

**CRIMINAL REVISION.***Before Fletcher and Beachcroft JJ.*

SUBEDAR AHIR

v.

EMPEROR

AND

CHHATRADHARI MISSER

v.

EMPEROR.\*

1915

Feb. 5.

*Joinder of Cases—Offences against different persons by the same accused—  
Legality of joint trial—Criminal Procedure Code (Act V of 1898)  
s. 234—Practice.*

Section 234 of the Criminal Procedure Code is not limited to the case of offences committed against the same person, but applies also where they are committed against different persons.

*Manu Miya v. Empress* (1) and *Sri Bhagwan Singh v. Emperor* (2) followed.

*Empress v. Mururi* (3), *Nanda Kumar Sirkar v. Emperor* (4), *Ali Muhomed v. Emperor* (5) dissented from.

*Queen-Empress v. Juala Prasad* (6) referred to.

At the same time the powers under the section should be used with great care and caution where there are different complainants.

THE facts relating to the two Rules are as follows :—  
*Crim. Revision No. 1863 of 1914.* On the 29th September 1914, the petitioner Subedar Ahir, went to

\* Criminal Revision, No. 1863 of 1914, against the order of R. Sheepshanks, Sessions Judge of Mozafferpore, dated Nov. 11, 1914 ; and Criminal Revision, No. 1902 of 1914, against the order of J. Johnston, District Magistrate of Rajshahye, dated Sep. 2, 1914.

(1) (1882) I. L. R. 9 Calc. 371.

(4) (1907) 11 C. W. N. 1128.

(2) (1908) 13 C. W. N. 507.

(5) (1908) 13 C. W. N. 418.

(3) (1881) I. L. R. 1 All. 147.

(6) (1884) I. L. R. 7 All. 174.

1915  
 SUBEDAR  
 AHIB  
 v.  
 EMPEROR.

a cattle fair at Bettiah and got into conversation with one Saudagar Mollah, and pointing out a bullock, induced the latter to bid for it, on his behalf, up to Rs. 50, though it was not worth more than Rs. 32. He gave Saudagar one rupee as earnest money. The latter purchased the animal and paid the owner the rupee. The petitioner then offered to pay the balance but the owner, pretending to have had a quarrel with him, refused to accept the same, whereupon the petitioner prevailed upon Saudagar to pay Rs. 40, and requested the latter to accompany him with the bullock to his house where he promised to pay the amount. On the way the petitioner tried to run away but was arrested. In the meantime one Mahadeo Koer came up and identified the petitioner as the man who had also victimized him in a precisely similar manner shortly before. Mahadeo had been induced to purchase for the petitioner another bullock worth Rs. 22, for Rs. 44. Saudagar and Mahadeo lodged separate informations at the thana, and the petitioner was sent up by the police, on the 30th September, before the Joint Magistrate of Bettiah who tried him on two charges under s. 420 of the Penal Code of cheating the two informants respectively, and convicted and sentenced him, on the 15th October, for each offence to imprisonment and fine. The petitioner's appeal against the order of conviction was dismissed by the Sessions Judge of Mozafferpore on the 9th November 1914.

*Crim. Revision No. 1902 of 1914.* On the 17th March 1914, the petitioner, Chhatradhari Misser, went with two others to the house of one Barkat Manjhi and carried him away forcibly, and proceeding next to the house of one Ganesh Lohar also seized him. The petitioner and his companions then took the two men to Rohanpur, in the district of Malda, wrongfully confined, and extorted bond from them. Barkat

and Ganesh lodged separate complaints against the petitioner and the others under ss. 342, 552 and 384 of the Penal Code before the Sub-Deputy Magistrate of Naogaon who tried the two cases together, and convicted and sentenced the petitioner, under s. 341 of the Penal Code, to a fine. An appeal against the order was dismissed by the District Magistrate of Rajshahye on 20th September 1914.

The petitioners in each case, thereupon, moved the High Court and obtained the present Rules.

*Dr. Dwarka Nath Mitra* (with him *Babu Baikuntha Nath Mitra* and *Babu Manindra Nath Banerjee*), for the petitioners in both cases. Section 234 applies only to the case of a single accused [*Budhai Sheik v. Emperor* (1)] and is limited to the case of three offences against the same person. Refers to *Empress v. Murari* (2), *Nanda Kumar Sirkar v. Emperor* (3) and *Ali Mahomed v. Emperor* (4). The case of *Manu Miya v. Empress* (5) has been practically overruled by the well known Privy Council decision. Refers to *Sri Bhagwan Singh v. Emperor* (6) and *Kali Das Chuckerbutty v. King-Emperor* (7). The consequences of holding the view that the section justifies a joint trial of cases brought by different persons, would be startling. A man might then be tried for three murders committed on different occasions. This construction would render certain sections of the Code unworkable, as where, one of the complainants being absent, the accused would be entitled under s. 247 of the Code to acquittal on all the charges. So also if one of the complainants compounded his case.

1915  
 SUBEDAR  
 AHIR  
 v.  
 EMPEROR.

(1) (1905) I. L. R. 33 Calc. 292.

(4) (1908) 13 C. W. N. 418.

(2) (1881) I. L. R. 4 All. 147.

(5) (1882) I. L. R. 9 Calc. 371.

(3) (1907) 11 C. W. N. 112<sup>s</sup>.

(6) (1908) 13 C. W. N. 507.

(7) (1911) 15 C. W. N. 463.

1915  
 SUBEDAR  
 AHIR  
 v.  
 EMPEROR.

*Babu Krishna Kamal Moitra*, for complainant in Cr. Rev. No. 1902, referred to *Sri Bhagwan Singh v. Emperor* (1) as supporting his case.

*Cur. adv. vult.*

FLETCHER J. The only question raised in the hearing of these two Rules is whether section 234 of the Code of Criminal Procedure authorizes one trial of not more than three offences of the same kind committed within the space of 12 months when the offences have been committed against different persons. The judicial decisions on this question are not uniform. In the case of *Empress v. Murari* (2) it was laid down by the Court that "the combination of three offences of the same kind for the purpose of one trial can only be where they have been committed in respect of one and the same person and not against different prosecutors." A different view was taken by this Court in the case of *Manu Miya v. Empress* (3). The case of *Queen-Empress v. Juala Prasad* (4) the next authority in order of date, is not opposed to the decision in *Empress v. Murari* (2), for in the case of *Queen-Empress v. Juala Prasad* (4) the several sums that had been embezzled had become the property of the Government, and there was, therefore, only one complainant. The next case is *Nandu Kumar Sirkar v. Emperor* (5) to which decision I was a party. In that case, a similar view was taken to that expressed in the case of *Empress v. Murari* (2). That decision was followed in the case of *Ali Mahomed v. Emperor* (6) but dissented from in the case of *Sri Bhagwan Singh v. Emperor* (1).

(1) (1908) 13 C. W. N. 507.

(2) (1881) I. L. R. 4 All. 147.

(3) (1882) I. L. R. 9 Calc. 371.

(4) (1884) I. L. R. 7 All. 174.

(5) (1907) 11 C. W. N. 1128.

(6) (1908) 13 C. W. N. 418.

On a further consideration, I am of opinion that the decision in the case of *Nanda Kumar Sirkar v. Emperor* (1) cannot be supported. No doubt section 234 of the Code of Criminal Procedure is taken from section 5 of the Statute 24 & 25 Vict. c. 96. The words "against the same person" which appear in section 5 of 24 & 25 Vict. c. 96, do not appear in section 234 of the Code of Criminal Procedure.

1915  
 SUBEDAR  
 ANIR  
 v.  
 EMPEROR.  
 FLETCHER J.

Section 234 of the Code of Criminal Procedure, I think, is not limited to cases where the offences have been committed against the same person.

At the same time I think that the power given by section 234 is one that requires to be used with great care and caution where there are different complainants.

In the result, I think, these two Rules ought to be discharged.

BEACHCROFT J. The only question which arises in these two Rules is whether section 234 of the Code of Criminal Procedure is limited to a case where there is one complainant in respect of all the offences charged, or whether it applies where the complainants are different persons.

Looking to the plain words of section 234, I should hardly have thought the matter open to argument. Section 234 is one of the exceptions to the general rule contained in section 233, viz., that every charge is to be tried separately. It provides that three charges of the same offence committed in the course of 12 months may be tried together, and the second part of the section explains what is meant by the same offence. Had the Legislature thought fit to impose such a limitation as that contended for on behalf of the petitioner, it would presumably have done so expressly, whereas

\* (1) (1907) 11 C. W. N. 1128.

1915  
 SUBEDAR  
 AHIR  
 v.  
 EMPEROR.  
 BEACHCROFT  
 J.

the section is framed in the widest terms, and when the Legislature has imposed no limitation it is not for us to do so.

But there are cases in the Courts in which the view has been taken that the limitation contended for applies. It is not necessary to discuss the case of *Empress v. Murari* (1) to which reference was made in the Full Bench case of *Queen-Empress v. Juala Prasad* (2) from the report of which there is reason to suppose that one of the Judges who decided the earlier case had changed his views. But in the case of *Nanda Kumar Sirkar v. Emperor* (3) the opinion was expressed that section 234 "evidently refers to different acts done by the same individuals or same sets of individuals against the same complainant." In that case the earlier case of *Manu Miya v. Empress* (4) does not seem to have been brought to the notice of the learned Judges. The decision in that case was directly contrary to the view contended for on behalf of the petitioner. The Legislature in the Code of 1882 endorsed the view taken by the learned Judges by introducing an Explanation of what is to be understood by the phrase "offences of the same kind" and that Explanation is repeated in the present Code.

Three classes of cases constantly occur in the mufassil in which an accused is charged with offences of the same kind against different complainants. In one a man breaks into several houses in one night; in another a man whose house is searched for stolen property is found to have received property stolen from different persons, on different occasions; in the third a man cheats several persons in pursuance of a system, e.g., by pretending to have the power of doubling

(1) (1881) I. L. R. 4 All. 147.

(2) (1884) I. L. R. 7 All. 174.

(3) (1907) 11 C. W. N. 1128.

(4) (1882) I. L. R. 9 Calc. 371.

money. In the last mentioned case the joint trial might perhaps be defended on the ground that the offences were committed in the course of one transaction, without having recourse to section 234, but in the other cases the offences are not committed in the course of the same transaction. In these cases, where there is no fear of the accused being prejudiced, the charges are always tried together. In the whole of my experience as Magistrate and Sessions Judge, I do not remember objection ever having been raised to the accused being tried at one trial for three offences in such cases. Such an objection would have struck me with surprise, as I am sure it would almost all judicial officers in the mufassil, who have constantly to try cases in which the provisions of this section are applicable, especially when the view described in *Nanda Kumar Sirkar v. Emperor* (1) as evident, had been definitely rejected by two Judges of this Court so far back as 1882.

It may be that the decision arrived at in *Nanda Kumar Sirkar v. Emperor*(1) was correct in that there were three charges of rioting and three of hurt, and that such a case would not be covered by section 234. But, so far as that case decided that section 234 applies only to offences against the same complainant, I must express my dissent from it.

It is argued that, unless the section is limited in the way suggested, an accused might be much embarrassed by the joinder of charges, *e.g.*, a man might be tried at one trial on three charges of murder committed on different occasions. Such an argument entirely loses sight of the fact that it must be presumed that those who are selected for the administration of the criminal law are fit for their duties, and will not use their powers in an arbitrary and oppressive manner.

(1) (1907) 11 C. W. N. 1128.

1915  
 SUBEDAR  
 AHIR  
 v.  
 EMPEROR.  
 BEACHCROFT  
 J.

1915  
 SUBEDAR  
 AHIR  
 v.  
 EMPEROR.  
 BEACHCROFT  
 J.

The Criminal Courts must be credited with the possession of a little common sense.

Finally, it was argued that other sections of the Code would be found difficult to work if the unrestricted interpretation were placed on section 234. The only section referred to was section 247. It was suggested that if one of three complainants were absent, the accused would be acquitted of all three charges. Leaving out of consideration for the moment the fact that charges are not drawn up in summons cases, the obvious answer is that he would not be acquitted of all three offences but only of the offence in respect of which the complainant was absent.

I think the Rules should be discharged, and the petitioner in revision case No. 1863 remanded to jail to serve out the remainder of his sentence.

E. H. M.

*Rules discharged.*

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### APPELLATE CIVIL.

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*Before Sharfuddin and Coxe JJ.*

1915  
 March 10.

HANUMAN PERSHAD THAKUR

v.

JADU NANDAN THAKUR \*

*Benami Purchaser—Auction sale—Civil Procedure Code (Act V of 1908)  
 s. 66—Object of the section.*

Section 66 of the Code of Civil Procedure, 1908, lays down that no suit shall be maintained against any person claiming title under a purchase, certified by the Court, on the ground that the purchase was made on behalf of the plaintiff or some one through whom the plaintiff claims. The

\* Appeal from Original Decree, No. 248 of 1911, against the decree of Prosanna Kumar Gupta, Additional Subordinate Judge of Mozafferpur, dated May 31, 1910.