

SECTIONS 75 AND 114 OF THE INDIAN PENAL CODE: THE HOODWINKING PLOY OF THE LEGISLATORS

One of the trickiest concepts in the Indian Penal Code, 1860 (hereinafter referred to as the "Code") is the principle of constructive liability for the abetted offence under Section 114 of the Code. Just like a mirage, the liability to commit an offence of abetment is disappeared by the constructive liability of the abetted offence itself upon the fulfilment of certain ingredients provided under Section 114 of the Code.

Before proceeding with the subject matter of the article, it is pertinent to note that a person is said to abet the doing of a thing, under Section 107 of the Code, when he instigates a person or by intentional aiding or illegally omitting the doing of an act which he's lawfully bound to do, or when he engages with other individual(s) in any conspiracy. Furthermore, Section 108 of the Code defines abettor as a person who abets: (i) the commission of an offence, or (ii) the commission of an act which would be an offence. Thus, a conjoint reading of Section 107 with 108 of the Code, would indicate that, to constitute an offence of abetment, presence of three things is essential, i.e. (i) there must be an abettor, (ii) he must abet, and (iii) the abetment must be of an offence.

Being an inchoate offence, the jurisprudential essence of punishing the offence of abetment is to put the kibosh on the happening of the offence at its very inception. The law makers follow an uncompromising and a stringent approach in dealing with the offence of abetting of an offence in the Code. This is clearly discernible from the degree of punishment prescribed under the Code for the offence abetment and its

Highlights

Punishing an offence of abetment attacks the very happening of the offence at its very inception.

Section 114 of the IPC provides for the constructive liability towards the offence of the abettor where he is present during the commission of offence consequence to its abetment.

Section 75 of the IPC provides for the enhanced punishment of second time offenders in some cases of previous conviction.

various species. It is clarified that the punish-ability of the abetment of an offence depends upon the nature of the offence itself.

Under Section 109 of the Code, if the offence is committed in consequence to abetment then the abettor is liable for the punishment provided for that offence. It is noteworthy that for the abetment of an offence which is punishable with "only fine", if committed in consequence of the abetment, no punishment is provided. It means, such offence of abetment of an offence which is punishable with only fine, would not classify *per se* as an offence under the Code.

Under Section 115 of the Code, if the offences punishable with death or life imprisonment are not committed in the consequence of abetment or if not committed at all, even then such abetment would attract a punishment of imprisonment of either description for term which may extend to 7 years and fine. Further, what makes this twice as much austere is that in consequence of such abetment even if hurt is caused to any person, the punishment may extend to 14 years.

For abetment of those offences punishable with imprisonment, Section 116 of the Code, inter alia provides with a punishment of any description for a term which may extend to one fourth of the longest term provided for that offence or fine or both.

As an extension of such legislative intention, Section 114 of the Code entails one such statutory fragment of the Code which manoeuvres not only the punish-ability but also the culpability of the offender. Section 114 provides that whenever an abettor abets an offence and in consequence of such abetment the abetted offence has been committed, if it is proved that the abettor was present at the place when the offence was committed, then irrespective of any active participation by the abettor or mutual intention between the abettor and the abetted person, the abettor shall be deemed to have committed the offence.

In *Kulwant Singh @ Kulbansh Singh v. State of Bihar, (2007) 15 SCC 670*, the Hon'ble Supreme Court of India has held that not every presence at the time of the commission of the offence is covered by the Section 114 of the Code. The Court further held:

"14. Section 114 applies where a criminal first abets an offence to be committed by another person, and is subsequently present at its commission. Active abetment at the time of committing the offence is covered by Section 109. and Section 114 is clearly intended for an abetment previous to the actual commission of the crime, that is before the first steps have been taken to commit it.

Section 114 is not applicable in every case in which the abettor is present at the commission of the offence abetted. While Section 109 is a section dealing generally with abetment, Section 114 applies to those cases only in which not only is the abettor present at the time of the commission of the offence but abetment has been committed prior to and independently of his presence."

Therefore, the above principle makes the abettor culpable for an offence which he abets at par with the principal offender. One of the trickled down effects of Section 114 of the Code is that once the stage of charge framing arises, the abettor shall not only be charged under Section 109 (offence of abetment of an offence) but also under the punishment section for the offence which was committed in the consequence of abetment.

Another collateral effect of this provision is that in situations where the same abettor, subsequent to his conviction under Section 114 of the Code, is again himself charged with the commission of same offence which was previously committed in his presence in consequence of his abetment, where such offence is related to Chapter XII (offences related to coin and government stamps) or Chapter XVII (offences against property), then under Section 75 of the Code, he will be held liable for an enhanced punishment. It means that a person, who was earlier convicted for an offence under Chapter XII or XVII of the Code because of the constructive liability principle under Section 114, if in case he again gets convicted for the similar subsequent offence, but this time for the actual commission of that offence, then he shall be liable to undergo an enhanced punishment for that offence and such person will be treated as a second time offender with respect to that offence.

Therefore, though the punishment for the abetment of an offence and that of the offence is same, a slight error in framing of charges in the first conviction could

absolve the abettor from undergoing an enhanced punishment for a subsequent punishment.

To conclude, if the abettor who does not participate in commission of an offence under Chapter XII or XVII of the Code is convicted for that offence because of his deemed liability under Section 114 of the Code, commits the same offence subsequently- his enhanced liability may arise like a mirage by virtue of Section 75 of the Code.



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