

31 C. 928 (=8 C. W. N. 907=1 Cr. L. J. 791.)

[928] CRIMINAL REVISION.

Before Mr. Justice Pratt and Mr. Justice Handley.

SAMIRUDDIN SARKAR v. NIBARAN CHANDRA GHOSE.*

[27th May, 1904.]

Criminal Breach of trust—Breach of trust of gross sum—Criminal Procedure Code (Act V of 1898), ss. 222, 234—Charge—Penal Code (Act XLV of 1860), s. 408.

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Where an accused person was charged under section 408 of the Penal Code with having committed criminal breach of trust in respect of a gross sum of money misappropriated by him within the period of one year and the charge not only specified the gross sum taken and the dates between which it was taken, but also set out the items, twenty-two in number, composing such gross sum, giving the dates and the amount alleged to have been misappropriated on each date:—

Held that the charge came within the provisions of clause 2 of s. 222 of the Criminal Procedure Code.

Held also that by specifying the items composing the gross sum the charge went beyond what was necessary and was to that extent favourable to the accused.

Emperor v. Gulsari Lal (1) followed.

[Foll. 93 All. 36=7 A. L. J. 897=11 Cr. L. J. 442=7 I. C. 186; 32 Cal. 1085=10 C. W. N. 51; 29 Mad. 558.]

RULE granted to the petitioner Samiruddin Sarkar.

This was a Rule calling upon the District Magistrate of Rangpur to show cause why the conviction of the petitioner under s. 408 of the Penal Code should not be set aside and a new trial ordered on the ground—

(1) that the trial should have been confined to three instances of the alleged misappropriation occurring within the period of one year,

(2) that the Sessions Judge did not appear to have given due consideration to the allegation of the accused that the receipts were tampered with by the ryots and to the fact that only one witness gave evidence regarding each receipt.

[929] The petitioner, who was the teshildar of one Bepin Chandra Roy Chowdhury, collected Rs. 103 by way of rent on behalf of his master from his master's tenants, for which sum he granted to the tenants certain rent receipts. On each of these receipts there were two columns, one for current rent and another for rent which was in arrear. The petitioner collected both the rents from the tenants, but credited only the current rents to his master and misappropriated the rest.

The petitioner was tried by the Deputy Magistrate of Rangpur and convicted under s. 408 of the Penal Code and sentenced to undergo six months' rigorous imprisonment. There were 23 items, which formed 23 acts of criminal misappropriation for which the petitioner was indicted; of these, 22 fell within the period of one year, and one beyond it. At the time of framing the charge the trying Magistrate excluded this last item, and charged the petitioner in accordance with the provisions of clause 2 of s. 222 of the Criminal Procedure Code with having criminally misappropriated Rs. 67 based upon 22 acts falling within the period of one year.

* Criminal Revision No. 482 of 1904; against the order passed by K. N. Roy, Sessions Judge of Rangpur, dated the 5th of April 1904, affirming the order passed by Bepin Behari Banerjee, Deputy Magistrate of Rangpur, dated the 5th of March 1904.

(1) (1902) I. L. R. 24 All. 254.

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The charge recited that the petitioner realized by certain rent receipts, 23 in number, the sum of Rs. 103, of which the petitioner misappropriated the sum of Rs. 67 realized by 22 of the said rent receipts within the period of one year, the dates and the amount misappropriated on each date being specified in the charge. The petitioner appealed against his conviction to the Sessions Judge of Rangpur, who on the 5th April 1904 dismissed the appeal.

The *Deputy Legal Remembrancer* (Mr. Douglas White) for the Crown. The charge in this case comes within the provisions of clause (2) of s. 222 of the Criminal Procedure Code. Under that clause, where an accused person is charged with criminal breach of trust it is only necessary to specify in the charge the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, and a charge so framed is deemed to be a charge of one offence within the meaning of s. 234 of the Code. It is not necessary to specify particular items or exact dates. In this case [930] the petitioner is charged with having committed criminal breach of trust with respect to the gross sum of Rs. 67 realized by 22 rent receipts within the period of one year. That under clause (2) of s. 222 of the Code is a charge of only one offence. In his charge the Magistrate need only have given the dates between which the sum of Rs. 67 had been misappropriated; instead of that he has given the date of each receipt and the amount misappropriated on each date, that is to say, he has given more particulars than was necessary to the accused. This act instead of prejudicing the petitioner would be greatly in his favour, inasmuch as it must materially help him in his defence. The point taken in this case was recently decided by the Allahabad High Court in the case of *Emperor v. Gulzari Lal* (1). There Stanley, C. J., held in a case similar to this one, where the items composing the aggregate sum were specified in the charge and were more than three in number that the charge was quite legal and not against the provisions of s. 234 of the Criminal Procedure Code.

Mr. K. N. Sen Gupta (Babu Jnanendra Nath Sarkar with him) for the petitioner. The petitioner has been tried in one trial on more than three charges and under s. 234 of the Code the trial is illegal. See Privy Council case of *Subrahmania Ayyar v. King-Emperor* (2). The petitioner has been greatly prejudiced in this trial, as he as in fact been tried at one trial for having criminally misappropriated no less than 22 specific sums of money. Clause (2) of s. 222 of the Code was never intended to apply to such a case.

That clause was intended to apply to a case where the prosecution could only show that a gross sum had been embezzled by the accused within the period of one year, and where the prosecution are unable to state that any particular sum had been misappropriated on any particular date, as in the case of a running account where the particular terms of misappropriation cannot be traced.

That clause was never intended to apply where the particular items misappropriated can be traced. In such a case s. 234 of the Code applies, and the accused can only be tried in one trial with respect to three of such items.

Therefore under the circumstances I submit the Rule should be made absolute, as the charge is clearly illegal.

[931] PRATT AND HANDLEY, JJ. This is a Rule calling upon the

(1) (1902) 1 L. R. 24 All. 354.

(2) (1901) 1 L. R. 25 Mad. 61.

District Magistrate to show cause why the conviction of the petitioner under section 408 of the Indian Penal Code should not be set aside, the first ground being that the trial should have been confined to three instances of alleged misappropriation occurring within the period of one year.

The charge recites that the accused realized by certain rent receipts, 23 in number, the sum of Rs. 103, of which the accused misappropriated the sum of Rs. 67. We think such a charge comes clearly within the provisions of clause (2) of section 222 of the Code of Criminal Procedure. By specifying the rent receipts the charge went beyond what was necessary, and was to this extent favourable to the accused, because it gave him an opportunity of meeting the accusation regarding the misappropriation of a gross sum of Rs. 67. The case of *Empress v. Gulzari Lall* (1) is in point and supports this view of the matter.

The second ground is that the Sessions Judge does not appear to have given due consideration to the allegations of the accused that the rent receipts were tampered with by the ryots and to the fact that only one witness gave evidence regarding each receipt.

It now appears that the rent receipts bear no sign of being tampered with, and that they are supported by other evidence besides that of the tenants to whom the receipts were granted. As has been pointed out by the Deputy Magistrate in his explanation, the witness Bholanath proved certain receipts. Sheriatulla Munshi, who knows the handwriting of the accused, proves it upon ten of the receipts.

Under the circumstances we see no reason to interfere. The Rule is discharged, and the prisoner must surrender to his bail in order to serve out the remainder of his sentence.

Rule discharged.

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[932] APPELLATE CIVIL.

Before Mr. Justice Geidt and Mr. Justice Mookerjee.

AMIRULLAH MAHOMED v. NAZIR MAHOMED.*

[24th, 28th June and 5th July 1904.]

Ejection—Under-ryat—Notice—Trespass—Right of occupancy—Bengal Tenancy Act (VIII of 1885), ss. 49 (b), 167.

An under tenant, who is not an occupancy ryat, cannot be ejected by the land-lord without the notice prescribed by s. 49 (b) of the Bengal Tenancy Act in order to take *khas* possession of the holding.

Peary Mohun Mookerjee v. Badul Chandra Bagdi (2) distinguished.

[Appr. 34 C. 104=3 C. L. J. 155; 13 C. W. N. 913=2 I. C. 654; Dist. 2. C. L. J. 570; 25 I. C. 741; Foll. 17 C. W. N. 781=18 I. C. 249; Ref. 46 Cal. 766; 19 C. W. N. 1077.]

SECOND APPEAL by Amirullah Mahomed, the defendant No. 1.

The plaintiff, Nazir Mahomed, brought this suit for recovery of *khas* possession of the disputed lands by evicting the defendants Amirullah Mahomed and others. One Gomai Nassya held an occupancy holding under Roop Mohan, a permanent tenure-holder. Gomai sublet the lands comprised in the holding to the ancestor of the present defendants, but

* Appeal from Appellate Decree No. 1326 of 1903, against the decree of Akhoy Kumar Chatterjee, Subordinate Judge of Jalpaiguri, dated May 18, 1903, reversing the decree of Satish Chandra Biswas, Munsif of Jalpaiguri, dated June 14, 1902.

(1) (1902) I. L. R. 24 All. 254.

(2) (1900) I. L. R. 28 Cal. 205.