REVISIONAL CRIMINAL.

1933.

November, 20.

Before Macpherson and Agarwala, JJ.

RAMKISHOON PRASAD

v.

KING-EMPEROR.*

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 222, 234, 235, 236 *and* 239—*charge of criminal breach of trust in respect of a lump sum consisting of three items, whether a single charge in respect of a gross sum—section* 222 (2)—*sections* 234, 235, 236 *and* 239, *cases falling under, whether mutually exclusive—Penal Code*, 1860 (*Act XLV of* 1860), *sections* 409 *and* 477*A*—*charge for an offence under section* 409 *in respect of a gross sum, whether can be tried with three charges for an offence under section* 477*A*—*one trial in respect of three charges of as many offences under section* 409, *whether valid.*

Where a person is charged under section 409 of the Penal Code with criminal breach of trust in respect of a gross sum consisting of three items, all of which were embezzled in the course of one year, the court is competent, by virtue of the provisions of sections 234 and 235 of the Code of Criminal Procedure, to try with this charge three charges for an offence under section 477A of the Penal Code if committed within the same period and forming part of the same transaction as the offence under section 409.

Gajadhar Lal v. *Emperor*(1) and *Michael John* v. *King-Emperor*(2), followed.

Raman Behary Das v. *Emperor*(3) and *Kasi Viswanathan* v. *Emperor*(4), not followed.

The vaidity of a charge of criminal breach of trust in respect of a gross sum is not affected by the fact that the items of defalcation are also enumerated.

* Criminal Revision no. 298 of 1933, from an order of T. G. N. Ayyar, Esq., I.C.S., Additional Sessions Judge of Patna, dated the 10th June, 1933, affirming an order of Maulavi M. A. Samad Khan, Deputy Magistrate, First Class, Patna, dated the 24th February, 1933.

(1) (1920) 60 Ind. Cas. 422.
(2) (1930) I. L. R. 10 Pat. 463.
(3) (1913) I. L. R. 41 Cal. 722.
(4) (1907) I. L. R. 30 Mad. 328.

Emperor v. *Datto Hanmant Shahapurkar*(1) and *Rahim Bux Sarkar* v. *Emperor*(2), followed.

Where the charge under section 409 of the Penal Code was to the following effect :

" That you between 19th October, 1931, and 1st April, 1932, at Patna City, being a public servant in the employment of Patna city municipality and in such capacity entrusted with municipal property, i.e. collection of taxes, to wit, by municipal receipt no. 38960, dated 20th October, 1931, for Rs. 139-7-0 Exhibit 6, no. 55091, dated 6th January, 1932, for Rs. 60 Exhibit 3 and no. 81273, dated 31st March, 1932, for Rs. 60 Exhibit 2, committed criminal breach of trust with respect to the said property, and thereby committed an offence under section 409 of the Indian Penal Code, and within my cognizance."

Held, (*i*) that the charge under section 409 was a single charge of criminal breach of trust in respect of a gross sum consisting of the three items of " collection of taxes " from one person within a stated period of less than one year, contemplated as a single item of " municipal property " entrusted to the accused;

(*ii*) that, therefore, the charge was correctly drawn up in accordance with the provisions of section 222(2), Code of Criminal Procedure, 1898, and must be deemed to be a charge of one offence within the meaning of section 234 of the Code.

Held, further, that even if the charge under section 409 be taken to constitute three charges of as many offences nevertheless the trial was valid under the Code.

Emperor v. *Jiban Kristo Bagchi*(3), followed.

It is far more consonant with reason and the probable wishes of the legislature that in a proper case the trial of three offences under section 409 along with the falsification of accounts with which the subject-matter of each charge is linked, should be contemplated than that it should be barred.

The four exceptional cases provided for in sections 234, 235, 236 and 239 of the Code are not mutually exclusive.

Emperor v. *Sheo Saran Lal*(4), not followed.

(1) (1905) I. L. R. 30 Bom. 49.
(2) (1930) A. I. R. (Cal.) 717.
(3) (1912) I. L. R. 40 Cal. 318.
(4) (1910) I. L. R. 32 All. 219.

1933.

RAMKISHOON PRASAD v. KING-EMPEROR.

The facts of the case material to this report are stated in the judgment of the Court.

S. N. Haque and *Ghulam Mohamad*, for the petitioner.

Government Advocate and *W. H. Akbari*, for the Crown.

MACPHERSON AND AGARWALA, J.J.—The petitioner has obtained the present rule for consideration of convictions recorded against him under sections 409 and 477A of the Indian Penal Code in two separate cases, the appeals from which were dismissed by a single judgment. In one case he was sentenced to eighteen months' rigorous imprisonment and a fine of Rs. 200 under section 409 and to eighteen months' rigorous imprisonment under section 477A, the sentences of imprisonment to run concurrently. In the other case he was sentenced under section 409 to two years' rigorous imprisonment and a fine of Rs. 200 and under section 477A to two years' rigorous imprisonment, the sentences of imprisonment again to run concurrently.

The first case related to realisation of municipal tax from Satyendra Nath Banarji. The charge under section 409 was as follows:—

"That you between 19th October, 1931, and 1st April, 1932, at Patna City, being a public servant in the employment of Patna City municipality and in such capacity entrusted with municipal property, i.e., collection of taxes, to wit, by municipal receipt no. 38960, dated 20th October, 1931, for Rs. 139-7-0 Exhibit 6, no. 55091, dated 6th January, 1932, for Rs. 60 Exhibit 3 and no. 81273, dated 31st March, 1932, for Rs. 60 Exhibit 2, committed criminal breach of trust with respect to the said property, and thereby committed an offence under section 409 of the Indian Penal Code, and within my cognizance."

The charge under section 477A related to the respective fraudulent false entries in the daily collection registers.

The second trial was concerned with three similar realisations between 29th September, 1928, and 28th March, 1929, from Zamiruddin and the charges were

on the same lines except that in the charge under section 409 the words

"to wit, by Municipal receipt no. 10607, dated 30th September, 1928, for Rs. 65-3-0 and receipt no. 38201, dated 20th February, 1929, for Rs. 32-9-6 and receipt no. 46282, dated 28th March, 1929, for Rs. 32-9-6"

are within brackets.

The only question which arises is whether the petitioner has been tried according to law. It is urged on the authority of *Kasi Viswanathan* v. *Emperor*(1) and other decisions which follow it, that a trial on what is substantially three charges of offences under section 409 and three charges of offences under section 477A is not justified by the Code and is wholly invalid. In reply Mr. Akbari relied upon the decisions in *Gajadhar Lal* v. *Emperor*(2) and *Michael John* v. *The King-Emperor*(3) as adequately meeting this contention on behalf of the petitioner. Now what was decided in the first of these cases was that where a person is charged under section 408 of the Penal Code with criminal breach of trust committed in one year in respect of a lump sum of money, the Court is competent, by virtue of the provisions of sections 234 and 235 of the Code of Criminal Procedure, to try with this charge three charges for an offence under section 477A of the Indian Penal Code if committed within the period of one year and forming part of the same transaction as the offence under section 408. In *Michael John* v. *The King-Emperor*(3) the decision in *Gajadhar Lal* v. *Emperor*(2) was approved while the decision in *Raman Behary Das* v. *Emperor*(4) based upon *Kasi Viswanathan* v. *King-Emperor*(1) was not followed. These two cases are binding upon us and, with respect, we hold that they were rightly decided. The learned Advocate for the petitioner does not contend that they were not but he would distinguish

(1) (1907) I. L. R. 30 Mad. 328.
(2) (1920) 60 Ind. Cas. 422.
(3) (1930) I. L. R. 10 Pat. 463.
(4) (1913) I. L. R. 41 Cal. 722.

1933.

RAMKISHOON PRASAD v. KING-EMPEROR.

MACPHERSON AND AGARWALA, JJ.

them on the ground that whereas in each of them the charge under section 409 was in respect of a lump sum (or, to use the expresssion in section 222(2) of the Code of Criminal Procedure, a gross sum), it is otherwise with the charges under section 409 set out above which, he contends, cannot be said to be in respect of a gross sum. The learned Government Advocate who appeared later on behalf of the Crown, contended in the first place that the charge under section 409 is in respect of a gross sum, being the aggregate realization under the three receipts enumerated which is also mentioned as " the said property ". It is a reasonable inference from the charge itself that in each case the Magistrate intended that the trial should be on the lines held to be valid in the case of *Michael John* v. *The King-Emperor*(1). It does not, of course, affect the validity of a charge of criminal breach of trust in respect of a gross sum that the items of defalcation are also enumerated: *Emperor* v. *Datto Hanmant Shahapurkar*(2) and *Rahim Bux Sarkar* v. *Emperor*(3). In our judgment the charge has been correctly framed in accordance with the provisions of section 222(2) of the Code of Criminal Procedure and is a charge of criminal breach of trust by a servant of a gross sum consisting of the three items of " collection of taxes " from one person (in one case from Satyendra Nath Banerjee and in the other case from Zamiruddin) within a stated period of less than one year, contemplated as a single item of " municipal property " entrusted to the accused. The same view has been taken by Mears, C.J. and King, J. in *Emperor* v. *Prem Narain*(4). In that case one charge was framed in which four sums of money said to have been embezzled were specified and three dates were also specified as being the dates of the alleged embezzlements, two of the four items being alleged to have been embezzled on one of the dates. The time included

(1) (1930) I. L. R. 10 Pat. 463.
(2) (1905) I. L. R. 30 Bom. 49.
(3) (1930) A. I. R. (Cal.) 717.
(4) (1930) I. L. R. 52 All. 941.

between the first and the last of the three dates was less than one year. It was held that there was in fact only one charge framed and as that charge, although it did not set out the total of the money embezzled, did specify all the items and the dates upon which the sums were alleged to have been embezzled and as the time included between the first and the last of such dates was less than two months (and so less than one year), the charge was correctly drawn up in accordance with the provisions of section 222(2) and must be deemed to be a charge of one offence within the meaning of section 234, so that it followed that there was no misjoinder of charges since the accused was on his trial for only one offence. The charge under section 409 against the petitioner thus being in each case a single charge as to a gross sum, the decisions in *Gajadhar Lal* v. *Emperor*(1) and *Michael John* v. *The King-Emperor*(2) apply and the plea of misjoinder of charges fails.

The learned Government Advocate further contends that assuming that the charge under section 409, as framed, must be taken to constitute three charges of as many offences, nevertheless the trial is valid under the Code of Criminal Procedure. In the case of August, 1902, mentioned by Carnduff, J. in *Emperor* v. *Jiban Kristo Bagchi*(3) it appears that in the trial "on six counts with three separate embezzlements under section 403 of the Penal Code and with three corresponding falsifications under section 477A" there was a conviction in the Calcutta High Court on each count. The decisions on which the Advocate for the petitioner relies, proceed on the view that section 234 and section 235 are mutually exclusive, to use the expression of Tudball, J. in *Emperor* v. *Sheo Saran Lal*(4). Now section 233 provides that for every distinct offence of which any person is accused there

(1) (1920) 60 Ind. Cas. 422.
(2) (1930) I. L. R. 10 Pat. 463.
(3) (1912) I. L. R. 40 Cal. 318.
(4) (1910) I. L. R. 32 All. 219.

1933.

RAMKISHOOR PRASAD v. KING-EMPEROR.

MACPHERSON AND AGARWALA, JJ.

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. There is no apparent reason for holding that these four exceptional cases are mutually exclusive. Certainly there is no more reason for holding that sections 234 and 235 are mutually exclusive than that one or other of these provisions and either section 236 or section 239 are mutually exclusive or that section 236 and section 239 are so. In our view it is far more consonant with reason and the probable wishes of the legislature that in a proper case the trial of three offences under section 409 along with the falsification of accounts, with which the subject-matter of each charge is linked, should be contemplated than that it should be barred. It can be predicated that in the present case there was no prejudice to the accused and indeed it is not easily discernible how prejudice can arise in such a case. Section 234 permits three offences of the same kind committed within the space of twelve months from the first to the last to be tried at one trial. A valid trial on charges as to three offences being thus constituted, section 235 comes in to provide that all offences committed by the same person in the series of acts so connected together as to form the same transaction with any one of those three offences, can be tried with that offence. In principle multiplicity of trials is to be avoided. Again in order to establish one or more of the charges triable at one trial under section 234, it is frequently essential or expedient to produce all the evidence necessary and sufficient to establish the other offences referred to in section 235(*1*). There being ordinarily no likelihood that the accused would, in the circumstances, be embarrassed in his defence, it is hard to believe that this evidence is only to have effect as to one of the offences committed in the same transaction. One would expect the legislature at least to *permit* a joint trial of all the offences in the series forming the same transaction in spite of the fact that one of the offences of the series is by another

provision triable along with two other offences of the same kind. We consider that it has done so and we can see no reason why sections 234 and 235 are not to be regarded as cumulative in their effect in a proper case.

1933.

RAMKISHOON PRASAD v. KING-EMPEROR.

In our view, even if the first submission of the learned Government Advocate had failed, the trials at which the petitioner was convicted, were validly constituted, there being no misjoinder of charges.

MACPHERSON AND AGARWALA, JJ.

We accordingly discharge the rule.

Rule discharged.

APPELLATE CRIMINAL.

Before Macpherson and Agarwala, JJ.

ELIZABETH GUTHRIE OR SEN

v.

KING-EMPEROR.*

1933.

November, 25.

Code of Criminal Procedure, 1898 (*Act V of* 1898), *sections* 4(*l*) (*i*), 275 *and* 446—"*European British subjects*" *meaning of—person not being European British subject whether is a* "*European*"—*European British subject tried by court of session in accordance with Chapter XXXIII—majority of jury not Europeans or Americans—trial, whether vitiated—sections* 275 *and* 446.

Section 4(*l*) (*i*), Code of Criminal Procedure, 1898, defines "European British subject" as being

"(*i*) Any subject of His Majesty of European descent in the male line born, naturalised or domiciled in the British Island or any Colony, or

(*ii*) Any subject of His Majesty who is the child or grandchild of any such person by legitimate descent."

Where it appeared from the evidence of *M*, a juror, that he and both of his parents were Anglo-Indian, as that term is

* Criminal Appeal no. 231 of 1933, from a judgment of Khan Bahadur Najabat Hussain, Sessions Judge of Manbhum-Sambalpur dated the 6th of June, 1933.