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personal debt of Sahu Bhikari Das and not a business debt due by the partnership.

We accordingly see no reason to interfere with the decree of the court below and dismiss the appeal with costs.

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice Sir Lal Gopal Mukerji and Mr. Justice King

EMPEROR *v.* KASHI RAM MEHTA*

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February, 8

Criminal Procedure Code, sections 179, 181(2)—*Jurisdiction—Place of trial—Criminal misappropriation—"Consequence which has ensued"—Must be a necessary ingredient of the offence—Loss to owner is not an essential ingredient of the offence of criminal misappropriation.*

Section 179 of the Criminal Procedure Code contemplates cases where the act done, and the consequence ensuing therefrom, together constitute the offence. The "consequence" contemplated by the section must be a necessary ingredient of the offence. If the offence is complete in itself by reason of the act having been done, and the consequence is a mere result of it which was not essential for the completion of the offence, then section 179 would not be applicable.

In the case of criminal misappropriation or criminal breach of trust the offence is complete as soon as there is a misappropriation or conversion with a dishonest intention, i.e., the intention of causing wrongful gain or wrongful loss. It is not necessary for the completion of the offence that loss to the owner should have actually accrued by that time. Loss to the owner, therefore, is not the kind of "consequence" contemplated by section 179, and that section will not confer jurisdiction for trial at the place where loss to the owner may ensue.

Sections 179 and 181(2) of the Criminal Procedure Code are not mutually exclusive in the sense that if one section applies, the other can never possibly apply. These sections have obviously a cumulative effect and it is not accurate to say that section 179 either controls or is controlled by section 181.

*Criminal Revision No. 686 of 1933, from an order of T. J. C. Acton, District Magistrate of Dehra Dun, dated the 12th of September, 1933.

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Langridge v. *Atkins* (1), *Muhammad Rashid Khan* v. *King-Emperor* (2), *Emperor* v. *Rich* (3) and *Brij Lal* v. *Emperor* (4), overruled.

Messrs. *Saila Nath Mukerji, N. C. Ganguli* and *Shri Ram,* for the applicant.

Mr. *Govind Das,* for the opposite party.

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

SULAIMAN, C.J.:—This is an application in revision from an order of the District Magistrate of Dehra Dun, declining to transfer a case pending in the court of the Sub-Divisional Magistrate of Chakrata forthwith but ordering him to proceed to take the evidence for the prosecution and hear the defence and then send the record to him for final orders as to whether the case would be transferred. The revision came up for disposal before a learned Judge of this Court, who rightly remarked that "it is not possible to appreciate the meaning of this order". Obviously if there was a case made out for transfer, the order should have been made forthwith or else the application should have been rejected; the matter should not have been ordered to be kept pending till the entire evidence had been recorded. This is particularly so when the main ground for the transfer was that the Magistrate had no jurisdiction to try the case at all.

In this reference we are not concerned with the convenience or propriety of transferring the case. The sole question which arises for consideration is whether the Sub-Divisional Magistrate of Chakrata has jurisdiction to entertain this complaint. Mohan Lal filed a complaint against the applicant, Kashi Ram Mehta, who is the manager of the Indian National Bank of Industries Ltd. at Dehra Dun, and also against Jai Singh, the proprietor of the General Trading Company, Dehra Dun. under section 403 of the Indian Penal Code. The

(1) (1912) I.L.R., 35 All., 29.
(2) (1926) 96 Indian Cases, 656.
(3) (1930) I.L.R., 52 All., 894.
(4) [1932] A.I.J. 269.

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prosecution case was that one Shamsuddin had drawn a cheque payable to bearer in favour of one Abdul Aziz, who signed the cheque without endorsing it in favour of any particular person and gave it to Mohan Lal; Mohan Lal then sent this cheque to the General Matches Agency, Dehra Dun, in payment of certain outstanding liabilities, but without signing the cheque at all. The cheque, according to the complainant, was delivered by mistake to Jai Singh, the proprietor of the General Trading Company, instead of being delivered to the General Matches Agency. Jai Singh handed it over to Kashi Ram Mehta and got the cheque cashed through him, with the result that ultimate loss has either fallen or is likely to fall on Mohan Lal, who is a resident of Chakrata. The objection to the want of jurisdiction of the Magistrate was taken at a somewhat belated stage, the objection being that the offence, if any, was committed at Dehra Dun and the complaint could not be entertained by the Magistrate at Chakrata. It may be mentioned that Chakrata is a sub-division in the Dehra Dun district.

Under section 403 of the Indian Penal Code, whoever dishonestly misappropriates or converts to his own use any movable property is liable to punishment, and a dishonest misappropriation for a time only is a misappropriation within the meaning of this section. Misappropriation or conversion has not been specifically defined, but the word "dishonestly" has been defined in section 24 of the Indian Penal Code. A man is said to do a thing dishonestly when he does it with the intention of causing wrongful gain to one person or wrongful loss to another person. It follows that a mere misappropriation or conversion to one's use is not sufficient for the completion of an offence but that the element of dishonesty is essential, and dishonesty comes into existence as soon as there is an intention of causing wrongful gain or wrongful loss. Obviously it is not necessary that the gain or loss should accrue before the

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completion of the offence of dishonest misappropriation. All that seems to be necessary is that there should be misappropriation or conversion with the intention of causing wrongful gain or wrongful loss. These sections, therefore, indicate that it is not necessary that loss or gain should have actually accrued before the offence is completed. All that is required is that there should be an intention of causing such gain or loss which would amount to a dishonesty.

Chapter XV of the Code of Criminal Procedure deals with the jurisdiction of the criminal courts in inquiries and trials. Sections 177 to 184 indicate the places where certain alleged offences should be tried. Section 177 is undoubtedly the general section and lays down that "Every offence shall *ordinarily* be inquired into or tried by a court within the local limits of whose jurisdiction it was committed." Then follow other sections which in particular cases lay down that the offence may be tried in other places as well. In particular, section 179 says that "When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued." Section 180 refers to the place of trial when an act is an offence by reason of its relation to another offence. Section 181, sub-section (2) specifically deals with the offences of criminal misappropriation and criminal breach of trust and lays down that such an offence may be inquired into or tried by a court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed. It is noteworthy that although section 181 repeats the place where the offence was committed, which occurs in section 177, it does not repeat the place where a consequence might

have ensued, as referred to in section 179. Section 182 deals with the place of inquiry or trial where the scene of offence is uncertain and provides that when it is uncertain in which of several local areas an offence was committed, etc., it may be inquired into or tried by a court having jurisdiction over any of such local areas. Section 183 deals with an offence committed whilst the offender is in the course of performing a journey or voyage, and provides that it may be inquired into or tried by any court through whose jurisdiction the offender passed during his journey or voyage. Lastly, section 184 deals with offences against Railway, Telegraph, Post Office and Arms Acts, and provides that the offence may be inquired into or tried in a presidency town, whether the offence is stated to have been committed within such town or not.

It may at once be conceded that these sections are in no sense contradictory or conflicting. If there be an offence which falls under more than one of these sections, it may be tried at any of the places mentioned in either of these sections. Section 177 is the only general section; but that lays down the place of inquiry in ordinary cases, and it is obviously subject to the particular sections that follow it. It is, therefore, not quite accurate to say that section 179 either controls or is controlled by section 181. It is to be noted that the legislature has used the word "shall" in section 177, while it has used the word "may" in all the other sections. Obviously the intention is to widen the scope and permit inquiries being held at more than one place. It is easy to conceive of cases which can fall both under section 179 and section 181 or section 183. An offender may in a dacoity seriously injure another person at one place, who may be taken to another place and may die there. It is obvious that the act was committed at the first place and the consequence of the act, which constitutes an essential ingredient of the offence of murder, took place at the other place. In such a case

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he can not only be tried in either of these two places, but can also be tried under section 181(1) at the place where the person charged is, i.e. where he is being tried. Similarly, if the offence of murder was committed by a person who was travelling by railway, he may not only be tried at the place where he injured the deceased and at the place where the deceased ultimately died, but also at all the places through which he passed in the course of that journey, under section 183. These sections, therefore, have obviously a cumulative effect and are not mutually exclusive in the sense that if one section applies the other can never possibly apply.

But the main question for our consideration is not whether, if section 179 applies, it has been overridden by section 181, sub-section (1), but whether section 179 at all applies to this case. The expression, "of any consequence which has ensued", in that section obviously means "by reason of any consequence etc." The repetition of the word "of" leaves no doubt that the prepositional phrase "by reason of" governs "consequence" as well. In this view the section can have only one meaning, namely, that the commission of the offence must be "by reason of anything which has been done and by reason of any consequence which has ensued". Another noteworthy fact is that the word "and" has been used instead of the word "or". Indeed, if the doing of anything were in itself sufficient to constitute the offence contemplated in this section, there would have been no occasion to use the expression, "of any consequence which has ensued", at the place at which it occurs; it would have been quite sufficient to mention it at the end of the section where it is already mentioned. If, therefore, the act done and the consequence which has ensued are to be taken as together amounting to the offence, the commission of which is complained against, then it necessarily follows that the consequence must be a necessary ingredient of the offence in order that section 179 be applicable. If the

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offence is complete in itself by reason of the act having been done, and the consequence is a mere result of it which was not essential for the completion of the offence, then section 179 would not be applicable. The illustrations to the section also make it clear that the consequence contemplated in the section is a consequence which coupled with the act done constitutes the offence. But if the two can be separated and the act itself is sufficient to constitute the offence, it would make the section inapplicable.

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That this is the correct interpretation is further strengthened by the circumstance that the legislature has thought it fit to make a special provision about criminal misappropriation and criminal breach of trust in section 181, sub-section (2). But it may be conceded that this fact in itself would not be sufficient to hold that the two sections do not overlap.

Now in the case of criminal misappropriation or criminal breach of trust the offence is complete as soon as there is a misappropriation or conversion with a dishonest intention. It is not necessary that the loss to the owner should have been actually suffered by that time. It is possible to conceive of cases where no actual or material loss may occur to the owner, and yet the offence of misappropriation or breach of trust may be complete. Indeed, in most cases the principal intention of the offender is not to cause loss to the owner, but a wrongful gain to himself or others, although in most cases also the loss to the owner is a necessary consequence of gain to other persons.

The opinions on the true interpretation of this section have been divided in this Court. The other High Courts have now come round to the view that the consequence contemplated in section 179 is such a consequence as is a necessary ingredient of the offence itself. The latest Full Bench case of the Bombay High Court, *In re Jivandas Savchand* (1), reviews the various

(1) (1930) I.L.R., 55 Bom., 59.

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authorities of the High Courts in India. It is not necessary for me to examine the earlier decisions in the other High Courts in which a contrary view had been taken, but it is certainly necessary to examine the cases of this Court on which reliance has been placed by counsel on both sides.

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In *Queen-Empress* v. *O'Brien* (1) EDGE, C.J., held that where certain goods belonging to the complainant had been sent to the accused for sale in lower Bengal and the latter did not remit the price of those goods, as he was bound to do, to his employers in Cawnpore, he could be tried at Cawnpore as well. No doubt the learned CHIEF JUSTICE remarked that section 179 was applicable because the consequence of the applicant having made away with, for his own purposes, goods of his employers, or the price of them, was a loss of the value of those goods ensuing to the employers at Cawnpore. But at the same time he pointed out that it might be very difficult to prove where the actual offence of breach of trust had been committed. The goods had been transferred from place to place and they disappeared ultimately. The accused actually went to Cawnpore, and it was there that he failed to render account to his employers. In these circumstances it may be that the learned CHIEF JUSTICE thought that as it was not ascertainable where the offence of breach of trust had been committed and the accused was at Cawnpore and he failed to account for the price of the goods at Cawnpore, the Magistrate at Cawnpore had jurisdiction to try the case. But if the learned CHIEF JUSTICE meant to lay down that even if the offence were known to have been committed somewhere outside Cawnpore, the mere fact that the consequence, namely the loss to the employer, occurred at Cawnpore gave the Cawnpore court jurisdiction, then, in my opinion, his observation was not right.

(1) (1896) I.L.R., 19 All., 111.

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In *Babu Lal* v. *Ghansham Das* (1) KNOX, J., clearly laid down that the only reasonable interpretation which can be put upon the words "and of any consequence which has ensued" in section 179 is that they are intended to embrace only such consequences as modify or complete the act alleged to be an offence. Accordingly the learned Judge held that where the substance of the complaint was that the accused had dishonestly and fraudulently, two days after becoming insolvent, realised at Calcutta the moneys due in respect of certain hundis which the complainant had purchased, the offence could be inquired into only in Calcutta and not at Aligarh where the complainant lived.

In *Emperor* v. *Mahadeo* (2) the accused was employed as an agent by a firm in Mirzapur and goods were entrusted to him for sale in various districts in Lower Bengal, and from time to time as he sold the goods he remitted money to his employers at Mirzapur, but when called upon to furnish accounts he offered a much smaller sum than was due and did not submit any account. TUDBALL, J., held that the courts at Mirzapur had jurisdiction to try the accused for whatever offence he had committed arising out of the above transactions. But the learned Judge very clearly pointed out that he did not rely on section 179 of the Criminal Procedure Code as governing the case but on section 182 of the Criminal Code, for on page 398 he observed: "It is impossible to state exactly where the act of embezzlement or the various acts of embezzlement took place; but they must have taken place either at Mirzapur, or at one of the various districts where the applicant travelled in order to sell his master's goods. Section 182 of the Code would apply, it seems to me, equally well."

I may in this connection point out that in many cases of criminal misappropriation or breach of trust there may be considerable difficulty in ascertaining the exact

(1) (1908) 5 A.L.J., 333. (2) (1910) I.L.R., 32 All., 397.

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place where, or the exact point of time when, the offence was in fact committed. In cases of such uncertainty section 182 would obviously apply. It may also be pointed out that where it is the duty of an agent not only to return specific goods to his principal but to account for that and to render accounts, the offence of misappropriation may not be committed till he has the dishonest intention of causing wrongful loss to his master and wrongful gain to himself, and, therefore, it may not possibly come into existence till ultimately he refuses either to render account or to pay the balance due. This may happen not only at the place where he received money but at the place where he is employed or his master resides. In each case it is a pure question of fact where or at what time the offence of misappropriation was complete. But, as pointed out above, it is not necessary for the completion of the offence that actual loss must have been caused to the owner; intention to cause it is enough.

In *Ganeshi Lal* v. *Nand Kishore* (1) KARAMAT HUSAIN, J., laid down that "The word 'consequence' in this section (section 179), in my opinion, means a consequence which forms a part and parcel of the offence. It does not mean a consequence which is not such a direct result of the act of the offender as to form no part of the offence." He followed the ruling of KNOX, J., in *Babu Lal's* case and distinguished the ruling of EDGE, C.J., in *O'Brien's* case.

The case of *Langridge* v. *Atkins* (2) may be taken to be the first case which is directly in favour of the complainant. In that case RAFIQ, J., distinctly laid down that loss caused to the person beneficially entitled to property through a criminal breach of trust is a consequence which completes the offence, and the prosecution would, therefore, lie at the place where such loss has occurred. The learned Judge relied on the previous cases quoted above. It appears that before

(1) (1912) I.L.R., 34 All., 487. (2) (1912) I.L.R., 35 All., 29.

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the learned Judge both the parties were agreed as to the interpretation of section 179 of the Criminal Procedure Code and the only point of difference between them was whether loss resulting from criminal breach of trust is said to be of such a consequence as completes the offence. The observations of the learned Judge were accordingly made when the point was partially conceded, and he laid down that loss to the victim of a criminal breach of trust is a consequence which alone can complete the offence. So far as this observation is concerned, I am not prepared to agree with it. But it may be pointed out that even in that case it was the fact that the complainant Mrs. Atkins did not know where the machine entrusted to the accused was at the time of her husband's death, or at the time she demanded its return, or at what places the applicant had exhibited it, and for a long time she could not trace the address of the applicant. If, therefore, it was unknown at what place the offence had been actually committed, section 182 might well have been applied to it.

On behalf of the respondent some reliance has been placed on the observations made in the Full Bench case of *Sheo Shankar* v. *Mohan Sarup* (1). No doubt at two places the learned CHIEF JUSTICE remarked that the intention of the Bench was expressed to be to uphold the decision in *Langridge* v. *Atkins* (2) and that the case before them did appear to them to be undistinguishable from that case. But at the same time it was pointed out that it was not necessary to consider the various decisions on section 179 of the Criminal Procedure Code because on the facts of that case the question was clear that the Mirzapur court had jurisdiction. I do not think that the observation, that the plan of misappropriating the money had been conceived at Mirzapur, was made the basis of the decision. As pointed out by BENNET, J., in a subsequent case, this would not be a true criterion. When the

(1) (1920) 19 A.L.J., 69. (2) (1912) I.L.R., 35 All., 29.

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learned Judges themselves did not consider it necessary to examine the rulings on section 179 or consider its true interpretation, I cannot consider this case to be an authority binding upon us. In fact the point was really left open and not decided.

Sulaiman, C.J.

In *Girdhar Das* v. *Emperor* (1) KANHAIYA LAL, J., held that the offence of criminal breach of trust would be inquired into and tried by the court within whose jurisdiction the offence was committed or any part of the property was received or retained by the accused, and not by a court within whose jurisdiction the loss may have been suffered by the complainant. The learned Judge, however, loosely referred to section 179 being controlled by section 181 of the Criminal Procedure Code. which, as noted above, is not an accurate statement.

In *Muhammad Rashid Khan* v. *King-Emperor* (2) DALAL, J., rightly pointed out that there was no divergence between section 179 and section 181(2); but he held that the court within whose jurisdiction any consequence has ensued can try the offence of criminal breach of trust. The previous authorities do not appear to have been cited before him, certainly there is no reference to them in the judgment.

In *Behari Lal* v. *Ganga Din* (3) BANERJI, J., held that a court, in whose jurisdiction the accused has neither to submit any accounts nor to pay the complainant the profits of the firm, cannot try an offence of misappropriation of partnership funds. The case proceeded on the ground that even the court, in whose jurisdiction a consequence ensued and which was empowered to try the case, would not have jurisdiction to do so if, in fact, the accused had neither submitted an account nor made any payment within that jurisdiction.

In *Emperor* v. *Rich* (4) DALAL, J., again pointed out that the provisions of Chapter XV of the Code of

(1) (1923) 21 A.L.J., 621.
(2) (1926) 96 Indian Cases, 656.
(3) (1926) 97 Indian Cases, 368.
(4) (1930) I.L.R., 52 All., 894.

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Criminal Procedure are not separately independent of one another and it is not correct to say that if one of the provisions applies another would not. In this he was obviously right. But he went on to lay down that for a criminal breach of trust the loss to the owner would be a consequence of the offence and the case would be triable by a Magistrate in whose jurisdiction such consequence ensues. This is in conformity with his previous pronouncement, but it is one which I am not prepared to accept as correct.

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In *Brij Lal* v. *Emperor* (1) BENNET, J., after considering some of the previous cases of this Court, thought that the weight of authority was in favour of the view that there is jurisdiction in the case of a breach of trust in the courts of the district to which the accused is alleged to be bound to make a remittance. But in a later case, *Jagannath* v. *Emperor* (2) the same learned Judge had to consider the question, and, after reviewing some of the previous authorities, came to the conclusion that in the case of a criminal breach of trust the criterion of the residence of the person who suffers loss is not a correct criterion for determining jurisdiction and that the offence is complete even though the loss is suffered by the owner actually at some other place.

It is thus obvious that opinion in this Court has not been altogether uniform and that even in this Court there is plenty of authority in support of the view which has been taken in the other High Courts that section 179 contemplates cases where the act done, and the consequence ensuing therefrom, together constitute the offence. In my opinion this is the correct view of the law and the opinions to the contrary expressed by RAFIQ, J., and DALAL, J., and BENNET, J., in the earlier case must be taken not to be correct.

I would, therefore, hold that the Chakrata court has no jurisdiction to entertain this complaint.

(1) [1932] A.L.J., 269. (2) A.I.R., 1934 All., 127.

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Mukerji, J.

MUKERJI, J.:—I entirely agree. In my opinion the offence to which section 179 refers must be one which is constituted in two portions. One must be the act done and the other the consequence following that act. In other words, the consequence must enter into the definition of the offence itself. If there be any consequence following the act which constitutes the offence and if such consequence is not mentioned in the Indian Penal Code in the definition of that offence, that consequence is to be disregarded for the purposes of section 179.

The offence with which the applicants have been charged is one under section 403 of the Indian Penal Code. The offence is completed as soon as the accused person dishonestly misappropriates or converts to his own use any movable property. The word "dishonestly" is defined in section 24 of the Indian Penal Code as anything done with the intention of causing wrongful gain to one person or wrongful loss to another person. When a man misappropriates a property himself he acts with the intention of causing wrongful gain to himself. There can be no doubt that the necessary consequence, in most cases at least, of his causing wrongful gain to himself is wrongful loss to another person. But the wrongful loss to another person which is caused by the wrongful gain is not considered in section 403. Therefore, it cannot be said that unless there is a corresponding wrongful loss to another person there can be no criminal misappropriation. In this view section 403 of the Indian Penal Code is not an offence to which section 179 refers.

The case law has been exhaustively discussed by the learned CHIEF JUSTICE and it has been pointed out by him that all the High Courts have now come to the view that this is the meaning to be put on section 179 of the Criminal Procedure Code.

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I, therefore, agree in holding that in the circumstances of this particular case before us the Chakrata court has no jurisdiction to entertain the complaint.

KING, J.:—I entirely agree to the views expressed by my learned brothers and think it unnecessary to add anything further.