

livelihood or is unable to give a satisfactory explanation of himself, which may justify a fresh proceeding against him under section 109 of the Code of Criminal Procedure, would not result in the forfeiture of the first bond, because that does not amount to the commission of or attempt to commit or abetment of an offence punishable with imprisonment. At most it might be a preparation for the commission of an offence, but short of an attempt. We accordingly direct that the record may be returned.

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 EMPEROR  
 v.  
 BAHADUR  
 SINGH.

Bejore Mr. Justice Niamat-ullah.

EMPEROR v. KASHI NATH AND ANOTHER.\*

*Criminal Procedure Code, sections 235, 236 and 239—Joinder of charges—Whether the sections are mutually exclusive—Several charges framed under section 235—One of such charges may be in the alternative under section 236.*

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Where several charges are rightly joined against the same accused person under section 235 of the Criminal Procedure Code, there can be no objection to one of such charges being in the alternative as provided by section 236, nor can there be any objection to another accused person being joined under section 239 as regards one of those charges.

Mr. Kumuda Prasad, for the applicants.

The Assistant Government Advocate (Dr. M. Wali-ullah), for the Crown.

NIAMAT-ULLAH, J. :—The applicants Kashi Nath and Dhoomi Mal have applied in revision from the order of the learned Sessions Judge, Mainpuri, who dismissed their appeal from the order of conviction passed by a Magistrate, first class, of that district for an offence under section 419 of the Indian Penal Code. Kashi Nath was also convicted by the trying Magistrate of an offence under section 411 of the Indian Penal Code or section 403 in the alternative, but the learned

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\* Criminal Revision No. 432 of 1931, from an order of Govind Sarup Mathur, Sessions Judge of Mainpuri, dated the 21st of May, 1931.

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Sessions Judge set aside his conviction on the latter charge.

It appears that both the accused travelled without tickets and on being questioned at the railway station Etawah, Dhoomi Mal represented that he was a relative of Kashi Nath who held a pass entitling them to travel without tickets. Kashi Nath produced a pass which he said entitled him as a railway servant and Dhoomi Mal his relative to travel without tickets. It was found on enquiry that the pass had been granted to one Jagannath Prasad, a railway servant, but was lost and in some inexplicable manner came into the possession of Kashi Nath who, though a railway servant, was not entitled to make use of the pass which he showed at Etawah railway station on the occasion already referred to. Both the courts below have held that the applicants committed an offence of cheating. On the facts stated above there can be no doubt that they were right. Kashi Nath was also convicted by the trying Magistrate of an alternative charge, to which reference has already been made. The Magistrate held that apart from the offence of cheating, Kashi Nath, being in possession of a pass which belonged to another, must have either misappropriated it or received it knowing it to be stolen from the rightful person, or misappropriated. The learned Sessions Judge, for reasons given in his judgment, set aside Kashi Nath's conviction of an offence under section 411 or 403. But the learned advocate for the applicants has contended before me that there was, nevertheless, a misjoinder of charges which vitiates the whole trial before the Magistrate.

It is not disputed that the two accused could be jointly tried for an offence under section 419 of the Indian Penal Code under section 239 of the Code of Criminal Procedure. Nor is it disputed that Kashi Nath could be tried, under section 235 of the Code of Criminal Procedure, for two offences, namely an

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offence under section 419 or 411, or in the alternative, of 419 and 403. It is, however, argued that in so far as a charge in the alternative could be framed and was framed with reference to section 236 of the Code of Criminal Procedure, and as sections 235 and 236 are mutually exclusive, they should not have been invoked to justify charges contemplated by sections 235 and 236. I am unable to accept this contention. Section 235 permits joinder of several charges in respect of offences committed by the same person if the acts constituting such offences are so connected together as to form the same transaction. The use of the pass by Kashi Nath, constituting an offence under section 419, and his possession at the time he made use of it, which constituted another offence, are acts so connected together as to form the same transaction within the meaning of section 235. So far as this reasoning is concerned, the learned advocate for the applicants has not much fault to find with it. He contends that as it could not be said positively that possession of the railway pass constitutes an offence under section 411, as, if Kashi Nath himself had misappropriated the pass he would be guilty of the offence of misappropriation under section 403 but not of one under section 411, and that for this reason an alternative charge of the character described in section 236 was rendered necessary, and such a charge could not be added without recourse to section 236. If, therefore, the learned advocate argues, sections 235 and 236 are mutually exclusive, joinder of charges which necessitated the combined operation of two antagonistic sections, like sections 235 and 236, vitiates the trial. I am unable to accept this view. There is no reason why, if both the sections are in terms applicable to a case, and if their application does not lead to any anomalous result, they should not be applied. Reference has been made to *Emperor v. Janeshar Das* (1). It was a case

(1) (1929) I.L.R., 51 All., 544.

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of joinder of charges of misappropriation. A learned Judge of this Court held that sections 234 and 236 are mutually exclusive. Similarly, in *Emperor v. Sheo Saran Lal* (1), another learned Judge of this Court thought that sections 234 and 235 could not operate in harmony. No case has been quoted in which the conjoint operation of sections 235 and 236 was considered to be obnoxious so as to vitiate the trial.

I find nothing in the language of sections 235 and 236 which supports the contention put forward on behalf of the applicants. Several charges being rightly joined against the same accused under section 235, there can be no objection to one of such charges being in the alternative as provided by section 236, nor can there be any objection to another accused being joined under section 239 as regards one of those charges. No conflict arises in consequence of joinder of charges and joinder of accused in the same trial in the manner indicated above. In this view it is not necessary to consider the further question whether Kashi Nath having been acquitted of the charge with which he alone was concerned, any question of misjoinder of charges could vitiate the trial.

Kashi Nath was sentenced by the Magistrate to a fine of Rs. 100 and Dhoomi Mal to a fine of Rs. 75. The Sessions Judge reduced the fine in the case of Kashi Nath to Rs. 75 and of Dhoomi Mal to Rs. 25. I do not think any further leniency can be shown in the matter of sentence.

The revision is dismissed.

(1) (1910) I.L.R., 32 All., 219.