

Emperor Vs. Kalka Prasad

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Court : Allahabad

Decided On : Nov-23-1915

Reported in : (1916)ILR39All42

Judge : Henry Richards, C.J.

Appellant : Emperor

Respondent : Kalka Prasad

Judgement :

Henry Richards, C.J.

1. Kalka Prasad was charged with offences under Sections 409 and 477A of the Indian Penal Code. He was sentenced to seven years' rigorous imprisonment under Section 409 and to three years' rigorous imprisonment under Section 477A, together with a fine of Rs. 4,000, the sentences to run concurrently. Kalka Prasad has appealed, and it has been argued on his behalf that there was a misjoinder of charges, contravening the provisions of Section 233 of the Code of Criminal Procedure, which provides that (save as therein mentioned) there shall be a separate charge for every offence and that every such charge should be tried separately. The charge in the court below against the accused was that he being the Tahvildar embezzled a sum of Rs. 3,991-7-11, and further that he omitted to enter arzrisals Nos. 1-120 with intent to defraud, and wrote on three of such arzrisals false numbers with like intent. The allegation is that it was his duty when

receiving money to take a form of tender from the person paying him the money. This document is called an arzrisal. He has to enter in his book the particulars contained in the arzrisal. It is alleged that in order to cover his defalcations he omitted to make these entries in respect of arzrisals Nos. 1-120, and that with like intent he put false numbers on three of these documents. It is contended on behalf of the accused that while having regard to the provisions of Section 222, Clause (2), of the Code of Criminal Procedure, it is allowable in the charge to state the gross sum which has been misappropriated, there is no similar provision which permits more than three charges under Section 477A to be joined together. It is contended that the accused, (if the allegations of the prosecution, are true), committed a separate offence every time he omitted to enter the particulars of each one of the arzrisals in his book. It is further contended that the joinder of the count for misappropriation with the count for falsification is contrary to law inasmuch as the charge or charges under Section 477A are connected with alleged defalcations more extensive than the charge under Section 409. Reliance is placed upon the recent ruling of their Lordships of the Privy Council, in which it was held that the joinder of charges in contravention of the provisions of Section 233 is something more than an irregularity and vitiates the trial. I think the contention has force. Supposing in the present case there had only been charges under Section 477A, it seems to me that there would have been a misjoinder of charges. The omission to enter the particulars of the arzrisals in the book of the accused was for the purpose of concealing the alleged misappropriation of a distinct sum in each case. As the law stands only three such offences can be joined and tried at the same trial. In this respect charges under Section 477A differ from charges under Section 409. I do not think that Section 235 applies. The case was not that of making a number of false entries in various books, etc., to conceal one misappropriation. No doubt there was a similarity in the acts alleged to have been committed by the accused, and it is alleged that the transactions all took place within three days. Nevertheless, it seems to me that if the accused did what he was charged with, he committed a separate offence on each occasion, for which he was liable to a separate conviction and sentence. Notwithstanding that I consider that the accused was in no way prejudiced by the way in which the charges were framed, nevertheless there was in my opinion an illegality which

vitiates the trial. I accordingly allow the appeal, set aside the conviction and sentence and direct that there be a new trial after charges have been framed according to law.

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