CRIMINAL REVISION.

Before Mr. Justice Mya Bu.

MAUNG PO KYWE *v.* THE KING.*

1938
Dec. 2.

Magistrate or Judge, disability to try a case—Personal interest in the case—Substantial interest and bias—Criminal breaches of trust in office of District Superintendent of Police—Headquarters Magistrate as Treasury Officer—Obtaining payment from Treasury Office—No question of efficiency of work of Treasury Officer—Penal Code, ss. 409, 420, 468, 477A—Criminal Procedure Code, s. 556.

It is not a mere interest in a case or in the circumstances of the case which disqualifies a magistrate or a judge from trying a case but that which disqualifies him must be a substantial interest giving rise to a real bias and not merely to a possibility of a bias.

In the matter of Ganeshi, I.L.R. 15 All. 192 ; *The Queen* v. *Handsley*, 8 Q.B.D. 383 ; *Regina* v. *Meyer*, 1 Q.B.D. 170, referred to

The Headquarters Magistrate who tried the cases against the accused for offences under ss. 409, 420, 468, 477A of the Penal Code also functioned as Treasury Officer of the station. The alleged falsification of accounts, embezzlements forgery etc. which enabled the accused to obtain money from the Treasury, were perpetrated by the accused in the Office of the District Superintendent of Police or in connection with the books and papers of that office, and no question with reference to the efficiency of the work of the Treasury Officer or to the discharge of the work of his office was substantially involved in any of the cases.

Held, that the magistrate was not disqualified from trying the cases under s. 556 of the Criminal Procedure Code.

Tun Byu (Government Advocate) for the Crown.

MYA BU, J.—These eight revision cases have been instituted by means of one common petition filed by the applicant against the convictions and sentences passed on him in eight separate trials in the Court of the

* Criminal Revisions Nos. 387B to 394B of 1938 from the order of the Headquarters Magistrate of Kyaukpyu in Criminal Trial Nos. 61 to 68 of 1936.

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Headquarters Magistrate, Kyaukpyu, which convictions and sentences have been confirmed by the learned Sessions Judge of Arakan Division on appeal. Since there is just one petition common to all the eight revision cases in this Court and as they turn mainly on same points I propose to deal with them all in this judgment.

The applicant Maung Po Kywe was at all times material to these cases an accountant of the District Superintendent of Police's Office at Kyaukpyu. As such his duty was to prepare bills and treasury vouchers for withdrawal of money required for official purposes, submit them to the District Superintendent of Police or apparently in his absence to the Headquarters Assistant to the District Superintendent of Police and after they have passed and approved of them, the applicant would present the bills or vouchers at the Treasury and receive payment thereon either in cash or in the shape of cash orders. It was also his duty to make payments of sums which were to be made by the District Superintendent of Police or by the office. The offences with which the applicant was charged in the eight trials were offences alleged to have been committed in connection with the applicant's duties which also included the maintenance of accounts and cash registers including a register known as the G.R.R. which apparently means General Remittance Receipts.

In Criminal Trial No. 61 of 1936 the applicant was convicted on three charges of criminal breach of trust of Rs. 10-9-0 Rs. 15 and Rs. 10 respectively, which offences were committed on or about the 26th June, 17th October and 27th September 1933 respectively. The applicant was sentenced to suffer four months' rigorous imprisonment on each charge. The learned Magistrate not having ordered that they are to run

concurrently, these sentences are in law to run consecutively.

In Criminal Trial No. 62 of 1936 the applicant was charged with an offence of cheating under section 420 of the Penal Code in respect of a sum of Rs. 65-4-0, being part of the amount drawn on a contingent bill for which he dishonestly procured the signature of the District Superintendent of Police by deceitful means on or about the 20th July 1934. The applicant has been convicted on this charge and has been sentenced to undergo one year's rigorous imprisonment.

In Criminal Trial No. 66 of 1936 the applicant was charged under section 468 of the Penal Code for forging the signature of the District Superintendent of Police on a Treasury voucher for Rs. 397-8-0 purporting to be travelling allowance due to the District Superintendent of Police on or about the 25th June 1935. The applicant has been convicted and sentenced to suffer one year's rigorous imprisonment on this charge.

In Criminal Trial No. 67 of 1936 the applicant has been convicted of two charges under section 477-A for wilful and fraudulent alteration of " Rs. 28 " into " Rs. 280 " in a Treasury form and in a Treasury pass book and also of " Rs. 129-9-0 " into Rs. 409-9-0 in a copy of the G.R.R. form on or about the 8th May 1935 and for wilfully and fraudulently mutilating a portion of a folio in the Treasury pass book and pasting a blank sheet of the same book in its place on or about the 10th December 1935. The sentence passed against the applicant is that he is to undergo one year's rigorous imprisonment on each charge, the sentences to run concurrently.

In Criminal Trial No. 63 of 1936 the applicant was convicted on three charges of criminal breach of trust under section 409 of the Penal Code in respect of Rs. 7-8-0, 82-7-0 and Rs. 42 on or about the 14th

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September, 6th December and 20th July 1934 respectively and was sentenced to suffer four months' rigorous imprisonment on each charge, the sentences to run concurrently with those in Criminal Trial No. 61 of 1936.

In Criminal Trial No. 65 of 1936, the applicant was convicted of criminal breach of trust under section 409 of the Penal Code in respect of Rs. 217-4-0, 170-4-0 and Rs. 507-7-0 on or about the 22nd February 1936, 26th February 1936 and 11th March 1936 respectively. In this case the applicant was sentenced to suffer one year's rigorous imprisonment on each of the first two charges and two years' rigorous imprisonment on the third charge, the sentences to run concurrently with the result that the aggregate term of rigorous imprisonment which the applicant has been ordered to undergo in this case is two years.

In Criminal Trial No. 68 of 1936 the applicant has been convicted on three charges of forgery under section 468 of the Penal Code for forging the signatures of the District Superintendent of Police on Treasury vouchers on or about the 21st July 1934, 7th February 1935 and 23rd February 1935 respectively. He has been sentenced to undergo one year's rigorous imprisonment on each charge, the sentences to run concurrently.

In Criminal Trial No. 64 of 1936 the applicant has been convicted on three charges under section 420 of the Penal Code for dishonestly inducing the District Superintendent of Police to sign certain contingent bills which involved fraudulent claims and also a fictitious travelling allowance bill on the 26th November 1935, on the 20th December 1935 and on the 11th January 1936 respectively. In this case the applicant has been sentenced to suffer four months' rigorous imprisonment on each charge, the sentences to run

concurrently with the sentences in Criminal Trial No. 62 of 1936.

The aggregate term of rigorous imprisonment which the trial Court has ordered the applicant to undergo in these eight cases is seven years.

With reference to the merits of the cases, upon the facts there is hardly anything which can be urged as militating against the veracity of the witnesses for the prosecution or the accuracy of the statement of facts that they made. The evidence tendered by the prosecution in each and every one of these eight cases remains unrebutted, because the applicant adduced no evidence whatever. There is, therefore, no ground whatever for interference with the convictions upon the facts in revision. The charges are also quite appropriate and there is no apparent error or irregularity in the conduct of the trials.

Only two questions deserve consideration: one is that which arose upon the applicant's allegation that the trials were vitiated or rendered illegal by the fact that the learned Headquarters Magistrate was personally interested in these eight cases. It is to be borne in mind that this objection was not raised in the course of the trials. The Headquarters Magistrate who tried the cases also functioned as Treasury Officer of the station and as such was responsible for the conduct of the business in the Treasury. The alleged falsification of accounts, the embezzlements, the cheating and the forgeries were all alleged to have been perpetrated by the applicant in the District Superintendent of Police's office or in connection with the books and papers maintained, or issued from, there, and no question whatever with reference to the efficiency of the work of the Treasury Officer or to the discharge of the work of his office was substantially involved in any of the cases.

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Section 556 of the Criminal Procedure Code provides :

"No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested * * *."

The Headquarters Magistrate either in his capacity as the Treasury Officer or in any other capacity was not a party, and the question as to what effect should be given to the applicant's present objection depends on whether the learned Magistrate was personally interested in any of the cases. It is pointed out by Knox J. in *In the matter of the Petition of Ganeshi* (1) relying on *The Queen* v. *Handsley* (2) that it was not a mere interest in a case or in the circumstances of the case which disqualified a Magistrate or a Judge from trying a case but that which disqualified him must be "a substantial interest giving rise to a real bias and not merely to a possibility of a bias." In the case of *The Queen* v. *Handsley* (2) Lord Cave followed the principle enunciated in *Reg.* v. *Meyer* (3) to the effect that the interest—where not pecuniary—must be substantial so as to make it likely that the justice has a real bias and that the mere possibility of bias is not sufficient to disqualify. Adopting the principles thus laid down, I hold that there is no substance whatever in the applicant's objection on this point.

The other question which to my mind arises for consideration is with reference to the sentences passed in the cases. No doubt the offences were numerous, but when they are added up, they do not involve very great monetary value. It is true that the gravity of the offences of dishonesty is to be judged not only by the

(1) (1893) I.L.R. 15 All. 192. (2) 8 Q.B.D. 383.
(3) 1 Q.B.D. 170.

pecuniary value involved. However, one cannot shut his eyes to the fact that if the number of cases against the applicant were not so numerous the aggregate term of imprisonment that the applicant would have been sentenced to suffer would not be as high. While it will not be proper to deal with the applicant leniently, I consider that a term of five years' rigorous imprisonment in the aggregate will amply meet the ends of justice. Therefore, while maintaining the convictions and sentences, I direct that the sentences passed by the trial Court in Criminal Trial No. 68 run concurrently with the sentence passed in Criminal Trial No. 66 and the sentences passed in Criminal Trials Nos. 61 and 63 run concurrently with the sentences passed in Criminal Trial No. 65 of 1936.