CRIMINAL REVISION.

Before Jack and Khundkar JJ.

SURENDRA NATH BASU

v.

EMPEROR.*

1938
Feb. 9.

Security—Surreptitious withdrawal of security deposit, if constitutes criminal breach of trust—Indian Penal Code (Act XLV of 1860), s. 408.

Security deposit by an employee is a sum which the employer is entitled to retain as long as it is necessary to secure him against losses which may be occasioned by the employee's default. This would usually be until accounts between the employer and the employee have been adjusted. During such period no one, not even the employee who has made the deposit, may deprive the employer of his right to retain the amount deposited. The surreptitious withdrawal by the employee of his security deposit before accounts have been adjusted amount to criminal breach of trust on the part of the employee.

Abdul Majid Mian v. *Emperor* (1) distinguished.

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The material facts and arguments in the case appear sufficiently from the judgment.

B. C. Chatterjee, Suresh Chandra Taluqdar, Mahendra Kumar Ghose and *Arabinda Guha* for the petitioner.

Narendra Kumar Basu, Hemendra Chandra Sen and *Surendra Nath Basu* (*Sr.*) for the complainant.

JACK J. In this case a Rule was issued upon the District Magistrate, Faridpur, to show cause why the conviction of and sentence passed on the petitioner should not be set aside. The main ground urged before us is that in this case there was no dishonest intention. The petitioner Surendra Nath Basu was the *nâib* of the Narail *zemindâr* at

*Criminal Revision, No. 967 of 1937, against the order of K. B. Roy, Sessions Judge of Faridpur, dated July 31, 1937, modifying the order of K. L. Banerji, Subdivisional Magistrate of Gopalganj, dated June 17, 1937.

(1) [1936] A. I. R. (Cal.) 520.

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Mukshudpur. On Kârtik 3, 1343, he was at the *zemindâr's kâchâri* there along with the treasurer and an *âmin* in charge of the property of the estate, including an amount of Rs. 2,968 in the safe, of which he had one key and the treasurer another key. Admittedly, on this date, having despatched the treasurer to render accounts at the *sadar* office he went off with Rs. 2,000 which he took from the safe and Rs. 87 in addition which he got from the treasurer.

His defence is that he was entitled to take Rs. 2,000, as he had deposited with the estate Rs. 2,000 in post office cash certificates as security during his appointment as *nâib*, and the Rs. 87, he said, was money really due to him as *pârbani*, and not belonging to the estate. The finding, however, is that this Rs. 87 also belonged to the estate and in support of this the Magistrate points out that he gave a combined receipt to the treasurer for the whole amount of Rs. 3,065 which included this Rs. 87. Both the Courts below have found that his intention was dishonest.

It has been urged that the prosecution have failed to show that there was a dishonest intention, inasmuch as the defence case is that the accounts are completely in order and no money is due from the *nâib* to the estate; that after the adjustment of accounts, Rs. 2,000 would be found due to him in the ordinary course; that the Rs. 87 was his money, and the prosecution have failed to show that any money is due from him to the estate.

It is true that the accounts have not yet been adjusted so that there is no evidence that any money beyond the Rs. 2,000 security and this Rs. 87 is due from him to the estate. It is clear that as regards the Rs. 2,000 there has, at least, been a temporary misappropriation inasmuch as the accused was not entitled to this Rs. 2,000 under the terms of his agreement until he should have received his discharge after the adjustment of his accounts in the

ordinary course. As regards the Rs. 87, both Courts have held that this money belonged to the estate relying on the entries in a receipt, Ex. 9, which the accused gave to the treasurer on receipt of this money. There may be some doubt, however, about this sum of Rs. 87 as it is not clear from the receipt that this money was deposited with the treasurer on estate account and there is no entry of the amount in the *zemindâri* accounts. The fact that he did not take the rest of the money in the safe seems to indicate that he thought he was justified in taking the Rs. 2,000. However, his conduct was clearly dishonest as he must have known he was not entitled to withdraw his security deposit in this surreptitious manner. We have been referred to the case of *Abdul Majid Mian* v. *Emperor* (1) in which it was held that an employee was not guilty under s. 408 of the Indian Penal Code in having withdrawn, unknown to his employer, when he resigned, money deposited by him as security. That case is possibly distinguishable from the present case inasmuch as there account papers were submitted by the employee whereas in this case there was no submission of accounts. The accused merely left a note that this amount had been withdrawn as his security deposit. But until the accounts had actually been submitted to his employer and adjusted he was not entitled to take away the security deposit and whatever justification there may have been, in the circumstances of that case, certainly in this case it is clear that there was a temporary misappropriation of Rs. 2,000.

In the circumstances, however, we think that the sentence was unnecessarily severe and we, accordingly, reduce it to one week's rigorous imprisonment (which we understand the accused has already undergone), together with a fine of Rs. 400. In default of payment of the fine, he will undergo further rigorous imprisonment for four months.

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KHUNDKAR J. I agree. I desire only to add a few words. As regards the sum of Rs. 2,000 the accused must have known that he could have no claim to it until the accounts as between himself and his employer had been adjusted. Deposits of this kind are sums which the employer is entitled to retain for as long as it is necessary to secure him against losses which may be occasioned by the employee's default. This would usually be until accounts between the employer and the employee have been adjusted. During such a period no one, not even the employee, who has made the deposit, may deprive the employer of his right to retain the amount deposited. To deprive the employer of this right of retention would, in my judgment, amount to causing wrongful loss. To hold otherwise would be to render security deposits of this kind entirely illusory.

Sentence modified.

A. C. R. C.