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Court : Allahabad

Decided On : Apr-29-1930

Reported in : AIR1931All267

Appellant : Emperor

Respondent : Prem Narain

Judgement :

King, J.

1. This is an application in revision by the Local Government-against an order passed by the Additional Sessions Judge of Agra setting aside the conviction and sentence of Prem Narain under Section 409, I. P.C., on the ground of misjoinder of charges, and directing a retrial. The accused Prem Narain was a clerk in the Cantonment-Board Office and he was charged with having embezzled sums of money entrusted to him in his capacity as a public servant. Evidence was led to show that there had been embezzlements amounting to about Rs. 1,500 but the charge against the accused was that he had embezzled four sums of money on or about 9th January, 5th February and 13th February 1929. It. must be observed that only one charge was framed in which all the four sums of money, said to have been embezzled, are specified, and the dates of the alleged embezzlements are also specified.

2. It will be noticed that the embezzlements are said to have taken place on three dates and four items are specified. That means that on one date, namely on 13th February 1929, two items are alleged to have been embezzled consisting of Rs. 2-13-0 and Rs. 9-6-0 respectively, totalling Rs. 12-3 0,

3. The trial Magistrate found the accused guilty of having embezzled the sums of money specified on three dates, namely,. 9th January, 5th February and 13th February, and sentenced him to rigorous imprisonment for the period of two years on each of the three counts, the sentences to run concurrently.

4. The accused came up in appeal before the Additional Sessions Judge and took, the objection, which was not mentioned; in the grounds of appeal, that the trial was bad in law and contravened the? provisions of Section 234, Criminal P.C. The argument was that the accused had, in effect, been tried on four charges of embezzlement and as Section 234 permits an accused person to be tried at one trial for not more than three offences of the same nature committed within twelve months, the trial was bad in law. The view taken by the learned Additional Sessions Judge was that each defalcation constituted a separate and distinct offence and therefore the procedure offends against the provisions of Section 234.

5. In our opinion the Court below has come to an erroneous decision owing to its not having considered the provisions of Section 222, Sub-section (2), which runs follows:

When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify be 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 last of such dates shall not exceed one year.

6. In the present case there was in fact only one charge framed, as we have already mentioned, and that charge, although it did not set out the total of the money, said to have been embezzled, did specify all the items. It also specified the

dates upon which the sums were alleged to have been embezzled. The time included between the first and the last of such dates is less than two months. Therefore the charge was correctly drawn up in accordance with the provisions of Section 222, Sub-section [1904] 27 All. 69, and the charge must, in accordance with the provisions of that subsection, be deemed to be a charge of one offence within the meaning of Section 234. It follows that there can be no misjoinder of charges since it must be held that the accused was upon his trial for only one offence, and there is no question of the trial having been vitiated by the trial of the accused for more than three offences. In our opinion the language of Sections 222 and 234, when read together makes the position perfectly clear and it would hardly be necessary to consider any judicial pronouncement on the point. We have however been referred by the Government Advocate to several decisions of this High Court which support the view which we have independently arrived at.

7. In the case of Emperor v. Gulzari Lal [1902] 24 All. 254, where an accused person was charged with having misappropriated or committed criminal breach of trust in respect of an aggregate sum of money the whole sum being alleged to have been wrongfully dealt with by the accused within a period not exceeding one year, it was held that the mere fact that the items composing the aggregate sum are specified and may be more than three in number, will not render the charge obnoxious to the prohibition implied by Section 234, Civil P.C.

8. A similar view was taken by this High Court in the case of Emperor v. Ishtiaq Ahmad [1904] 27 All. 69. In that case, in a charge of criminal misappropriation, there were three counts. Each count specified the sum of money alleged to have been misappropriated by the accused on the particular day, but in two out of the three cases the total sum consisted of three separate items in each instance. It was held that a charge so framed did not offend against Section 231, Criminal P.C. This decision is very directly applicable to the case before us. In the case before us there are three counts in the charge and it is only in the case of one count that the total alleged to have been embezzled in a particular day consisted of two items.

9. Finally our attention has been drawn to the case of Emperor v. Ibrahim Khan [1911] 33 All. 36. In that case an accused person was charged under Section 409, I. P. C, with having embezzled an aggregate sum of Rs. 208-12-0 on various dates between 1st July and 1st November 1909. It was held that the charge so framed was not open to objection, notwithstanding that evidence was available as to the various items of which the aggregate sum charged was composed. It appears that the aggregate sum consisted of some 18 items. These three cases lend strong support to the view which we take of the relevant provisions of the Code.

10. The Court below has relied upon a ruling in the case of Raman Lal v. Emperor [1911] 33 All. 36. This ruling is clearly distinguishable upon the facts. In that case the applicant was found to have committed criminal breach of trust in a series of transactions which did not take place within the space of one year, and all these transactions were joined together in one charge in respect of an offence under Section 381, and the applicant was convicted under Section 408, I. P.C. It was held that in such circumstances the trial was vitiated in the same way as if there had been a misjoinder of charges. It will be noticed however that the transactions did not take place within the space of one year and that the charge was of offences under Section 381. Section 222, Sub-section (2), has no application to offences under Section 381. This ruling therefore is no good authority for the opposite view. The learned Judge in the Court below has also relief upon a case which he has cited as '24 Cr. L. J. 462.' He does not give the names of the parties, as he should have done, but we are informed that the case is the same as that reported in A.I.R. 1922 Mad. 435: Chakrakodi Shama Shastri v. Emperor. In that case the accused appears to have been charged, not with criminal misappropriation of money or criminal breach of trust, but with falsification of accounts. That ruling therefore is of no help to us in the present case.

11. Lastly the Court below relied upon a case which it cited as '20 Cr. L. J. 784.' Here again no names of the parties are given, but we understand that it is the same as Avadh Behari Lal v. Emperor [1919] 53 I.C. 624. That case is also distinguishable because the accused was sent up for trial on eight counts not only for criminal breach of trust but for other offences also under Sections 218 and 466, I. P.C. The Court held that there was misjoinder of charges, but that case is of no

authority for the proposition that there was any misjoinder of charges in the present case.

12. The learned advocate for the respondent has cited the case of Ganga Prasad v. Emperor A.I.R. 1923 All. 483 which was decided by a single Judge of this Court. In that case the accused was convicted of criminal misappropriation in respect of 26 items which were alleged to have been misappropriated by him within the space of one year. It was held that the joinder of charges was illegal and vitiated the trial. Unfortunately the learned Judge did not give any reasons in support of his view, and it is apparent that none of the earlier cases decided by this Court, to which we have referred above, were brought to his notice. He merely refers to the Privy Council case of N. A. Subramanii Iyer v. Emperor [l902] 2l Mad. 61 which is no-authority for the view that the present trial was vitiated by misjoinder of charges. In the Privy Council case it was held that Section 234, Criminal P.C., which provides that a person may only be tried for three offences of the same-kind, if committed within a period of 12 months, is plainly contravened by trying an accused on an indictment charging him with no less than 41 acts extending over a period of two years.

13. In the present case the alleged embezzlements extend over a period of less than two months, and the Privy Council ruling has no application. We are satisfied that there was no defect in the trial owing to misjoinder of charges. Under the provisions of Section 222 the accused must be held to have been upon his trial for only one offence, and the Magistrate-was not, strictly speaking, correct in sentencing him separately on each of the three counts. He should have passed one sentence for the one offence with which the accused was charged. The irregularity is of no practical importance as the sentences are to run concurrently. We accordingly set aside the order of the Court below and direct the Court below to dispose of the appeal on its merits.

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