

fixed as the date for payment by the mortgagors to the plaintiff Bank, and six months thereafter, for payment by the appellants—the subsequent mortgagees—to the plaintiff Bank. Future interest is allowed at $3\frac{1}{2}$ per cent. per annum, simple, from the date of the decree of the Subordinate Judge.

Only one other point remains in this appeal. The appellants have taken exception to certain remarks made by the Court below about the dishonest conduct of defendant No. 1. In our opinion the remarks are not uncalled for as the defendant No. 1 certainly undertook to pay off the mortgage in favour of the plaintiff Bank and failed to do so although it is not alleged that the failure was due to the inability of defendant No. 1 to pay it off. In the circumstances we think that the remarks are not unjustified.

We may add that the question of the reduction of interest under the Agriculturists Relief Act was raised on behalf of the respondents 2 to 5. We do not decide that question as it is for the determination of the Court which passed the original decree.

We allow the appeal to the extent indicated above, but make no order as to costs.

Appeal partly allowed.

REVISIONAL CRIMINAL

Before Mr. Justice Ziaul Hasan

BRIJ KISHORE (COMPLAINANT-APPLICANT) v. PANDIT
CHANDRIKA PRASAD (ACCUSED OPPOSITE-PARTY)*

1936
February, 2

Indian Penal Code (Act XLV of 1860), sections 405 and 408—Criminal breach of trust by servant—Failure to deliver money realized, whether amounts to embezzlement—Criminal Procedure Code (Act V of 1898), section 181(2)—Venue of trial—Accused's failure to account and deposit at place of accounting moneys realized at different places—Jurisdiction of Court at the place of accounting to try suit.

*Criminal Revision No. 15 of 1935, of the order of Mr. W. Y. Madeley, I.C.S., Sessions Judge of Lucknow, dated the 29th of January, 1935.

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Where a servant fails to render accounts and to deliver up the moneys realized by him in spite of repeated demands, he uses the property entrusted to him in violation of the legal contract made by him with his master and is thus guilty of an offence under section 408, I. P. C.

Where it is the duty of the accused to keep accounts of all the moneys received by him at different places and to deposit the moneys so realized at his master's place of business and get accounts entered there, and the accused fails to deposit the money and render accounts at the said place, the Court at that place is fully competent to try the case. *Abdul Latif Yusuf v. Abu Mahamed Kassim* (1), *Gunananda Dhone v. Santi Prakash Nandy* (2), *Paul De Flondor v. Emperor* (3), *Prakash Chandra Sircar v. Mohim Chand Halidar* (4), *Sheo Shankar v. Mohan Sarup* (5), *Ram Sahai v. Krishna Lal* (6), and *Gobindram Jeshanmal v. Emperor* (7), relied on.

Dr. J. N. Misra and Mr. G. G. Chatterji, for the applicant.

Mr. A. P. Singh, for the opposite party.

ZIAUL HASAN, J.:—This is an application in revision against an order of the learned City Magistrate of Lucknow discharging the respondent, Pandit Chandrika Prasad, under section 253(2) of the Code of Criminal Procedure in a case under section 408 of the Indian Penal Code brought against him by the present applicant.

The applicant claims to be the general attorney of Musammat Basanti Devi, widow of one Babu Murlidhar, deceased, of Nazirabad, Lucknow. The complaint was brought against the respondent on the allegation that he was zilledar of Babu Murlidhar, deceased, and used to make collections of rent in the villages owned by Babu Murlidhar in the districts of Partabgarh and Allahabad, that the respondent committed criminal breach of trust as such zilledar and did not account to the complainant's principal for the moneys realized by him in spite of repeated demands.

(1) (1922) Cal., 46.

(3) (1931) Cal., 528.

(5) (1921) All., 12.

(2) (1925) Cal., 613.

(4) (1934) Cal., 392.

(6) (1926) Lab., 119.

(7) (1928) Sind., 166

The learned Magistrate was of opinion that the alleged criminal breach of trust took place in the district of Partabgarh and that therefore he had no jurisdiction to try the case. He accordingly discharged the accused. The applicant went in revision to the Sessions Judge but his application was dismissed. He has now applied to this Court and it is contended on his behalf that the learned City Magistrate of Lucknow was wrong in holding that he had no jurisdiction to try the case.

I am of opinion that the grounds urged on behalf of the applicant are well founded. Section 181(2) of the Code of Criminal Procedure provides that the offence of criminal misappropriation or of criminal breach of trust may be enquired 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. Section 405, I. P. C., which defines the offence of criminal breach of trust says—

“Whoever being in any manner entrusted with property or with any dominion over property . . . dishonestly uses or disposes of that property in violation . . . of any legal contract, express or implied, which he has made touching the discharge of such trust . . . commits criminal breach of trust.”

This shows that one of the ways in which an offence of criminal breach of trust is committed is by dishonest use or disposal of property in violation of any legal contract which the accused has made regarding the discharge of the trust. In paragraph 4 of the complaint it was clearly stated that it was the duty of the accused to keep accounts of all the moneys realized by him and to deposit the moneys so realized at Babu Murlidhar's kothi (place of business) in mohalla Nazirabad of Lucknow city and to get accounts entered at the kothi. It follows therefore that the accused committed criminal breach of trust under section 405, I. P. C., which he dishonestly used the money realized by him by failing to

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deposit it, according to the implied contract between him and his late master, at the latter's kothi in the city of Lucknow. We have seen that under clause (2) of section 181 of the Code of Criminal Procedure the offence of criminal breach of trust can be tried by Courts at three places, namely, at the place where the property was received, at the place where the property was retained by the accused or at the place where the offence was committed and as under section 405, I. P. C., the offence was committed in this case at Lucknow where the accused failed to deposit the money and render accounts, the Court at Lucknow was fully competent to try the case.

As no evidence has been recorded by the learned Magistrate it might be said that there is nothing to show what time, if any, was fixed for the accused depositing the money at the Lucknow kothi or rendering the accounts there, but in this case the question whether the appointed time for the deposit of the money or rendition of accounts had elapsed or not does not arise as the complaint shows that the accused failed to render accounts and deposit the moneys realized by him in spite of the fact that he was asked to do so not only by registered notice but also by a telegram.

The view that I have taken in this case is supported by a string of decisions of various High Courts.

In the case of *Abdul Latif Yusuff v. Abu Mahamed Kassim* (1) a Bench of the Calcutta High Court held that where in a complaint it was alleged that the accused while in the service of the complainant's firm at Singapore committed criminal breach of trust in respect of moneys received there but for which he had to account at Calcutta, on the allegations made, the Courts at Calcutta had jurisdiction. In the case of *Gunananda Dhone v. Lala Santi Prakash Nandy* (2) which was also a Bench case, MUKERJI, J. summed up as follows:

(1) (1922) Cal., 46.

(2) (1925) Cal., 613.

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“My conclusion therefore is that where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court within the local limits of whose jurisdiction that place is situate may enquire into and try the offence under the provisions of section 181, sub-section (2) of the Criminal Procedure Code”.

 Ziaul Husain,
J.

The same principle was followed in the case of *Paul De Flondor v. Emperor* (1) and in the case of *Prokash Chandra Sircar v. Mohim Chand Halidar* (2). A Full Bench of the Allahabad High Court has also held in the case of *Sheo Shankar v. Mohan Sarup* (3) that where the duty to account was at a certain place and the misappropriation is made at another place, the offence can be tried at the place where account was to be given. In the Lahore case of *Ram Sahai v. Krishna Lal* (4), ZAFAR ALI, J. held that where the accused is under a liability to render accounts at a particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him, the Court within the local limits of whose jurisdiction that place is situated may inquire into and try the offence under the provisions of section 181, clause (2) of the Code of Criminal Procedure. In the case of *Gobindram Jeshanmal v. Emperor* (5), ASTON, A.J.C. remarked as follows:

“Where an agent who has to remit moneys and render periodical accounts to a head office fails to do so or renders false accounts not only does the loss occur at the place where the head office is situated, but it seems to me that the omission or the rendering of false accounts is so intimately connected with the conversion or misappropriation as to form part of the offence. It amounts to a user of the property entrusted in violation of the legal

(1) (1931) Cal., 528.

(2) (1934) Cal., 392.

(3) (1921) All., 12.

(4) (1926) Lah., 119.

(5) (1928) Sind, 166.

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contract which the agent has made touching the discharge of the trust. The legal contract is that one of the uses to which the property entrusted will be put is that certain moneys and accurate accounts will periodically be delivered at the head office. The omission or the rendering of false accounts at the head office infringes the agreement regarding the mode in which the property will be used . . .”

In the present case the accused having failed to deliver up the moneys realized by him in spite of repeated demands, it can be held with much greater force that he used the property entrusted to him in violation of the legal contract which he made with his master. This is an aspect of the case which the learned trying Magistrate entirely lost sight of.

I am therefore clearly of opinion that the City Magistrate of Lucknow had jurisdiction to try the case and accepting the application for revision set aside the order of discharge of the accused and send back the case to the trial Court for enquiry according to law.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava and
 Mr. Justice E. M. Nanavutty*

1936
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NAWAB MIRZA MOHAMMAD SADIQ ALI KHAN
 (DEFENDANT-APPELLANT) v. M. NIAZ AHMAD AND OTHERS,
 DEFENDANTS, AND OTHERS PLAINTIFFS (RESPONDENTS)

*Civil Procedure Code (Act V of 1908), Order XXXIV, rule 9
 —Mortgage suit—Separate suits on a mortgage, if allowable
 —Decree to one defendant against another defendant, if
 permissible.*

It is well settled that in a mortgage suit all questions of account between the mortgagor and the mortgagee must be gone into and decided in that suit and that separate suits can not be brought by the several heirs of a mortgagee to enforce

*First Civil Appeal No. 40 of 1934, against the decree of Pandit Parduman Kishen Kaul, Subordinate Judge of Sitapur, dated the 12th of December, 1933.