

**Emperor Vs. Laxman**

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**SooperKanoon Citation :** [sooperkanoon.com/353096](http://sooperkanoon.com/353096)

**Court :** Mumbai

**Decided On :** Sep-01-1926

**Reported in :** AIR1927Bom38

**Appellant :** Emperor

**Respondent :** Laxman

**Judgement :**

**Shah, J.**

1. This is a reference by the District Magistrate of Poona in respect of an order made by the First Class Magistrate of Poona discharging the accused on the ground that that Court had no jurisdiction to try the case. It may be mentioned that on this reference a rule was issued to the accused. The Government Pleader has appeared in support of the reference, and we have heard him. We have considered the point arising on the facts which are briefly these:

The case for the prosecution was that the accused hired a cycle at Poona on June 11, 1925, for six hours, but, instead of returning the same in accordance with his written contract, he took it out to Yeola, in the Nasik District, and deposited it with one Damu Namdeo Sali as a security for an advance of Rs. 6. On these allegations the accused was charged with criminal breach of trust punishable under Section 406, Indian Penal Code.

2. The learned Magistrate held that he had no jurisdiction and he gave the following reasons:

It is clear that the actual disposal was effected at Yeola in Nasik District. With the nature of the disposal I am not now concerned. The important question is whether any Poona Magistrate has jurisdiction to try the case simply because the contract for hire was made in the Poona City.

3. After referring to Section 181(2), Criminal P.C, the learned Magistrate observes:

In my humble opinion no Poona Magistrate has jurisdiction and the case must be tried at Yeola.

4. Accordingly, he made an order discharging the accused, leaving it to the authorities or the party concerned to file a complaint, if so advised, at the place where the property was said to have been, dishonestly disposed of. Section 181, Sub-section (2), provides:

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a. Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

5. This is a specific provision with regard to these two classes of offence and the Code gives jurisdiction not only to the Court where the offence was committed, but also to the Court within whose jurisdiction the property which is the subject of the offence was received or retained by the accused person. The learned Magistrate says:

There is authority of more than one High. Court ruling referred to in the commentaries to the Criminal P.C, in support of my contention that I have not jurisdiction.

6. He has not expressly referred to any cases ; so we are not in a position to deal with the cases which the Magistrate might have in view. But some of the cases which possibly the learned Magistrate had in view have been referred to by the

learned Government Pleader. We do not think, however, that these reported cases afford any answer to the wording of Section 181, Sub-section (2). It is not essential, under Section 181, Sub-section (2), that at the time the property is said to be received or retained by the accused person he must have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference to it. It is enough for the purposes of the section if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the Magistrate of that place to try the case.

7. It may be said that, even if the property was received quite properly and innocently, at one place, and was subsequently dealt with at another place dishonestly by the accused so as to constitute a criminal misappropriation or a criminal breach of trust, under the wording of the section he would be triable at , the place where he received or-retained the property. No reported case has been brought to our notice, which can be said to conflict with this view. Out of the. cases cited to us it is sufficient to refer to *The Assistant Sessions Judge, North Arcot v. Ramaswami Asari* [1914] 38 Mad. 779 and *Emperor v. Ramratan* A.I.R. 1922 Bom. 49. They do not bear directly upon Section 181(2) but lend some support to the view which we take of Section 181(2).

8. We make the rule absolute, set aside the order of discharge, and direct the learned Magistrate to hear the complaint and dispose of it according to law.

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