

APPELLATE CRIMINAL.

Before Ross and Kulwant Sahay, J.J.

CHANDRA PRASAD

v.

KING-EMPEROR.*

1926.

Feb., 23,
24;
March, 3.

Penal Code, 1860 (Act XLV of 1860), section 409—wilful detention of money by servant where there is a duty cast to account, whether amounts to embezzlement—proof, what amounts to.

Where it is a servant's duty to account for and pay over the monies received by him at stated times, his not doing so, wilfully, amounts to embezzlement.

Rex v. Jackson(1), followed.

Rex v. Jones(2), not followed

Kupplili Prakasarow, *In re* (3), *Mathura Prasad v. Emperor*(4), *Rambyas Rai v. Emperor*(5) and *Queen-Empress v. Ganpat Tapidas*(6), distinguished.

C a sub-postmaster, and *D* a parcels' clerk, were charged with criminal breach of trust in their capacities of public servants under section 409, Penal Code, in respect of three sums of money received for value-payable articles on 23rd May, 1925, 27th May, 1925, and 30th May, 1925, respectively, these sums not being accounted for until the 9th of June, 1925. The defence of *C* was that the articles were all along in the exclusive custody of *D*, that the money realized for them was never made over to him and that until the 9th June, 1925, he did not know that it had been realized. The defence of *D* was that the articles were not delivered to the addressees on the 23rd, 27th and 30th of May, but on the 9th of June. The facts found were that the sums of money were paid to the post office on the dates specified in the charges, and were received by *D* in the usual course and entered by him in the register of

*Criminal Appeals nos. 216 and 223 of 1925, from a decision of J. Chattarji, Esq., Sessions Judge of Darbhanga, dated the 9th of December, 1925.

(1) (1844) 1 C. & K. 384.

(4) (1917) 40 Ind. Cas. 303.

(2) (1898) 7 C. & P. 833.

(5) (1918) 47 Ind. Cas. 607.

(3) (1915) 26 Ind. Cas. 307.

(6) (1886) I. L. R. 10 Bom. 256.

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value-payable articles received. It was also found that *C* had made some entries in the register of value-payable articles received and had also initialled the balance of articles undisposed of. Under the rules the appellants as servants of the post office, were bound to send money received for value-payable articles to the sender on the date of receipt or at the latest on the next day. The prosecution failed to prove that *C* was ever entrusted with the money received by *D* or that he had any knowledge of the receipt of money in the post office.

Held, on the facts found, (i) that *D* was guilty of criminal breach of trust in the capacity of a public servant; (ii) that the mere fact that *C* had made some of the entries in the register and had initialled the daily balance of articles undisposed of, or the fact of his failure to check the register with the articles actually in hand, did not take the place of proof that he knew the monies to have been paid or that they were at any time entrusted to his care, and that, therefore, he was not guilty of an offence under section 409, Penal Code.

These were two appeals, one by Chandra Prasad who was Sub-Postmaster of Roserah Sub-Post Office, and the other by Debendra Nath Ganguly who was a clerk in the same office, against their conviction under section 409 of the Indian Penal Code. The appellants were charged with criminal breach of trust in their capacities of public servants in respect of three sums of money, namely, Rs. 307-15-0, which was paid for value-payable letter no. 641 on the 30th of May, 1925, Rs. 119-7-0 which was paid for value-payable letter no. 3 on the 27th of May, 1925, and Rs. 303 which was paid on account of insured value-payable parcel no. 738 on the 23rd of May, 1925, these sums not being accounted for until the 9th of June 1925.

The defence of the Sub-Postmaster was that the value-payable articles referred to in the charges were all along in the exclusive custody of Debendranath Ganguly and that the money realized for them was never made over to him and he did not know that it was realized before the 9th of June. The defence of Debendranath Ganguly was that the letters and parcel were not delivered to the addressee on the 23rd, 27th and 30th of May, but on the 9th of June.

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This latter defence was found to be untrue at the trial where it was conclusively shown that the sums of money referred to in the charges had been paid to the Post Office on the dates specified therein; and, in the appeal, this defence was abandoned.

The facts as found by the Sessions Judge were no longer disputed in appeal. These facts were that value-payable letter no. 641 was sent by Messrs. H. D. Nandi and Company of Taltola to a firm in Roserah called Friends and Company of which the sole proprietor was Lachminarain Purvey. The letter contained the railway receipt for a bicycle consigned to sender. The letter was despatched on the 25th and arrived at Roserah on the 27th. It was received by Debendranath Ganguly in the usual course and entered by him in the register of value-payable articles received. He also issued a receipt form on the 27th of May. The money was paid to Debendranath Ganguly by Lachminarain Purvey on the 30th of May, 1925; but the value-payable letter appeared in the register in an entry made by Debendranath Ganguly as still undelivered on the 4th of June, and the money order in respect of this receipt was not issued until the 9th of June.

Value-payable letter no. 3 was sent by Jhallu Sahu Bijadhar Ram of Benares to Bhailal Gobind Lal of Roserah on the 19th of May. It contained the railway receipt for a bag of German Silver Lotas. The letter was received on the 21st of May and was registered by Debendranath Ganguly, who also issued the usual receipt form. On the 27th of May Badrilal, the proprietor of the firm, paid Rs. 119-7-0 to Debendranath Ganguly and got delivery of the letter. In this case also the money was not remitted to the sender by Debendranath Ganguly until the 9th of June.

The insured parcel no. 728 which was said to contain gold-leaf was despatched by S. C. Singh from Strand Road, Calcutta, to Bhailal Gobind Lal at

Roserah on the 22nd of May and was received at Roserah on the 23rd and entered as an ordinary value-payable article in the register by Debendranath Ganguly on that date. He also issued the usual receipt form. The money Rs. 303 was paid by Badrilal on the date of receipt, namely, the 23rd of May, to Debendranath Ganguly and the parcel was delivered to him. The parcel was still shown as undelivered on the 1st of June and on the 4th of June by Debendranath Ganguly in his register and the money was not remitted to the sender until the 9th of June.

D. P. Sinha, B. P. Varma and R. S. Lal, for the postmaster.

S. P. Varma, B. N. Mitra, B. Prasad and K. Moitra, for the parcels clerk.

H. L. Nandkeolyar (Assistant Government Advocate) for the Crown.

Cur. adv. vult.

Ross, J. (after stating the facts as set out above, proceeded as follows): The contention on behalf of the Sub-Postmaster Chandra Prasad is that as the money was never entrusted to him, he cannot be held guilty of criminal breach of trust. The learned Assistant Government Advocate contended that both the appellants are Post Office servants and both are bound by the terms of their appointment to dispose of the property entrusted to them in accordance with the contract which is implied under the rules. If they are bound by the rules to send money received on account of value-payable articles to the sender on the date of receipt or at the latest on the next day, as the rules provide, they violate the contract if they dishonestly retain the money. The duties of the parcels clerk are to receive parcels and deliver them and make over the money received for them to the postmaster. The duty of the postmaster is, as soon as he receives the money, to send it to the cash office at

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Samastipur. It is admitted by the learned Assistant Government Advocate that the prosecution has not proved that the money was received by the postmaster; but it is contended that the postmaster wilfully suffered the parcels clerk to dispose of the money in a manner contrary to his legal obligations. He knew of the receipt of the money in the Post Office; and, if he dishonestly omitted to send off the money, he is guilty of criminal breach of trust. It is argued that once the money comes into the Post Office to the knowledge of the postmaster, it is entrusted to him. He has made some of the entries in the register of value-payable articles received and has also initialled the balance of articles undisposed of. Now it seems to me that on the facts found no charge is proved against the postmaster. He may have been negligent in supervision; and from the fact that the parcels clerk, who was in receipt of a salary of Rs. 74 a month, must have been of almost the same standing in the service as himself, his pay being Rs. 78 a month, it is not unlikely that he exercised insufficient control. But from the mere fact that he made some of the entries in the register and initialled the daily balance of articles undisposed of, it cannot be inferred that he knew that these monies had been paid. If he had checked the register with the articles actually in hand, the fraud must have been discovered; but his failure to do this cannot take the place of proof that the money received on account of these articles was entrusted to his care. In the case of the insured article Article 393 of the Post Office Manual requires that in sub-post offices where the pay of the sub-postmaster is less than Rs. 100 a month, the duty of examining the insured parcels must be performed by the sub-postmaster and the undelivered insured parcels must be kept under lock and key in his personal custody. But this rule is not available to the prosecution for two reasons—first, the insured article was entered in the register as an ordinary value-payable article; and, secondly, it was delivered to the addressee on the date of receipt.

There is, in my opinion, no case against Chandra Prasad; and his appeal must be allowed.

The case of Debendranath Ganguly stands on a different footing. Learned Counsel argued on his behalf that accepting the findings, the facts do not amount to an offence under section 409. They prove that certain sums of money were received on the 23rd, 27th and 30th May and were not transmitted until the 9th of June. But this only amounts to detention of the money and the prosecution must prove that within this period of detention the money was converted to the appellant's own use; but there is no such finding and there is no evidence to show that the money ever left the post office; and the period of detention was so short that it was not safe to presume that the appellant intended to cause wrongful loss or gain. The following decisions were referred to: *Rea v. Jones*(¹) where it was held that the mere fact of not entering the sum of money received was insufficient to support an indictment for embezzlement; although it was observed that had the prisoner denied the receipt of the money, the case might have been different. Archbold, in his *Criminal Pleadings and Practice* (26th Edition. page 618). refers to this decision and says that it must be taken to be overruled by the contrary decision in *R. v. Jackson*(²) where it was held by Coleridge, J., that where it is the servant's duty to account for and pay over the monies received by him at stated times, his not doing so wilfully is an embezzlement, although he does not actually deny the receipt of them. The next case was *In Re Kuppili Prakasarrow*(³). The head-note to that case says that where the only evidence against the accused charged with misappropriating a telegraphic money order is that the postal account contained entries of delivery on dates different from those on which the actual deliveries were made, that merely creates a suspicion and is not sufficient proof of misappropriation. The finding was that there was no evidence to

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(1) (1838) 7 C. & P. 833.

(2) (1844) 1 C. & K. 384.

(3) (1913) 26 Ind. Cas. 307.

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show that the sum was misappropriated by the accused and not by the postman. The decision, therefore, went on the facts which are entirely different from the facts of the present case. The next case was *Mathura Prasad v. Emperor*⁽¹⁾ where it was held that the detention of money by a servant or clerk for fifteen months after its receipt raises a very serious doubt of bona fides against him, but the detention is not conclusive proof of criminal misappropriation or criminal breach of trust. The decision in that case, however, proceeded on the absence of any rules regarding the paying in of money realized, as well as on facts showing that the accused had attempted on various occasions to pay the money, but it had been refused by the treasurer. Knox, J., observed, "In the present case the estate is a private estate. No attempt has been made on the part of the prosecution to prove that any rule of the estate, or any contract, express or implied, lay between the estate and Mathura Prasad regarding the time and the manner in which all such monies were to be deposited. It is easy to say that they should be deposited without delay, but that must be a matter of proof as much as any other matter of fact in the case". This observation clearly differentiates that case from the present where the rules of the post office are definite that the money must be remitted on the day of receipt or at the latest on the following day. Reference was also made to *Rambyas Rai v. Emperor*⁽²⁾, but that decision proceeded entirely on the facts which negated any dishonesty on the part of the accused in retaining certain documents. The last case was *Queen-Empress v. Ganpat Tapidas*⁽³⁾. There money received on account of the Government had been detained for some time by a revenue patel. He had, however, taken formal receipts for the money from the payees and it was found that the reason for his not immediately

(1) (1917) 40 Ind. Cas. 303.

(2) (1918) 47 Ind. Cas. 667.

(3) (1886) I. L. R. 10 Bom. 256.

paying the money to them was that they were willing to trust him with the money. That decision has therefore no application to the present case. The accused Debendranath Ganguly kept these monies which were entrusted to him as a public servant for periods of seventeen, thirteen and ten days in violation of the rules by which he was bound. This in itself raises a case which he has to answer. He gave a false explanation that the monies had not been received until the 9th of June. He also made entries in his register showing that the articles were still undelivered in the post office long after they had been delivered and the money for them had been received. This amounts to a denial of the receipt of the money and is conclusive evidence of criminal breach of trust. In my opinion, therefore, Debendranath Ganguly was properly found guilty of the charges framed against him.

The result is that the appeal of Chandra Prasad is allowed and his conviction and sentence are set aside and he is ordered to be acquitted and released from bail. His fine, if paid, will be refunded. The appeal of Debendranath Ganguly is dismissed; and he will surrender to his bail to undergo the rest of his sentence.

KULWANT SAHAY, J.—I agree.

PRIVY COUNCIL.

GANESH LAL PANDIT

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Limitation Act, 1877 (Act XV of 1877), Schedule II, Articles 66, 132—Mortgage—personal covenant—decree for sale—deficiency—Hindu Law—Hindu widow—alienation—necessity—decree by co-sharers for contribution.

*Present: Viscount Dunedin, Lord Blanesburgh, Sir John Edge and Mr. Ameer Ali.