

In the High Court of Judicature at Patna.

attached in.

Section.

1931/1.

District

PART I.

(THIS FILE MUST BE PRESERVED FOR F.I.R.)



FR000161

Revision under Section 435, Code of Criminal Procedure.

No. 38

Motion made on behalf of

Bhagebati Ch. Panigrahi & ors

PETITIONERS.

Through *Mr. R.K. Das*

versus

Emperor

OPPOSITE PARTY.

SUBJECT.

Praying that the order of the Magistrate of
dated the _____ day of _____ 193 .

To Magistrate:—No. _____ Cr.,
dated _____ 193 .

To Sessions Judge:—No. _____ Cr. A.,
dated _____ 193 .

To Advocate General:—No. _____ Cr. B.,
dated _____ 193 .

From Sessions Judge:—No. _____
dated _____ 193 .

From Magistrate:—No. _____
dated _____ 193 .

Intimates that the _____ of _____ 193 , has been fixed for the hearing, when the Court will consider any cause which may be shown by _____ why the conviction and sentence should not be _____ and requests him to forward the record on or before the _____ 193 .

Copy for information, with the request that he will forward the record on or before the _____ 193

Copy for information.

Date of decision of High Court
29-11-1931/1.

Lay before the Criminal Bench
the Hon'ble Mr. Justice

Assistant Registrar.

38/1931-01

In the High Court of Judicature at Patna.

attacks circuit

Criminal Jurisdiction.

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Criminal Revision No. 38 of 1941.

Shree Ch. Panigrahi & ors
versus
Shree ...

Appellant
Petitioner

Respondent
Opposite-party

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3	Letter of Reference Petition of appeal Application	11-15
4	Lower Court Judgment	16-90
5	Explanation	-
6	Paper Books	one copy

Compared and found correct.

SW
Signature of Officer of Court.

Date

13/5/41

W. B. ...

Record-keeper.

In the High Court of Judicature at Patna.

Custace Circuit

ORDER SHEET.

C.R Appeal No. 38 1947.

Bhagabati Charan Panigrahi
Jans

Appellant.

versus

Emperor

Respondent.

Serial No. of Order	Date of Order	ORDER WITH SIGNATURE.	Office Note as to action (if any) taken on Order.
	15.4.41	Filed at Court.	
2	17.4.41	As regards maintainability the office objection that there ought to be two petitions in revision seems to be based on the analogy of ^{Civil} criminal procedure in which separate decrees are prepared when there are two appeals. This is not the case on the Criminal side. One application in revision seems therefore to be sufficient. The application will be heard. Issue notice. Bail refused.	at 12.15 as per st. report. Two petitions should have been filed with the 2 appeals. One by Ptr no. 3 (Appeal no. 6c) + the other by Ptr 1, 3 & 5 (Appeal no. 4c). For admission. Advocate General opposed the bail today. Cem 17.4.41

RP
RS

Serial
No of
Order

Date of
Order.

ORDER WITH SIGNATURE.

Office Note as to action (if any) taken
on Order.

3 28.4.41 Heard in part by
Rowland & Shearman
88
C.

4 29.4.41 Hearing finished
Judgment delivered
by Rowland
Application dismissed
80
C.

No. 1250 of 25/41

L.C.R. with 2 copies of gto.
sent to the District
Sessions Judge, Cuttack.

Sml.
2/5/41

No. 1259 of 25/41

L.C.R. returned to the
District Magistrate,
Cuttack.

Sml.
2/5/41

Criminal Revision 38 of 1941.

From an order of J.E. Maher, Esqr., I.C.S. Sessions Judge of Cuttack-Sambalpur, dated the 3rd February, 1941 affirming an order of ~~Mr~~ H. Lal, Esqr., I. C.S. Special Magistrate, Cuttack, dated the 3rd December, 1940.

- 1. Bhagabati Charan Panigrahi.
- 2. Ananta Charan Patnaik,
- 3. Gurucharan Patnaik.
- 4. Baldayanath Bath.
- 5. Banamali Das-----petitioners,

versus

The King Emperor.

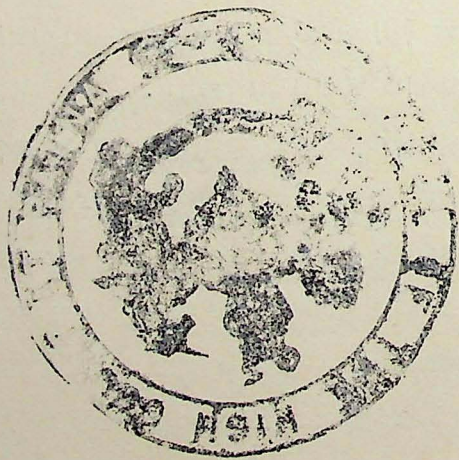
For petitioners : Mr. R.K.Das.

For Crown : The Advocate General and Public Prosecutor of Cuttack.

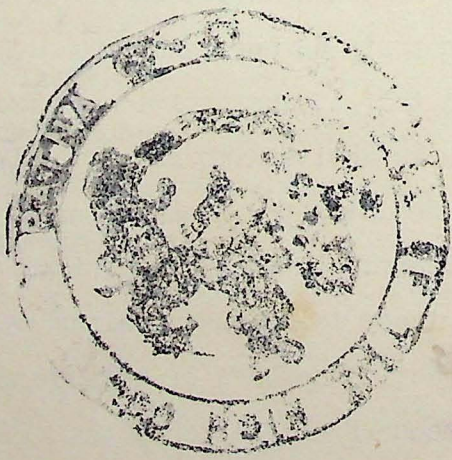
Rowland, J.

The petitioners have been convicted of offences against the Defence of India Rules, also under section 17 of the Criminal Law Amendment Act 1908, of membership of an unlawful association, namely, the Communist party and also under section 120B of the Indian Penal Code read with the Defence of India Rules of conspiracy to do prejudicial acts described in Defence of India Rules 34(6)(e), (k) and (p) and to make and distribute documents containing prejudicial reports.

It is argued that the trial was bad by reason of misjoinder of ~~the~~ charges. The courts had treated all the acts charged as having been done in the course of one transaction; but it is contended that there were a number of unconnected acts. It is said that membership of the Communist Party was ~~the~~ not the same transaction as the conspiracy to do prejudicial acts. It was also suggested that there might have been several unrelated conspiracies in which different groups severally participated. This argument does not quite agree with the case for the prosecution as established



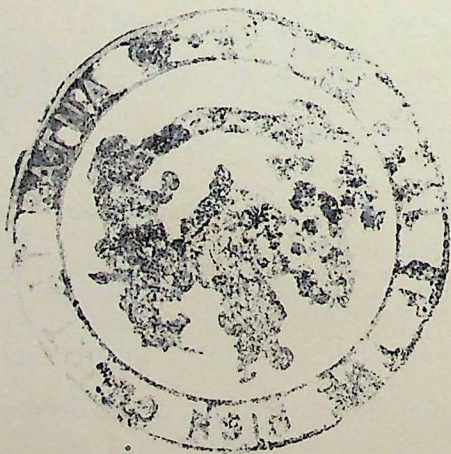
in evidence to the satisfaction of the courts below. The Advocate General in his answer contended that there was no question of membership of the Communist party and conspiracy to do ~~different~~ prejudicial acts being different transactions, because the literature of the Communist party which was seized in the course of the searches of the houses of the accused and elsewhere showed that the very objects of the Communist party are to do illegal and prejudicial acts; and further he said that all the members of the Communist party are to be taken to be conspirators with the object of doing such acts. He asked us to hold that being members of the party and being conspirators cannot be two transactions, because it is merely two ways of saying the same thing which falls within two slightly different descriptions. Without going so far as this, I think it is possible to say that the documents establish that in the Communist party the leading and active members were conspiring together for the systematic dissemination of prejudicial reports and were doing ~~these~~ ^{this} not as individuals but as a part of the work of the party as such and from this it ~~can~~ can be said that if the petitioners were associating with those active members of the Communist party in conspiring for those purposes, then they did so as members of the Communist party and their conspiracy to do these things was all one with their ^{being} active members of the Communist party. It was as members of the party that the accused became active in the dissemination of prejudicial reports and so the conspiracy for this dissemination is not a separate transaction from their



membership of the Communist party. I find therefore that there is no misjoinder in trying the accused at one trial for membership of the Communist party and for the conspiracy to do prejudicial acts.

Then it is said that as they have been charged with a number of ^{individual} ~~individual~~ acts, these should not have been the subject of the same trial with the conspiracy charged. I cannot find that there is really any substance in this case once the position is accepted that there was a general conspiracy and the special acts with which the accused have been charged in particular, ~~The acts done, that is to say,~~ mainly the publication of documents, were done in pursuance of membership of the party and of the general conspiracy. I therefore find no substance in the objection as to misjoinder of charges.

The courts below have found that there was sufficient evidence to connect each of the accused with the conspiracy generally with membership of the Communist party and with the doing of the illegal acts charged against each. A special point has been taken with regard to Banamali Das that he is a subject of Nilgiri Native State and it is said it was not competent for a court in British India to try him without a certificate from the Political Agent under section 188 of the Criminal Procedure Code. The argument as presented to us seems to be based on a misapprehension. A certificate of the Political Agent is required when a native Indian subject of the Crown is accused of having committed an offence in the territories of ~~an~~ a Native State; but such a certificate will be of no avail when an offence is committed outside British India by a person who is not a subject of the Crown at all. On the other hand, any person whether a subject of the Crown or



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not is liable to be tried and punished in British India for any offence which he may have committed in British India; ~~that~~ ^{in case} there is no question of a certificate by the Political Agent being required. We have to see whether in fact Banomali has committed any offence within British India. For such an offence he was liable to be tried and convicted if it be proved against him. It appears that for most of the time between the dates mentioned in the charge, he was resident at his home in Nilgiri State. He was receiving prejudicial reports from Bhagabati; he was writing acknowledgments proving concert between him and Bhagabati; asking for more copies of documents such as Age Chalo which we know to have been prejudicial documents; but this apparently would establish that he while not in British India was abetting the commission of offences in British India and by itself may not prove the commission of the offence by him in British India. There is mention in one of his letters of a visit in Cuttack in connection with the business of the unlawful association and with reference to the despatch and receipt of prejudicial documents. That he was a member of the conspiracy and of the Communist party appears sufficiently from other correspondence to which I have referred and this last mentioned document is an indication that he was a member of the party and was engaged in the conspiracy at a time when he was in Cuttack on a visit. I am of opinion that the conviction of this accused is in order and cannot be challenged on the ground that it is without jurisdiction.

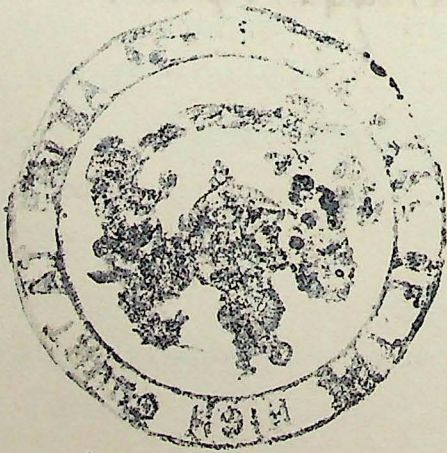
An objection was taken that the offences under section 120 B should not have been enquired into and tried without the sanction under section 196(a) of



the Code of Criminal Procedure. This objection is sufficiently and correctly answer^{ed} in the judgment of the Sessions Judge.

Then an argument was addressed to us that the procedure of intercepting correspondence in the post was illegal and it was suggested that as a result of this letters seized ought not to be used in evidence. It does not follow by any means that if the seizure was irregular its facts and the contents of the letters seized would not be relevant and admissible; but in fact there appears to be power to intercept letters in accordance with sections 26 and 27-B of the Post Office Act 1898. The courts below appear to have relied on section 27-B and had that been the only authority for the interception there would be irregularity because sub-section (2) requires that the addressee should be notified when a postal article is detained under this section; but there is also a power under section 26 and this is relied on by the Advocate General. The authority was given to the Superintendent of Police/^{Criminal Investigation Department} by Government notification 855 G published in the gazette of 4th September 1936 and this power is relied on as the authority for the detention. There is no substance in the argument as to the alleged illegality in the interception of the papers.

It was also suggested that the Notification of the Government of India issued in 1934 declaring the Communist party an unlawful association was no longer in force. The Criminal Law Amendment Act of 1932- section 16(2) has been repealed; but



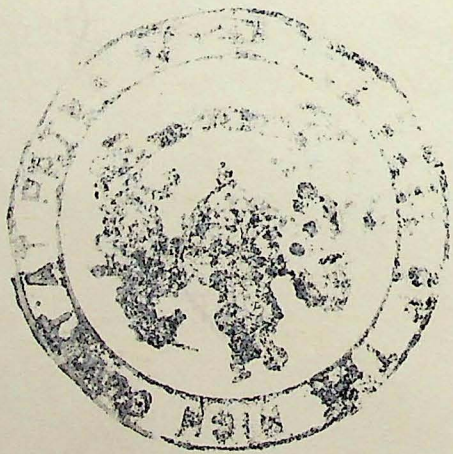
when this sub-section was omitted in pursuance of the Government of India (Adaptation of Indian Law) Supplementary Order 1937, there was an express saving made in paragraph 9 of that Order of any Notification duly made before the commencement of the Order. It is therefore clear that the Notification must remain in force until the local Government chooses to withdraw it.

I do not find that any of the objections to the conviction are well-founded. The sentences in my view do not call for interference and I would dismiss the application and discharge the rule.

W. Powland

Circuit Court,
Cuttack,
The 29th April, 1941.
B. Chowdhury.

38/1941-09



Shearer J

I agree. The argument of the learned Advocate-General - and the argument, which commended itself to the learned, trying magistrate, - was that, as the avowed object of the communist party is to overthrow the constitution established in this country by law, and, as the communist party has proclaimed its intention of resorting to acts, which are made punishable by the Defence of India Rules, in order to achieve that object, it necessarily follows that the members of the communist party are parties to a criminal conspiracy. This argument is not, in my view, altogether well-founded. If it is sought to convict persons, who happen to be members of the communist party, of conspiracy, the charge against them must set out, with some degree of particularity, the object of the conspiracy alleged and that object must be proved. Fortunately, perhaps, for the prosecution, the charge under section 120-B of the Penal Code set out inter alia that the conspiracy, in which the petitioners are said to have been concerned, was a conspiracy "to make publish and distribute documents entitled 'proletarian Path, 2. War against War, 3. Betrayal of France, 4. Communist, 5. Aga chala nos 1-3 and 5.6. Yudh Birudhre Yudh kara and 7. France prati Biswasghatakata containing prejudicial reports as defined in the D.C.India Rules ~~34~~ 34(7) i.e. to commit an offence punishable under Rule 35 of the Defence of India Rules". It was conclusively shown that three of the petitioners each made one or more of

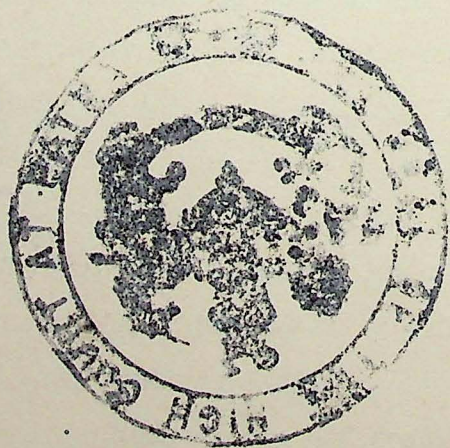
these



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documents and that another of the petitioners distributed them. Evidence, both oral and documentary, was also led to show that each of the petitioners was aware of what ² others were doing, and that they were acting together in pursuance of a common plan. In other words, circumstances were clearly made out which justified the courts below in inferring, not merely the existence of a conspiracy of the kind set out in the charge, but also that each of the petitioners was a party to it. When certain persons take part in a conspiracy, the object of each is to commit certain specific offences, those of them, who commit one or more such offences in pursuance of the conspiracy,

can be tried in respect of the conspiracy and of the specific offence or offences, which they have committed, at one and same trial, and can also be tried along with those, who have been concerned in the conspiracy but have not themselves committed any specific offence in pursuance of it. Clause (b) of section 239 of the Code of Criminal Procedure applies in such a case. The question, then, arises, whether the addition of the charge under section 17(1) of the Criminal Law Amendment Act, 1908, to the charges under section 120-B of the Penal Code and rule 34(7) of the Defence of India Rules vitiated the trial. Section 17(1) of the Criminal Law Amendment Act makes it an offence "to be a member of an unlawful association..... or in any way to assist the operations of any such association. It is clear that the petitioners, in entering into this conspiracy, and those of them, who made or distributed prejudicial reports, in making or



distributing such reports were assisting the operations of the unlawful association, of which they were members. It might perhaps have been urged that they were not liable ^{to be punished} separately both under section 17(1) of the Criminal Law Amendment Act and under section 120-B of the Penal Code and rule 34(7) of the Defence of India Rules. As the sentences, which have been imposed, are to run concurrently, that is a purely academic question, on which it is unnecessary for me to express an opinion. But it obviously cannot be said that, in trying the petitioners on these various charges at one and the same trial, the learned trying magistrate exercised a jurisdiction not given to him by law.

R. Chattarji

High Court, Patna,
 Cuttack Circuit,
 The 29th April, 1941.
 R.P.Chattarji.

