CRIMINAL REVISION.

Before Mr. Justice Stephen and Mr. Justice Holmwood.

1908
May 28.

DEBI PRASAD BHAGAT
v.
NAGAR MULL.*

Criminal breach of trust—Dishonest conversion—Partnership—Liability of a partner to account for partnership money—Penal Code (Act XLV of 1860), s. 406.

A partner is entitled to be called upon for an account of the expenditure of the money, which he has received, and it is open to him to spend the money received by him and to account for it in dealing with the partnership.

Where it was not satisfactorily made out that this was not done, and could not be made out in the absence of a proper demand for accounts, it was *held* that there was no dishonest conversion, which would justify his conviction under s. 406 of the Penal Code.

THE petitioner was a broker, who carried on business under the name of *Debi Prasad, Lachmi Narain*, and the opposite party, the complainant, had a piece-goods business in Cross Street. The prosecution story was as follows:—In October 1907 the petitioner proposed to do a joint business in rice, which proposal was accepted. It was then agreed that each party should contribute Rs. 5,000, and the complainant paid his share on the 27th November 1907. A week later the accused went to the complainant's *guddi*, and, on being questioned about the rice, stated that he had purchased it and stored it at Chaibassa, and that he would send the accounts as soon as he reached his office. The accounts were not sent, and the complainant, after waiting a week, made inquiries at Chaibassa and found that no rice had been bought by the petitioner.

It was in evidence that a thousand-rupee note, which the complainant had given the petitioner, was paid by the latter on the 29th November to the Burra Bazar branch of the Bank

* Criminal Revision No. 458 of 1908, against the order of D. Swinhoe, 2nd Presidency Magistrate of Calcutta, dated the 23rd April, 1908.

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of Bengal on account of the purchase of silver by the petitioner's firm. He never returned the money, nor did he render any accounts to the complainant.

The petitioner was charged under s. 406 of the Penal Code, and pleaded not guilty. He admitted the receipt of the money, but stated that the story about the rice business was false, and that the money was given him to buy silver bars for the complainant. He further said that he had purchased silver bars at the Burra Bazar branch of the Bank of Bengal, but that, as the business proved unprofitable, the complainant repudiated all dealings in silver and invented the rice story. He called several witnesses to prove his story.

The Second Presidency Magistrate, who tried the case, disbelieved the petitioner's story. He laid stress in his judgment on the facts that the accused could not account for Rs. 4,000 and that, if the petitioner had bought the silver bars for the complainant, he did not make them over to him, but had sold them to his witness Rid Karan.

The petitioner was found guilty and sentenced to six months' rigorous imprisonment.

Mr. Chowdhry (with him *Babu Provash Chunder Mitter*) showed cause. The only question in the case is one purely of facts. The High Court does not usually interfere on revision on the facts. The main question in the case is one of dishonest conversion. The conduct of the accused shows a dishonest intention. He told a falsehood about having purchased and stored rice at Chaibassa, and he promised to render an account, when he got to his office, but failed to do so.

Mr. P. L. Roy (with him *Mr. E. P. Ghose* and *Babu Atulya Charan Bose*) for the petitioner. As a matter of general practice the Court does not weigh and test the evidence on revision, but it has been held that very great laxity in weighing and testing evidence by the Lower Court is a ground for interference on the facts: *Queen-Empress* v. *Shekh Saheb Badrudin*(1), *Ram Brahma Sircar* v. *Chandra Kanta Shah*(2), *Keshab Chunder Roy* v. *Akhil*

(1) (1883) I. L. R. 8 Bom. 197. (2) (1894) I. L. R. 21 Calc. 931.

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Metey(1), *Balmakand Ram* v. *Ghansamram*(2). Here manifest injustice has resulted from the manner in which the case has been dealt with by the learned Magistrate. He has given no good reason for disbelieving the defence, which was supported by an Honorary Magistrate. The only reason for the conviction of the petitioner is, that he has not shown that the greater portion of the money received was used in the silver transaction. This is an inadequate reason for the conclusion that the accused is guilty of criminal breach of trust. In any case, whether the money was given for rice or for silver business, as a partner he is only liable to render an account of the partnership money. No such account has been called for.

STEPHEN AND HOLMWOOD JJ. In this case the petitioner before us has been convicted of criminal breach of trust under section 406 of the Indian Penal Code, and a Rule has been granted to show cause, why that conviction should not be set aside on the ground that the judgment of the Presidency Magistrate, before whom he was convicted, does not show any criminal intention on the part of the accused.

The facts of the case are that, according to the story of the complainant, he and the accused entered into a contract whereby, on the 27th October 1907, the complainant gave the accused a sum of five thousand rupees which, added to a like sum contributed by the accused, was to be spent in a rice business. This contract established a partnership between these two persons for the purpose of buying rice. The accused on the finding before us did not fulfil his contract, and made an untrue statement when asked as to the expenditure of the money he had received. The offence of conversion is alleged to have been committed between the 29th November 1907, when he received the money, and the 3rd or 4th December, when he made his statement just mentioned to the complainant. But considering that there was a partnership existing at this time, the accused was plainly entitled to be called upon for an account of the expenditure of the money, which he had received, for, as the contract was one of partnership and not

(1) (1895) I. L. R. 22 Calc. 998. (2) (1894) I. L. R. 22 Calc. 391.

of bailment, it was open to the accused to spend the money he had received and to account for it in dealing with the partnership. It is not satisfactorily made out that this was not done, and cannot be made out in the absence of a proper demand for an account. We are, therefore, of opinion that no dishonest conversion has been found, which would justify the conviction under section 406 of the Indian Penal Code. Further, we find in the judgment a case made out for the accused, which is apparently a very strong one. It is disbelieved apparently by the Presidency Magistrate for a very insufficient reason, namely, that, whereas the accused says that the contract was to deal in silver, not in rice, and whereas he did deal in silver at this time, he has not shown that the greater part of the notes he received from the complainant was used in his silver transaction. We can only say that, if this was, as it seems to have been, the Presidency Magistrate's reason for attaching no weight to the story put forward by the defence, it was a very insufficient one. At the same time the complainant's story is left in a state of very great vagueness, and has not been proved with any of that detail, which was necessary, before the Presidency Magistrate could give the credence, which he has apparently given to it.

Under these circumstances, we consider that the conviction is improper, and the Rule is made absolute.

Rule absolute.

E. H. M.

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