

Emperor Vs. Lalji Bhanji

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Court : Mumbai

Decided On : Feb-11-1912

Reported in : (1912)14BOMLR306

Judge : N.G. Chandavarkar and ;Batchelor, JJ.

Appeal No. : Criminal Application for Revision No. 358 of 1911

Appellant : Emperor

Respondent : Lalji Bhanji

Judgement :

N.G. Chandavarkar, J.

1. The petitioner Lalji Bhanji was accused No. I at the trial before the Magistrate, and the charge against him was, first, under Section 408 of the Indian Penal Code, and, secondly, under Section 465 of the said Code. The first charge was that he in or about the months of January and February 1911, at Viramgaum, being a clerk of Messrs. Byramji and Ardeshir, and being entrusted with Rs. 204-4-0 in such capacity, did commit criminal breach of trust punishable under Section 408 of the Indian Penal Code. The second charge was that he in or about January, February and March 1911, at Viramgaum, did make false documents, viz., the transshipping register, daily reports and monthly bills (Exhibits E. F. and G.), intending that the documents forged shall be used for the purpose of committing the offence of

criminal breach of trust by a servant. He was convicted by the Magistrate of both these offences. But in appeal the learned Sessions Judge confirmed the conviction on the first charge, and reversed that on the second charge upon the ground that the petitioner ought not to have been tried for both these offences, because they were not of the same kind. The learned Sessions Judge held that the trial on the second charge was illegal. It is now urged before us by Mr. Shah, the learned Pleader for the petitioner, that the whole trial was illegal and void because the petitioner had been tried for two offences of distinct kinds; and that the illegality admitted by the learned Sessions Judge as to the second charge, tainted also the trial on the first charge. In support of his contention Mr. Shah relies upon the decision in *Emperor v. Nathalal Bapuji* (1902) 4 Bom. L. R. 413, which has been followed by the Madras High Court in *Kasi Viswanathan v. Emperor* ILR (1907) Mad. 828. But in our opinion those two decisions are distinguishable from the present case. In the Madras case the accused had been tried and convicted on a charge which alleged three distinct acts of criminal breach of trust under Section 409, and three distinct acts of falsification of accounts, which were offences under Section 47; A of the Indian Penal Code. That is to say, there were six distinct offences in all, and the learned Judges who decided that case held that Section 235 did not cover the case because the falsification of accounts connected with one act of criminal breach of trust could not be said to have formed part of the same transaction with the other acts of criminal breach of trust. They proceeded to remark in their judgment as follows:-' Such act of criminal breach of trust may, no doubt, be said to form part of the same transaction with the falsification of accounts made with a view to conceal that act of breach of trust.' But with reference to that they said that the principle could not apply because in the case before them the charge did not form part of the same transaction with the other breaches of trust and falsifications which were committed on altogether different occasions. That was also the principle of the ruling of this Court in *Emperor v. Nathalal Bapuji* (1902) 4 Bom. L. R. 413. There also there were several acts of criminal breach of trust and falsification of accounts, some of them unconnected with the rest, and charged against the accused.

2. The present case falls within Clause (I) of Section 235 of the Code of Criminal Procedure. Here there was only one act of criminal breach of trust charged against

the petitioner, and the falsification of accounts charged was an offence which formed part of the transaction as to the criminal breach of trust, because the accounts alleged to have been falsified related to the act charged under Section 408, Indian Penal Code. Therefore, they were all offences connected with one another and arising out of the same transaction.

3. For these reasons the conviction and sentence must be confirmed and the rule discharged.

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