

REVISIONAL CRIMINAL.

Before Terrell, C. J. and Adami, J.

1930.

MICHAEL JOHN

Dec. 12.

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (Act V of 1898), sections 233, 234 and 235—charges of breach of trust and falsification of accounts, when and how far can be tried together—Penal Code, 1860 (Act XLV of 1860), sections 408 and 477A.

It is quite lawful to charge a person under section 408, Penal Code, 1860, with Criminal breach of trust in respect of a lump sum of money made up of three different items and to link with that a series of charges of falsification of accounts under section 477A each of which charges under section 477A is united with one of the items of embezzlement under the charge under section 408, provided the charges of embezzlement under section 408 are linked together into one sum and that linking together also affects the charges of falsification.

Gajadhar Lal v. Emperor(1), followed.

Raman Bihari Das v. Emperor(2), not followed.

Emperor v. Jiban Krishto Bagchi(3), distinguished.

The facts of the case material to this report are stated in the judgment of Terrell, C.J.

S. P. Varma and *K. Sahai*, for the petitioner.

Nobody for the Crown.

COURTNEY TERRELL, C.J.—The petitioner has been convicted of criminal breach of trust under

* Criminal Revision no. 603 of 1930, against a decision of S. Bashiruddin, Esq., Sessions Judge of Purnea, dated the 20th September, 1930, modifying a decision of Babu L. K. Sen, 1st class Magistrate of Purnea, dated the 18th June, 1930.

(1) (1920) 60 Ind. Cas. 422.

(2) (1913) I. L. R. 41 Cal. 722.

(3) (1912) I. L. R. 40 Cal. 318.

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section 408 of the Indian Penal Code and under section 477A for falsification of accounts and was sentenced in the first place to two years' rigorous imprisonment and a fine of Rs. 1,000 which sentence was reduced on appeal to one year and a fine of Rs. 500.

The petition raises only one point of substance. The fact is that the petitioner was a cashier of the local municipality, his duty being to collect municipal dues, keep accounts and deposit the collections into the sub-treasury. Two separate charges were made against him. The first charge stated that within a period of one year he had embezzled altogether a sum of Rs. 2,058-1-9 and that that sum included several different headings, the first being receipts in respect of cart registration, the second being in respect of pound revenue, the third in respect of personal and latrine tax, the fourth in respect of motor car licenses and the fifth in respect of receipts for old chairs. The second charge of falsification of accounts set forth various items of falsification in the cash book and in each case the falsification of the entry in the cash book relates to one or other of the headings under which the charge of embezzlement was made. The argument is raised on behalf of the petitioner that the trial was vitiated because of the joinder in one trial of charges relating to different offences not arising out of the same transaction.

Section 233 of the Criminal Procedure Code states :

" For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately except in the cases mentioned in sections 234, 235, 236 and 239."

Section 234 (1) says :

" When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences whether in respect of the same person or not he may be charged with, and tried at one trial for, any number of them not exceeding three."

Section 235 (1) states :

"If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence."

The point raised on behalf of the petitioner is, as I understand it, argued thus:—It is said that although each of the items of the falsification charges can be linked up in one transaction with one or other of the items of the embezzlement charges so as to form one transaction the separate series of falsification charges cannot be united together to form one transaction and, therefore, that the trial did not comply with the provisions of section 235 but, in my opinion, that view is not well-founded. It seems to have been based upon a decision of the Calcutta High Court in the case of *Raman Behari Das v. Emperor*⁽¹⁾ but in that case the effect of section 235 of the Code of Criminal Procedure does not seem to have been taken into account at all by the Court. I prefer the decision of this Court in the case of *Gajadhar Lal v. Emperor*⁽²⁾ which makes it clear that it is quite lawful to charge a person under section 408 with criminal breach of trust in respect of a lump sum of money made up of three different items and to link with that a series of charges of falsification under section 477A each of which charges under section 477A is united with one of the items of embezzlement under the charge under section 408, provided the charges of embezzlement under section 408 are linked together into one sum and that linking together also affects the charges of falsification, and I agree with the reasoning of Mr. Justice Mullick in that case.

A word may be said with regard to the decision of *Emperor v. Jiban Krishto Bagchi*⁽³⁾ which lays down the principle that a charge of criminal breach of trust

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cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate breach of trust. In the particular case that we are now dealing with that state of affairs does not in fact exist because each act of misappropriation is connected with a specific act of falsification and the whole of the acts of misappropriation are united together in a single sum contained within a period of one year. For these reasons it seems to me that the point taken on behalf of the petitioner fails. The link between the series of falsification charges is affected by their being each linked to a specific charge of misappropriation and the misappropriation charges are united together by their going to make up a single lump sum. The application is dismissed.

ADAMI, J.—I agree.

Rule discharged.

APPELLATE CIVIL.

1930.

Dec. 12.

Before Jwala Prasad and James, JJ.

SHAIKH ELAHI BAKSH

o.

E. I. RAILWAY ADMINISTRATION.*

Railways Act, 1890 (Act IX of 1890), section 3(6)—suit against "the Railway Administration through Agent resident at Calcutta" instituted after 1st January, 1925, whether a proper suit against Secretary of State for India—Code of Civil Procedure, 1908 (Act V of 1908), section 79—notice served on Agent or Manager of the Railway Administration, whether sufficient compliance with section 80 of the Code.

A suit against "the Railway Administration through their Agent resident at Calcutta" instituted after the 1st of January, 1925, when the Government took charge of the

* Appeal from Appellate Decree no. 654 of 1929, from a decision of Babu Akhauri Nityanand Singh, Subordinate Judge of Monghyr, dated the 18th January, 1929, reversing a decision of Babu Braj Bilas Prasad, Munsif of Jamui, dated the 30th November, 1927.