CRIMINAL REVISION.

Before Harington and Coxe JJ.

1913

April 8.

ASGAR ALI BISWAS

v.

EMPEROR.*

Charge—One head of charge relating to several distinct offences—Misjoinder —Illegality of trial—Criminal Procedure Code (Act V of 1898), s. 233.

A single charge relating to several distinct offences is illegal. Under s. 233 of the Criminal Procedure Code there should be a separate head of charge for each such offence.

A charge, under s. 409 of the Penal Code, of criminal breach of trust in respect of a total sum of 10 annas 6 pies, to wit, a sum of 4 annas 6 pies collected from A between certain dates in one year and a sum of 6 annas collected from B between other dates in the same year, is bad for misjoinder; and a trial held on such a charge is illegal.

Subrahmania Ayyar v. *King-Emperor* (1) followed.

THE petitioner was the collecting panchayat of Union VI of thana Domkal, in the district of Murshidabad, and as such it was his duty to make collection of the chowkidari-tax within the Union. It appeared that, on the report of the President of the Union, a local inquiry was made as to the petitioner's collections, and subsequently the District Magistrate of Murshidabad took cognizance, under section 190 (*1*) (*c*) of the Criminal Procedure Code, of a charge of criminal breach of trust against him and made over the case to Babu Hem Chandra Chatterji, a Deputy Magistrate of Murshidabad, who framed a charge with one head against him as follows:—

"That you, between the 15th *Joisto* 1318 B. S. (29th May 1911) and the 18th *Aghran* 1318 B. S. (4th December 1911), at Ramna Etharnagar,

* Criminal Revision, No. 239 of 1913, against the order of E. Panton Sessions Judge of Murshidabad, dated Jan. 2, 1913.

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being entrusted with the collections made on account of chowkidari-tax, in your capacity of a public servant, as a collecting panchayat of Union VI of thana Domkal, dishonestly misappropriated a total sum of 10 annas 6 pies to wit, a sum of 4 annas 6 pies collected from Atal Mistri, between the 15th *Joisto* 1318 (29th May 1911) and the 14th *Bhadra* 1318 (31st August 1911), and a sum of 6 annas collected from Rajani Nath between the 20th *Assar* 1318 (5th July 1911) and the 18th *Aghran* (4th December 1911), and thereby committed an offence under section 409 of the Penal Code..."

The petitioner was convicted under the section specified in the charge, and sentenced to one year's rigorous imprisonment and a fine of Rs. 100. On appeal, the Sessions Judge of Murshidabad, by his order dated the 20th January, 1913, acquitted him in respect of the smaller sum, on the ground that the prosecution had failed to prove that it had been collected by him, but upheld the conviction as to the other amount, and reduced the sentence to six months' rigorous imprisonment and a fine of Rs. 50.. The petitioner thereupon moved the High Court and obtained the present Rule.

Babu Dasarathy Sanyal (with him *Babu Upendra Nath Bagchi*), for the petitioner. Under section 233 of the Code the Magistrate should have framed two separate charges, as the act of misappropriation of the sum paid by A is distinct from that in respect of the amount paid by B, and the accused committed really two different offences. The conviction is bad in law: see *Subrahmania Ayyar* v. *King-Emperor* (1).

No one appeared for the opposite party.

HARINGTON J. This is a Rule calling on the District Magistrate to shew cause why the conviction and sentence should not be set aside on the third ground mentioned in the petition. The third ground is that the joinder of two distinct offences under one charge is an illegality which is fatal to the proceedings.

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HARINGTON J.

We have looked at the charge, and I agree that the charge, as it stands, is an illegal charge, having regard to section 233 of the Criminal Procedure Code. There are two distinct offences, and for each offence a separate charge ought to have been made. Though certain provisions in the Code provide that more than one charge may under certain circumstances be tried together, that does not justify the inclusion in one charge of several distinct offences, and as that is an illegality, in my opinion, the Rule must be made absolute and the conviction set aside.

With regard to the future, it will be a matter for the Magistrate to consider whether this man ought to be put on his trial again or not. It was stated in the course of the argument that he has suffered three months' imprisonment. That would be one matter which the Magistrate will take into consideration. In my view, the matter should be left to his discretion to decide whether he should prosecute the man further or not.

COXE J. I agree that the Rule should be made absolute, though with great reluctance, as it is perfectly clear that the defect in the charge has never made the least difference to the petitioner. We are bound, however, by the decision in *Subrahmania Ayyar* v. *King-Emperor* (1), and the charge framed being illegal, the conviction cannot be sustained.

I agree also in leaving it to the Magistrate to decide whether the proceedings against the accused should continue, and I do not desire to hamper him in any way in dealing with the question.

E. H. M. *Rule absolute.*

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