

1926

ALI
BAHADUR
BEG
v.
RAFI-
ULLAH.

The judgement-debtor died after the passing of the preliminary decree and the right to sue, which includes the right to continue the suit, survived. The appeal is dismissed with costs.

Appeal dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Kendall.

EMPEROR v. RAMAN LAI.*

1926
November,
24.

Criminal Procedure Code, sections 234 and 235—Charge—
Several offences of a similar nature extending over a period of more than one year joined together in one charge.

The accused was charged with having, on or about a certain date, committed theft in respect of eight necklaces. The evidence, however, disclosed that he had committed criminal breach of trust in respect of two of the necklaces on different dates more than a year apart, and it was not clear as to when he had misappropriated the others.

Held, that although there was technically no misjoinder of charges, the trial was vitiated in the same way as if there had been a misjoinder of charges and this was not a mere irregularity. *Subrahmania Ayyar v. King-Emperor* (1) and *Emperor v. Kalka Prasad* (2), referred to.

THE facts of this case sufficiently appear from the judgement of the Court.

Babu Piari Lal Banerji, Pandit Uma Shankar Bajpai, Babu Satish Chandra Das and Munshi Ram Nama Prasad, for the applicant.

Sir Charles Ross Alston, for the opposite party.

The Assistant Government Advocate (Dr. M. Waliullah), for the Crown.

* Criminal Revision No. 557 of 1926, from an order of Kashi Prasad, Sessions Judge of Muttra, dated the 1st of September, 1926.

(1) (1901) I.L.R., 25 Mad., 61.

(2) (1916) I.L.R., 33 All., 42.

KENDALL, J. :—This is an application for the revision of the order of the Additional Sessions Judge of Muttra upholding the conviction of Raman Lal under section 408 of the Indian Penal Code. The facts of the case are given at length in the learned Judge's judgement. The main point taken on behalf of the applicant is that the trial is vitiated by joinder of charges in respect of eight separate necklaces. The applicant had been accused of committing various offences in connexion with his management of a temple, and one of the complaints against him was that he had stolen eight necklaces valued at about Rs. 15,000, which had been in the possession of the temple. The Magistrate framed a charge against him to the following effect :—

“ That you on or about the day following Anna-kut day of Sambat 1977, corresponding to the 12th of November, 1920, at Gokal, being a servant of Musammat Maha Lakshmi Bahuji, committed theft in respect of eight necklaces valued at Rs. 15,000, which necklaces were in the possession of your employer, the said Maha Lakshmi Bahuji.”

And the Magistrate found it to be proved that the applicant had not committed theft on any particular day, but that he had committed criminal breach of trust in a series of transactions. The details of all these transactions have not been fully proved; but in regard to two of them, in which the applicant is shown to have pawned two of the necklaces to two different people, the actual misappropriation took place in one case on the 5th of February, 1922, and in the other on the 21st of January, 1924. In regard to the other necklaces, it is not certain when the misappropriation took place.

It is argued on behalf of the applicant that the trial was irregular and offended against the provisions of sections 234 and 235, Code of Criminal Procedure,

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EMPEROR
O.
RAMAN LAL

in that the offences for which the accused was tried did not take place within the space of twelve months from the first to the last. It has been argued on the other side that, as only one charge had been drawn, it cannot be said that there was any misjoinder of charges. Technically this is correct. What has happened in this case is that a number of transactions have been joined together in one charge, and these transactions certainly did not take place within the space of one year. Had the charge been framed under section 408 of the Indian Penal Code, instead of section 381 of the Indian Penal Code, the provisions of clause (2) of section 222 would have demanded that the various transactions which made up the charge should have taken place within the space of one year. The offence in regard to these necklaces being one of criminal breach of trust, and the transaction in regard to each necklace being apparently a separate one, it would be necessary to charge the accused separately with each offence; for every such offence which is charged must be tried separately, unless the provisions of section 234 or section 235 of the Code of Criminal Procedure will enable the court to try two or more of the offences at one time.

Although it may be said that there was technically no misjoinder of charges, as only one charge was drawn, I consider that the trial was vitiated in the same way as if there had been a misjoinder of charges, and this is not a mere irregularity: *Subrahmanya Ayyar v. King-Emperor* (1) and *Emperor v. Kalka Prasad* (2). I accept the application for revision, set aside the conviction and sentence for the reasons given above, and direct, as the case is one of considerable importance, that it be tried *de novo* in accordance with law.

Application allowed.

(1) (1901) I.L.R., 25 Mad., 61.

(2) (1915) I.L.R., 38 All., 42.