which furnishes principles of the agency have been enumerated as follows:

The involvement of the parties forming an agreement must be proved by prima facie evidence

After the aforementioned condition is satisfied, then anything done, written or said in furtherance of the common intention[15] will be evidence against all the parties

Anything done, written or said by any of the conspirators post the formation of common intention by any of the parties would be admissible[16]

IV. Punishment of Criminal Conspiracy (Section 120B)

This section segregates conspiracy into two categories for the purpose of punishment. Parties engaged in the conspiracy of the commission of grave offences which have not been enumerated by the Indian Penal Code are to be punished in the same manner as if they had abetted the offence.

Usually such 'grave offences' are punishable with a death sentence, life imprisonment or rigorous imprisonment. Further, the conspiracy to perpetuate any other offence or an illegal act is punished likewise with imprisonment which may extend till six months with or without fine.

Section 120B is mandated to be read with Section 196 of the CrPC. Without the prior leave of the Central or the state Govt a court cannot take cognizance of the criminal conspiracy to:

Perpetuate an offence against the state

Promote communal displeasure

Offend religion'

Perpetuate public mischief

Similarly, without availing prior consent of the Central or State Govt. or the district magistrate, a court cannot take cognizance of the following conspiracy to:

Institution of an act adverse to the national integrity

Bring into existence and promote hatred and contempt amongst racial groups and religious groups

Nevertheless, no prior approval is required when the offence is pertinent to an offence provided by Section 195, CrPC. A conspiracy initiated in India related to some unlawful activities outside India does not necessitate the prior permission of the Central Govt.[17] One must note here that Section 196 does not restrict the registration of a case related to criminal conspiracy or

conducting an investigation by police or submission of a report prepared after the investigation to a magistrate.

Importantly it must be noted that Section 120B punishes any act which in furtherance of a criminal conspiracy did not amount to an offence. Additionally, if more than two persons are engaged in design to commit an offence or to accomplish the object of the conspiracy, then even if some of the accused persons are exonerated, does not mean the remaining could not be held guilty under Section 120B.

In the famous Hawala[18] case, the Jain brothers had allegedly bribed well-known politicians to gain favourable contracts and had recorded these bribe amounts in a diary. The Special court dismissed the discharge petitions filed by two prominent politicians whose names were found in the diary namely – VC Shukla and LK Advani. The Apex court, on a further appeal, removed the charges levelled against the politicians due to lack of prima facie evidence. However, the Jain brothers were held liable under Section 120B.

Another important issue which has emerged is regarding the charges to be imposed with reference to conspiracy or abetment when an offence is committed in furtherance of a conspiracy. Apex court in the case of State of Andhra Pradesh v. Kandimalla Subbaiah,[19] ruled that:

“Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such conspiracy. There is no analogy between Section 120B and 109, IPC. There may be an element of abetment in a conspiracy, but the conspiracy is something more than abetment.”

[1] Glanville Williams, Textbook of Criminal Law: The General Part (second edn, Stevens & Sons, London, 1983, Indian Reprint by Universal Publishing) p 420

[2] Mohd Amin v. CBI [2008] 15 SCC 49

[3] BG Barsay v. State of Bombay AIR 1961 SC

[4] R Sai Bharathi v. J Jayalalitha [2004] 2 SCC 9

[5] Devender Pal Singh v. State (NCT of Delhi) AIR 2002 SC 1661

[6] Bimbadhar Pradhan v. State of Orissa AIR 1956 SC 469

[7] Leenart Schussler v. Directorate of Enforcement [1970] 1 SCC 152

[8] State of Tamil Nadu v. Nalini AIR 1999 SC 2640

[9] Raghuvir Singh v. State of Bihar AIR 1987 SC 149

- [10] BG Barsay v. State of Bombay AIR 1961 SC 1762
- [11] AIR 1970 SC 45
- [12] Fakruddin v. State of Madhya Pradesh AIR 1967 SC 1326
- [13] State of Himachal Pradesh v. Kishanlal Pardhan AIR 1987 SC 773
- [14] PK Narayanan v. State of Kerala [1995] 1 SCC 142
- [15] Baburao Bajirao v. State of Maharashtra [1971] 3 SCC 432
- [16] Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra AIR [1965] SC 685
- [17] Vinod Kumar Jain v. State (through CBI) [1999] Cr LJ 669 [Del]
- [18] CBI v. VC Shukla AIR 1998 SC 1406
- [19] AIR 1961 SC 1241