

REVISIONAL CRIMINAL.

Before Justice Sir George Knox.

EMPEROR v. SITA RAM.*

1919
December, 10.

Act No. XLV of 1860 (Indian Penal Code), section 409—Criminal breach of trust by a public servant—Post-master retaining in his hands money which he ought to have paid to certain persons entitled thereto.

A post master whose duty it was to pay over to the holders of certain cash certificates the money due thereon at a certain rate, in fact paid the holders at a lower rate and appropriated the difference himself. *Held* that by so doing he had committed the offence of criminal breach of trust by a public servant as defined by section 409 of the Indian Penal Code. *Queen-Empress v. Ganpat Tapidas* (1) distinguished.

THE fact of this case were as follows :—

The accused-Sita Ram was the Sub-Post-Master of Bridge-manganj Sub-Post-Office. Cash certificates were issued at Rs. 7-12, their face value being Rs. 10, to several persons from this Sub-Post-Office and many of the cash certificate-holders had come to the accused with their certificates for encashment. The sum payable on each cash certificate was Rs. 8-2-6. The accused, instead of paying that sum to those persons, paid only Rs. 7-6-6 for each certificate, but took a receipt for the entire Rs. 8-2-6 and thus appropriated a sum of 12 annas on each certificate himself. He was convicted of an offence under section 409 of the Indian Penal Code (criminal breach of trust) and was sentenced to undergo 18 months' rigorous imprisonment, including one month's solitary confinement and a fine of Rs. 50.

Munshi *Shiva Prasad Sinha*, for the applicant :—

The applicant cannot be convicted of criminal breach of trust. The section contemplates that there must be a breach of the trust imposed upon a public servant by his master. There was no such breach in this case. The certificate-holders were losers and not the Government. Section 409 did not, therefore, apply. The conviction, if at all, should have been under section 420; *Queen-Empress v. Ganpat Tapidas* (1).

KNOX, J. :—Sita Ram has filed an application for revision of an order passed by the Sessions Judge of Gorakhpur, dated the

*Criminal Revision No. 733 of 1919, from an order of R. L. Yorko, Sessions Judge of Gorakhpur, dated the 22nd of September, 1919.

22nd of September, 1919, whereby he has sentenced the said Sita Ram to undergo six months' rigorous imprisonment on each of three separate counts. The sentences are to run consecutively. They are passed under section 409 of the Indian Penal Code. There is also a sentence of solitary confinement and fine.

1919
EMPEROR.
v.
SITA RAM.

The grounds taken on which I am asked to revise are :—

(1) Because the evidence does not warrant the conviction of the applicant and the propriety of the finding, sentence and order.

(2) Because no offence against the accused has in a proper view of the case been made out ; and

(3) That the sentences are unduly severe.

The applicant at the time the offences were committed was Sub-Post-Master of Bridgemanganj Sub-Post-Office. In the course of his official work he had to issue certain cash certificates. The certificates were issued at Rs. 7-12. He was asked to encash them at a time when under each certificate the holder was entitled to receive Rs. 8-2-6. He encashed the certificate and handed over Rs. 7-6-6 on each certificate and took a receipt to the effect that he was paying over Rs. 8-2-6 while in fact he only paid over to each man Rs. 7-6-6. It is contended that, inasmuch as no loss or damage has been caused to Government, no offence has been committed under section 409. Now section 409 is criminal breach of trust by a public servant, and in substance the contention is that he may or may not have paid to the holder of the cash certificates less than they were entitled to, but that he had committed no criminal breach of trust so far as the Government was concerned. I fail to understand this contention. The Government had made over to the accused upon each of these cash certificates the sum of Rs. 8-2-6. It had given this money to the accused as a trust and he had accepted it as a trust binding him to pay to each certificate-holder the sum of Rs. 8-2-6. Out of that sum he paid Rs. 7-6-6 and there was a sum of annas 12 remaining with the accused as money entrusted to him for the purpose of payment to the cash certificate-holder. He put annas 12 of this trust money into his pocket and did not pay it to the holder of the cash certificate. So far as appears from the record he has not even now paid this deficient sum to the

1919

EMPEROR
v.
SITA RAM.

complainants That is the offence which the accused has committed. He has not carried out the trust reposed in him by Government but has diverted a portion of that trust to his own private ends. The learned vakil who appears for the applicant has, in support of his contention, referred to the case of *Queen-Empress v. Ganpat Tapidas* (1). That case differs very much from the one before me and can be easily distinguished. At the time when the accused diverted portion of the trust reposed in him, the date was the 26th of June, 1919. It is now all but six months since that portion of the money entrusted to him for payment to the complainants has been retained by the applicant. There is nothing in the record to show that the complainants, Ram Prasad Bhole and Thakuri consented to the retention by the accused of this money. Anyhow the annas 12 which Government entrusted to the accused for payment to the certificate-holders in part payment of the cash certificates has not been paid to them. That money has been retained by the accused. With all due respect to the learned Judges who decided the case referred to, I am not prepared to agree with them when they say that the appellant before them had fulfilled the trust reposed in him by Government. However, the evidence in that case is not before me and there may have been something in it which justified the statement. In the case before me I hold that the very fact of the accused taking annas 12 and putting it in his own pocket instead of paying it over to the holder of the cash certificate, was a criminal breach of trust. I see no reason to interfere and dismiss the application.

Application dismissed.

(1) (1885) I. L. R., 10 Bom., 256