

1929.

KOI SAHU
v.
ATUL
KRISHNA
GHOSH.

judgment of the Munsif should be restored. The defendant no. 1 who has contested this case will pay the costs throughout.

JAMES, J.—I agree.

Appeal decreed.

REVISIONAL CRIMINAL.

Before Macpherson and Dhavle, JJ.

SUCHIT RAUT

v.

KING-EMPEROR.*

1929.

April, 29.

Post Office Act, 1898 (Act VI of 1898), section 64—Penal Code, 1860 (Act XLV of 1860), sections 420 and 511—Blank papers sent under insured cover—whether trial should be under the special Act or the general law.

The principle that where a particular set of acts or omissions constitute an offence under the general law and also under a special law the prosecution should be under the special law, is confined to cases where the offences are coincident or practically so.

Kuloda Prasad Majumdar v. Emperor (1), distinguished.

A person sent only blank papers in a cover insured for Rs. 900 and addressed to himself, and, on delivery of the cover, stated that the cover had contained currency notes to the value of Rs. 900 and made claim for the same. He was charged under sections 420/511 and 419 of the Penal Code and also under section 64 of the Post Office Act, although no sanction for the prosecution had been obtained under section 72 of that Act. He was convicted of attempting to cheat under section 420/511 and acquitted of the other charges. In revision it

*Criminal Revision no. 127 of 1929, from an order of Rai Bahadur J. Chattarji, Sessions Judge of Saran, dated the 25th January, 1929, modifying an order of Babu S. N. Singh, Deputy Magistrate of Chapra, dated the 17th December, 1928.

(1) (1906-07) 11 Cal. W. N. 100.

was contended that he should have been convicted under section 64 of the Post Office Act and not under the Penal Code.

Held, that even if an offence under section 64 of the Post Office Act had also been committed, which was doubtful, the conviction under the Penal Code was correct.

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

S. P. Varma, for the petitioner.

C. M. Agarwala, Assistant Government Advocate, for the Crown.

MACPHERSON, J.—This rule has been issued to consider the conviction of and sentence upon Suchit Raut alias Bikramajitya who has been convicted by a Deputy Magistrate of Chapra under section 420 read with section 511 of the Indian Penal Code and sentenced to eighteen months' rigorous imprisonment which term was reduced on appeal to one year.

The facts alleged were that on the 23rd July last the petitioner made over to the Chapra post office a letter marked

" Ins. for rupees nine hundred, Rs. 900 "

and addressed to Bikramajitya at Naihati, giving the sender's name as Ramlagan Raut who is his father and insuring the letter for Rs. 900. According to the post office rule it was enclosed in another cover which two days later reached Naihati intact and on the 27th the petitioner went to the post office to take delivery. There he made difficulties in respect of signing a receipt until he should see the contents, and when eventually he opened the cover he pointed out that it contained nothing except three pieces of blank paper, accused the clerk and others of having stolen his money, despatched a telegram to the Subdivisional Magistrate of Barrackpore complaining that his remittance of Rs. 900 had been tampered with and only blank papers were found inside the cover and demanding an inquiry,

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lodged at the police-station a case against two persons unknown of theft of Rs. 900 from his insured letter, giving the details as three Government currency notes of Rs. 100 and 60 such notes of Rs. 10 and in addition made a long statement of claim to the Inspector of Post Offices. The postmaster of Naihati meantime wired to Chapra and after communication among themselves the postal authorities eventually made over the matter to the police of Saran. It was alleged that the petitioner had not enclosed the notes for Rs. 900 in his letter and that his claim against the post office was entirely false. The Court framed charges under section 420 read with sections 511 and 419 of the Indian Penal Code and section 64 of the Post Office Act.

The case against him of attempt to cheat is found by the lower Courts to have been conclusively established. A particularly strong point against the petitioner was that three notes of Rs. 100 and sixty notes of Rs. 10 would have weighed at least 60 rattis whereas the original which he presented weighed only 17 rattis and was sent at a postal charge of Rs. 1-2-0 whereas the postal charge for a cover containing sixty-three notes would have been much more. Palpably the intention of the accused was fraudulently to secure compensation of or at least not exceeding Rs. 900 from the post office for his alleged loss. He was acquitted by the trial Court of the second and third charges.

The only points which Mr. S. P. Varma has advanced in support of the rule are: (1) that before this prosecution was entered upon his first information of theft should have been inquired into; (2) that he should have been prosecuted only under section 64 of the Post Office Act, VI of 1898, and not under the Indian Penal Code for an attempt to cheat, in which case he would only have been liable to a fine extending to Rs. 500; and (3) that the sentence is excessive. In my opinion there is no substance in any of these pleas.

As regards the first contention, the fact as to the case of theft is that it has been kept pending until the

disposal of the present prosecution. The practice in respect of prosecutions under section 211 is referred to in support of the contention that the petitioner ought not to have been prosecuted until his own case had been disposed of. But in the first place, the practice that a complainant or first informant should not be prosecuted under section 211 until his complaint or police case had been disposed of is not based on any statute and is merely a precautionary rule of safety in respect of a special class of criminal case. Then while a prosecution under section 211 might in certain circumstances be delayed or even set aside in accordance with this practice, the practice could per se be no ground for setting aside a conviction, for there is no illegality in the trial. The practice itself is also one which should be subjected to the strictest limitation. In the second place, there is no real analogy between a prosecution under section 211 and the prosecution to which the petitioner was subjected; for instance, where there are countercases in respect of a riot one of the cases must be taken up before the other and it is in the discretion of the Magistrate which is to be first inquired into. Similarly, whereas here the petitioner set out one version and the post office another it was in the discretion of the Magistrate to take up that case first which appeared to him to be true, from which it follows that the other may be kept pending. There is here no irregularity in any part of the trial and certainly there has been no resulting prejudice or failure of justice. The plea fails.

As to the second point, it is based on the principle that where a particular set of acts or omissions constitute an offence under the general law and also under a special law the prosecution should be under the special law and the decision in *Kuloda Prosad Majumdar v. Emperor* (1) is quoted in support. But the proposition is confined to cases where the offences are

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coincident or practically so. The difficulty in the appellants' way is that section 64 of the Post Office Act merely makes punishable

" a person who being required by the Act to make a declaration in respect of any postal article to be sent by post or the contents or value thereof makes in his declaration any statement which he knows, or has reason to believe to be false or does not believe to be true."

In the present case the charge of attempt to cheat contains additional ingredients supported by additional evidence beyond those required for a conviction under section 64 of the Post Office Act. Assuming, therefore, that section 64 is a minor offence to an attempt to cheat the post office, it will not be illegal to try an accused for the major offence only. Furthermore, it is by no means clear that an offence under section 64 has been committed. Reference has been made to the rules framed under section 32 of the Post Office Act with respect to the insurance of postal articles and in particular to rules 118, 125, 130 and 132; but though an article, which it is proposed to insure, must be presented at the post office with the amount for which the sender wishes it to be insured clearly written on the cover, as was done by the petitioner, that writing cannot be held to constitute the sender a person who is required by the Post Office Act or even by the rules to make a declaration within the meaning of section 64 in respect of the article. The facts that currency notes being sent by post are compulsorily insurable and that articles cannot be insured beyond the real value of their contents have no significance in this regard. In any case, under section 72 of the Post Office Act a Court cannot take cognizance of an offence punishable under section 64 except on complaint by the postal authorities and no such complaint was filed. For these reasons the second contention also cannot prevail.

As to the third contention, it is based upon the difference between the punishment under section 64 of fine which may extend to Rs. 500 and the punishment which has been awarded. But section 64 is obviously

no criterion for the punishment of the completed offence of attempt to cheat. When he insured his letter at Chapra for the purpose of defrauding the Government the petitioner had proceeded but a little way in the execution of his purpose. The sentence of one year's rigorous imprisonment is by no means excessive, particularly having regard to the fact that it was reduced in the Session Court by reason of "an earnest appeal for leniency."

The application is without merits and I would discharge the rule.

DHAVLE, J.—I agree.

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REVISIONAL CRIMINAL.

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CHARAN MAHTO

v.

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1929.

May, 6.

Code of Criminal Procedure, 1898 (Act V of 1898), sections 118 and 426(1)—inquiry under Chapter VIII, whether a trial—person called upon to furnish security under section 118, whether deemed to be convicted—section 426(1), whether applies to such person—order releasing on bail pending appeal by such person, whether legal.

A proceeding under Chapter VIII, Code of Criminal Procedure, 1898, dealing with "Security for keeping the Peace and for Good Behaviour" is an inquiry which, under the definition of that term, excludes a "trial".

*Criminal Miscellaneous Case no. 19 of 1929. From an order of P. N. Bhattacharya, Esq., officiating Additional Sessions Judge of Manbhum-Sambalpur, dated the 30th January, 1929, reversing an order of the District Magistrate of Manbhum, dated the 7th July, 1929.