

He also remarked that the restriction had since been removed by the more recent notification of 18th July 1901 (G.O., Revenue, No. 606). He acquitted the accused under section 245 of the Code of Criminal Procedure.

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Against that order, the Public Prosecutor preferred this appeal. The Public Prosecutor in support of the appeal.

JUDGMENT.—The Magistrate appears to have been of opinion that the evidence showed that the accused were guilty of an offence under section 55 of the Abkari Act. He, however, acquitted them on the ground that the officer who arrested them was an officer who, under the terms of the notification of 24th November 1899, had only authority within the area of his circle and that when he arrested the accused he was acting outside that area. The notification in question did not, and could not, operate so as to limit the powers conferred upon officers by section 34 of the Act. The question whether the officer who effected the arrests was acting within or beyond his powers in making the arrest does not affect the question of whether the accused were guilty or not guilty of the offence with which they were charged.

The Magistrate had jurisdiction under section 190 of the Criminal Procedure Code to take cognizance of the offence.

We must set aside the acquittals and direct the retrial of the accused.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Moore.

KRISHNASAMI PILLAI (SECOND ACCUSED), APPELLANT,

v.

EMPEROR, RESPONDENT.*

1902.
August 11.

*Criminal Procedure Code—Act V of 1893, ss. 233, 235—Misjoinder of charges—
Objection first taken on appeal—Same transaction.*

A person was convicted on three charges, namely;—(1) of abetting the falsification of a document (an account book), (2) of fraudulently destroying and secreting documents, and (3) abetting criminal breach of trust, no objection on

* Criminal Appeal No. 259 of 1902 against a conviction and sentence by R. D. Broadfoot, Sessions Judge, South Arcot Division, in Calendar Case No. 11 of 1902.

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the ground of misjoinder being taken before the Sessions Judge. The only manner in which the alleged falsification and destruction were connected was that the account book and the document were both in the custody of the accused, who thus had opportunity to falsify the one and to destroy the other. It was not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed, or that documents had been destroyed in order to prevent the particular falsification from being detected :

Held, that the offences charged did not constitute one series of acts so connected together as to form the same transaction within the meaning of section 235 of the Code of Criminal Procedure. Also that the misjoinder could not be treated as an irregularity curable under section 537, and that the conviction must be set aside.

Subramania Ayyar v. King-Emperor, (I.L.R., 25 Mad., 61), followed.

CHARGES of (1) abetting the falsification of a document (under section 477-A of the Indian Penal Code); (2) fraudulently destroying a document and fraudulently secreting a document (under section 477); and (3) abetting criminal breach of trust (under sections 109 and 458). The accused (with another who was tried jointly with him) was tried by a Judge sitting with assessors, and convicted and sentenced to three years' rigorous imprisonment.

He now preferred this appeal.

Mr. *John Adam* for appellant.

The Acting Public Prosecutor in support of the conviction.

JUDGMENT.—In this case the Sessions Judge has convicted the second accused on three charges :

(1) A charge of abetting the falsification of a document,—an offence under section 477-A of the Indian Penal Code.

(2) A charge of the fraudulent destruction of a document and the fraudulent secretion of other documents,—offences under section 477.

(3) A charge of abetting criminal breach of trust,—an offence under sections 109 and 408.

These are distinct offences and the second accused having been tried at the same trial for the three distinct offences the conviction is bad as being in contravention of section 233 of the Code of Criminal Procedure, unless it appears that the alleged offences were committed by the same person in a series of acts so connected together as to form the same transaction within the meaning of section 235. It has been urged on behalf of the prosecution that because the different offences are alleged in the charge to have been committed at or about the same time and place and because

the objection of misjoinder was not taken before the Sessions Judge, it is not open to us to say the conviction is bad. We entirely disagree with this contention. The fact that the charge alleges that the different offences were committed at or about the same time or place does not of course show that the case falls within the provisions of section 235.

The only sense in which the alleged falsification of the account book and the alleged fraudulent destruction and secretion of documents can be said to be "connected together" is that the fact of the first accused being left in charge of the account book and of the documents gave him an opportunity of defrauding the complainant by falsifying the account book and destroying the documents. It is not suggested that the account book was falsified in order to conceal the fact that documents had been destroyed or that documents had been destroyed in order to prevent the particular falsification from being detected.

We are of opinion that the offences charged do not constitute one series of acts so connected together as to form the same transaction. This misjoinder of charges cannot be treated as an irregularity which is curable under section 537 of the Criminal Procedure Code (*Subramania Ayyar v. King-Emperor*(1)).

We set aside the conviction and direct that the second accused be retried.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Davies.

IN THE MATTER OF BYRAVALU NAIDU (COMPLAINANT)*

1902.
September 9.

Criminal Procedure Code—Act V of 1898, ss. 250, 388 (2)—Compensation in respect of vexatious complaint—Sentence of imprisonment on non-production of sureties and on complainant's plea of inability to pay—Legality.

A Deputy Magistrate, having held that a complaint was vexatious, ordered the complainant to pay compensation under section 250 of the Code of Criminal Procedure. He recorded the following order:—"The complainant is unable

(1) I.L.R., 25 Mad., 61.

* Case Referred No. 90 of 1902, for the orders of the High Court under section 438 of the Code of Criminal Procedure, by E. L. Vaughan, District Magistrate of North Arcot, in his letter, dated 13th July 1902, R.C. No. 951, Magisterial of 1902.