

Brijiwan Das Vs. Emperor

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Court : Allahabad

Decided On : Nov-17-1930

Reported in : AIR1931All209; 129Ind.Cas.558

Appellant : Brijiwan Das

Respondent : Emperor

Judgement :

ORDER

Dalal, J.

1. Brijiwan Das was a treasurer of a zamindar of Benares and was convicted in 1929 of an offence under Section 408, I. P.C., of embezzlement with respect to a sum of Rs. 44-6-8-3 received by him in his capacity of servant of Babu Khiva Prasad Gupta and misappropriated by him between the dates 1st February 1928 and 26th September 1928. He was sentenced to a day's imprisonment and a fine of Rs. 600. In the month of December, last year the applicant's master, through another servant, instituted a fresh complaint for the prosecution of Brijiwan Das on three charges of embezzling three sums of money on 21st June, 2nd August and 21st August 1928. It will be noticed that these dates fell within the dates of the previous charge, 1st February and 26th September but I have satisfied myself that these three items were not included in the gross sum for which the applicant was prosecuted, charged and convicted at the former trial.- There is a certain

divergence of judicial opinion as to whether after a trial in respect of a gross sum for which a breach of trust was alleged to have been committed between two specified dates, a second trial in respect of an offence alleged to have been committed on intermediate days but not included in the gross sum is permissible or not. Dr. Waliulla has placed before me the case law on the subject with great clearness. In *In re Appadurai Ayyar* [1916] 17 Cr.L.J. 30 the Madras High Court held that under, such circumstances the charges in the first trial must be taken to have included all the items embezzled during the period entered in the charge. In *Nagendra Nath Bose v. Emperor* A.I.R. 1923 Cal. 654 there was a difference of opinion between three learned Judges. The view of one of them was in conformity with the view taken by the Madras High Court. The majority of the Judges took a view contrary to that of the Madras High Court. The view of the Bombay High Court in *Emperor v. Kashinath Bagaji Sali* [1910] 11 Cr. L.J. 337, was followed by the majority of the learned Judges in the Calcutta case. Looking at the provisions of Section 403, Criminal P.C., there is nothing in those provisions to bar a trial on the present complaint. The first three subsections deal with offences falling within Sections 236, 237 and 235 (1) of the Code and do not deal with separate and distinct offences. The provisions of Section 233 of a separate trial of every offence are in, no way modified by the new provisions of Section 222 (2). The provisions of Section 222 (2) are enabling and enable a Court to have a joint trial of what may apparently be several offences of breach of trust. The charge of a gross sum embezzled between two dates is only one charge and there may be a separate trial under the provisions of Section 233 of embezzlement of another item not included in the gross sum for which an earlier charge was framed under Section 222 (2). It cannot be denied that two of the present offences could have been tried jointly with the former offence for embezzling a gross sum, and there is no reason why there could not be a separate trial because Section 235 is only permissive and permits the trial of three offences of the same kind within a year by one trial, but does not bar three separate trials for those offences.

2. In certain cases the High Court can exercise its power under Section 439, Criminal P.C., and prevent a second trial for the ends of justice. Such a view was taken in the case of *Sidh Nath Awasthi v. Emperor* : AIR1929 Cal457 on the analogy of a case of this Court, *Inamulla v. Emperor* [1905] 2 A.L.J. 673. This

Court in 1916 exercised its revisional jurisdiction in countermanding a trial in the case of T.N. Chaddha v. Emperor [1916] 18 Cr.L.J. 46. In the present case I am not prepared to exercise that power. At the former trial the applicant was sentenced only to a day's imprisonment and fine. If he is really guilty of the embezzlement as alleged by his master he certainly deserves a heavier sentence.

3. I dismiss this application.

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