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Court which have been consistently followed for many years. Our attention has been called to a ruling of the Oudh Court which is to the opposite effect. We do not think that the reasons therein are sufficiently strong to entice us to strike out a new line and confuse the law as it is well understood in this Court. In our opinion the decision of the court below is correct. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Walsh.

EMPEROR *v.* MOHAN SINGH*

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April, 17.

Criminal Procedure Code, section 222 (2)—*Act No. XLV of* 1860 *(Indian Penal Code), section* 408—*Criminal breach of trust—Charge of general deficit in accounts, where agent had not only to receive but also to expend moneys of his principal.*

Section 222, sub-section (2), of the Code of Criminal Procedure was meant to provide for the case of an agent or subordinate whose duty it might be merely to receive sums of money from time to time and to account for them. It is not suitable to the case of an agent whose employment involves the expenditure of money belonging to the principal as well as its receipt. *Emperor* v. *Ibrahim Khan* (1) referred to.

Although transactions which involve civil liabilities may amount to criminal offences, and often do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, the use of the criminal law, not for the purpose of punishing an offender or in the public interest, but as a means of exerting pressure to extract money from an agent, is to be discouraged.

THE appellant Mohan Singh was employed at Nagina by a Company which dealt in babhar grass. The grass was collected in the Tarai in the Sahranpur and Bijnor districts and despatched to various paper mills in Bengal and elsewhere. It was also stacked at Nagina railway station and sold there or despatched. The Company had what was called a head office at Saharanpur and an agency at Nagina. Mohan Singh was employed by the Company as a girdawar and posted at Nagina on the 15th of December, 1918, on Rs. 25 a month, and he worked there until the 8th of May, 1919, or thereabouts. He was given various

*Criminal Appeal No. 68 of 1920, from an order of Murari Lal, Additional Sessions Judge of Moradabad, dated the 24th of November, 1919.

(1) (1910) I. L. R., 33 All., 36.

registers, such as roz-namcha, rokar, registers for the receipt and despatch of goods and for payments, etc. He was authorized to sell the grass at Nagina and also to despatch it to other places. In course of time the Company became uneasy as to Mohan Singh's proceedings and despatched one Chohal Singh to examine his accounts. Considerable difficulty was experienced by Chohal Singh in getting at the accounts; but ultimately, with the aid of such papers as Mohan Singh produced, it appeared that Mohan Singh had failed to account for a good deal of the money which had passed through his hands. A prosecution was started against Mohan Singh and he was committed to the court of Session at Bijnor on charges which amounted rather to charges of a general deficit on the whole of his accounts than of the misappropriation of definite and specefic items. Mohan Singh was convicted by the Additional Sessions Judge under section 408 of the Indian Penal Code and sentenced to three years' rigorous imprisonment, also to a fine of Rs. 500, of which Rs. 300 were directed to be paid to the Company as compensation. Mohan Singh appealed to the High Court.

Mr. *A. S. Osborne*, for the appellant.

The Government Pleader (Babu *Lalit Mohan Banerji*), for the Crown.

WALSH, J. :—The learned Judge in this case had the acquiescence of all three assessors, and one cannot help feeling that probably in recording a conviction he was not far wrong in the sense that by a sort of rough justice he has arrived at a right determination. But nothing is more dangerous in criminal law than the system of convicting a person on some vague general notion when the real charge has not been established. In this case I have grave doubt whether the form of the charge in which it was sent to Sessions was one which the learned Sessions Judge ever ought to have entertained. Undoubtedly section 222 (2) of the Code of Criminal Procedure enables a man to be charged for criminal breach of trust in respect of a gross sum received by him between certain dates without specifying any particular item or any particular date in respect of the constituent parts of the gross sum, but I think that that is meant for a case where he is charged with embezzling

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the gross sum. The authority referred to during the argument in this case on behalf of the Crown, *Emperor* v. *Ibrahim Khan* (1), certainly bears out that view. In that case the accused was charged with having committed a criminal breach of trust in respect of a gross sum of Rs. 208-12-0, fees which he had received on eighteen different occasions from persons in respect of grazing cattle. It was no part of his duty to expend any part of that sum. It was his duty to pay it into the Treasury. He did not do so, but appropriated it to his own use. That was a gross sum within the meaning of section 222 (2), as was decided by the learned Judges in that case. But that is not the case here, and section 222 must be construed and controlled in the light of the governing provision, which requires such particulars to be given as are reasonably sufficient to give the accused notice of what he has got to meet. Sub-clause (2) is merely a particular illustration which the Legislature has enacted so as to make the case free from doubt which might otherwise have given rise to doubt. But the cases must be very rare in which, where a trader appoints a general agent or manager of a sub-branch with general authority to sell goods, collect money, purchase goods, pay labour dues and general expenses, it is sufficient to fling into the charge an alleged balance of net profit which the agent is supposed to have earned and say that in respect of that net profit he is guilty of misappropriation of every rupee which he cannot produce or explain. One difficulty in that procedure is, as it seems to me, that it offends against the principle that the onus is on the prosecution. They must make up their mind what amount they are prepared to prove he has lawfully received and lawfully expended and what total sum, and how that total sum is made up, he has either unlawfully expended or failed to account for in such a way as to leave no doubt that he has been engaged in criminal misappropriation.

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Although transactions which involve civil liabilities may amount to criminal offences, and often do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, on the other hand I have always set my face strongly

(1) (1910) I. L. R., 33 All., 36.

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against permitting an employer of labour when he entrusts a sub-agent or manager with large powers without any very clearly defined rules as to how those powers should be carried out, how his books should be kept and his accounts from time to time made up, and when he finds that those powers have been abused and there is a failure to render a satisfactory account, resorting to the criminal law, not for the purpose of punishing an offender or in the public interest but as a means of exerting pressure to extract money from the agent. In this case the principal agent who was sent by the prosecuting Company to investigate the affair admits that he extracted from the accused a promise to pay, and I am surprised that the learned Judge should in a case of this kind have awarded any portion of the fine as what he calls "compensation" to the prosecuting Company. I should in any event have quashed that part of the sentence. I regard it as a mistake and one calculated to encourage rather than otherwise employers and masters using the criminal law for an indirect purpose of their own.

[His Lordship then proceeded to deal with the facts, set aside the conviction and sentence, directed the return of any portion of the fine which might have been recovered or goods which might have been seized in execution, and ordered a re-trial of the accused on a particular charge of forging a receipt, or in the alternative, of embezzlement of the amount of the receipt, and such other charges as the Sessions Judge might find on the evidence.]

Re-trial ordered.

REVISIONAL CIVIL.

1920
April, 19.

Before Mr. Justice Piggott and Mr. Justice Walsh.

SUKHAMAL, BANSIDHAR (PETITIONERS) *v.* BABU LAL KEDIA AND CO. (OPPOSITE PARTIES.)*

Act No. IX of 1899 *(Indian Arbitration Act), section* 4 *(b)—Arbitration—Submission—Submission inferred from the contents of several documents—Arbitrator acting outside the limits of the submission.*

A submission, or written agreement to submit differences to arbitration, provided it is an agreement, may be collected from a series of documents, even though connected by parole evidence, and signature of any document forming

* Civil Revision No. 139 of 1919.