

REVISIONAL CRIMINAL.

Before Ram Lall J.

M. A. KHAN—Petitioner,

versus

THE CROWN—Respondent.

Criminal Revision No. 849 of 1938.

1938

July 27.

Criminal Procedure Code (Act V of 1898), S. 260 — Summary procedure — whether inappropriate when a Government servant is under trial — Summary procedure or ordinary warrant case — a question of fact in each case.

The trial Magistrate passed an order that the accused-petitioners be tried summarily before him under s. 447 of the Indian Penal Code for the offence of committing a trespass on the property alleged to belong to North-Western Railway. The Additional Sessions Judge made a reference to the High Court recommending that the case be tried as an ordinary warrant case and not in a summary manner because (i) there were important points of law involved in the case and (ii) one of the accused-petitioners was a Government servant and therefore the summary procedure, though not illegal, was most inappropriate in his case.

Held, (i) that in the circumstances, the case was quite a simple one and the contest on the point in issue even assuming that it had an important bearing on the merits of the case, did not make the case one which should not be tried summarily.

(ii) that as a question of law pure and simple there was no force in the contention that a Government servant should not be tried summarily or that generally the summary procedure is inappropriate in cases in which Government servants are accused. It is a question of fact in each case whether one mode of trial or the other should be employed.

Case-law referred to.

Case reported by Mr. E. A. N. Mukarji, Additional Sessions Judge, Lahore, with his No. 29 of 1938.

L. CHAMAN, for Petitioner.

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NAZIR HUSSAIN, Assistant Legal Remembrancer,
for (Crown) Respondent.

Report of Additional Sessions Judge.

The accused, was ordered by Mr. A. Isar, exercising the powers of a Magistrate of the 1st Class in the Lahore District, dated the 8th April, 1938, under section 447 of the Indian Penal Code, to be tried summarily.

The facts of this case are as follows :—

The petitioners who are four in number are being tried by Mr. A. Isar, Additional District Magistrate, Lahore, under Section 447, Indian Penal Code, for having committed a trespass on the property alleged to belong to the North-Western Railway. The petitioners requested the trial Court to try the case as an ordinary warrant case. This prayer has been refused and from this order, the petition for revision has been filed.

The proceedings are forwarded for revision on the following grounds :—

I am of opinion that this case should be tried as an ordinary warrant case because important points of law are involved and one of the accused is a servant of the Railway. It has been held by the Lahore High Court that under such circumstances, summary procedure though legal is most inappropriate specially when Government servants, no matter what their rank is, are concerned as accused persons. This view was held in *Robert John Bradley v. Emperor* (1). In that case the accused was Station Superintendent appointed by the Municipality. His position was held to be analogous to that of a Government servant. The

position of a Guard in the North-Western Railway is certainly that of a public servant within the meaning of Section 21, Indian Penal Code.

For these reasons I submit the records to the High Court for necessary orders.

Orders of the High Court.

RAM LALL J.—This is a reference by the Additional Sessions Judge of Lahore in which he recommends, though he does not specifically say so, that the order of the Additional District Magistrate, Lahore, dated the 8th April, 1938, holding that the case in question was one which should be tried summarily, be set aside and the Additional District Magistrate directed to try it as an ordinary warrant case. The learned Additional Sessions Judge bases this recommendation on two considerations :—

- (a) That there are important points of law involved in the case; and
- (b) that one of the accused-petitioners is a government servant and, therefore, on the authority of *Robert John Bradley v. Emperor* (1), the summary procedure, though not illegal, was most inappropriate in his case.

The learned Additional Sessions Judge has not indicated what the difficult points of law are and Mr. L. Chaman, who appeared for one of the accused-petitioners vaguely suggested that this was a test case, without indicating how it became a test case and what obscure principle of law was intended to be put to the test. To my mind the case appears to be quite simple. The only point of law that has been only hinted at is that the trespass, if any, was committed not on railway

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land but on land belonging to the P. W. D. I am unable to see how a contest on this point, even assuming that it has an important bearing on the merit of the case, makes this case one which should not be tried summarily.

The next point urged both in the order of reference and by Mr. L. Chaman is that Mr. Miller, one of the accused-petitioners, is a railway guard and, therefore, should not be tried summarily. The learned Assistant Legal Remembrancer, who appeared in this Court and resisted the order of reference, has stated before me that Mr. Miller is no longer in railway service. Mr. Miller has not appeared before me to deny the statement and Mr. L. Chaman, who appeared for M. A. Khan, one of the accused in the case, said that though he had no definite information he was informed by the said M. A. Khan that Mr. Miller was under orders of suspension. Whether this be so or not, it does not appear to me to make any material difference in the view that I have taken of the matter.

As a question of law pure and simple, I am unable to assent to the proposition that a Government servant should not have been tried summarily or that generally the summary procedure is inappropriate in cases in which Government servants are accused. I can easily imagine cases in which, though Government servants are involved, the summary procedure would be more appropriate than an ordinary and protracted trial. It appears to me to be a question on the facts of each case whether one mode of trial or the other should be employed.

I have been referred to several decided cases by learned counsel for M. A. Khan in support of this

contention. In *Muhammad Abdullah v. The Crown* (1), it was held that the summary procedure was not proper where a lengthy enquiry extending over several months and the reading of an elaborate judgment to support the conclusions of the trial Court was necessary. I am in complete agreement with the views expressed in this case, but I am quite satisfied that the conditions mentioned in that authority do not exist in the present case.

In *Robert John Bradley v. Emperor* (2) there were several grounds on which it was held that trial by summary procedure had caused prejudice to the accused in that case. That case was originally before a Magistrate of the second class and was transferred to the file of the Additional District Magistrate without notice to the accused who was then tried summarily. The accused was not even informed that the Additional District Magistrate was proposing to try the case summarily, and eventually he was sentenced to a fine which was not appealable but would have been appealable if he had been tried by the Court which was originally seized of the case. It was held, therefore, that in fact the accused had been prejudiced by the procedure adopted. The Sessions Judge who reported the case to the High Court for orders on the above facts no doubt said in his order of reference that the summary procedure was most inappropriate where Government servants were involved. The learned Chief Justice who accepted the reference held that the summary procedure was inappropriate in that particular case—a case which was based more on prejudice caused to the accused than on the status of the accused. I do not understand Sir Shadi Lal, C. J., in accepting the reference in question to have assented to the broad pro-

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position that Government servants should as a rule never be tried by the summary procedure. Where prejudice can be shown different considerations arise. It was suggested that the accused in this case proposed to put in several documents and tender lengthy written statements in defence. I have no reason to suppose that the learned Additional District Magistrate will refuse to receive these documents, if relevant, or to put on the record and consider the written statements, however lengthy, so long as they are relevant to the case. If he does refuse, a case of prejudice will probably be made out and this Court will then no doubt interfere, if moved in the proper way.

In *Emperor v. Bashir* (1), a previous convict, who had already been bound down under section 109, Criminal Procedure Code, in a personal bond with one surety, was tried under Section 411, Indian Penal Code. It was held there that the consequences of a conviction to the accused and his surety would be so grave that a full hearing and record was desirable. I can see no such necessity in this case. It has been suggested that a conviction in the present case would involve the dismissal of Mr. Miller by the N.-W. Railway. This is not necessarily so, and, in any case, the N.-W. R. can terminate the services of a railway guard on one month's notice and discharge him without assigning further cause.

In *Emperor v. Rustomji Mancherji* (2) the main question was whether or not, the running of a flour mill constituted a nuisance and this was held to have been an issue which should have been fully tried, because in the decision of this issue a considerable body of evidence would have to be led. This case, too, does

(1) 1929 A. I. R. (All.) 267.

(2) 1921 A. I. R. (Bom.) 370.

not appear to me to help the accused-petitioners in any way.

I can see no indication on the record nor has any suggestion been made to me that the learned Additional District Magistrate will not deal with the case with fairness and independence and, in these circumstances, I am unable to accept the reference made by the learned Additional Sessions Judge.

The case will, therefore, go back to the Additional District Magistrate, Lahore, for disposal according to law.

A. N. K.

Revision dismissed.

APPELLATE CRIMINAL.

Before Ram Lall J.

MANZUR ALI—Appellant,

versus

THE CROWN—Respondent.

Criminal Appeal No. 419 of 1938.

Indian Penal Code (Act XLV of 1860), S. 409 — Criminal breach of trust — by Public Servant — Criminal Procedure Code (Act V of 1898), S. 197 — Government of India Act, 1935, S. 270 — Sanction for prosecution whether necessary — Sanction after institution of proceedings — effect of — Technical objections to procedure — Final test.

The accused, a Sub-Postmaster, was tried under s. 409, Indian Penal Code, for the offence of criminal breach of trust in respect of moneys entrusted to him by various depositors for credit into their Savings Bank Accounts. He was arrested on 4th August, 1937, and a Magistrate in the District granted him bail on the 5th August and about three months later a Special Magistrate was appointed. No sanction was obtained to the institution of the proceedings up to that time. The evidence in the case commenced on 24th January but a sanction

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