REVISIONAL CRIMINAL

Before Mr. Justice Mulla

EMPEROR *v.* FATEH SINGH*

1939 *September,* 20

Criminal Procedure Code, section 181(2)—*Place of trial—Criminal breach of trust by agent—Place of accounting—Place of delivery of the property—Accounting does not necessarily include delivery—No jurisdiction at the place of accounting only, unless delivery was to be made there.*

Where there is only a liability to account at a certain place, and no duty to deliver at that place the money or property which is the subject of an alleged offence of criminal breach of trust, the criminal court at the place where the accounting alone is to be done has no jurisdiction under section 181(2) of the Criminal Procedure Code to try the offence.

There is a clear distinction between mere liability to account at a particular place and the further duty to deliver property at that place. An agreement to render accounts at a particular place cannot be deemed to include in every case a further agreement to hand over or deliver any money or property at that place.

Emperor v. *Mohru Lal* (1), distinguished and doubted.

Mr. *C. B. Agarwala,* for the applicant.

Mr. *B. Mukerji,* for the opposite party.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

MULLA, J.:—This is an application in revision by one Fateh Singh challenging the jurisdiction of the criminal courts at Meerut to try a case in which he is charged with an offence under section 409 of the Indian Penal Code. The case has been instituted against the applicant and four others upon a complaint made by one Bishambhar Sahai in his capacity as the sales manager of a sugar mill styled Ram Luxman Sugar Mill situated in Mohiuddinpur within the district of Meerut. The applicant and his co-accused are alleged to be the proprietors in partnership of a firm styled Jani Singh Dwarka Das which carried on the business of commission

*Criminal Revision No. 513 of 1939, from an order of R. F. S. Baylis, Sessions Judge of Meerut, dated the 27th of March, 1939.

(1) (1935) I.L.R. 58 All. 644.

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agents at Amritsar. As the decision of the question of jurisdiction raised by the applicant turns to a very considerable extent upon the allegations contained in the complaint it is necessary to set them out *in extenso*. The relevant paragraphs of the complaint are as follows:

(1) That the accused as partners of the firm Jani Singh Dwarka Das were known from before to the proprietors of Ram Luxman Sugar Mills. As such in December, 1935, the accused 1 and 5 came to Mohiuddinpur as partners and representatives of the firm and the firm was appointed as agents for the sale of "Ram Luxman" brand sugar throughout U. P. and Punjab and Sind.

(2) That the conditions of agency were that the accused would collect all the money due to the complainant's mills and render accounts thereof as and when collected at Mohiuddinpur where the mills and its offices are situate.

(3) That in pursuance of the said terms the accused did render full and final accounts at Mohiuddinpur for the cane season of 1935-36.

(4) That throughout the cane season of 1936-37 the complainant mills supplied sugar in accordance with the orders of the accused and sent all the railway receipts thereof to the accused's firm at Amritsar for the purpose of collecting money.

(5) That the accused individually and collectively from time to time collected all the moneys due on the railway receipts but did not render any accounts to the complainant in spite of repeated demands.

Upon these allegations a complaint charging the applicant and other proprietors of the firm of Jani Singh Dwarka Das with an offence under section 409 of the Indian Penal Code was filed in the court of a first class Magistrate at Meerut. When the applicant was summoned to answer the charge he at once raised a preliminary objection that the court at Meerut had no jurisdiction to try the case. The learned Magistrate overruled the objection, relying upon the authority of

a case decided by this Court in *Brij Lal* v. *Emperor* (1). The applicant then went up in revision to the learned Sessions Judge of Meerut, who upheld the order of the learned Magistrate though he pointed out that the case relied upon by the learned Magistrate had been overruled by a subsequent decision of this Court in the case of *Emperor* v. *Kashi Ram Mehta* (2). The learned Judge himself relied upon two decisions, one of this Court in the case of *Emperor* v. *Mohru Lal* (3) and the other of the Oudh Chief Court in the case of *Brij Kishore* v. *Pandit Chandrika Prasad* (4). Aggrieved by that decision the applicant has come up in revision to this Court.

The substance of the argument on behalf of the applicant is that having regard to the provisions of section 181(2) of the Criminal Procedure Code the Meerut court has no jurisdiction and the two cases relied upon by the learned Judge are distinguishable. Having heard the learned counsel on both sides at considerable length I have arrived at the conclusion that the contention of the learned counsel for the applicant is sound and ought to prevail. It was conceded in the course of argument on either side that the view formerly held that the offence of criminal breach of trust can be tried at a place where loss is caused as a consequence of the offence, by virtue of the application of section 179 of the Criminal Procedure Code, is no longer good law and that the question in issue has to be decided upon the interpretation of section 181(2) of the Criminal Procedure Code. Now section 181(2) runs as follows: "The offence of criminal misappropriation or of criminal breach of trust 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 will be noticed that the latter part of the section is apparently redundant

(1) [1932] A.L.J. 269.
(2) (1934) I.L.R. 56 All. 1047.
(3) (1935) I.L.R. 58 All. 644.
(4) (1936) I.L.R. 12 Luck. 77.

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in view of the general provision made by section 177 of the Criminal Procedure Code that every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed. It is not always easy to determine where an offence of criminal breach of trust is committed, because in view of section 405 of the Indian Penal Code the offence is committed only when the property which is the subject of the trust is dishonestly misappropriated or converted to his own use by the offender or dishonestly used or disposed of by him in violation of any direction of law prescribing the mode in which the trust is to be discharged or of any legal contract, express or implied, which the offender has made touching the discharge of such trust. Having regard to the difficulty of fixing the place where this essential ingredient of the offence comes into existence the legislature has provided in the first part of section 181 (2) that the offence of criminal misappropriation or of criminal breach of trust 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. The place where the property which is the subject of the offence was received or retained by the accused person is obviously capable in every case of being established by definite evidence. In order to hold that a court has jurisdiction to try an offence of criminal breach of trust one of the two alternatives mentioned in sub-section (2) of section 181 of the Criminal Procedure Code must be clearly established. The question which therefore arises for consideration in the present case is: Was the offence with which the applicant is charged committed at Meerut or was the property which is the subject of that offence received or retained by the applicant at Meerut? With regard to the latter part of the question I think there can hardly be any contest, for it is clearly the case for the prosecution that the consignments of sugar sent

from time to time by the complainant firm were received by the applicant firm at Amritsar and that the price of the goods was realised by the applicant's firm at Amritsar. There is absolutely no suggestion in the complaint that any part of the property which is the subject of the alleged offence was received or retained by the applicant's firm at Meerut. It is evident therefore that the court at Meerut can have no jurisdiction to try the offence until it is established that the alleged offence was committed at Meerut. Now, the argument on behalf of the applicant is that upon the case for the prosecution itself all the moneys due to the complainant firm were realised and retained by the applicant and his co-accused at Amritsar and it must therefore be deemed that the dishonest misappropriation or conversion, if any, took place there. Upon that view of the case it necessarily follows that Amritsar was the place where the offence was committed and also the place where the property, which is the subject of the offence, was received and retained as contemplated by sub-section (2) of section 181 of the Criminal Procedure Code. Upon the facts alleged in the complaint this view is, to my mind, obviously sound and must prevail. It is, however, contended on behalf of the complainant that he has nowhere specifically alleged in his complaint that the dishonest misappropriation or conversion took place at Amritsar, but he has, on the other hand, based his cause of action on the ground that the accused persons dishonestly disposed of the property, which is the subject of the offence, in violation of a legal contract between the parties inasmuch as they failed to account for the moneys received by them on behalf of the complainant at Mohiuddinpur within the district of Meerut. It may be noted here that there is no allegation in the complaint that there was any contract between the parties under which the accused persons were bound to bring the moneys realised by them to Mohiuddinpur and all that is alleged is that the conditions of agency

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were that the accused would collect all the moneys due to the complainant's mill and render accounts thereof as and when collected at Mohiuddinpur where the mill and its offices are situate. It was strenuously urged by the learned counsel for the complainant that this allegation in the complaint necessarily implies that the contract between the parties was that the accused persons shall bring all moneys realised by them to Mohiuddinpur. I must state at once that I cannot accept this contention. An agreement to render accounts at a particular place cannot be deemed to include in every case a further agreement to carry any property or money to that place. Where the question of jurisdiction turns upon the allegations made by a party it is not fair to read into them something which they do not express and which may or may not be implied. There was nothing to prevent the complainant from alleging clearly in his complaint that the accused persons had agreed to bring all moneys to Mohiuddinpur if there was a contract between the parties to that effect, but a careful perusal of the complaint would show that he has avoided making that allegation. The question of jurisdiction must therefore be determined upon the basis that the complainant alleges that the accused persons were bound under the contract between the parties to render accounts at Mohiuddinpur. So far as my own view is concerned I would have had no hesitation in holding, if I were free to do so, that even if the accused persons had agreed not only to render accounts at Mohiuddinpur but also to deposit the moneys there, still they could not be said to have committed the offence of criminal breach of trust at Mohiuddinpur. There is, however, the decision of a Bench of this Court in the case of *Emperor* v. *Mohnu Lal* (1) which clearly lays down that where it is alleged that the accused has failed to account for the property, then the second part of section 405 of the Indian Penal Code will apply and jurisdiction exists at the place

(1) (1935) I.L.R. 58 All. 644.

where the property should have been delivered by the accused. This view is binding on me though it has been dissented from by other Courts in several subsequent cases, e.g. *Vasanji Khimjee* v. *Kanji Tokersey* (1) and *Mukhi Tirathdas* v. *Jethanand Matvalomal* (2). In the present case, however, there is no allegation that the property which is the subject of the alleged offence had to be delivered under the contract between the parties at Mohiuddinpur, and hence the only question for consideration is whether the mere liability to account at Mohiuddinpur is sufficient in view of this Court's decision in the case of *Mohru Lal* (3) to confer jurisdiction on the criminal court at Meerut. Upon a very careful perusal of that case I find that it is clearly distinguishable from the present case and affords no authority for the proposition that where there is only a liability to account at a certain place and no duty to deliver any property at that place, still the criminal court at the place where the accounting is to be done has jurisdiction to try the offence. In my judgment the learned Judges who decided the case of *Mohru Lal* drew a clear distinction between mere liability to account and the further duty to deliver property at a particular place. In order to fortify the conclusion at which I have arrived I consider it necessary to cite the relevant portion of their judgment which runs as follows:

"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 had 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 direc-

(1) A.I.R. 1938 Rang. 94. (2) A.I.R. 1937 Sind 68.
(3) (1935) I.L.R. 58 All. 644.

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tion 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 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 my judgment the present case is clearly distinguishable from that of *Emperor* v. *Mohru Lal* (1) on the ground that in the latter case it was specifically alleged that the accused was to bring the money either personally to a particular place or to remit it to that place. As I have stated above there is no such definite allegation in the present case. In fact, upon the allegations contained in the complaint in the present case it is evidently known "that the accused has dishonestly misappropriated or converted to his own use certain property at a particular place", and hence according to the decision in *Mohru Lal's* case itself the jurisdiction to try the accused will be at the place where that dishonest misappropriation or conversion has taken place. A careful perusal of the decision in *Mohru Lal's* case leaves no doubt in my mind that the learned Judges were not prepared to hold that the mere liability to account was sufficient to confer jurisdiction upon the place where the accounting was to be done. The learned Judges referred to the case of *In re Jivandas Savchand* (2) and observed as follows: "In *In re Jivandas Savchand* the accused was employed in Rangoon and he was charged with falsifying the accounts at Rangoon. He was employed by a firm in

(1) (1935) I.L.R. 58 All. 644. (2) (1930) I.L.R. 55 Bom. 59.

Bombay but he had no duty to remit the money to Bombay. His duty was to send to Bombay weekly statements of 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." This I think makes it perfectly clear that the learned Judges drew a clear distinction between mere liability to account and the duty to remit money to a particular place or to deposit it there. As I have indicated above my own view is that upon the facts alleged in the present case the Meerut court has no jurisdiction and I find nothing in the case of *Emperor* v. *Mohru Lal* (1), which is binding on me, to prevent me from holding that view.

The result therefore is that I allow this application in revision and hold that the court at Meerut has no jurisdiction to try the case. The order passed by the courts below to the contrary is set aside. The record should be returned to the Magistrate at Meerut with the direction that the accused be discharged and that the complainant be informed that if so advised he can bring his complaint in a court of competent jurisdiction at Amritsar.

(1) (1935) I.L.R. 58 All. 644.