

Emperor Vs. Ibrahim Khan

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Court : Allahabad

Decided On : Jun-29-1910

Reported in : 7Ind.Cas.186

Judge : Tudball and ;Chamier, JJ.

Appellant : Emperor

Respondent : ibrahim Khan

Judgement :

1. This is an application in revision filed by the Local Government seeking to have cancelled the order of the Sessions Judge of Meerut whereby he set aside the conviction and sentences passed by the Assistant Sessions Judge of that district, upon one Ibrahim Khan, in respect of an offence under Section 409, Indian Penal Code, and ordered a re-trial of the case. The question raised in the case involves the true construction of Clause (2), Section 222, Criminal Procedure Code.
2. The accused Ibrahim Khan was a naib daruga employed in the Meerut Cantonments, and the charge against him is that in that capacity he realised the total sum of Rs. 208-12 as grazing fees, from various persons who grazed cattle on the Cantonment grass lands, between the 1st July and 1st November 1909 and embezzled the same, failing to pay it into the Treasury.
3. The sum of Rs. 208-12 consists of some 18 items which the accused is said to have collected on dates (somewhat uncertain) between the 1st July and 1st

November 1909. Apparently he had no power to expend any money but it was his duty to pay it in as he collected it presumably daily. One charge in respect to the gross sum was framed against him, in view of the provision in Clause (2) Section 222, Criminal Procedure Code, and being committed for trial, he was found guilty and convicted by the Assistant Sessions Judge.

4. On appeal the Sessions Judge held that in view of the ruling reported in *Queen-Empress v. Kellie* 17 A. 153 and *Buddhu v. Babu Lal* 18 A. 116 and the Privy Council ruling in *Subramanya Ayar v. King-Emperor* 25 M. 61 : 11 M.L.J. 253 : 3 Bom. L.R. 540 5 C.W.N. 104 : 28 I.A. 257 the trial was an illegality in that the prosecution was able to prove the embezzlement of 18 specific items and, therefore, he should have been charged separately in regard to each item embezzled, there being in fact 18 separate offences. In this view he set aside the conviction and sentence and ordered a retrial. It is this order which we are now asked to set aside on revision. It is contended that in view of the plain language of Clause (2) of Section 222, Criminal Procedure Code, and the rulings of this Court and of the High Courts of Calcutta and Madras reported in *King-Emperor v. Gulzari Lal* 24 A. 254 : A.W.N. (1902) 44 *King-Emperor v. Ishtiaq Ahmed* 27 A. 69 : A.W.N. (1904), 165 : 1 Cr. L.J. 637 *Samiruddin Sarkar v. Nibaran Chander Ghose* 31 C. 928 : 8 C.W.N. 807 : 1 Cr. L.J. 791 *Satnarain Tewari v. Emperor* 32 C. 1085 : 10 C.W.N. 51 : 3 Cr. L.J. 138 *Thomas v. Emperor* 29 M. 558 : 5 Cr. L.J. 133 all of dates subsequent to the alteration of the law in 1898, the decision of the lower Court is incorrect and that the Sessions Judge has relied upon decisions which were passed prior to the Code of 1898.

5. Section 222 Clause (1) of the Code sets forth the particulars as to time, place and person which have to be entered in a charge sheet.

6. When the Code of 1898 became law, Clause (2) was added to the section. It runs as follows: 'When the accused is charged with Criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates and the charge so framed shall be deemed to be a

charge of one offence within the meaning of Section 234. Provided that the time included between the first and the last of such dates shall not exceed one year.'

7. The plain meaning of the above language appears to us to be that where a man in a certain capacity is entrusted from time to time with various sums of money and commits criminal breach of trust in respect thereto, he may be charged with an offence in respect to the gross sum so embezzled and it is not necessary to specify the particular items embezzled or the exact dates on which they were so embezzled and that a charge so framed shall be deemed to be a charge of one offence provided that the period within which such embezzlement has taken place is not more than one year.

8. Section 234 allows of the trial of an accused person at one trial in respect to three offences of the same kind committed within the space of 12 months. If the accused embezzled more than three separate specific items on specific dates, in the same capacity, within the period of 12 months, he could (under Section 234) be tried at one trial in respect to only three of such items, were it not for Clause (2) of Section 222 of the Code, which lays down that in such a case he may be charged in respect to the gross sum embezzled without specifying the particular items or exact dates and that such a charge shall be deemed to be a charge of one offence within the meaning of Section 234.

9. It is quite clear that the latter section is qualified by the former to a certain extent. Nor is there anything in language of Clause (2) Section 222 which goes to show that where particular items and exact dates can be specified, they shall be so specified and the section shall not apply and that the accused shall be charged and tried in respect to each item or set of three items.

10. This is the view taken of the meaning of this section in the case of King-Emperor v. Gudzari Lal 24 A. 254 : A.W.N. (1902) 44, and this was followed in the case reported in King-Emperor v. Ishtiaq Ahmed 27 A. 69 : A.W.N. (1904), 165 : 1 Cr. L.J. 637.

11. The same view was adopted by the Calcutta High Court in Samiruddin Sarkar v. Nibaran Chunder Ghose 31 C. 928 : 8 C.W.N. 807 : 1 Cr. L.J. 791, Satnarain

Tiwari v. Emperor 32 C. 1085 : 10 C.W.N. 51 : 3 Cr. L.J. 138 and by the Madras High Court in the case reported in Thomas v. Emperor 29 29 M. 558 : 5 Cr. L.J. 133.

12. While admitting that the weight of authority is against him, the learned counsel for the accused has pressed the contention that the Code of Criminal Procedure of 1898 amended the law in this matter simply with a view to set at rest the conflict of decision between this Court and the Calcutta High Court in respect to those cases in which the prosecution is able only to establish a general deficiency and has no means of proving the exact dates and particular items. Prior to 1898 this Court had held that where a general deficiency could be established the accused could be charged and convicted in respect thereto, {vide Queen-Empress v. Kellio 17 A. 153, Buddhu v. Babu Lal 18 A. 116}. The Calcutta High Court ruled otherwise in Queen-Empress v. Pursotam Das Morarjee 24 C.193

13. It is further contended that the Legislature did not intend to introduce any organic change in the law by enacting the Code of 1898 ; that the clause in question was intended to cover cases in which the accused, after receiving many sums at different times, has on a certain date embezzled the whole amount thus received or part of it, i.e., where there has been really only one act of embezzlement, and also cases of general deficiency where it is impossible to give particular items or specific dates. It is urged that Clause (2) controls Clause (1) and that an accused might be greatly prejudiced by being tried at one trial in respect to a thousand different items or more, embezzled within the 12 months on specific dates, by reason of the complexity of the case. The contention as to the intention of the Legislature may be a correct one, but we have primarily to look to the language used by the Legislature to ascertain its meaning and intention. Where that language is plain and unambiguous as in the present case, we are not allowed to look at extraneous matters and read other language into the section so as to give it a meaning which we may believe the Legislature intended to express.

14. Our attention has been called to the case of King-Emperor v. Kashinath Bagaji Sali 12 Bom. L.R. 226 : 5 Ind. Cas. 970 : 11 Cr. L.J. 337, in which it was held by Mr. Justice Chandravarkar that where there have been defalcations in respect of

different items in the course of 12 months, there the Court can try a man in respect of three offences by selecting different items combining those items into one lump sum and making the election so as to get three sums, the appropriation of each constituting¹ an offence itself. The decision may or may not be correct but we fail to see that it goes so far as to hold that all the sums may not be put together to form one gross sum and the accused charged in respect to the gross sum so arrived at; such a charge is clearly deemed to be charge of one offence within the meaning of Section 234 (vide Clause 2 of Section 222). If it goes as far as is contended before us, we cannot agree with it.

15. Nor can we see that the accused has in the present case been at all prejudiced at his trial.

16. In our opinion the order of the Sessions Judge is wrong. We allow this application, set aside his order and direct that the appeal be decided on its merits according to law.

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