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Code of Civil Procedure, which says that in the absence of any specific provision to the contrary nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. The Provincial Insolvency Act is a special law and in the absence of any specific provision to the contrary the Code of Civil Procedure cannot limit or otherwise affect the provisions of the Insolvency Act. We are, therefore, of the opinion that it is not possible to interfere with the order of the court below under any provision of the Code of Civil Procedure when a distinct procedure is prescribed in the Provincial Insolvency Act.

At one stage it was argued on behalf of the appellants that the order of the court below could be interfered with in appeal inasmuch as the order is a decision of the district court. We cannot agree with this contention because a distinction has been drawn by the Act between a decision and an order. The word "decision" has an element of finality so far as a particular court is concerned and an interlocutory order of a court cannot be said to be a decision of that court.

For the reasons given above we sustain the preliminary objection and dismiss this appeal with costs.

REVISIONAL CRIMINAL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

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November, 4

EMPEROR *v.* MOHRU LAL*

Criminal Procedure Code, sections 179, 181—*Jurisdiction—Place of trial—Criminal misappropriation—Indian Penal Code, section* 405—*Agent of Cawnpore firm sent to sell goods in Bengal and to remit the money to Cawnpore—Agent absconding and failing to remit the money—No evidence to show where the money was actually misappropriated.*

*Criminal Reference No. 478 of 1935.

Section 405 of the Indian Penal Code, which defines criminal breach of trust, falls into two parts. The first part will apply where it is known that the accused has dishonestly misappropriated or converted to his own use the entrusted property at a particular place, and the jurisdiction to try the accused will be at that place. But where it can not be alleged that the misappropriation was actually and definitely committed at any particular place, there the case comes under the second part of section 405, namely dishonestly disposing of the property in violation of any direction of law or of any legal contract; and if the legal contract required that the accused should remit or deliver or otherwise dispose of the property at a particular place, then his failure to do so constitutes the offence, and the jurisdiction to try the accused exists at such place. Hence, if there is evidence apart from the fact of non-delivery or non-accounting to show where the misappropriation was committed, the trial may be held at that place; but if there is no evidence to show where the misappropriation was committed, other than the fact of non-delivery or non-accounting according to the contract, then the trial may be held at the place where the accused failed to deliver or to account, because that is where the offence was committed.

So, where the accused was engaged in Cawnpore as an agent of a firm of Cawnpore to sell goods in Bengal and either bring or remit the money to Cawnpore; and the accused made some sales and realised the prices at some places in Bengal but failed to bring or remit the money to Cawnpore; and there was no allegation or evidence that the accused had actually misappropriated or converted to his own use the money by any definite act committed at any particular place: *Held*, that the Cawnpore court had jurisdiction to try him for an offence under section 408/409 of the Indian Penal Code.

Messrs. *P. L. Banerji* and *V. D. Bhargava*, for the accused.

Dr. *K. N. Katju* and Messrs. *Saila Nath Mukerji*, *I. B. Banerji* and *Shri Ram*, for the complainant.

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

SULAIMAN, C.J., and BENNET, J.:—This is a reference by the learned Sessions Judge of Cawnpore of the case of King-Emperor *v.* Mohru Lal under section 408/409

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of the Indian Penal Code, on the ground that the Magistrate of Cawnpore has no jurisdiction to try this case. The charge as actually framed by the Magistrate is that Mohru Lal between the dates of the 10th of May and the 18th of December, 1934, being a factor or broker, servant or agent of Matadin Bhagwan Das did commit criminal breach of trust in respect of Rs.19,013-5-9 and committed an offence under section 408/409 of the Indian Penal Code. The Magistrate has omitted to put the place of occurrence of the offence. For the accused it is contended that the allegations of the complainant amount to a charge of a commission of an offence somewhere in Bengal and that the Cawnpore court has no jurisdiction to try such an offence. For the complainant the allegation is that the offence can be inquired into in Cawnpore and that the Cawnpore court has jurisdiction. The allegations in the complaint are that the accused was engaged in Cawnpore as an agent of the firm of Matadin Bhagwan Das, sugar merchants of Cawnpore, and that the accused was sent to Bengal with instructions to effect deliveries of sugar bags and to realise the price of goods from customers and either personally bring the proceeds to Cawnpore or remit the money to Cawnpore, that accused did remit large sums to Cawnpore and that the latest date of such remittance was the 7th of December, 1934, and that "subsequently he withheld the moneys collected by him and embezzled". In paragraph 7 of the complaint the names of nine purchasers are given and the total amount paid by these purchasers Rs.19,099, and the allegation is made that the accused realised these amounts and embezzled the sums. The evidence given on behalf of the complainant showed that these sums had been realised by the accused. It was further shown that the accused absconded and could not be traced. There was no evidence given on behalf of the complainant nor was any allegation made that the accused had actually misappropriated or converted to his own use this money

by any positive act. The allegations and evidence of the complainant were that the accused had collected this money and had failed to send it to Cawnpore within a reasonable time. It was also shown that certain of the sums of money in question had been collected by the accused prior to his last remittance on the 7th of December, 1934, and therefore the argument was that the accused had misappropriated these sums of money.

The point of jurisdiction has been argued before us at great length and learned counsel has contended that the offence, if any, must be taken to have been committed in Bengal. It is contended by learned counsel that this case might be tried at any of the places in Bengal where it is shown that the accused had collected money. One objection to such an argument is that the mere collection of the money did not amount to a criminal offence. The accused may have been perfectly innocent when he collected this money and his criminal offence occurred later when he failed to remit the money or to bring it to Cawnpore. Now there are various rulings, on which learned counsel relies, of the Calcutta High Court. The earliest of these is *Gunananda Dhone* v. *Santi Prakash Nandy* (1). In that ruling a Bench, of which MUKERJI, J., was a member, laid down two propositions; (1) that where there was an accused person bound to render accounts, the court which had jurisdiction at the place where the accounts were to be rendered had jurisdiction for an offence of criminal breach of trust, and (2) that such jurisdiction existed even where there was clear evidence of embezzlement in another place. Later rulings dissented from this latter proposition, and in *Pascal* v. *Raj Kishore Mathur* (2) a Bench of two Judges including the learned CHIEF JUSTICE threw doubts on the correctness of the decision in *Gunananda Dhone* v. *Santi Prakash Nandy* (1), but in this case the Bench did not interfere with the continuance of the trial before the

(1) A.I.R., 1925 Cal., 613. (2) A.I.R., 1931 Cal., 521.

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Magistrate in Calcutta. There is again a ruling against the applicant, in *Paul de Flondor* v. *Emperor* (1). The ruling proceeds on page 98 to quote a decision in *Reg.* v. *Davison* (2) where Baron ALDERSON stated: "Where there is no evidence of fraudulent embezzlement, except the non-accounting, the venue may be laid in the place where the non-accounting occurred, because the jury may presume that there the fraudulent misappropriation was made, but this cannot apply where there is distinct evidence of the misappropriation elsewhere." Further, on page 99 it was laid down: "Embezzlement, according to English common law, is committed, and can be tried in the place where the accused misappropriated the money, or if there is no evidence of embezzlement except the non-accounting, then in the place where he ought to have accounted and failed to do so, or accounted falsely, or refused to account, or denied the receipt of the money." Now the learned Judges of the Calcutta High Court went on to say: "But whatever be the effect of the English decisions and statutes, they are not in point. So far as India is concerned, the Code of Criminal Procedure, in sections 177 to 189, provides the appropriate venue. It has been settled law for many years that section 179 does not apply to charges of misappropriation." And reference was also made to section 181(2). Now we are of the opinion that the learned Judges in referring to these provisions of sections 179 and 181 missed the point in regard to this particular offence. In our view the essence of the English common law is that the offence itself may involve the commission of an offence at a place where there is a failure to render accounts. Sections 179 and 181(2) of the Criminal Procedure Code are sections which in various circumstances extend the jurisdiction of the courts beyond the place where the offence is actually committed. What we have to see in regard to this offence of criminal breach

(1) (1931) I.L.R., 59 Cal., 92. (2) (1855) 7 Cox.C.C., 158.

of trust is where the offence was actually committed. Section 177 of the Criminal Procedure Code lays down a rather obvious proposition that the court where the offence is committed has jurisdiction to try the offence, but that section and the subsequent sections do not indicate which is the court where the offence is committed. That point has to be determined from the definition of the offences in the Indian Penal Code.

Now when we come to the particular offence in question we find that section 405 is as follows: "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'." This section falls into two parts. The first part is a positive part and deals with dishonest misappropriation or conversion of property. To charge a person under this part of the section there should be an allegation that at a particular time and place that person has dishonestly misappropriated or converted to his own use property which was entrusted to him. Now the second part of the section may be a negative part. It consists of dishonestly using or disposing of property in violation of (*a*) any direction of law, or (*b*) any legal contract touching the discharge of the trust. Where there is a violation of a direction of law or a legal contract, the proof of that violation may be by negative evidence that the direction of law or the contract has not been fulfilled. We are of opinion that where the direction of law or the contract requires that the accused should dispose of the property at a particular place, then the court having jurisdiction at that place will have jurisdiction to try the offence of the second part of section 405 of the Indian Penal Code

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where there is a charge that the accused has failed to comply with the direction of law or the legal contract and has failed to carry out his duty at that place. The first part of section 405 will apply where it is known that the accused has dishonestly misappropriated or converted to his own use certain property at a particular place, and the jurisdiction to try the accused will be at the place where that dishonest misappropriation or conversion has taken place. But where it is alleged that the accused has failed to account for the property, then the second part of section 405 will apply and jurisdiction exists at the place where the property should have been delivered by the accused. In *Paul de Flondor* v. *Emperor* (1) the court has laid down: "If there is evidence apart from the fact of non-accounting to show where the misappropriation was committed, the venue must be laid either in that place or in the place where the property was received or retained. If there is no evidence to show where the misappropriation was committed, other than the fact of non-accounting, then the venue may be laid in the place where the accused failed to account, because that is where the offence was committed within the meaning of section 181(2): *Reg.* v. *Davison* (2)." The latter portion of this observation is against the applicant in revision.

In *Niwasilal Modi* v. *Routhmull* (3) there was no duty to pay the money at Calcutta. The accused was employed by a Calcutta firm to manage a branch in Behar and his duty was to write up the books of the branch in Behar and to credit the money received to the firm in Behar. The accused was called to Calcutta to explain his accounts and he was unable to explain his accounts. It was held that the mere fact of being unable to explain his accounts in Calcutta did not give the Calcutta court jurisdiction. This ruling will not help the applicant because in the present case there was a duty to pay the money at Cawnpore.

(1) (1931) I.L.R., 59 Cal., 92(100). (2) (1855) 7 Cox.C.C., 158.
(3) A.I.R., 1931 Cal., 532.

In *Prokash Chandra Sircar* v. *Mohim Chand Haldar* (1) there was a ruling of a Bench of which MUKERJI, J., was again a member and it was held that where there was no definite allegation of misappropriation at any particular place, but the accused had a duty to remit the money which he realised to Calcutta and the accused failed to remit the money to Calcutta, then the Calcutta court had jurisdiction.

In *In re Jivandas Savchand* (2) the accused was employed in Rangoon and he was charged with falsifying the accounts at Rangoon. He was employed by a firm in Bombay but he had no duty to remit the money to Bombay. His duty was to send to Bombay weekly statements of the accounts of the business transacted in Rangoon. It was held that the Bombay court had no jurisdiction to try the offence of criminal breach of trust. This again was a case where there was no duty to remit money to Bombay.

In *Re Rambilas* (3) there were certain brokers of Bombay charged with having committed criminal breach of trust in Bombay in respect of certain hundis sent to them at Bombay by the complainants who resided within the jurisdiction of a Magistrate of Erode in Madras. It was held that the court at Erode had no jurisdiction to try the offence and the argument centred on section 179 of the Criminal Procedure Code on the ground that the criminal breach of trust in Bombay occasioned wrongful loss to the complainants in Erode. Learned counsel bases his argument on a mere *obiter dicta* at the bottom of page 641 and at the top of page 642 as follows: "In the first place the present case falls under the first, and not the second, part of the section (405); the complaint clearly charges dishonest misappropriation to accused's own use, and not use or disposal in violation of law or contract. Secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place, not where the contract was made or should

(1) A.I.R., 1934 Cal., 392. (2) (1930) I.L.R., 55 Bom., 59.
(3) (1914) I.L.R., 38 Mad., 639.

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have been performed." This mere *obiter dicta* is of no weight.

In *Aya Ram* v. *Gobind Lal Verma* (1) a single Judge remitted a case for further evidence which would show where the jurisdiction lay. We do not think that any weight can be assigned to his observations.

In *Mahtab Din* v. *Emperor* (2) there was a ruling of the learned CHIEF JUSTICE sitting alone. It was a case of a merchant at Karachi who should have remitted accounts and sale proceeds to Lyallpur in the Punjab, but he retained the sale proceeds at Karachi. The retention at Karachi was known and the case then fell under the first part of section 405.

In *Ali Mohamed Kassim* v. *King-Emperor* (3) there was a case where the accused misappropriated the money by gambling at a certain place in the Shan States. He had to render accounts at Mandalay, but it was held that this did not give the Mandalay court jurisdiction. This was a case falling under the first part of section 405 of the Indian Penal Code.

We now turn to the rulings of this High Court.

In *Queen-Empress* v. *O'Brien* (4) Sir JOHN EDGE, C.J., had before him a case in which the accused was employed by a company of Cawnpore to sell goods in Bengal and the company ordered him to return the goods or the sale proceeds and the accused failed to comply. The Court held that the Cawnpore court had jurisdiction. It is true that the judgment was partly based on the consequence of loss of the value of goods arising to the employers at Cawnpore and this view of the law is not now good law. A similar view was taken by RAFIQ, J., in *Langridge* v. *Atkins* (5).

In *Emperor* v. *Mahadeo* (6) TUDBALL, J., had a case where the accused was employed by a firm in Mirzapur to take goods for sale to districts in Lower Bengal and sell the goods and remit the money to his employers in

(1) A.I.R., 1933 Lah., 559.
(2) A.I.R., 1924 Lah., 663.
(3) (1931) I.L.R., 9 Rang., 338.
(4) (1896) I.L.R., 19 All., 111.
(5) (1912) I.L.R., 35 All., 29.
(6) (1910) I.L.R., 32 All., 397.

Mirzapur. When called on to furnish accounts he failed to do so. It was held that there was jurisdiction in Mirzapur.

In *Ganeshi Lal* v. *Nand Kishore* (1) KARAMAT HUSAIN, J., held that the Cawnpore court did not have jurisdiction where an agent of a Cawnpore firm was in charge of a branch shop in Sultanpur and he misappropriated money belonging to his principal which should have been sent to the head office at Cawnpore, because the offence of misappropriation was actually and definitely committed at the branch shop. "When the complainant was examined he distinctly stated that the accused misappropriated the money belonging to the branch firm at Gauriganj." This view of the law that in these cases section 179 of the Criminal Procedure Code will entitle a court to have jurisdiction on the ground that wrongful loss is caused to the complainant and that wrongful loss is a consequence of the criminal act within the meaning of section 179 is a view which has been held to be incorrect by a Full Bench of this Court in *Emperor* v. *Kashi Ram Mehta* (2). In that ruling it was observed by the learned CHIEF JUSTICE on page 1056: "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."

We may also refer to a brief ruling of a Full Bench of this Court in *Sheo Shankar* v. *Mohan Sarup* (3). In that case a servant of a shop at Mirzapur was sent to collect

(1) (1912) I.L.R., 34 All., 487. (2) (1934) I.L.R., 56 All., 1047.
(3) (1920) 19 A.L.J., 69.

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money from two villages in Allahabad district and he failed to bring the money to Mirzapur and alleged that he had been robbed in Allahabad district. It was held that the Mirzapur court had jurisdiction to try him for criminal breach of trust. We consider that the basis of the decision is contained in the sentence: "Accused No. 1 was the servant of the complainant and had a duty to account to his master at the shop at Mirzapur."

Having considered all these rulings we are of opinion that the propositions in regard to jurisdiction for cases falling under section 405 enunciated by us in the earlier part of this judgment are correct. On that view of the law, in the present case the Magistrate at Cawnpore had jurisdiction because the allegations in the complaint are that the accused withheld money collected by him and did not forward it to Cawnpore. There is no charge that he misappropriated or converted to his own use the money at any particular place and his offence consists in failing to carry out his contract and remit the money or bring the money to Cawnpore. He was guilty of an illegal omission. Section 43 of the Indian Penal Code lays down that a person is said to be "legally bound to do" whatever it is illegal in him to omit. He was legally bound to remit this money to Cawnpore and he failed to do so. He therefore committed an offence within the jurisdiction of the Magistrate in Cawnpore by his illegal omission to send or bring the money to Cawnpore. We consider therefore that the Magistrate at Cawnpore had jurisdiction to try this case.

We accordingly refuse this reference and direct that the record be returned to the Magistrate through the learned Sessions Judge.