CRIMINAL REVISION.

Before Costello and M. C. Ghose JJ.

1935

Jan. 25.

KASHIRAM JHUNJHUNWALLA

v.

EMPEROR.*

Charge—Misjoinder—Joinder of charges—Legality of trial—Indian Penal Code (Act XLV of 1860), ss. 408, 477A—Code of Criminal Procedure (Act V of 1898), ss. 222(2), 233, 234, 235.

A charge of criminal breach of trust with regard to a gross sum consisting of seven items can legally be joined at the same trial with two charges of falsification of accounts committed within one and the same year, if the falsification was carried out as one of the series of acts constituting the transaction by which the misappropriation was effected.

John v. *King-Emperor* (1) followed.

Emperor v. *Sheo Saran Lal* (2) distinguished.

Kasi Viswanathan v. *Emperor* (3) dissented from.

The word "transaction" in section 235 of the Code of Criminal Procedure means a group of facts so connected together as to involve certain ideas, *viz.*, unity, continuity and connection. In order to determine whether a group of facts constitutes one transaction, it is necessary to ascertain whether they are so connected together as to constitute a whole which can properly be described as a transaction.

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The material facts appear from the judgment.

S. K. Basu (with him *Ramdas Mukherji*) for the petitioner. It was not lawful for the two charges of falsification of accounts to be joined with the charge of criminal breach of trust. Such a joinder would amount to an illegality which vitiates the trial according to the rule laid down by the Privy Council

*Criminal Revision, No. 813 of 1934, against the order of S. N. Modak, Additional Sessions Judge of Howrah, dated July 31, 1934, modifying the order of B. K. Ghosh, Magistrate, First Class, of Howrah, dated May 28, 1934.

(1) (1930) I. L. R. 10 Pat. 463. (2) (1910) I. L. R. 32 All. 219.
(3) (1907) I. L. R. 30 Mad. 328.

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in the case of *Subrahmania Ayyar* v. *King-Emperor* (1). The decisions in *Kasi Viswanathan* v. *Emperor* (2), *Emperor* v. *Sheo Saran Lal* (3), *Emperor* v. *Salim-ullah Khan* (4), *Queen-Empress* v. *Mati Lal Lahiri* (5), *Raman Behari Das* v. *Emperor* (6), *Emperor* v. *Jiban Kristo Bagchi* (7) and other cases support me in the view that criminal breach of trust or criminal misappropriation are separate transactions from falsification of accounts, and cannot legally be charged jointly with falsification of accounts in one trial.

Debendranarayan Bhattacharjya for the Crown. The one offence referred to under section 222 (*2*) must be taken to constitute one transaction and the character of the transaction in this case was such as to form a series of operations in which the falsifications of accounts were merely steps or stages in one comprehensive transaction. The cases cited on behalf of the petitioner are all distinguishable, and if there is no illegality or irregularity in the trial the occasion for the application of the principle of *Subrahmania Ayyar* v. *King-Emperor* (1) does not arise.

There are two decisions of the Patna High Court which are directly applicable to the points raised in this case and I rely on them. *John* v. *King-Emperor* (8) and *Gajadhar Lal* v. *Emperor* (9).

Sateendranath Mukherji for the complainant.

COSTELLO J. This Rule is directed against a judgment of the Additional Sessions Judge of Howrah, dated the 31st July, 1934, affirming the decision of Mr. B. K. Ghosh, Magistrate of the 1st Class, Howrah, dated the 28th May, 1934.

(1) (1901) I. L. R. 25 Mad. 61; L. R. 28 I. A. 257.
(2) (1907) I. L. R. 30 Mad. 328.
(3) (1910) I. L. R. 32 All. 219.
(4) (1909) I. L. R. 32 All. 57.
(5) (1899) I. L. R. 26 Calc. 560.
(6) (1913) I. L. R. 41 Calc. 722.
(7) (1912) I. L. R. 40 Calc. 318.
(8) (1930) I. L. R. 10 Pat. 463.
(9) (1920) 60 Ind. Cas. 422.

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The petitioner, Kashiram Jhunijhunwalla, was convicted by the learned magistrate on charges laid under section 408 of the Indian Penal Code and under section 477 A of that Code and was sentenced under the latter section to one year's rigorous imprisonment and to pay a fine of Rs. 1,000.

The case for the prosecution was briefly as follows:—Kashiram, in his capacity as manager and cashier of the complainant firm, Hurdut Rai Golap Rai, had in his charge certain cheque books, which had been signed by the complainant for the purpose of the withdrawal of money from the bank when necessary. Taking advantage of the fact that these cheque books were in his possession, the accused drew from the bank certain sums of money and misappropriated a part of those sums and then sought to cover up the defalcations by making entries on the counterfoils of the cheque books of amounts smaller than the sums for which the cheques were actually drawn and the monies received by him.

The main charge against him was that he had misappropriated a total sum of Rs. 2,200 which was made up of seven separate items. He was also charged with falsification in respect of two entries in the counterfoils and in his books of sums smaller than those actually drawn from the bank. He was in fact indicted on a charge of criminal breach of trust under section 408 of the Indian Penal Code and on two separate charges of falsification of accounts under section 477 A of the Indian Penal Code.

At the trial, the defence taken was a denial of the charges. The learned Sessions Judge says: "The trial of the case appears to have a chequered "career, and at one time certain questions were "agitated in High Court." He then said: "In this "court of appeal there has been absolutely no "argument on the merits of the case." He gave certain reasons why that was so. The learned Sessions Judge continued:—

The whole argument by the learned advocate appearing for the appellant was restricted to three factors, namely, (i) that the accused might now be

given an opportunity to cross-examine the prosecution witnesses; (*ii*) that an opportunity might be given to the appellant's lawyer to argue the case before the magistrate, and (*iii*) that the charges framed by the court below were vitiated by several factors of illegality.

Having disposed of the first two of those three points he said with regard to the third point:—

The charge under section 408 of the Indian Penal Code relates to a gross sum consisting of seven items of money alleged to have been misappropriated, and it has been argued that this militates against the principle of section 234 of the Code of Criminal Procedure. In my opinion, section 222(2) of the Code of Criminal Procedure furnishes a complete answer to this argument.

The only question which has been argued before us is the question whether it was lawful for the two charges of falsification to be joined with the charge of misappropriation, that is to say, with the charge of breach of trust under section 408 of the Indian Penal Code.

Mr. S. K. Basu has not sought to argue that the latter charge in itself was illegal, and indeed that part of the matter is completely covered by the provisions of section 222 (*2*) of the Code of Criminal Procedure which provides that:—

When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234.

Provided that the time included between the first and last of such dates shall not exceed one year.

It is clear, therefore, that it was well within the rights of the prosecution to charge the accused with having misappropriated the total sum of Rs. 2,200. With regard to the charges of falsification, however, Mr. S. K. Basu has argued that the addition of those charges was not only a misjoinder, but a misjoinder of such a character as would vitiate the whole of the proceedings and render them not only irregular but illegal. If that were the effect of what was done, then, of course, the bounden duty of this Court would be to quash the proceedings and either to acquit the accused here and now, or to order a new trial.

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It is to be observed that section 234 (*1*) of the Criminal Procedure Code provides that—

> When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

Mr. S. K. Basu has suggested that it was by reason of that provision that the charges in the present case were limited to three, namely, one of misappropriation and two of falsification. Whether that was so or not is, however, immaterial for our present purposes. What we have to decide is whether, in the circumstances of this case, the two charges of falsification could properly be joined with the one charge of misappropriation. The answer to that question depends upon the question of whether the provisions of section 235 (*1*) of the Code of Criminal Procedure materially affect this case. That sub-section provides as follows:—

> If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial, for every such offence.

It is clear from the terms of that section that a person may lawfully be tried for one offence of misappropriation joined with a charge of falsification which was carried out as one of the series of acts constituting the transaction by which the misappropriation was effected.

Mr. S. K. Basu has referred us to a number of decisions, but it is only necessary, I think, to refer to two of them. In the case of *Emperor* v. *Sheo Saran Lal* (1), the accused had been charged and tried at one and the same trial for three offences under section 408 of the Indian Penal Code, committed within a period of one year, and three offences of forgery under section 467 of the Code, and he was convicted and sentenced in respect of all the six offences. Mr. Justice Tudball held that this was an illegality not covered by section 537 of the Code of Criminal Procedure.

(1) (1910) I. L. R. 32 All. 219, 221.

It is to be observed, however, that in that case the facts were that Sheo Saran Lal was a clerk in a certain bank and the case against him was that three different persons seeking to deposit money in the bank handed over certain sums to him, which he embezzled, and for which he gave receipts in his own handwriting, forging thereon the signature of the manager of the bank. The facts of that case were, therefore, quite different from the facts of the case which is now before us. Mr. Justice Tudball said in effect that the accused was tried in respect of six offences at one and the same trial, and, although the offences might have been committed within the space of twelve months, the trial contravened the rule laid down in section 233, even when read with section 234. Then he says—

It has been argued, however, that section 235, clause (*1*) must be read with section 234, and that the three offences mentioned in the latter section must be deemed to include all the offences committed in three similar transactions such as are contemplated by section 235, clause (*1*) ; in other words, if an accused person goes through three similar transactions within the period of twelve months, committing in each transaction the same series of offences, he can be tried at one and the same trial on account of all offences committed in the course of the three transactions, even if they total more than three. I am of opinion that this would be too great an extension of the exception mentioned in section 234.

The other case on which Mr. S. K. Basu strongly relied was that of *Kasi Viswanathan* v. *Emperor* (1), where it was held by Mr. Justice Benson and Mr. Justice Wallis that it was illegal to try a person on a charge which alleged three distinct acts of criminal breach of trust and three distinct acts of falsifying accounts. The learned Judges said that section 234 of the Code of Criminal Procedure would not apply, as the offences of criminal breach of trust and falsification of accounts are not of the same kind, neither would section 235 cover the case, as the several offences cannot be said to form part of the same transaction. Then follows a passage in the judgment which seems to be no more than an *obiter dictum*. In the passage the learned Judges observed :—

It is true that section 222 provides for a charge being framed in respect of the gross sum misappropriated within twelve months from first to last

(1) (1907) I. L. R. 30 Mad. 328, 329.

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and enacts that a charge so framed shall be deemed to be a charge of one offence within the meaning of section 234, but it does not provide that the acts so charged shall be deemed to be one transaction within the meaning of section 235.

That observation contains a proposition, which, if correct, would operate decisively in favour of Mr. S. K. Basu's contention before us. The real question which we have to decide is whether, contrary to the view taken in the Madras case, it ought not to be held that if a person is charged with one offence, namely, that of misappropriation of a gross sum as provided in section 222 (*2*) then that one offence ought to be deemed to have arisen out of one transaction so as to enable the prosecution to join with it in the same charge a charge of some other offence constituted by the series of acts or some of the series of acts which connected together form that transaction. Mr. Basu has argued that, although it is the case that by virtue of the provisions of section 222 (*2*) the individual items of defalcation may be lumped together to constitute one offence, yet the sum of the items does not constitute one transaction, but remains a series of transactions each one of which is made up of a series of acts. If that were the right view of the matter it would necessarily follow, as Mr. Basu contended, that it would not be possible to combine into one transaction some seven items (as was done here), and then to pick out two of those items and say that for the purposes of section 235 they were separate transactions, so that the charges of falsification could be made in connection with each of them.

Mr. Bhattacharjya and Mr. Mukherji on behalf of the prosecution have invited us to hold that the one offence referred to under section 222 (*2*) must be taken to constitute one transaction, and they have argued that the character of the transaction was this: that the accused made up his mind to rob his employer in a series of operations by means of which he secured for himself a total sum of Rs. 2,200 and so each series of operations were merely steps or stages in one comprehensive "transaction".

It is not easy or indeed possible to give an exact definition to the word transaction, but I think we may say that it means a group of facts so connected together as to involve certain ideas, namely, unity, continuity and connection. In order to determine whether a group of facts constitutes one transaction it is necessary to ascertain whether they are so connected together as to constitute a whole which can be properly described as a transaction.

In my opinion, where a clerk or cashier sets out to rob his employer, having regard to the fact that section 222 (*2*) provides that he may be charged with having misappropriated the total of whatever sums he may have appropriated in course of any one year, it is not unreasonable to say that for the purposes of the section that the year's illicit operations can be regarded as one transaction.

Mr. Bhattacharjya has contended that none of the authorities cited by Mr. S. K. Basu are directly in point for our present purposes and he has referred us to the decision of the Patna High Court in the case of *John* v. *King-Emperor* (1), where it was held by Sir Courtney Terrell C. J., and Mr. Justice Adami that—

> It is quite lawful to charge a person under section 408, Indian Penal Code, 1860, with criminal breach of trust in respect of a lump sum of money made up of three different items and to link with that a series of charges of falsification of accounts under section 477A each of which charges under section 477A is united with one of the items of embezzlement under the charge under section 408, provided the charges of embezzlement under section 408 are linked together into one sum and that linking together also affects the charges of falsification.

Certain decisions of this Court were considered in the Patna case and either distinguished or not followed. The learned Chief Justice and Mr. Justice Adami followed the previous decision of the Patna High Court in *Gajadhar Lal* v. *Emperor* (2), where it was held by Mr. Justice Mullick and Mr. Justice Bucknill that "where a person is charged, under "section 408 of the Indian Penal Code, with criminal

(1) (1930) I. L. R. 10 Pat. 463. (2) (1920) 60 Ind. Cas. 422.

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"breach of trust committed in one year in respect of "a lump sum of money, the court is competent, by "virtue of the provisions of sections 234 and 235 of "the Criminal Procedure Code, to try with this "charge three charges for an offence under "section 477 A of the Indian Penal Code if committed "within the period of one year and forming part of "the same transaction as the offence under "section 408".

We are of opinion that the decision of the Patna High Court in the case *John* v. *King-Emperor* really covers the point with which we are now concerned, and, in our opinion, that decision gives a reasonable and accurate interpretation of the relevant sections of the Code of Criminal Procedure.

It follows that this Rule must be discharged.

GHOSE J. I agree with my learned brother that this Rule should be discharged.

The petitioner was manager and cashier of a certain firm and as such he was entrusted with the cheque books of the firm, and he proceeded to rob his employer by writing cheques for certain sums and writing smaller sums in the counterfoils and in the accounts, and dishonestly misappropriating the balance. It is said that he has altogether robbed his employer of no less than Rs. 24,000. The charge was made with respect to a sum of Rs. 2,200 which he is said to have misappropriated by means of seven cheques in course of one year. The seven cheques and counterfoils were proved in court. In respect of two of those cheques further charges were made of falsification of accounts under section 477 A of the Indian Penal Code.

It is urged by Mr. Basu that the trial of the petitioner as regards the charge of criminal breach of trust and the two charges of falsification of accounts, as framed in the case, was illegal and without jurisdiction, and as such the conviction and sentence are bad in law.

Various reported cases were cited by Mr. Basu. It is worthy of note that in all those cases there were two or more charges of criminal breach of trust against the accused person, and in addition to those charges of criminal breach of trust there were further charges of falsification of accounts and it was held in those reported cases that the trial of two or more charges of criminal breach of trust with two or more charges of falsification of accounts was illegal.

In the present case, there was only one charge of criminal breach of trust in respect of a sum of Rs. 2,200. It is true that the sum of Rs. 2,200 was made up of seven different items, as proved in the case. But section 222 (*2*) of the Code of Criminal Procedure provides—

> When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234.

The present charge of criminal breach of trust must, therefore, be held to be a charge of one offence of criminal breach of trust, and the two charges of falsification of accounts were parts of two items of the charge of breach of trust, those falsifications having been made in order to commit the said misappropriation. One charge in respect of Ex. 8 which was a cheque cashed by the accused was that it was for a sum of Rs. 1,300, but he put in the counterfoil and in the accounts a sum of Rs. 600, thereby misappropriating Rs. 700, and the other charge was in respect of Ex. 9 whereby he withdrew a sum of Rs. 600 and credited to the counterfoil and to the accounts Rs. 200, thereby misappropriating Rs. 400.

Section 233 of the Criminal Procedure Code lays down that for every distinct offence there shall be a separate charge. The basis of the rule is that an accused person should not be prejudiced by being accused of several offences at once.

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In this particular case, it cannot be said that the accused was in any manner prejudiced. He was charged with one charge of criminal breach of trust and in respect of a portion of the money it was shown that he falsified these accounts in order to commit the said misappropriation. There can be no doubt that an act of criminal breach of trust forms the same transaction together with an act of falsification of accounts which is made in order to facilitate the breach of trust, and the two charges of criminal breach of trust and falsification of accounts may be tried together under section 235 of the Code of Criminal Procedure. In this case, in respect of two sums of money charges of falsification were made.

In my opinion, there was no illegality in the trial of the two charges in one trial along with the charge of criminal breach of trust.

A. A. *Rule discharged.*