Mohan Singh Vs. Emperor

Mohan Singh Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/479101

Court : Allahabad

Decided On : Apr-17-1920

Reported in : AIR1920All274; 59Ind.Cas.372

Judge : Walsh, J.

Appellant : Mohan Singh

Respondent : Emperor

Judgement :

Walsh, J.

1. The learned Judge in this case had the acquiescence of all three assessors and one cannot help feeling that, probably, in recording a conviction, he was not far wrong in the sense that by a sort of rough justice he has arrived at a right determination. Bat nothing is more dangerous in criminal law than the system of convicting a person on some vague general notion when the real charge has not been established. In this case I have grave doubts whether the form of the charge in which it was sent to Sessions was one which the learned Sessions Judge ever ought to have entertained. Undoubtedly, Section 222(2) of the Code of Criminal Procedure enables a man to be charged for criminal breach of trust in respect of a gross sum received by him between certain dates without specifying any particular item of any particular date in respect of the constituent parts of the gross Sum, but I think that that is meant for a case where he is charged with embezzling the gross

sum. The authority referred to during the argument in this case on behalf of the, Emperor v. Ibrahim Khan 7 Ind. Cas 180 : 33 A. 36 : 7 A.L.J. 897 : 11 Cr. L.J. 412, certainly bears out that view. In that case the accused was charged with having committed a criminal breach of trust in respect of a gross sum of Rs. 208-12 fees which he had received on 18 different occasions from persons in respect of grazing cattle. It was no part of his duty to expend any part of that sum. It was his duty to pay it into the Treasury. He did not do so but appropriated it to his own nee. That was a gross sum within the meaning of Section 222(2), as was decided by the learned Judges in that case. But that is not the case here, and Section 222 trust be construed and controlled in the light of the governing provision which requires such particulars to be given as are reasonably sufficient to give the accused notice of what he has got to meet, Sub-Clause (2) is merely a particular illustration which the Legislature has enacted so as to make the case free from doubt which might otherwise have risen. Bat the cases must be very rare in which, where a trader appoints a general agent or manager of a sub-branch, with general authority to sell goods, collect money, purchase goods, pay labour dues and general expenses, it is sufficient to ding into the charge an alleged balance or net profit which the agent is supposed to have earned and say that, in respect of that net profit, he is guilty of misappropriation of every rupee which he cannot produce or explain. One difficulty in that procedure is, as it seems to me, that it offends against the principle that the onus is on the prosecution and they have no right to throw the onus upon the accused in respect of the charge. They must make up their mind what amount they are prepared to prove he has lawfully received and lawfully expended and what total sum, and how that total sum is made up, he has either unlawfully expended or failed to account for in snob a way as to leave no doubt that he has been engaged in criminal misappropriation.

2. In this case I think, having regard to the fact that the law in this country does not permit an accused person to give evidence on oath and, therefore/puts considerable obstacles in the way both of the prosecution and of an accused person in a case of this character, the power to examine the accused at the trial with a view to enable him to give an explanation ought to be carefully exercised. Reading the examination of the abused in this case and the somewhat rough and ready method by whish the learned Judge arrived at his final conclusion, the

learned Judge seems to me to have gone dangerously near filling up the gaps in the prosecution evidence by the answers extracted from the accused in his examination.

3. It is to be feared that the provisions of Section 342. Criminal Procedure Code, are sometimes either misunderstood or used for a purpose for, which they were never intended.

4. Although transactions which involve civil liabilities may amount to criminal offenses and often they do, so that the dividing line between the two in a discussion of the case is almost indistinguishable, On the other hand, I have always set my face most strongly against permitting an employer of labour when he entrusts a sub-agent or manager with large powers without any very clearly defined rules as to how those powers should be carried out, how his books should be kept and his accounts from time to time made up, and when he finds that those powers have been abused and there is a failure to render a satisfactory account resorting to the criminal law, not for the purpose of punishing an offender or in the public interest but as a means of putting the screw on to extract money from the agent. In this case the principal agent who was sent by the prosecuting company to investigate the affair admits that he extracted from the accused a promise to pay, and I am surprised that the learned Judge should, in a case of this kind, have awarded any portion of the fine as what he call, 'compensation' to the prosecuting company I should, in any event, have quashed that part of the sentence. I regard it as a mistake and one calculated to encourage rather than otherwise, employers and masters using the criminal law for an indirect purpose of their own.

5. There is no getting over the fast that the prosecution themselves made the initial mistake of failing to support the charge with any account whatever representing what they put forward as the true account showing how mash had been embezzled, and the learned Judge has merely some to the conclusion that on a rough calculation the accused has probably misappropriated something like Rs. 450, if not more. That will not do. There must be a definite finding of a certain definite sum traced to the accused and clearly shown to have been wilfully and unlawfully appropriated to his own use. The prosecution made a feeble attempt to

discharge this duty in respect of three items. They proved that one Allah Bakhsh had taken a receipt for Rs. 480 and one Majid had taken a receipt of Rs. 163 for grass sold, but, inasmuch as both these items were entered by the accused in his accounts, the charge as to his having failed to account for these receipts obviously breaks down and it becomes a question whether he had properly expended the difference between what he had in his possession and what he had included in the sums which in fact he received. They went so far as to call one independent witness, named Ishri Prasad, who proved that he had paid the accused Rs. 250. Inasmush as the accused had never denied the fast and had entered it in his own handwriting in his accounts, the object for whish this witness was sailed is not apparent. It did happen that, in the course of the case, one sum, namely, of Rs. 400, alleged to have been paid to one Binda Mal Bania and vouched for by him on the 1st of May 1919 was put forward by the accused as accounting for part of the money which was not forthcoming, and a receipt is on the file purporting to be a receipt by Binda Mal Bania dated the 1st of May 1919 for that sum which might have been paid in instalments or even in a lump sum on that date. It is true that in order to establish a right to have witnesses summoned the defense ought to provide a list before the Magistrate but in a case of this kind the neglect to exercise that right ought not to be judged too harshly, having regard to the somewhat roving nature of the charge, but, inasmush as the learned Judge had the receipt before him and the Legislature had provided by Section 540 of the Code of Criminal Procedure an admirable weapon in the hands of the Court for satisfying itself upon any essential matter left in doubt, and inasmuch as the accused in this case himself invited the Court to summon this witness, I am unable to understand why the Sessions Judge did not call for the Bania and examine him under that section. However, he chose not to do so and I am, therefore, the less able to understand how he should possibly commit himself to the finding, which is one of the few definite findings of fast which I can discover in the judgment, that this receipt is a clear forgery.

6. On all these grounds the conviction and the sentences must be set aside, and the fine, if recovered, and to the extent to which it has been recovered by either payment or distress or execution, must be refunded to the accused person, and any goods seized from him or his family in execution of the fine must be restored

and the Court must take steps to direct that that be done without any delay whatever. On the other hand, I think I must re commit the accused to the Sessions on one definite charge, at any rate, namely, the alleged uttering of the forged receipt alleged to have been given by Binda Mal on the 1st of May 1919 which I have initialled M.S.I., or, alternatively, under Section 235, of having embezzled that sum of Rs. 400. Of course, if the receipt is really a forgery and the money was never paid the accused must have dishonestly applied the money to his own use. I direct the Sessions Judge also to frame any charges which he may find upon the evidence (I have been unable to find any other upon the evidence on the record) of embezzlement of any specific sums such an those I have mentioned, namely, its. 480 paid to accused by Allah Bakhsh, Rs. 163 paid by Majid and Rs. 250 paid by Ishri Prasad, and decide the question with regard to those sums of money whether they have been received at any time by the accused and the receipt wilfully concealed from his master and the amounts or any part thereof wilfully applied to his own use.

7. The accused must not be released from custody. He must be detained in custody as a prisoner waiting trial until the re hearing of this case in the Sessions Court. I send the case for re-trial by the Sessions Judge of Moradabad.