

Sallimullah Khan Vs. Emperor

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Court : Allahabad

Decided On : Oct-29-1909

Reported in : 4Ind.Cas.808

Judge : Richards, J.

Appellant : Sallimullah Khan

Respondent : Emperor

Judgement :

Richards, J.

1. The appellant was charged and convicted under Section 477 A, Indian Penal Code. The charge is in the following terms: 'That you between 1907 and 1909 being a clerk of the Canal Department wilfully altered and mutilated the accounts, which were in your possession etc.' Section 233 of the Code of Criminal Procedure provides that for every distinct offence of which any person is accused there should be a separate charge, and every such charge shall be tried separately except in the cases mentioned in Sections 234, 235, 236 and 239. In the present case the accused according to the evidence is charged with making five series of alterations. Under tired 234, the accused might have been section at one trial for three offences but they must have been committed within the space of twelve months from the first to the last. It cannot be contended that Section 235 applies, nor the provisions of Section 236 or Section 239. In the case of Subrahmania

Ayyar v. King-Emperor 25 M. 61 (P. C); 28 I.A. 257 it was held by the Privy Council that the joining of charges contrary to the provisions of the Code of Criminal Procedure was not merely an irregularity which could be remedied by Section 537. In the case of Queen-Empress v. Mati Lal Lahiri 26 C. 560; 3 C.W.N. 412 a Bench of the Calcutta High Court held that a charge framed as the present charge was quite irregular. It seems to me under the circumstances that I have no option except to direct a retrial of the case. A proper charge must be framed in accordance with the Code of Criminal Procedure. It should be borne in mind that I do not decide that evidence of the alleged falsifications other than those actually charged is inadmissible. I accordingly set aside the conviction and sentence passed on the appellant and direct that the Sessions Judge of Mainpuri do proceed as soon as he reasonably can to re-try the appellant after framing charges. I further direct that the appellant may be admitted to bail upon giving security to appear at his trial to the satisfaction of the District Magistrate.

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