

## CRIMINAL REVISION.

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*Before Imam and Chapman, JJ.*

MUSAI SINGH

v.

EMPEROR.\*

1913

July 2.

*Charge—Single head relating to three separate offences of the same kind—  
Defect—Duplicity or Misjoinder—Prejudice—Criminal Procedure Code  
(Act V of 1898), ss. 233, 234 and 537.*

A single head of charge, relating to three offences of the same kind, is defective for duplicity and not misjoinder: but a trial under such a charge is not bad unless the accused has been prejudiced thereby.

*Subrahmaniam Ayyar v. King-Emperor* (1) referred to.

THE petitioner was a *sazawal* of the Bettiah Raj, and as such it was his duty to collect rents from the tenants of the estate. It appeared that the rents of the village in which certain tenants lived had not been realized for about three years pending the re-measurement of their lands and the settlement of rents in accordance therewith. On the 18th March 1912, the petitioner went to the village and informed three of the tenants, Dhuman Chamar, Gulchand Chamar and Ramdhani Chamar, that the sums due from them as rents were Rs. 26 pies 3, Rs. 30 and Rs. 22 respectively, and obtained the same. The first and last named above were subsequently given receipts for Rs. 20 pies 3 and Rs. 12 each, and Gulchand was credited to the amount of Rs. 18, as 14 only. The petitioner was allèged to have appropriated the differences.

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\* Criminal Revision No. 337 of 1913, against the order of R. Sheepsbanks, Sessions Judge, Mozafferpore, dated Jan. 6, 1913.

Three separate complaints under s. 420 of the Penal Code were filed against him by the three persons before the Joint Magistrate of Mozafferpore who tried the cases together at one trial, and drew up a single head of charge in the following terms :—

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"That you, on or about the 18th March 1912, at Barsak, cheated Dhuman Chamar, Ramdhani Chamar and Gulchand Chamar by dishonestly inducing them respectively to deliver to you Rs. 3, Rs. 10, and Rs. 11 as. 2, and thereby committed an offence punishable under s. 420, I. P. C."

The petitioner was found guilty and sentenced, on the 13th December 1912, to two years' rigorous imprisonment and a fine of Rs. 100, and in default to rigorous imprisonment for a further term of six months. An appeal against the conviction was dismissed by the Sessions Judge of Mozafferpore, whereupon the petitioner moved the High Court and obtained this Rule from Coxe and N. R. Chatterjea, JJ. to set aside the conviction and sentence on the strength of the decision in *Srish Chandra Mukerjee v. Emperor* (1). The Magistrate in his explanation referred to *Moharuddi Malita v. Jadu Nath Mandul* (2).

*Mr. Zuker* and *Babu Biswanath Bose*, for the petitioner.

*Dr. Dwarka Nath Mitter*, for the opposite party.

*Cur. adv. vult.*

IMAM AND CHAPMAN, JJ. At the time of the alleged offences the petitioner was a *sazawal* of the Bettiah Raj and was entrusted with the work of collecting rents from the tenants of the Raj. Three tenants are said to have been cheated by him while he was so engaged in the collection of rents. They laid three separate complaints against him before the Magistrate, who, purporting to act under section 234 of the

(1) (1909) 13 C. W. N. 1067.

(2) (1906) 11 C. W. N. 54.

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Criminal Procedure Code, tried the petitioner for the three offences at one trial and framed only one charge, setting out only one offence of cheating in respect of all the three complainants.

If the Magistrate had treated the three complaints as complaints of distinct offences and had drawn up three separate charges, the procedure would have been without defect. There was no obstacle to the disposal of all three cases at one trial. There was no misjoinder and no contravention of any law limiting the joinder of offences in one indictment: *Subramanya Ayyar v. King-Emperor* (1).

The defect is one of "duplicity," not of misjoinder: Archbold's Pleading, Edn. 1910, page 76. It was not the mode of trial that was wrong; it was merely the form of the charge.

The law on this subject, in the words of the Code of Criminal Procedure, is as follows:—"For every distinct offence . . . there shall be a separate charge, but no finding or sentence . . . shall be deemed invalid merely on the ground that no charge was framed, or shall be reversed or altered on account of any error, omission or irregularity in the charge unless a failure of justice has been occasioned." It seems clear, therefore, that it is not open to us to hold that the trial was bad merely upon the ground of the omission to draw up a separate charge for each offence.

We are of opinion that the petitioner clearly understood what he was being tried for, and was not in any way prejudiced. Moreover, he made no objection at the time of the trial (see *Explanation* to section 537).

The result is that we see no reason to interfere with the conviction. The sentence was, however, too

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(1) (1901) I. L. R. 25 Mad. 61.

severe. It is reduced to nine months' rigorous imprisonment. The sentence of fine, or imprisonment in default, will stand.

E. H. M.

*Rule discharged.*

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APPELLATE CIVIL.

*Before Mookerjee and Beachcroft, JJ.*

BHAGIRATHI DAS

v.

BALESHWAR BAGARTI.\*

1913  
March 6.

*Res Judicata—Restoppel—Mortgage by Hindu widow claiming an absolute estate—Reversioner, previous independent title of.*

On 28th August, 1879, one Musammât Bhâmô was declared to have preferential title to one Satyabadi in certain lands. On the 30th September, 1904 Bhâmô executed a conditional mortgage. In a suit for foreclosure brought by the mortgagee against Bhâmô and Satyabadi's brother Baleshwar who was made a party on the allegation that he was in possession as a donee of the equity of redemption, a decree nisi was granted to the mortgagee, and Baleshwar (who repudiated the title of Bhâmô and set up a title in himself alleging that the property belonged to him, and Bhâmô was in possession as his guardian) was dismissed from the suit. Subsequently, the mortgage decree having been made absolute, and the mortgagee having been unable to obtain possession of the lands in question, a suit for recovery of possession was filed on the 19th June 1906 by the mortgagee against Baleshwar. This latter suit was decreed on the 17th September 1906 and both Courts of Appeal subsequently confirmed this decree. Shortly after the decision of the High Court in the above appeal, Bhâmô died, and, on the 2nd April 1909, Baleshwar brought a suit against the mortgagee for declaration of title and recovery of possession.

\* Appeal from Appellate Decree, No. 4172 of 1910, against the decree of J. C. K. Peterson, District Judge of Sambalpur, dated Sept. 15, 1910, reversing the decree of Ram Lal Das, Subordinate Judge of that district, dated April 23, 1910.