

APPELLATE CRIMINAL.

1915

September, 23.

Before Sir Henry Richards, Knight, Chief Justice.

EMPEROR v. KALKA PRASAD.*

Criminal Procedure Code, sections 222(2), and 233—Act No. XLV of 1860 (Indian Penal Code), sections 409 and 477A—Misjoinder of charges—Criminal breach of trust and falsification of accounts—Illegality.

An accused person was charged with and tried at the same trial for offences under section 409 and section 477A of the Indian Penal Code.

In respect of the former offence he was charged with criminal breach of trust respecting a lump sum of money composed of numerous items. In respect of the latter offence he was charged with suppressing a large number of documents showing the tender to him of sums of money by the persons liable to pay the same, and with putting false numbers on three of such documents. These documents (called *arzrisals*) related as well to other sums of money as to the sums which the accused was alleged to have embezzled.

Held that the principle of section 222(2) of the Code of Criminal Procedure could not apply to section 477A of the Indian Penal Code, and that the framing of the charges against the accused in the manner described was an illegality which vitiated the trial.

THE facts of this case were as follows:—

Kalka Prasad the accused was *tahvildar* at the Sub-Treasury of Fatehpur. He used to receive various sums of money that used to be paid in daily by various persons who had to pay money to Government. The money was paid in by means of *arzrisals* filled up by the applicants showing the amount of money tendered. These *arzrisals* were on printed forms in duplicate and the duty of the accused was to enter the particulars of *arzrisal* in a daily register, to put on the *arzrisal* the same serial number as the entry in his register relating to it bore, then to receive the money and sign the *arzrisal*, keep one part and return the duplicate to the applicant. The prosecution case was that on the 4th, 5th and 6th of May large sums of money were paid in by several persons by means of 120 *arzrisals*, Exhibits 1 to 120, aggregating Rs. 7,430-3-4, out of which the accused only accounted for Rs. 1,548-3-5, leaving a deficit of Rs. 5,881-15-11. Out of this deficit, the prosecution selected the amounts covered by 49 *arzrisals* amounting to Rs. 3,991-6-11 and charged the accused with criminal breach of trust with respect to this amount. The accused

* Criminal Appeal No. 635 of 1915, from an order of Ram Chandra Chaudhri, Sessions Judge of Banda, dated the 22nd of July, 1915.

was further charged with falsification of account books inasmuch as he omitted to enter any of the *arzrisals* Exhibits 1 to 120 in his daily register and entered fictitious numbers on the duplicates of 3 *arzrisals* Ex. 17, 18 and 19. The accused was committed to take his trial before the court of Session. The charge sheet so far as material was as follows :—

“(a) That you between the dates 4th to 6th May received on behalf of your employer Rs. 3,991-6-11 and committed criminal breach of trust with respect to it punishable under section 409, Indian Penal Code.

“(b) That you being entrusted on behalf of your employer with a Siaha Bahi fraudulently omitted to enter thereon *arzrisals* Exhibits 1 to 120, and put on Exhibits 17, 18 and 19 false numbers, and committed an offence under section 477A, Indian Penal Code.”

The accused was convicted under charge (a) and sentenced to seven years' rigorous imprisonment and convicted under charge (b) and sentenced to three years' rigorous imprisonment the sentences to run concurrently. He was also fined Rs. 4,000. From this conviction and sentence Kalka Prasad appealed to the High Court.

• Babu Piari Lal Banerji (with Pandit Krishna Narayan Laghate), for the appellant :—

The trial was vitiated by the misjoinder of charges and according to the decision of the Privy Council the contravention of the provision of section 233 of the Code of Criminal Procedure vitiated the whole trial and the question of prejudice to the accused did not arise; *Subrahmaniam Ayyar v. King-Emperor* (1). There were two defects in the charge. Firstly, charge (b) contravened the provisions of section 234 inasmuch as more than 3 offences of the same kind had been included. The omission to enter each one of the *arzrisals* was a separate offence, as each defalcation was a separate act and each omission related to a distinct and separate defalcation. The omission to enter the different *arzrisals* was not part of the same transaction so as to be covered by section 235. It was not the case of a series of false entries with respect to the same defalcation, but in this case each omission was

1915

EMPEROR
v
KALKA
PRASAD.

a distinct act, as the acts of defalcation were distinct. The second charge (b) therefore really included 120 offences and was bad. It was only in the special case of criminal breach of trust that the Legislature had specially declared that a charge under that section might cover several items of embezzlement and yet be deemed to be a charge for one offence. The phraseology of section 222 (2) clearly showed by the use of the word 'deemed' that the Legislature was merely allowing the lumping together of several items embezzled. It did not declare that each embezzlement was not a separate offence. Section 222 (2) could not be extended to any other offence, e.g., section 477A. Secondly, the joinder of charges (a) and (b) in the same trial was bad. Secondly, the charge under the criminal breach of trust count was confined to 49 *arzrisals* and that under the falsification count carried all the 120. Even if it be conceded that the embezzlement of any item and a false entry to conceal it might be offences *in the same transaction*, yet a false entry with respect to an embezzlement not charged was quite another offence and not being committed in the course of the same transaction, could not be joined with a charge for embezzlement of other items. In the present case the embezzlement of the money covered by the 49 *arzrisals* and the omission to enter these 49 *arzrisals* might be two offences in the course of the same transaction, but this charge (b) went further and included the omission to enter other *arzrisals* also which was not an offence committed in the course of the same transaction as the embezzlement mentioned above. He relied on the following cases:—*Queen Empress v. Mati Lal* (1), *Emperor v. Jiban Kristo* (2), *Raman Behary v. King-Emperor* (3), *Kasi Viswanathan v. Emperor* (4), *Emperor v. Nathulal Bapuji* (5).

The Government pleader (Babu *Lalit Mohan Banerji*), for the Crown:—

The accused was not charged with several offences of falsification, but only with one viz., the falsification of the account-book as a whole. The several items which the accused omitted to enter were merely evidence of his falsifying the account-book.

(1) (1899) I. L. R., 26 Calc., 560. (3) (1913) 18 C. W. N., 1152.

(2) (1912) I. L. R., 40 Calc., 378. (4) (1907) I. L. R., 30 Mad., 328.

(5) (1902) 4 Bom. L.R., 433.

A man may strike another 50 strokes, yet it would be one offence of beating, just as a man may commit forgery with respect to an entire book consisting of many sheets, but yet the offence would be one. The offences in this case were very similar and were all committed with the same object and the several acts were really parts of the same transaction. The meaning of the expression "same transaction" was discussed in *Queen Empress v. Vajiram* (1).

RICHARDS, C. J. :—Kalka Prasad was charged with offences under sections 409 and 477A of the Indian Penal Code. He was sentenced to seven years' rigorous imprisonment under section 409 and to three years' rigorous imprisonment under section 477 A, together with a fine of Rs. 4,000, the sentences to run concurrently. Kalka Prasad has appealed, and it has been argued on his behalf that there was a misjoinder of charges, contravening the provisions of section 233 of the Code of Criminal Procedure, which provides that (save as therein mentioned) there shall be a separate charge for every offence and that every such charge should be tried separately. The charge in the court below against the accused was that he being the *Tahvildar* embezzled a sum of Rs. 3,991-7-11, and further that he omitted to enter *arzrisals* Nos. 1-120 with intent to defraud, and wrote on three of such *arzrisals* false numbers with like intent. The allegation is that it was his duty when receiving money to take a form of tender from the person paying him the money. This document is called an *arzrisal*. He has to enter in his book the particulars contained in the *arzrisal*. It is alleged that in order to cover his defalcations he omitted to make these entries in respect of *arzrisals* Nos. 1-120, and that with like intent he put false numbers on three of these documents. It is contended on behalf of the accused that while having regard to the provisions of section 222, clause (2), of the Code of Criminal Procedure, it is allowable in the charge to state the gross sum which has been misappropriated, there is no similar provision which permits more than three charges under section 477A to be joined together. It is contended that the accused, (if the allegations of the prosecution are true), committed a separate offence every time he omitted

1915

 EMPEROR
 v.
 KALKA
 PRASAD.

1915

EMPEROR
v.
KALKA
PRASAD.

to enter the particulars of each one of the *arzrisals* in his book. It is further contended that the joinder of the count for misappropriation with the count for falsification is contrary to law inasmuch as the charge or charges under section 477A are connected with alleged defalcations more extensive than the charge under section 409. Reliance is placed upon the recent ruling of their Lordships of the Privy Council, in which it was held that the joinder of charges in contravention of the provisions of section 233 is something more than an irregularity and vitiates the trial. I think the contention has force. Supposing in the present case there had only been charges under section 477A, it seems to me that there would have been a misjoinder of charges. The omission to enter the particulars of the *arzrisals* in the book of the accused was for the purpose of concealing the alleged misappropriation of a distinct sum in each case. As the law stands only three such offences can be joined and tried at the same trial. In this respect charges under section 477 A differ from charges under section 409. I do not think that section 235 applies. The case was not that of making a number of false entries in various books, etc., to conceal one misappropriation. No doubt there was a similarity in the acts alleged to have been committed by the accused, and it is alleged that the transactions all took place within three days. Nevertheless, it seems to me that if the accused did what he was charged with, he committed a separate offence on each occasion, for which he was liable to a separate conviction and sentence. Notwithstanding that I consider that the accused was in no way prejudiced by the way in which the charges were framed, nevertheless there was in my opinion an illegality which vitiates the trial. I accordingly allow the appeal, set aside the conviction and sentence and direct that there be a new trial after charges have been framed according to law.

Appeal allowed. Conviction set aside. Re-trial ordered.