

Queen-empress Vs. Kellie

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1895)ILR17All153

Judge : Aikman, J.

Appellant : Queen-empress

Respondent : Kellie

Judgement :

Aikman, J.

1. The case for the petitioner has been well argued by Mr. Ross Alston. The main ground relied on by the learned Counsel for the petitioner is that a conviction for criminal breach of trust on a general balance of account is bad in law.

2. In support of this he referred to Reg. v. Lloyd Jones 8 C. and p. 5488. In that case Aldbbson, B., observed: 'It is not sufficient to prove at the trial a general deficiency in account. Some specific sum must be proved to be embezzled, in like manner as in larceny some particular article must be proved to have been stolen.' The cases of Reg. v. Chapman 119 and K., 119, and Reg. v. Wolstenholme 11 Cox. Or. Ca. 313, were also relied upon.

3. The propriety of these rulings has been doubted even in England. With reference to the ruling in *Reg. v. Lloyd Jones*, the following remarks are made in *Roscoe's Criminal Evidence*, 10th edition, page 477: 'When a person is employed in the receipt and payment of money, it is almost impossible to prove anything more than a deficiency in account, and if the words of Alderson, B, in *Reg. v. Jones* 8 C. and p. 288, were to be taken in their strict sense, it would be impossible ever to procure a conviction for embezzlement when there were running accounts between the parties.' And the author goes on to suggest that there was in the case referred to some misapprehension of the principles of law applicable to the question. I would also refer to the case of *The Queen v. Lambert* 2 Cox. Cr. Ca. 309, decided in 1847. In that case, when the cash in the hands of the accused, an employ in the Customs Department, was checked, it was found to be short by 270 of the amount which, according to his books, ought to have been in his possession. The accused had by virtue of his employment both to receive and pay away money on account of Government. It was contended on his behalf that the charge could not be supported in the absence of evidence to prove the appropriation of any particular sum from any one person. Erle, J., said: 'I think that the offence is sufficiently made out, within the meaning of the statute, if the jury are satisfied that the prisoner received in the aggregate the amount with which he appears to have charged himself and that he absconded or refused, when called upon, to account, leaving a portion of the gross sum deficient. There would be constant failure of justice if I were to decide otherwise, since it is impossible in cases like the present, where a number of different amounts of money have been received, to specify which sum or sums or the part of which sum or sums have been embezzled.'

4. But, be the law in England what it may, I have no hesitation in holding that, according to Indian law, an accused person may be charged with criminal breach of trust in respect of a general deficiency, and that it is not necessary in all cases to charge the accused with the embezzlement of a particular sum received on a certain date from some particular person. It is enough if the accused person has sufficient notice of the accusation he has to meet, and that he had in the present instance.

5. To hold otherwise would, to use the words of Ekle, J., result in a 'constant failure of justice.' It was further argued by the learned Counsel for the petitioner, on the strength of the ruling in the case *Rex v. Edward Hodgson* 3 C. and p. 422, that, as the prisoner's accounts were not shown to be incorrect, there was therefore no embezzlement, but merely a default of payment. But it is not in respect of accounts that a charge is made in such cases; it is in respect of the disappearance of a certain sum of money. The accounts may be kept in a faultless manner whilst peculation is going on; on the other hand, it is possible to imagine that accounts may be kept in a slovenly manner and that there may be many omissions in them, even whilst any suspicion of dishonesty is negatived. In the case referred to by the learned Counsel it was said: 'If the prisoner regularly admits the receipt of the money, the mere fact of not paying it over is not felony. It is but matter of account.' In this case, however, there was something more than the mere fact of not paying over the balance.

6. It appears from the evidence of Mr. Tilemann and Mr. Sonderegger that when questioned as to this deficiency Kellie admitted that he had taken the money, and their evidence is borne out by the terms of a letter (Exhibit G) written by Kellie to Mr. Sonderegger on the 30th of August 1894.

7. The learned Counsel for the applicant also addressed the Court in mitigation of sentence. The punishment which has been sustained was a sentence of two years' rigorous imprisonment. Having regard to the circumstances of the case, I am of opinion that this punishment was not a bit too severe. This was not the case of an employee yielding on a solitary occasion to temptation. A large amount was embezzled, and it appears from the evidence of Mr. Sonderegger that Kellie admitted that peculation had been going on for some eighteen months. The nature of the defence set up by the applicant does not tell in his favour, as it amounted to an insinuation that the missing amount had been taken by Messrs. Tilemann and Sonderegger, an insinuation which I concur with the lower Courts in thinking to be baseless.

8. For the above reasons I reject the application and direct that the records be returned.

