REVISIONAL CRIMINAL.

Before Mr. Justice Muhammad Raza.

1930 *April*, 8.

RANGI LALL (APPLICANT) *v.* KING-EMPEROR (COMPLAINANT-OPPOSITE-PARTY.)*

Indian Penal Code (Act XLV of 1860) Section 408—Criminal Breach of Trust, essential elements of—Mere retention of money or failure to return it, if raises a presumption of dishonest misappropriation—Delay in payment, whether by itself a ground for imputing criminal intention—Breach of trust, when an offence—Principal and agent—Transactions involving civil liability—Use of criminal law as a means of exerting pressure to extract money from one agent, justification of—Revision—Questions of fact—Lower courts approaching case from wrong point of view—High Court's power to consider questions of fact in criminal revision.

Mere retention of money or mere failure to return it does not necessarily raise a presumption of dishonest misappropriation. The mere fact that the payment was delayed is no ground for imputing a criminal intention. Though the ingredients of the offence of criminal breach of trust are somewhat broadly stated in section 408 of the Indian Penal Code there is no doubt as to the meaning. The sections dealing with the offence of criminal breach of trust were intended to punish an offence of which dishonesty is the essence. Any breach of trust is not an offence. It may be intentional without being dishonest or it may appear dishonest without being really so. In such cases the Magistrate should be slow to move. This caution is all the more necessary since there is a natural desire to secure speedy justice by having recourse to criminal law.

Although transactions which involve civil liabilities may amount to criminal offences, and often do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, the use of the criminal law, not for the purpose of punishing an offender or in the public interest, but

*Criminal Revision No. 34 of 1930, against the order of L. S. White, Sessions Judge of Lucknow, dated the 8th of March, 1930, reversing the order of Rai Bahadur Pandit Triloki Nath Bhargawa, Special Magistrate, First Class, Lucknow, dated the 12th of February, 1930.

as a means of exerting pressure to extract money from an agent, is to be discouraged. *Emperor* v. *Mohan Singh* (1), relied on.

The onus of proving everything essential to the establishment of the charge against the accused lies upon the prosecution who must prove the charge substantially as laid. The guilt of the accused must be proved beyond a reasonable doubt. The gravest suspicion against the accused will not suffice to convict him of a crime, unless evidence established it beyond doubt.

Messrs. *R. F. Bahadurji* and *Jagat Narain Mathur*, for the applicant.

RAZA, J. :—This is an application for revision of an order, dated the 8th of March, 1930, passed by the learned Sessions Judge of Lucknow dismissing the applicant's appeal against the order, dated the 12th of February, 1930, passed by the Special Magistrate, Lucknow, convicting the applicant under section 408 of the Indian Penal Code and sentencing him to three months' rigorous imprisonment and a fine of Rs. 100 (or in default, one month's further simple imprisonment).

The applicant Rangi Lal is the son of one Brij Bihari Lal. Brij Bihari Lal and Rangi Lal both were charged with an offence punishable under section 418 of the Indian Penal Code, but Brij Bihari Lal was acquitted and his son Rangi Lal was convicted and punished under section 408 of the Indian Penal Code.

The case originally started on a complaint lodged by one Ram Dass on the 25th of November, 1929. His case was that, he had purchased a lorry on the *hire-purchase system* from the Pioneer Motor Engineering Works, Lucknow, for Rs. 1,200 on the 6th of September, 1929, at the instance of Brij Bihari Lal and Rangi Lal, having paid the initial sum of Rs. 400 out of Rs. 1,200 on the 2nd of September, 1929. The remaining Rs. 800 were to be paid by monthly instalments of

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Rs. 80. Having got the lorry he employed Rangi Lal at the instance of Brij Bihari Lal to drive the lorry for him. Rangi Lal was to get Rs. 30 per month and daily food. Rangi Lal was thus employed on the 6th of September, 1929. He (Rangi Lal) drove the lorry daily till nearly the end of September when he was dismissed. Another man Ram Swarup was then appointed to drive the lorry, but he drove it for one day only, and after that was prevented from doing so by Brij Bihari Lal and Rangi Lal both. The lorry had been kept at the house of Brij Bihari Lal and Rangi Lal while it was being driven by Rangi Lal and they refused to part with it. As the other instalments had not been paid according to the agreement executed in favour of the Pioneer Motor Engineering Works they took back the lorry ultimately in November, 1929. The substance of the complaint was that Rangi Lal had retained all the money realised by him as hire of the lorry to the amount of Rs. 440.

Both the accused pleaded not guilty. It was stated in defence that the complainant Ram Dass and Brij Bihari Lal were partners in the lorry business and had purchased the lorry as such. It was not denied that Brij Bihari Lal and Rangi Lal had realized the hire of the lorry. It was stated that Rangi Lal was always ready to pay Ram Dass his share of the profits after payment of the expenses and wages, etc., the account of which had not been settled. Rangi Lal had stated also on the 17th of December, 1929, that he had paid the money received less daily expenses to Ram Dass. It should be noted that six of the prosecution witnesses were examined on the 17th of December, 1929, and the accused were also examined the same day. Two more witnesses were examined for the prosecution on the 6th of January, 1930, but the accused were not examined after that, though they should have been examined as required by law. A written statement was filed on the

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2nd of February, 1930. It purports to be a written statement on behalf of Brij Bihari Lal and Rangi Lal both, but it bears the signatures of Brij Bihari Lal alone.

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It was contended before the learned Sessions Judge that there was a genuine dispute as to accounts and no criminal intention; but the contention was not accepted by the learned Judge. The learned Judge was of opinion that Rangi Lal was bound to account for the money realized by him and he withheld it with criminal intention.

Ordinarily, I do not enter into the merits of cases in revision, that is to say, I refuse to consider questions of fact; but I have to consider questions of fact in this case. The lower courts have approached the case from a wrong point of view and the evidence which has been produced in this case has not received due consideration.

The learned Sessions Judge has not given any definite finding on the question of partnership. He was of opinion that it was perhaps outside the province of a criminal court to inquire and determine whether any sort of partnership existed. I am unable to agree with him on this point. In my opinion the determination of that question has an important bearing on this case.

In my opinion there is sufficient reliable evidence on the record to show that Ram Dass and Brij Bihari Lal were partners in the lorry business and had purchased the lorry as such. Exhibit A is the receipt for Rs. 400 which was given by the Pioneer Motor Works to Ram Dass and Brij Bihari Lal both on the 2nd of September, 1929. This receipt shows clearly that Ram Dass and Brij Behari Lal both had purchased the lorry from the Pioneer Motor Works. Exhibit 2 is the deed of agreement which was executed by Ram Dass and Brij Bihari Lal both in favour of the Pioneer Motor Works. This document also shows that Ram Dass and Brij Brij Bihari Lal had purchased the lorry as partners.

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Ram Dass' statement that he had got the name of Brij Bihari Lal entered in the agreement (exhibit 2) simply for his convenience, is not reliable at all and must be rejected. It is true that J. Franklen, who is in the service of the Pioneer Motor Works Company, gives evidence in favour of Ram Dass in his examination-in-chief, but let us see what he states in his cross-examination. He admits in his cross-examination that Brij Bihari Lal and Rangi Lal both were present at the time the bargain was settled and that Ram Dass and Brij Bihari Lal both were present at the time Ram Dass had paid Rs. 400 on the 2nd of September, 1929. When the receipt (exhibit A) was shown to him he admitted that it was in the name of Ram Dass and Brij Bihari Lal both, that it was correct and that Brij Bihari Lal and Ram Dass both had paid the money for which the receipt was given to them. When the agreement (exhibit 2) was shown to him he admitted that Ram Dass and Brij Bihari Lal both had signed it as purchasers in his presence and that both of them were bound to pay the money under that deed. The learned Magistrate was of opinion that Brij Bihari Lal had signed the agreement simply as a surety for Ram Dass, as he wanted to get a job for his son Rangi Lal. It is noticeable that this finding is not supported by any reliable evidence on the record. It was never alleged by Ram Dass himself that Brij Bihari Lal had signed the agreement in question simply as his surety. He states simply that he had obtained Brij Bihari Lal's signature on the deed for his convenience. This statement is surely untrue. If Brij Bihari Lal had signed the agreement simply for the convenience of Ram Dass, it is difficult to understand why the names of Brij Bihari Lal and Ram Dass were entered in the receipt (exhibit A). Surely the name of Brij Bihari Lal was not entered in the receipt for the sake of Ram Dass' convenience. It should be borne in mind that the receipt had been given to Ram Dass and Brij Bihari Lal both some four days before the execution of the agreement.

The fact is that both of them had paid the money to the Motor Works Company and so the names of both of them were entered in the receipt. J. Franklen (P. W 2) had to admit in his cross-examination that Brij Bihari Lal and Ram Dass both had paid the money for which the receipt was given to them on the 2nd of September, 1929. I am entirely unable to agree with the finding of the learned Magistrate which is purely conjectural and is inconsistent with the statement of the complainant himself. I hold, therefore, that Ram Dass and Brij Bihari Lal were partners in the lorry business and had purchased the lorry from the Motor Works Company as such.

The next matter I have to consider is the question of the criminal liability of Rangi Lal applicant. His statement on some points may be untrue, but the onus of proving everything essential to the establishment of the charge against the accused lies upon the prosecution who must prove the charge substantially as laid. The guilt of the accused must be proved beyond a reasonable doubt. The gravest suspicion against the accused will not suffice to convict him of a crime, unless evidence establishes it beyond doubt. Ram Dass complainant states in his cross-exmination that at the time he had lodged the complaint, he knew that Brij Bihari Lal and Rangi Lal had realized Rs. 366 only as hire of the lorry but as he has also paid Rs. 75 in cash to them, he had alleged in his complaint that they had misappropriated Rs. 440. He admits in his cross-examination that at the time he had demanded money from the accused they had said to him that they would pay money to him after deducting expenses, etc., He makes the following statement at the end of his cross-examination :—

> "I have not yet paid the pay due to Rangi Lal, as the accounts have not yet been settled.

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Rangi Lal himself has incurred expenses of petrol and mobil oil for the lorry over and above Rs. 25 (not Rs. 75 as stated before) which I had paid to him. Rangi Lal himself has paid the price of all the things which he has purchased (for the lorry). The dispute between me and Rangi Lal is this; Rangi Lal says that the income, after deducting the motor expenses and his pay and the expenses of his daily food, may be taken by me and Brij Bihari Lal in equal shares. However Rangi Lal is wrong in saying so, as Rangi Lal's father is not my partner in business."

The statement made by the complainant in his cross-examination shows clearly that Rangi Lal really never refused to pay the money which might be found due to the complainant on account of his share after deducting the necessary expenses and that he was always ready and willing to pay the income of the complainant's share to him on settlement of accounts. However the complainant wanted to get the whole income and wanted also to keep the lorry in his exclusive possession. This is clear from the statement of the complainant's witness, Ram Swarup (P. W. 6). He states that he was present at the time the dispute took place between Ram Dass and the accused over the income of the lorry. Rangi Lal had said at that time that he would pay money at the end of the month after deducting all the expenses, but Ram Dass had insisted on getting the whole income and on keeping the lorry in his own possession. Surely Ram Dass was wrong in doing so when he and Brij Bihari Lal were partners in business. The proposal which the accused had made to him was a reasonable proposal, but he was wrong in refusing to accept it and in

demanding the whole income and in insisting on keeping the lorry in his exclusive possession. Ram Dass wanted to deprive Brij Bihari Lal and Rangi Lal of the amounts which were due to them and to which they were legally entitled. It is neither alleged nor shown that Rangi Lal was to pay the income to the complainant daily or within any particular period. He never refused to pay to the complainant the money which might be found due to him on settlement of accounts.

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These are the facts which are established by the evidence in this case. In my opinion no charge is made out against Rangi Lal under section 408 of the Indian Penal Code. It should be borne in mind that mere retention of money or mere failure to return it does not necessarily raise a presumption of dishonest misappropriation. The mere fact that the payment was delayed is no ground for imputing a criminal intention. Though the ingredients of the offence of criminal breach of trust are somewhat broadly stated, there is no doubt as to their meaning. The sections dealing with the offence of criminal breach of trust were intended to punish an offence of which dishonesty is the essence. Any breach of trust is not an offence. It may be intentional without being dishonest or it may appear dishonest without being really so. In such cases the Magistrate should be slow to move. This caution is all the more necessary since there is a natural desire to secure speedy justice by having recourse to criminal law. As pointed out in the case of *Emperor* v. *Mohan Singh* (1), although transactions which involve civil liabilities may amount to criminal offences, and often do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, the use of the criminal law, not for the purpose of punishing an offender or in the

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public interest, but as a means of exerting pressure to extract money from an agent, is to be discouraged. I say nothing about the civil liability of Rangi Lal or his father Brij Bihari Lal, but I am not satisfied that the charge under section 408 of the Indian Penal Code is made out against Rangi Lal. He should at all events be given the benefit of doubt.

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The result is that I accept the application for revision and setting aside the conviction and sentence of Rangi Lal direct that he be acquitted and released. His bail bond may be discharged.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice A. G. P. Pullan.

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RAM PEAREY (PLAINTIFF-APPELLANT) v. MUSAMMAT KAILASHA (DEFENDANT-RESPONDENT)*

Hindu Widows Remarriage Act (XV of 1856), sections 2 and 6—Remarriage of a Hindu Widow alleged to be in the Brahma *form not proved—Widow having an illicit connection with another man—Child born of the illicit connection—Forfeiture of her husband's property—Remarriage of a Hindu widow, ceremonies and rites necessary to be proved—Plaintiff setting up remarriage in a particular form—Finding that remarriage in the alleged form not proved—Plaintiff, whether entitled to set up remarriage in another form.*

Where the remarriage of a Hindu widow in the *Brahma* form as alleged was held not to be proved, the fact that an illicit connection had sprung up between her and another person and a child was born as a result of it was not sufficient to establish a remarriage within the meaning of the Hindu Widows Remarriage Act.

*Second Civil Appeal No. 25 of 1930, against the decree of Saiyid Shaukat Husain, Subordinate Judge of Unao, dated the 16th of October, 1929, confirming the decree of Babu Gulab Chand Srimal, Munsif, Purwa at Unao, dated the 13th of February, 1929.