

APPELLATE CRIMINAL

Before Mr. Justice Wallace.

THE PUBLIC PROSECUTOR, APPELLANT,

1928,
February 15.

v.

PODIMONU BEARY, ACCUSED.*

Indian Penal Code, sec. 407—Accused entrusted with carriage of coffee from one place to another—Portion abstracted—No evidence as to where or when—Trial of accused under sec. 407 in a Criminal Court in the place of delivery—If such Court has jurisdiction.

When the accused was entrusted with the carriage of a quantity of coffee from an estate in Mysore to a firm of merchants in Mangalore, and a portion of the goods was abstracted and there was no evidence as to when or where such abstraction took place, *held*, that the Subdivisional Magistrate at Mangalore had jurisdiction to try the accused on a charge of criminal breach of trust, as there was a failure to deliver the goods at Mangalore in accordance with the terms of the entrustment.

In *re Rambilas*, (1915) I.L.R., 38 Mad., 639, *Krishnamachari v. Shaw Wallace & Co.*, (1916) I.L.R., 39 Mad., 576, *Bapu Daldi v. The Queen*, (1882) I.L.R., 5 Mad., 23, distinguished.

APPEAL under section 417 of the case of Criminal Procedure, 1898, against the acquittal of the accused by the Court of the Subdivisional Magistrate, Mangalore, in C. C. No. 4 of 1927 on his file.

Public Prosecutor for appellant.

D. A. Krishna Variar for accused.

JUDGMENT.

This appeal is by Government against the acquittal of an accused by the Subdivisional Magistrate, Mangalore. The facts of the case, so far as are necessary for

* Criminal Appeal No. 650 of 1927.

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the decision of this appeal, may be taken to be as follows: On 29th January 1927 the accused as a carrier was entrusted by P.W. 3, the proprietor of Mosanalla coffee estate, Mysore, with 225 bushels of parchment coffee to be carried by him from the estate to Mangalore for delivery there to Volkart Brothers' Coffee Works. When the consignment was handed over in Mangalore, it was found that, from 27 bags, coffee had been abstracted and tailings of no value substituted. There was no evidence as to where or when the coffee was abstracted. On these facts the police charge-sheeted the accused under section 407 of the Indian Penal Code. Part of the defence was that the magistrate had no local jurisdiction to try the offence. This contention has found favour with the magistrate who held that as there was no evidence that the offence took place in British India and not in Mysore territory it could not be held that the offence was committed within his jurisdiction. For this view he relied on a certain ruling of the Lahore High Court in *Nadar v. Emperor*(1), and in the result acquitted the accused, and Government has appealed.

Now it is obvious that on such a view of the case as the magistrate has taken the result will follow that in all such cases a theft will never be brought to book at all when it is impossible to get evidence as to the exact locality of the theft, and that would be so in almost every such case. The British Court will refuse jurisdiction because it is not proved that the offence occurred in British India, and the Mysore Court, which follows practically the same Code of Criminal Procedure, will refuse jurisdiction because it is not proved that the offence occurred in Mysore. The offence will therefore

(1) (1923) 24 Cr. L.J., 579; 73 I.C., 323.

go wholly unpunished, because it cannot be decided which Court has jurisdiction. That is a result so opposed to justice and common sense that I should refuse to adopt it unless the processual law absolutely compels such a view.

The Public Prosecutor has relied upon section 185 of the Criminal Procedure Code, but I do not think that section assists here. It only applies if the place of offence is in British India. It would not give jurisdiction to a Court in British India to try an offence committed outside British India merely because the offence was committed in the course of a journey. This is the effect of the ruling in *Bapu Dalai v. The Queen*(1). It appears to me that the real solution of the difficulty lies in an examination of the offence committed. The offence is criminal breach of trust by a carrier. The ingredients of a criminal breach of trust so far as it is necessary to set them out here are, first, entrustment of property, and second, either a dishonest misappropriation of property or a dishonest disposal of that property in violation of any contract which the accused has made touching the discharge of such trust, or wilfully suffering any other person so to do. If the accused had taken dishonestly the coffee entrusted to him at some place on the journey between the estate and Mangalore, he would undoubtedly have misappropriated dishonestly the property entrusted to him, and could be convicted thereof by any Court which has jurisdiction over the locality where the misappropriation occurred. But apart from this, it appears to me reasonable to hold that, when he did not deliver the coffee at Mangalore, he violated the contract under which he was entrusted with it, and that such violation would, if dishonest, make

(1) (1882) I.L.R., 5 Mad., 23.

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him equally guilty of a criminal breach of trust; that is, the offence of criminal breach of trust was committed in Mangalore itself by such failure to deliver, provided the failure was found due to dishonest disposal of that property or wilfully suffering any other person so to dispose of it.

The accused argues that this view is not in conformance with the rulings in *In re Rambilas*(1), *Krishnamachari v. Messrs. Shaw, Wallace & Co.*(2) and *Bapu Daddi v. The Queen*(3). I do not think this is so. In *re Rambilas*(1), the property misappropriated was the proceeds of hundis entrusted by a Dharapuram merchant to accused for encashment in Bombay. The accused cashed these at Bombay and misappropriated the proceeds there. It was clear that the misappropriation was at Bombay, even though there apparently was an undertaking that the money was to be remitted to Dharapuram. So far as the facts in that case went it was clear to the Bench that the misappropriation was complete when the cash was dishonestly taken in Bombay. The learned Judge no doubt goes on to say that it is only the intention which is essential, but that dictum was doubted in *Krishnamachari v. Messrs. Shaw, Wallace & Co.*(2), and further, that whether wrongful gain or loss results is immaterial. The argument that the contract broken by failure to deliver the money was not accepted because first, the charge was not of use and disposal in violation of a contract, and secondly, because the offence would be committed where the dishonest use or disposal took place. The essential distinction between that case and the present is that the time and place of the actual misappropriation were known and these were fixed at

(1) (1915) I.L.B., 38 Mad., 639.

(2) (1916) I.L.R., 39 Mad., 576.

(3) (1832) I.L.R., 5 Mad., 23.

Bombay and therefore it could not have been at Dharampuram. In *Krishnamachari v. Messrs. Shaw, Wallace & Co.*(1), a mufassal agent of a Madras firm misappropriated sale-proceeds of his firm's goods. It was held that the magistrate in Madras had no jurisdiction to try the case because the loss had actually occurred in the mufassal—really a very similar case to the above. *Bapu Daldi v. The Queen*(2), is called in aid more for what it does not say than for what it does. There a carrier entrusted with rice to be conveyed from Mangalore to Calicut took it into Goa and sold it there. The Court held that the misappropriation occurred at Goa and therefore the Mangalore Court had no jurisdiction. It is argued that if the offence could have been constituted by the non-delivery at Calicut, the Bench might have held that the case was triable at Calicut, but that was not the point before the bench which was merely whether the Mangalore Court had jurisdiction. The *ratio decidendi* is that the conversion did not take place until Goa was reached.

Now in all these three cases the time and the place of the dishonest conversion or disposal are definite, and the Court could therefore very definitely hold that it occurred at such and such a place and it was not necessary to go further and consider whether the contention that it occurred elsewhere was valid. The contention that the offence occurred at the place and time of the failure to deliver was negatived and rendered untenable by proof that it had occurred elsewhere. But in the present case the failure to deliver is the only evidence of the misappropriation and it is sufficient evidence of the time and place, in the absence of evidence to the contrary, to establish that there was a disposal in

(1) (1916) I.L.R., 39 Mad., 576.

(2) (1882) I.L.R., 5 Mad., 23.

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violation of the contract at least at the place of delivery. If the accused wishes to contend that the disposal was not there, it is for him to show it. It is not a question of giving the benefit of the doubt to the accused. He has committed *prima facie* a violation of the contract at Mangalore by non-delivery. If he pleads that the violation was not at Mangalore, the onus of proving that rests upon him. I am not prepared to follow the Lahore ruling of a single Judge relied on by the lower Court. I hold therefore that the lower Court had jurisdiction to try the case.

I allow the appeal, reverse the acquittal and direct that the accused be now tried.

B.C.S.

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

R. SRINIVASA REDDY (PETITIONER), PETITIONER,

v.

M. DASARATHA RAMA REDDY (RESPONDENT),
COUNTER-PETITIONER.*

1928,
March 15.

Criminal Procedure Code (V of 1898), sec. 145—Application made in respect of forcible dispossession—Preliminary order not passed within two months—Applicant in no way responsible for the delay—If to operate to his prejudice—Intent and object of section.

When an application is made to a Magistrate under section 145 of the Code of Criminal Procedure by a person complaining

* Criminal Revision Case No. 963 of 1927.