

We have the evidence of one witness, who says that he was for some months on terms of great intimacy with the deceased, and on the previous afternoon he was seen by the other wife of the accused, who told her husband of it. This is said to be the cause of the murder. We are not prepared to accept this uncorroborated evidence of Maham Sheikh. The case therefore is one only of grave suspicion, but it is not one upon which we should be justified in convicting the accused. We therefore direct that he be acquitted and released.

D. S.

1902

EMPEROR
v.
NURI
SHEIKH.

Before Mr. Justice Stevens and Mr. Justice Harington.

EMPEROR

v.

PREO NATH CHOWDHRY.*

1902
March 7.

Criminal breach of trust by servant—Papers ordered to be destroyed—Property—Appropriation of papers by servant—Penal Code (Act XLV of 1860) ss. 95 and 403—Criminal Procedure Code (Act V of 1898) s. 432.

The accused, a servant, was ordered by his employers in Calcutta to take certain bags of papers and forms belonging to them to their yard in Garden Reach and there to burn and destroy them. Instead of doing this the accused brought some of them to Bow Bazar in Calcutta.

Held, that the act of the accused did not amount to criminal breach of trust under s. 408 of the Criminal Procedure Code. *Empress v. Wilkinson* (1) followed.

Held, also, that s. 95 of the Penal Code has no application, unless the act in question would amount to an offence under the Code, but for the operation of that section.

THE accused Preonath Chowdhry was in the service of Kilburn & Co., Agents of the India General Steam Navigation Company at Calcutta. He was ordered by his employers to take several bags of papers and forms belonging to the Company to Garden Reach, where they had a yard, and there to burn and destroy the papers. The accused instead of destroying the papers brought some of them to Bow Bazar in Calcutta.

* Criminal Reference No. 1 of 1902, made by T. A. Pearson, Esq., Chief Presidency Magistrate of Calcutta, dated the 19th of February 1902.

1902

EMPEROR
 v.
 PRED NATH
 CHOWDHRY.

The accused was sent up by the police on a charge under s. 408 of the Penal Code before an Honorary Presidency Magistrate, who under s. 432 of the Criminal Procedure Code referred the following point of law to the High Court:—

The facts are shortly these. The defendant was sent up by the police on a charge under s. 408 of the Indian Penal Code. The defendant was in the service of Messrs. Kilburn & Co., Agents of the India General Steam Navigation Company. He was ordered by his masters to burn a few bags of papers and forms, belonging to the Company. The order he received to the effect was to take them to Garden Reach, where the Company had a yard, and there to burn and destroy the papers. The defendant instead of destroying them brought some of them to Bow Bazar. It seems to me that the defendant disobeyed the order of his masters and converted the papers to his own use. The witness, Mr. Bruce, who is also a servant of the Company says that the papers have no value to the firm, but have a great value to any designing man who might use them for the purpose of committing forgery. I accept this as true.

Having regard to s. 95 of the Indian Penal Code and *Empress v. Wilkinson* (1), did the defendant commit any offence under s. 408 of the Indian Penal Code?

Babu Abulya Charan Bose for the accused.

STEVENS AND HARRINGTON JJ. This is a reference under s. 432 of the Code of Criminal Procedure made by one of the Honorary Presidency Magistrates.

The defendant was in the service of Messrs. Kilburn & Co., and he received from his employers some bags of waste paper with an order to take them to the Company's yard at Garden Reach and there to burn and destroy the papers. The defendant instead of destroying the papers brought some of them to Bow Bazar. The Honorary Magistrate is of opinion that the defendant disobeyed the orders of his masters and converted the papers to his own use. He adds that, though the papers are of no value to the firm, they might be misused by designing persons for the purpose of committing forgery.

The question which the learned Magistrate refers to us is, "having regard to s. 95 of the Indian Penal Code and the case of the *Empress v. Wilkinson* (1), did the defendant commit any offence under s. 408 of the Indian Penal Code?"

We think that s. 95 of the Indian Penal Code would have no application, unless the act in question amounted to an offence under the Code, but for the operation of that section.

(1) (18932) C. W. N. 216

As regards the question whether the act committed in itself amounted to an offence under s. 408, we think that the case is closely analogous to that of the *Empress v. Wilkinson* (1), to which the learned Honorary Magistrate refers, and in accordance with the view expressed in that case we hold that the act of the defendant did not amount to criminal breach of trust.

Let this answer be returned to the Honorary Magistrate.

D. S.

CRIMINAL REFERENCE.

Before Mr. Justice Prinsep and Mr. Justice Stephen.

EMPEROR

v.

MATHURA PRASAD.*

1902

Feb. 6.

Building—Commencement of second storey to house—Rebuilding house—Alteration—Encroachment—Whether permission from Municipality necessary—Order for demolition of addition—Bengal Municipal Act (III of 1884) ss. 175, 235, 236, 237, 238, and 273—Criminal Procedure Code (Act V of 1898) ss. 438 and 439.

The accused commenced building a second storey to his house without permission of the Municipality. He was convicted under s. 273 (1) of the Bengal Municipal Act of 1884, and, in addition to a sentence of fine, the Magistrate as Chairman of the Municipality in the same order directed the demolition of the addition made to the house.

Held, that the whole order was illegal. The case did not come under s. 273 (1) of the Act, and there was no necessity for the accused to have obtained permission.

In this case the Municipal Overseer of the Samastipur Municipality reported to the Chairman that the accused Mathura Prasad had made an addition to his house by commencing to build an upper storey. The Chairman sanctioned the prosecution of the accused, and simultaneously in his capacity as Subdivisional Magistrate signed an order summoning the accused. The accused was subsequently tried by another Subdivisional Magistrate and convicted under s. 273 (1) of the Bengal Municipal Act of 1884, and sentenced to a fine. The accused was also in the same order directed to demolish the addition made to his house.

(1) (1898) 2 C. W. N. 215.

* Criminal Reference No. 342 of 1901, made by E. P. Chapman, Esq., Sessions Judge of Tirhoot, dated the 12th December 1901.