

ORIGINAL CRIMINAL.

Before Sanderson C. J.

EMPEROR

v.

JHABBAR MULL LAKKAR.*

1922
Feb. 20.

Autrefois Acquit—Acquittal on trial for criminal breach of trust—Subsequent trial on the same facts for falsification of accounts relating to the same acts of misappropriation and forming part of the prosecution case on the first trial—Criminal Procedure Code (Act V of 1898), s. 403.

Where an accused was tried, under s. 408 of the Penal Code, for criminal breach of trust of three sums of money alleged to have been dishonestly misappropriated on three dates, and it was part of the prosecution case at the trial that he had made three false entries to conceal the acts of misappropriation, and he was acquitted by the jury, but was subsequently charged on the same evidence, under s. 477A of the Penal Code, in respect of the said three entries:—

Held, that he should not, on the facts of the case, be tried again for what were virtually the same offences charged in a different form.

THE prisoner, Jhabbar Mull Lakkar, was the cashier and accountant of the firm of Radhakissen Sewdut Roy of Jugmohan Mullick Street, in the town of Calcutta, and was entrusted in such capacity with certain cash belonging to the firm. He was alleged to have dishonestly misappropriated three sums of money, and was committed by the Fourth Presidency Magistrate to the High Court, and tried, at the last Criminal Sessions of 1921, before Walmsley J. and a jury charged under s. 408, I. P. C., in three separate counts, with dishonest misappropriation of Rs. 5,000, Rs. 3,000 and Rs. 2,000, on the 25th April, 2nd and 13th May, respectively.

* Original Criminal.

The accused was unanimously acquitted by the jury, but he was subsequently sent up to the Sessions on three charges under s. 477A of falsification of a *rolleur* book of the firm by making therein (i) a false entry of Rs. 5,000, under date the 25th April 1921, purporting to show payment of the said sum to the firm of one Sadharam Tularam, which sum was not so paid, (ii) a similar false entry of Rs. 3,000, under date the 2nd May 1921, purporting to be a payment to Nunda Lal Pal & Co., which sum was not so paid, (iii) a similar false entry of Rs. 2,000, under date the 13th May 1921, purporting to be a payment to Durga Prosad Hari Charan which was not so made.

The trial came on before his Lordship, the Chief Justice, and a jury at the First Criminal Sessions of the High Court, and a preliminary question was raised by the counsel for the prisoner.

Mr. A. N. Sen, for the accused. Section 403 of the Code bars the trial of the accused on the present charges. He was tried at the last Sessions for criminal breach of trust in respect of the same sums. The facts on which the charges of falsification are based are identical with those which formed the subject of the previous trial. Section 403 applies though the charges are framed under a different section: *King v. Plummer* (1), *Emperor v. Lalit Mohan Chuckerbutty* (2), *Jaliram Alom Ganburah v. Rajkumar Amar Singh* (3).

Mr. S. K. Sen, for the prosecution, admitted that the facts in both cases were identical, and that the falsification now alleged formed part of the prosecution case in the first trial; section 403, does not apply: see *Emperor v. Jibon Kristo Bagchi* (4).

(1) [1902] 2 K. B. 339.

(2) (1911) I. L. R. 38 Calc. 559.

(3) (1900) 5 C. W. N. 72.

(4) (1912) I. L. R. 40 Calc. 318.

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SANDERSON C. J. In December 1921, J. M. Lakkar, the accused, was tried at the Criminal Sessions by my learned brother, Mr. Justice Walmsley, and the jury in respect of three alleged offences under section 408 of the Indian Penal Code.

The charges were that on or about three dates, viz., 25th April 1921, 2nd May 1921 and 13th May 1921, he being the cashier of Messrs. Radhakissen Sewdut Roy and entrusted with three sums, viz., Rs. 5,000, Rs. 3, and Rs. 2,000, committed criminal breach of trust by dishonestly misappropriating the said sums.

The jury unanimously found him not guilty in respect of each of the three charges.

J. M. Lakkar is now charged again in respect of the same three matters but in a different form. It is now alleged that he, being a cashier in the above-named firm, as aforesaid, with intent to defraud, made false entries in the *pukka rokur* book of the said firm on or about the 25th April, 2nd May and 13th May 1921, in respect of the said three sums of money, and that he committed offences in respect thereof punishable under section 477A of the Indian Penal Code.

It was argued by the learned counsel on his behalf that as J. M. Lakkar was acquitted at the last Sessions, he ought not to be tried on the present charges by reason of section 403 of the Criminal Procedure Code.

It is conceded by the learned counsel for the prosecution that the evidence, which would be given in respect of the present charges, would be identical with the evidence given against the accused at the last Sessions, and the learned counsel further informed me that the matter of the alleged false entries was investigated at the trial before my learned brother Mr. Justice Walmsley and the jury. In other words, it was part of the prosecution case, at the trial at the last Sessions, that the accused had made the alleged

false entries in the book for the purpose of carrying out the alleged misappropriation, and with the intention of concealing his alleged breach of trust.

Since the case was argued last Friday I have considered the matter, and I have come to the conclusion that, on the facts of this case, the accused ought not to be put on his trial in respect of these charges. If he were so tried, in my judgment, it would in effect amount to trying him again for the same offences as those upon which he has already been tried and acquitted by the jury, although the charges now before the Court are framed in a different manner.

Apart from this, I am not at present satisfied that, if it had been thought advisable to lay before the Court, at the trial at the last Sessions, the facts as constituting offences under section 477A as well as offences under section 408, a form of procedure could not have been adopted for the purpose of carrying out such object.

Under these circumstances, in my judgment, it would not be right to put the accused man on his trial for the second time in respect of the same evidence and in respect of the same matters upon which he has already been unanimously acquitted by the jury.

I confine my judgment to the facts of this case, and I hold that the accused is not liable to be tried on the charges now made against him. Let the accused be discharged.

E. H. M.

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