

APPELLATE CRIMINAL.

Before Mr. Justice Pandrang Row.

IN RE G. J. JOSEPH (ACCUSED), PETITIONER.*

1939,
January 11.

Indian Penal Code (Act XLV of 1860), sec. 406—Misappropriation by Head Clerk of fines received from parties—Fits of insanity during that period—Absence of dishonest intention—Conviction for criminal breach of trust—Legality of.

The petitioner, the Head Clerk in a Sub-Magistrate's Court, was convicted of criminal breach of trust under section 406, Indian Penal Code, in respect of amounts which were fines received by the petitioner as Head Clerk from parties. It was admitted that the petitioner received the amounts in question and spent them for his private purposes. The evidence, however, showed that during the period when the misappropriation took place, the petitioner was not in a normal state of mind and that he was subject to fits of insanity which rendered him unable to understand that what he was doing was wrongful at the time and therefore to form the criminal intention of causing wrongful gain or wrongful loss.

Held that, even if the case was not really covered by section 84, Indian Penal Code, the evidence adduced by the petitioner excluded the existence of a dishonest intention which is an essential ingredient of the offence of criminal breach of trust, that the misappropriation could not therefore be regarded as criminal and that the conviction of the petitioner was illegal.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Trichinopoly Division in Criminal Appeal No. 10 of 1938 preferred against the judgment of the Court of the Subdivisional Magistrate, Musiri, in Calendar Case No. 67 of 1937.

K. S. Jayarama Ayyar for petitioner.

Public Prosecutor (V. L. Ethiraj) for the Crown.

* Criminal Revision Case No. 666 of 1938 (Criminal Revision Petition No. 634 of 1938).

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ORDER.

PANDRANG ROW J.—This is a petition to revise the judgment of the Sessions Judge, Trichinopoly, dated 20th April 1938, dismissing the appeal preferred by the petitioner from his conviction under section 406, Indian Penal Code, by the Subdivisional Magistrate, Musiri. The petitioner was the Head Clerk of the Sub-Magistrate's Court at Kulitalai and the charge against him was that he committed criminal breach of trust in respect of an aggregate sum of Rs. 112 made up of four separate items ranging in date from 6th April to 4th May 1937. The amounts in question were fines received by the petitioner as Head Clerk from parties and the receipt of these sums is not denied. It is also stated that ultimately the whole of the amount was made good by the petitioner's wife and another. The principal defence in the case was that there was no criminal misappropriation, stress being laid on the adjective "criminal." It is unnecessary to deal at length with the contention that there was no misappropriation at all because the facts established are sufficient to support the inference that these monies must have been spent for the private purposes of the petitioner in order to gratify his own unregulated desires. The substance of the defence was that the petitioner was practically insane during the period in question; and that he was generally subject to fits of insanity during summer months when he behaved almost like a mad man, being violent in his conduct, disrespectful and threatening to his superiors and so on. The evidence as regards the petitioner's conduct during the summer in question establishes beyond doubt that he was certainly not in a normal state of mind. So far is conceded on behalf of the Crown. The question is whether the petitioner's state of mind was such that it amounted to unsoundness of mind of such a degree

that he was incapable of knowing the nature of his acts or that he was doing what was either wrong or contrary to law, or, in other words, whether the general exception contained in section 84, Indian Penal Code, applies to the petitioner. This question was considered by both the Courts below and they were of opinion that though the petitioner was, so to say, not in a normal state of mind and was behaving like a mad man, nevertheless his case would not be covered by section 84, Indian Penal Code. The Courts below, however, failed to consider another aspect of the case, namely, whether, even if section 84 did not cover the case, the state of mind in which the petitioner was did not exclude the existence of a dishonest intention which is an essential ingredient of the offence of criminal breach of trust. Evidence is certainly relevant for the purpose of ascertaining whether the petitioner's state of mind rendered it possible or likely for him to have entertained a dishonest intention when he dealt with the monies entrusted to him. As was observed by Lord BIRKENHEAD L.C. in *Director of Public Prosecutions v. Beard*(1), where a specific intent is an essential element in the offence, evidence of a state of drunkenness rendering the accused incapable of forming such an intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime. The case was no doubt one where drunkenness was put forward as a fact which negatived the existence of a criminal intention. But any other mental state can also be put forward with equal relevancy for the purpose of negativing the existence of the criminal intention which is an essential ingredient of the crime that is charged against the person in question. No doubt section 86, Indian Penal Code, appears to speak

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in a different way from the law as laid down by the House of Lords in *Director of Public Prosecutions v. Beard*(1). But that is so only so far as knowledge goes and does not include intention. That section provides that where a particular knowledge or intent is a necessary ingredient of an offence a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had, had he been not intoxicated, unless he was intoxicated as the result of something being administered to him against his will or without his knowledge. It will thus be seen that the latter part of the section carefully omits the word "intention" and there would be no justification for attributing to the person the same intent which he would have had if he had not been intoxicated, though the same knowledge could be imported to him under the section. This section, moreover, applies only to cases of intoxication and does not cover a case like the present where what is alleged is an inherent defect or infirmity of mind which is of greater significance because such infirmity or disease of mind is more likely to prevent the formation of that intention which is required by the law to be established as a part of the offence charged. In this case the evidence is so full and so cogent that I find it impossible to resist the conclusion that the petitioner must have been really unable to form the criminal intention that is attributed to him by the prosecution, namely, of causing wrongful loss or wrongful gain. He was in such a mental condition that he could not have understood that what he was doing was wrongful at the time. There is indeed a good deal to be said in support of the view that the case is really covered by section 84, Indian Penal Code. Unsoundness of mind need not necessarily make a

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person incapable of understanding the nature of all his acts. There are some forms of unsoundness of mind which seem to affect only particular acts. In other words, unsoundness of mind may be such that in respect of certain acts the person committing them is incapable of knowing the nature of what he is doing while in the case of other acts he might have knowledge of their character. It cannot therefore be said that because the man was allowed to continue in office while he was in this state of mind, his mind must have been sufficiently sound to enable him to know that what he was doing was wrong or contrary to law. The fact seems to be that the petitioner in his unsound state of mind thought that he was in a way a representative of the Crown to whom the money belonged and that he could do what he liked with it for the purpose of making presents to children and dressing himself up in velvet and so on, the period of the alleged misappropriation having synchronised with the celebration of the Coronation. It is unfortunate that no alienist was asked in the present case to give expert evidence as to the inferences that could be drawn from the facts and circumstances elicited in the evidence about the petitioner's state of mind. But with the evidence as it stands I have little doubt that criminal intention has not only been not proved but is practically excluded by such evidence as has been adduced regarding the petitioner's state of mind during the period when the misappropriation took place. The misappropriation cannot therefore be regarded as criminal and the conviction of the petitioner and the order requiring him to give security for his good behaviour are set aside and he is acquitted.

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v.v.c.