

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

1916

Dec. '12.

SIMHACHALAM

v.

EMPEROR.\*

*Jurisdiction—Criminal misappropriation or breach of trust—Receipt of money and conversion at head office of a company in Madras Presidency—Loss to complainant in a district in Bengal—Jurisdiction of Court at latter place to try the offences—Criminal Procedure Code (Act V of 1898), ss. 179, 181 (2).*

The jurisdiction of a Court to try the offences of criminal misappropriation or breach of trust is governed by s. 181(2) and not s. 179 of the Criminal Procedure Code.

Loss, though a normal result, is not an ingredient of the offences of criminal misappropriation or breach of trust, and not, therefore, a "consequence" within the meaning of s. 179.

A complaint of offences under ss. 403 and 406 of the Penal Code against an official of an Insurance Company having its head office at B in the Madras Presidency, where the money was received and the conversion took place, cannot be tried by a Court at K where loss ensued to the complainant.

*Ganeshi Lal v. Nand Kishore* (1) and *Rambilas v. Emperor* (2) followed.

*Queen-Empress v. O'Brien* (3) and *Langridge v. Atkins* (4) dissented from.

*Colville v. Kristo Kishore Bose* (5), *Emperor v. Mahadeo* (6), distinguished.

THE petitioner was the secretary of the Coromandel Life Insurance Company, Ltd., having its head office

\* Criminal Revision No. 1004 of 1916, against the order of D. Dutt, Deputy Magistrate of Krishnagar, dated Sep. 16, 1916.

(1) (1912) I. L. R. 34 All. 487.

(4) (1912) I. L. R. 35 All. 29.

(2) (1914) Mad. W. N. 894.

(5) (1899) I. L. R. 26 Calc. 746.

(3) (1896) I. L. R. 19 All. 111.

(6) (1910) I. L. R. 32 All. 397.

at Bimlipatam in the Presidency of Madras. The Company had chief agents in various provinces in India and agents for local areas within the same. One Rati Kanta Laha insured his life with the said Company on the representation of Sarat Chunder Roy, who was the agent of the Company for the Sadar Sub-division of Krishnagar, in the district of Nadia, at the time acting under the Chief Agent for Assam and Bengal whose office was at Calcutta. In 1909 Rati Kanta was appointed the agent at Krishnagar and secured several subscribers. He resided at Krishnagar and used to send his own and the subscribers' premia by postal money-order from Krishnagar to the office of the Chief Agent at Calcutta who transmitted the same to the head office. It appeared that the Company later went into voluntary liquidation, and one P. Adinarayan, the managing director, was appointed the liquidator.

In March, April and May 1915, Rati Kanta sent the premia as usual, but failed to obtain a receipt therefor from the Company in spite of correspondence with the managing director. Accordingly, on the 30th March 1916, Rati Kanta filed a complaint, in the Court of the Sadar Subdivisional Magistrate of Krishnagar, against the petitioner and Adinarayan, of offences under ss. 403, 406 and 416 of the Penal Code. The money was received at Bimlipatam and it was not suggested that the conversion of it to the use of the accused took place anywhere else. Process at first issued only against Adinarayan under ss. 403 and 406 of the Penal Code, but he was ultimately discharged, on the 7th June, for want of jurisdiction. Upon the suggestion of the District Magistrate of Nadia, to whom an application had been made under s. 437 of the Code, the Subdivisional Officer summoned the petitioner, on the 17th July, under the same sections. The case

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was then transferred to Mr. D. Dutt, a Deputy Magistrate, for disposal. The petitioner took a preliminary objection to the jurisdiction of the Court to try him. The Magistrate overruled the same by his order of 16th September on the authority of *Queen-Empress v. O'Brien* (1). The petitioner then moved the High Court and obtained the present Rule.

*Mr. K. N. Chaudhuri* and *Babu Debendra Narain Bhattacharjee*, for the petitioner.

*Babu Manmutha Nath Mukerjee* and *Babu Narendra Kumar Bose*, for the complainant.

*The offg. Deputy Legal Remembrancer (Mr. Camell)* for the Crown.

*Cur. adv. vult.*

TEUNON AND BEACHCROFT JJ. The question for our consideration in this Rule is one of jurisdiction. The complainant has brought charges under sections 403, 406 of the Indian Penal Code in the Court of the Magistrate at Krishnagar in the district of Nadia, against the petitioner, an official of an Insurance Company having its head office at Bimlipatam in the Madras Presidency, alleging that he has misappropriated certain sums of money paid on account of an insurance policy. The question is whether the case can be tried in the Nadia Court.

Chapter XV of the Code of Criminal Procedure deals with the jurisdiction of Criminal Courts. Section 177 provides the general rule that an offence must ordinarily be tried in the Court within the local limits of whose jurisdiction it was committed. Then follow a number of enabling sections which extend the jurisdiction of Courts. One of these, section 181 (2), provides specially for the trial of the offence of

(1) (1896) I. L. R. 19 All. 111.

criminal misappropriation. By it the offence may be tried by a Court within the local limits of whose jurisdiction any part of the property, the subject of the offence, was received or retained as well as by the Court which is given jurisdiction by section 177.

Now, when the Code in express terms enumerates the Courts which have jurisdiction in language which is apparently exhaustive, if it is sought to establish the fact that another enabling section still further extends the jurisdiction, we must only give effect to the argument if the Court claiming jurisdiction comes strictly within the terms of the section.

The Crown contends that section 179 is such an enabling section. That section provides that "when a person is accused of the commission of an offence by reason of anything which has been done and of any consequence which has ensued, such offence may be tried by a Court within the local limits of whose jurisdiction any such thing has been done or any such consequence has ensued." In the present case the money was received at Bimlipatam, and it is not suggested that the conversion of the property to the use of accused took place anywhere else. But it is argued that loss was caused to the complainant in Nadia and, therefore, by the application of section 179, the Nadia Court has jurisdiction.

Now, for the application of section 179 it is essential that the offence should depend on an act done and on a consequence which has ensued. But loss to one person, though a normal result of an act of misappropriation by another, is not an essential ingredient of the offence of criminal misappropriation. The offence is complete if the conversion is done with the intention of causing wrongful gain to the offender irrespective of any loss which may ensue to any other person. The offence does not depend on the consequence which

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has ensued but only on the act which has been done. Section 179, therefore, does not in terms apply.

There is no reported decision on the point in this Court. The case of *Colville v. Kristo Kishore Bose* (1) has no application, as the charge there was of cheating. In the Madras Court the case of *Rambilas v. Emperor* (2) is in favour of the petitioner. In the Allahabad Court there have been contrary decisions. The case of *Queen-Empress v. O'Brien* (3) which was followed in *Langridge v. Atkins* (4) supports the Crown, while that of *Ganeshi Lal v. Nand Kishore* (5) supports the petitioner. The case of *Emperor v. Mahadeo* (6) is not exactly in point as the Court held that the acts of embezzlement must have taken place at Mirzapur or at one of the districts in which the accused travelled. It also held that section 182 of the Code of Criminal Procedure was applicable. The cases of *Ganeshi Lal v. Nand Kishore* (5) and *Rambilas v. Emperor* (2), in our opinion, express the correct view.

The Rule is, therefore, made absolute and the proceedings against the petitioner are quashed.

E. H. M.

*Rule absolute.*

(1) (1899) I. L. R. 26 Calc. 746.

(4) (1912) I. L. R. 35 All. 29.

(2) (1914) Mad. W. N. 894.

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