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## Case Comment: Abhayanand Mishra v The State of Bihar - Attempt and Preparation vis-a-vis Indian Penal Code

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### INTRODUCTION

Education and employment are very crucial in today's world to survive. Even sectors like agriculture where not much education was required previously, now become a sector where modern technology is been used for improvement. Without higher and proper education, it is nearly impossible to get a high-paying job in any country. In India, about 71% of adults do not have upper secondary education<sup>1</sup> and the employment rate even though it has increased to 45.20 percent in the first quarter of 2023<sup>2</sup> we can see more than 50 percent of the population in India is unemployed. Not only does this affect the efficiency of the country but also if we see from the perspective of law, one of the major factors that lead to an increase in the crime rate in a country is lack of education and unemployment. To understand the relationship between unemployment and crime, a study was conducted by BOCSAR in March 2012. This study

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<sup>1</sup> 'Education at a Glance 2019' (OECD, 2019) <[https://www.oecd.org/education/education-at-a-glance/EAG2019\\_CN\\_USA.pdf](https://www.oecd.org/education/education-at-a-glance/EAG2019_CN_USA.pdf)> accessed 22 July 2023

<sup>2</sup> 'Employment to population ratio, 15+, female (%) (national estimate) - India' (World Bank, 25 April 2023) <<https://data.worldbank.org/indicator/SL.EMP.TOTL.SP.ZS?locations=IN>> accessed 22 July 2023

reflected a direct impact of unemployment on the crime rate in Australia and stated that the huge difference in income disparities in society is the reason.

In the present case of *Abhayanand Mishra v The State of Bihar*<sup>3</sup>, we can see the cause of committing the offense is to obtain higher education. Higher education can not only improve the chances of better income but also improve the quality of your life and the coming generation. *Abhayanand Mishra*, the appellant in order to pursue M A, tried to appear in the M.A. examination through fraudulent acts. The main issue about this case is to what extent we can consider an act as preparation for committing an offense. This is one of the landmark cases that explain sections 415<sup>4</sup>, 420<sup>5</sup> and 511<sup>6</sup> and dismisses the appeal of the appellant against his conviction under sections 511<sup>7</sup> given by the High Court of Patna.

The Supreme Court not only gives insight into the decision of the High Court but also gives more clarity on a debatable topic of the step of a crime emphasizing how the facts of the case can help to distinguish between the preparation and attempting to commit an offense.

## **FACTS OF THE CASE**

The appellant, *Abhayanand Mishra* wanted to sit for the 1952 M.A. exam in English as a private candidate for which he applied to Patna University for permission. The appellant represented himself as a B.A. graduate in 1951 and that he had been teaching in a particular school. To support the authenticity of his application he further attached certain certificates claiming it to be from the headmaster of the school and the Inspector of schools. The appellant's application and statements were accepted by the University followed by asking him for the remission of the fees and two copies of his photograph. After doing so, a proper admission card was sent to the headmaster of the school on 09 April 1954.

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<sup>3</sup> *Abhayanand Mishra v The State of Bihar* (1961) SC 1698

<sup>4</sup> Indian Penal Code, 1860, s 415

<sup>5</sup> Indian Penal Code, 1860, s 420

<sup>6</sup> Indian Penal Code, 1860, s 511

<sup>7</sup> *Ibid*

University received the information that the appellant was neither a B.A. graduate nor a teacher in any school and the documents provided by his are forged. Moreover, the appellant was debarred from taking any university exam for a time period as a result of corrupt practice at a university exam. After reporting to the cops and an investigation done by them the appellant was not found guilty of forging certificates but was convicted of cheating and deceiving the university to issue an admission card for him.

## ISSUES

1. Whether the acts of the appellant were considered an attempt to commit the offense under section 420 of the Indian Penal Code<sup>8</sup>.
2. Whether the act of deceiving and providing forged documents to the University is considered a preparation or attempt to commit an offense under section 511 of the Indian Penal Code<sup>9</sup>.
3. Whether the Admission Card provided by the University will be covered under the definition of 'Property' as per section 415 of the Indian Penal Code<sup>10</sup>.

## OBSERVATION AND DECISION OF THE HIGH COURT

The ruling and observation of the Supreme Court have played an important role in understanding the necessary elements and convicting a person under sections 420<sup>11</sup> and 511<sup>12</sup> of the Indian Penal Code. There were two main contentions of the appellant's counsel were turned down by the Court with proper interpretation and reasoning of the respective sections.

Firstly, the appellant claimed that he was in the process of preparation and had not taken any action towards the commission of the offense so he cannot be punished under section 511<sup>13</sup>. In response to this, the Court explained the thin line between the commission of an offense and simply its preparation. The three ways of committing an offense were explained which include

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<sup>8</sup> Indian Penal Code 1860, s 420

<sup>9</sup> Indian Penal Code 1860, s 511

<sup>10</sup> Indian Penal Code 1860, s 415

<sup>11</sup> Indian Penal Code 1860, s 420

<sup>12</sup> Indian Penal Code 1860, s 511

<sup>13</sup> Indian Penal Code 1860, s 415

the presence of Mens rea i.e., the intention to commit such offense followed by the preparation required to facilitate the offense, and lastly the act of committing an offense. The last act may be successful which results in the commission of a crime otherwise it is an attempt to commit such a crime. Whether the person succeeds or fails to commit the crime he will be punishable under Indian Penal Code. The Supreme Court observed that when anyone with the necessary intention commences an act after the preparation is completed, he/she is said to start the commission of an offense. To explain in more detail the illustrations of this section were relied on. In both illustrations, the action taken was with the intention to commit the respective offense enabling the start of the commission of the offense<sup>14</sup>. The court laid stress on the flexibility of the provision and the phrase 'attempt to commit an offense'.

The learned Judge further said: 'We do not agree that the act towards the commission of such offense must be an act which leads immediately to the commission of the offense. The purpose of the illustration is not to indicate such a construction of the section, but to point out that the culprit has done all that be necessary for the commission of the offense even though he may not actually succeed in his object and commit the offense'.

The Court further responded to the second argument of the appellant that, since the admission card has no monetary value, it shall not be considered a 'Property' as per section 415 of the Indian Penal Code. "The admission card as such has no pecuniary value, but it has immense value to the candidate for the examination".<sup>15</sup> If the admit card had not been issued the appellant couldn't enter the examination hall to appear for the exam. The court mentioned and relied on the judgment of *Queen Empress v Appasami* for support. In the *Queen Empress v Appasami*<sup>16</sup> case, it was observed by the court that the ticket would be considered 'property' because it allowed the accused to enter the examination hall and give the examination.<sup>17</sup> The accused in the present case has deceived the University and dishonestly delivered the admission card to himself, which would not have been successful if the University had not

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<sup>14</sup> *Abhayanand Mishra v The State of Bihar* (1961) SC 1698

<sup>15</sup> *Ibid*

<sup>16</sup> *Queen-Empress v Appasami* (1889) ILR 12 Mad 151

<sup>17</sup> *Ibid*

deceived. The court observed that all the criteria to commit cheating as per section 415 of the Indian Penal Code have been fulfilled by the accused.

The court concluded that the appellant succeeded in deceiving the University. Cheating commenced the moment he dispatched its false documents; he just failed to receive and appear for the exam as the University was informed that he was neither a B.A. graduate nor a teacher in any school due to something that was not under his control. As a result of this conclusion, the Supreme Court upheld the conviction under section 420 read with section 511 of the Indian Penal Code<sup>18</sup> given by the Trial Court and Patna High Court to the accused and dismissed the appeal.

## ANALYSIS AND CONCLUSION

In the present case, the court made it clear that only the penultimate acts will not be considered as attempts but it shall also include any act in furtherance of the preparation. To understand the judgment and observation of the court it is important to understand the reason behind such distinction. Preparation for attempting a crime can be very basic at times. Any reasonable person cannot distinguish whether such preparation is done in general or with the intention of doing a crime. For a very basic example, one can buy a kitchen knife but from the perspective of any reasonable man, the intention of the person buying the knife cannot be deduced. It could either be for kitchen use or to murder someone. Commission of the offense will only start when such a knife is used to attempt the murder, doesn't matter if he/she is not successful.

Additionally, there is one more important reason why the court was very particular about whether the stage of preparation has been crossed by the accused. There are times when people self-reflect and withdraw from doing any crime at the preparation step. Anger, dissatisfaction, grievance, or even desperation can push people to think of doing criminal acts but at the same time, individuals still have the chance to retreat from such thoughts or preparation. So, it is safe to say that the stage of preparation is harmless and there is a chance

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<sup>18</sup> Paras Panjwani, 'Case Brief: Abhayanand Mishra Vs. The State of Bihar' (Legally *Flawless*, 12 September 2020) <<https://legallyflawless.in/case-brief-abhayanand-mishra-vs-the-state-of-bihar/>> accessed 18 July 2023

of repentance by the individual. But as soon as an act enters into the attempt arena, criminal liability arises, this is because the act takes the perpetrator very close to the completion of the crime. The act itself can be dangerous to society considering its proximity to the completion of crime<sup>19</sup>.

In the light of the case of *Abhayanand Mishra v State of Bihar*, the Court recognized the act of deceiving and producing fake documents as an attempt since the accused dispatched the false documents with the necessary intention. As soon as the documents were dispatched the accused entered into the attempt arena and his criminal liability arose. This act itself shows that the preparation stage has been finished and the accused was very close to completing the offense of cheating by acquiring the admission card which permitted him for the examination.

The Court used the Proximity Test to come to this conclusion. With the help of this test, the court evaluated the proximity of the act of the accused to the offense. This test detects when an act will be an attempt. If the accused has carried out all or nearly all the necessary acts to commit the crime but falls short of the anticipated result, he is said to have attempted the offense<sup>20</sup>. In the present case, all the necessary steps to deceive the University and provide false documents were completed by the accused. As a result of such deception, an admission card was also dispatched to the accused. Though the accused was not successful in appearing for the exam, criminal liability will be there on him as per Proximity Test.

Supreme Court has demonstrated thorough insight with respect to section 511 of the Indian Penal Code through this case. This judgment is not only used for persuasive precedent in Courts but also referred for in-depth understanding in its respective area of crime.

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<sup>19</sup> Suwarn Rajan, 'ATTEMPT IN CRIMINAL LAW' (*LAWYERCLUBINDIA*, 02 October 2009) <<https://www.lawyersclubindia.com/articles/ATTEMPT-IN-CRIMINAL-LAW-1664.asp>> accessed 18 July 2023

<sup>20</sup> *Ibid*