

Gurucharan Samal Vs. the State

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Court : Orissa

Decided On : Feb-11-1953

Reported in : AIR1953Ori258; 19(1953)CLT281

Judge : Panigrahi and ;Narasimham, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 222, 222(2), 234 to 239; Indian Penal Code (IPC) - Sections 409 and 477A

Appeal No. : Criminal Revn. No. 398 of 1951

Appellant : Gurucharan Samal

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : G.C. Jena, Adv.

Disposition : Revision dismissed

Judgement :

Panigrahi, J.

1. In tills revision the correctness of the conviction of the petitioner is challenged, and the only point argued before us is that his trial is vitiated by a misjoinder of charges.

2. The petitioner was the Postmaster of the experimental Branch Post Office at Kotpur under the Dharmsala P. S. in Cuttack district and in that capacity he received three postal money orders from the Dharmsala Post Office, for disbursement to the payees. The three money orders are:

(i) M. O. No. 89, dated 18-12-48 for Rs. 80/-payable to one Moti Bewa;

(ii) M. O. No. 4824 dated 2-2-49 for Rs. 60/-payable to one Baidhar Parida; and

(iii) M. O. No. 4825 dated 2-2-49 for Rs. 20/-payable to one Rai Chandra Parida.

The prosecution case was -- and it has been proved to the satisfaction of the Courts below --that the petitioner forged the thumb impressions of the payees on the money order vouchers, falsified the accounts of the Branch Post Office, and committed criminal misappropriation of the amounts covered by the three postal money orders aggregating Rs. 160/-.

3. The prosecution proved that the thumb impressions on the money order vouchers alleged to be those of the payees had been forged and that the entries in the postal books had been falsely made. The petitioner was charged, firstly, with having committed criminal breach of trust in respect of the gross sum of Rs. 160/- punishable under Section 409, I. P. C. This charge sets out the numbers and dates of the three money orders. The second, third and fourth charges related to the forging of the thumb impressions given on the vouchers which purport to be those of the payees and they are punishable under Sections 467 and 471, Penal Code. The fifth and sixth charges were under Section 477A, Penal Code; the fifth being related to Money Order No. 89 for Rs. 80/-, dated 18-12-48, and the sixth in respect of Money Orders No. 4824 and 4825 both dated 2-2-49, for Rs. 60/- and Rs. 20/- respectively. The contention raised on behalf of the petitioner is that this joinder of charges amounts to a contravention of the provisions of Sections 234 and 235 of the Code of Criminal Procedure. The learned Additional Sessions Judge overruled this contention on the authority of the case reported in --'Ram Kishoon Prasad v. Emperor', AIR 1934 Pat 232 (A). It was held in that case that

'where a person is charged under Section 409, Penal Code, with breach of trust in respect of a gross sum consisting of three items, all of which were embezzled in the course of one year, the Court is competent by virtue of the provisions of Sections 234 and 235, Criminal P. C., to try with this charge, three charges for an offence under Section 477A, Penal Code, if committed within the same period and forming part of the same transaction as the offence under Section 409.'

Learned counsel for the petitioner has, however, drawn our attention to a Full Bench decision of the Bombay High Court reported in -- 'D. K. Chandra v. The State', AIR 1952 Bom 177 (FB) (B), where the learned Chief Justice, who delivered the leading judgment, was of opinion, on a review of the entire case law, that such a joinder of charges is obnoxious to the provisions of Section 234. We are asked on the authority of this decision and some other decisions of certain other High Court, in which a similar view has been taken, to dissent from the contrary view taken by the Patna High Court in a series of reported decisions and on which the Court below has relied for its conclusion.

4. There is considerable divergence of opinion not only among the different High Courts but also among Judges of the same High Court as to whether Sections 234 and 235, Criminal P. C., are mutually exclusive. One view is that the two sections may be read as supplementary to each other and in a cumulative sense, so that any number of offences committed in the course of the same transaction & falling within Section 235, may be charged at one trial and that such transactions not exceeding three in number and committed within the space of twelve months, may also be charged under Section 234 of the Code. As a result of the combination of the two Sections an accused may be put on trial for three offences committed in the course of the same year and also other offences arising out of the three acts provided they form part of the same transaction.

5. The principles applicable to joinder of charges are contained in Sections 233 to 239, Criminal P. C., the general principle being that for every distinct offence there shall be a separate charge and that every such charge shall be tried separately. This principle is subject to certain exceptions mentioned in Sections 234, 235, 236 and 239 which permit of joinder of charges. Section 234 permits trial of three

offences of the same kind committed within a period of twelve months. Section 235 says that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. Sub-section (2) of Section 235 says that if the acts alleged constitute an offence falling within two or more separate definitions the person accused of them may be charged with and tried at one trial for each such offence. Section 236 provides that where it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with all such offences, or in the alternative with having committed some one of the said offences. The last exception is contained in Section 239 which deals with joinder of persons who may be tried together.

In a case of embezzlement and forgery and falsification of accounts, with a view to cover up the defalcation, the main offence committed by the person accused of misappropriation is the offence under Section 409 I. P. C. But such misappropriation is not possible unless the accounts are forged and false entries are made. All the three offences are so connected that it is obvious that they may be held to form the same transaction within the meaning of Section 235. The purpose of committing these several offences is to commit misappropriation and all the three acts are motivated by the same purposes: in fact the three are so closely inter-related as to form cause and effect. The sum total of these acts of the accused constitutes the offence of misappropriation though the series of acts leading up to it constitute the several offences of forgery and falsification. If three such offences are committed within the space of one year, Section 235 would enable a joinder of charges and the accused may be tried at one trial for all the three offences.

In cases of criminal breach of trust, or dishonest misappropriation of money the position is made simpler by Section 222, Sub-section (2) of which says that it shall be sufficient to specify the gross sum in respect of which the offence is committed, without specifying the particular items, or the exact dates, and the charge so framed shall be deemed to be a charge for one offence within the meaning of Section 234. If all the sums misappropriated within the course of one year are to be regarded as forming parts of the same offence, for the purpose of Section 234

the several other offences which are so connected together with the main offence of misappropriation may also be charged under Section 235 provided they are linked with the charge for defalcation of the gross sum of the three money orders. It is said, however, that the offences of forgery and falsification of accounts are not offences of the same kind as the offence of misappropriation and therefore, Section 234 would bar the joinder of such charges. The question is whether Section 235 is controlled by Section 234, or whether the two sections are independent provisions permitting joinder of charges in different circumstances.

6. Ever since the decision in -- 'Gajadharlal v. Emperor', AIR 1920 Pat 775 (C) the Patna High Court has held that the court is competent, by virtue of the provisions in Sections 234 and 235 to try, along with the charge of breach of trust, three charges for an offence under Section 408, I. P. C. In the year 1930 this point directly arose for decision in -- 'Michael John v. Emperor', AIR 1931 Pat 349 (D), the contrary view taken in --'Ramanbehari Das v. Emperor', AIR 1915 Cal 296 (E) was cited in support. In this case, the first charge stated that the accused had embezzled a gross sum, made up of five different items. The second charge of falsification of accounts set forth the various items of falsification made in the ;cash book, and each item of falsification related to one or other of the headings under which the charge of embezzlement was made. The Division Bench of the Patna High Court preferred to accept the earlier decision in Gajadharlal's cast on the ground that the charges of embezzlement being linked together into one sum, the charges of falsification could also be linked together with the main charge. -- 'Ramanbehari's case (E)', which was based upon a decision of the Madras High Court in -- 'Kasi Viswanadhan v. Emperor', 30 Mad 328 (F) was not followed. In the year 1933, the question again came up for decision before a Division Bench of the same High Court in -- 'A. I. R. 1934 Pat 232 (A)'. Their Lordships, relying upon the two earlier decisions rejected the plea of misjoinder of charges. Their Lordships observed (at page 234 of the report):

'In order to establish one or more of the charges triable at one trial under Section 234, it is frequently essential or expedient to establish the other offences referred to in Section 235 (1). There being ordinarily no likelihood that the accused would, in the circumstances, be embarrassed in his defence, it is hard to believe that this

evidence is only to have effect as to one of the offences committed in the same transaction..... One would expect the Legislature atleast to permit a joint trial of all the offences in the series forming the same transaction, in spite of the fact that one of the offences of the series is, by another provision, triable along with the two other offences of the same kind. We consider that it has done so, and we can see no reason why Sections 234 and 235 are not to be regarded as cumulative in their effect in a proper case'.

In a later case of the Patna High Court reported in -- Emperor V. Ram Autar Lal', AIR 1942 Pat 401 (G) the charge of falsification of entries did not relate to the items alleged to have been misappropriated and the main charge of misappropriation failed; and it was held, while approving of the principle laid down in the previous decisions that the charges in that particular case were illegal. Their Lordships observed:

'Had it been the prosecution case that all these series of entries in the accounts were falsified in order to cover up one single defalcation, the joint trial may have been perfectly legal'.

The view of the Patna High Court, it is needless to say, has been followed by the Subordinate Courts of this State till now, and there is no decision of this Court, so far, which has dissented from that view. Apart from the binding character of the view taken by the Patna High Court, the logic and reasoning adopted by their Lordships of that Court appear to me as laying down the correct view to be taken of these two sections of the Code of Criminal Procedure.

7. With regard to the construction of these two sections relating to joinder of charges and persons, we have to abstract the correct principles deducible from the language of these Sections. Sections 233 to 235 deal with joinder of charges. Section 239 (a) deals with joinder of persons and Section 239 (b), (c) and (d), with both persons and charges. The validity of the joinder under Section 235 cannot be determined until the end of the trial, nor can the propriety of a joinder of persons under Section 239 be determined until the trial is completed. If, therefore, the charges 'prima facie' deal with matters which form part of the same transaction the Court is entitled to put the accused on trial for all such offences alleged against

him, and unless it is established that the adoption of this course embarrasses him in his defence, or is outrageous to the principles of natural justice the trial should not be held to be illegal. As to whether the accused has been prejudiced in a particular case will depend upon the facts stated in the charge. There is an enormous volume of such cases which have proceeded on this footing and different opinions have been expressed by Judges based on different facts and circumstances of different cases.

8. It appears to me, however, that in a case of misappropriation of a gross sum it is not unfair to give notice of the several other offences alleged to have been committed by the accused in relation to the main offence of misappropriation. On the other hand, the adoption of such a procedure is advantageous to the accused inasmuch as it affords him an opportunity to know that the prosecution is going to lead evidence of other acts in support of the offence of misappropriation. If the joinder of charges for the other offences were to be prohibited an objection may be raised to the admission of evidence relating to falsification and forgery, the result being that the charge of misappropriation cannot be proved at all. The Code, therefore, gives the discretion to the prosecution to combine such charges as it will be noticed that the whole bunch of Sections 234 to 239 are permissive in language and the word 'may' is used therein throughout, There is nothing in any of these provisions to indicate that one is controlled by the other so as to be exclusive of each other. In my judgment, therefore, the prosecution can take advantage of one or more of the Sections and combine charges which are inter-related and which do not violate any of the express provisions of the Code. But whether in a particular case the trial is to be held illegal or not, will depend upon whether the accused has been prejudiced in his defence in meeting more than one charge at the trial. That this is the principle to be deduced from these rules of procedure gains support from the observations of Their Lordships of the Privy Council in -- 'Babulal Choukhani v. Emperor', A. I. R. 1938 P. C. 130 (H). Their Lordships, referring to Section 239 (d) said:

'The clause is expressly an exception from Section 233, and enables a plurality of offences to be dealt with in the same trial. But it does import, either expressly or by implication, the limitation set out in Section 234, according to which not more than

three offences of the same kind committed within the space of twelve months can be tried together, or the limitation contained in Section 235 (1) under which more offences than one committed by the same person can only be tried together if they are in one series of acts so connected together as to form the same transaction, in which case there is no specific limit of number. Nor is there any limit of number of offences specified in Section 239 (d)'.

It appears to me that this reasoning would apply to cases falling under Section 235 and that this Section cannot be controlled by any limitations set out in Section 234.

9. I shall now take up the reported decisions of the several High Courts and examine whether the principle deducible from these decisions is consistent with the view I have taken.

10. In -- 'Emperor v. Jiwan Krushna', 40 Cal 318 (I) Carnduff J. held that a charge of criminal breach of trust can be tried, under Section 235 (1) with another of falsification of accounts made with a view to conceal the act of misappropriation as part of the same transaction; and that the two inter-connected charges of falsification may be tried at one trial under Section 234. In Ramanbehari's case reported in -- 'A. I. R. 1915 Cal 296 (E)', (to which reference has already been made) there were three separate charges under Section 409, I. p. C. and three others under Section 477A. Their Lordships laid down that Section 222 was not applicable to a charge under Section 477A, but observed:

'A series of alteration in accounts made to cover a defalcation might all be charged in one charge under the provisions of Section 477A as there are not three distinct offences committed merely by reason of the fact that the accused makes more than one false entry to cover one defalcation'.

This decision would indicate that where the accused is charged with having misappropriated a gross sum, a series of false entries made to cover up that offence, constitutes only one offence under Section 477A and can be jointly tried. In '40 Cal 318 (I)' there was a charge of criminal breach of trust, together with another charge relating to a distinct act of misappropriation committed in a separate transaction. It was therefore held that the trial was vitiated. In that case,

however, Carnduff J. refers to an unreported decision of that Court in which an accused person was charged in August 1902, on six counts with the offence of embezzlement under Section 408 I. P. C. and with three corresponding falsifications of account under Section 477A and was convicted on each of those counts. Then, again in-- 'Prafulla Chandra v. Emperor', AIR 1931 Cal. 8 (J) it was held that, if the intention is to defalcate a certain amount, any act done to achieve that object -- such as making false entries --must form part of the same transaction, though the petitioners were charged with only falsification of accounts on several dates. In a later case 'Kasiram v. Firm Hurdut Rai Gopal Bai', AIR 1935 Cal. 312 (K) the accused was tried for one offence of misappropriation in respect of several items of money, joined with a charge of falsification which was carried out as one of the series of acts constituting the transaction by which misappropriation was effected. Their Lordships upheld the conviction, following the Patna decisions in -- 'Michael John's case (D)', and in -- 'Gajadharlal's case (C)', and distinguished Kasiviswanathan's 'case. Their Lordships held, in that case, that all the sums misappropriated within the course of a year and the falsification of accounts made to facilitate the commission of the offence of criminal breach of trust, formed one transaction.

Surhawardy J. observed:

'It is not unreasonable to say that, for the purpose of the Section, the year's illicit operation can be regarded as one transaction'.

The contrary view was taken in -- 'H. F. Bellgard v. Emperor', AIR 1941 Cal 707 (L) where two persons were jointly tried, each on nine different charges of cheating and falsification of accounts. The offences of cheating were held to be entirely separate transactions, and it was held that unless it was clearly alleged at the trial that the three transactions were carried out in furtherance of a conspiracy to commit such an offence the joinder of the nine charges in one trial must offend the provisions of Section 239. It will be noticed, however, that in that case there was no charge of cheating in respect of a gross sum, as indeed there could not be one. Sub-section (2) of Section 222 provides for the framing of a charge for a gross sum only in cases of criminal breach of trust or misappropriation of money. This

case is therefore distinguishable as it was neither alleged nor found that all the offences were committed in the course of the same transaction.

'Becharam v. Emperor', AIR 1944 Cal 224 (M) is a similar case in which the accused was charged with three offences of theft and three offences of dishonest misappropriation in the alternative. All these six offences were tried at one and the same trial and it was held that the joinder of the nine charges in one trial must offend the provisions of Section 239. It will be noticed, however, that in that case there was no charge of cheating in respect of a gross sum, as indeed there could not be one. Sub-section (2) of Section 222 provides for the framing of a charge for a gross sum only in cases of criminal breach of trust or misappropriation of money. This case is therefore distinguishable as it was neither alleged nor found that all the offences were committed in the course of the same transaction.

'AIR 1944 Cal 224 (M)', is a similar case in which the accused was charged with three offences of theft and three offences of dishonest misappropriation in the alternative. All these six offences were tried at one and the same trial and it was held that the joinder of charges was not permissible as the thefts were committed on different dates separated by considerable periods and should not be treated as one act of theft. The case did not come either under Section 236 or under Sub-section (1) of Section 235, and the question whether Sections 234 and 235 could be joined did not arise at all for decision. The *raison d'être* of the judgment is that in the particular facts and circumstances of that case the joinder of charges was not saved by Section 235 and therefore amounted to a contravention of Section 233. There is, therefore, no warrant for holding that the Calcutta High Court has taken a view inconsistent with that adopted by the Patna High Court and the only case of the Calcutta High Court in which it was distinguished was on different facts.

10a The view of the Allahabad High Court on this question appears to have fluctuated. On one side, the view that Sections 234 and 235 are mutually exclusive was first propounded in -- 'Emperor v. Sheo Sarn Lal', 32 All. 219 (N) by Tudball J. sitting as a single Judge. The learned Judge does not give any reasons for his view except that, in his opinion, it would be too great an extension of the exception mentioned in Section 234 to try three charges under Section 408 and three under

Section 467, Penal Code, regarding them as three similar transactions. It will be noticed that there was no charge for a gross sum in that case, and the charges of misappropriation were framed for each act of misappropriation on three different occasions. This view was followed in another single bench decision of that Court in -- 'Shuja Uddin Ahmed v. Emperor', A. I. R. 1922 All 214 (1) (O) and no reasons were given in support of the view that the two sections should be read as mutually exclusive of each other. The third case is -- 'Janeshar Das v. Emperor', AIR 1929 All 202 (P) which, again, is a Single Judge decision, in which Tudball, J's opinion was referred to. But the point that directly arose for decision in that case was whether a charge of embezzlement and, in the alternative abetment thereof, may be considered to be one charge under Section 236. Two persons were charged with three offences and each charge was framed in the alternative, either of criminal breach of trust or abetment thereof. The learned Judge held that the provisions of Section 236 cannot be extended to Section 239 when more than one person is put on trial. The correctness of this decision is open to grave doubt in view of the pronouncement of the Privy Council in -- 'Babulal's case (H)', cited in the earlier part of this judgment.

10b The contrary view of the same High Court finds expression in -- 'Shib Charan v. Emperor', A. I. R. 1931 All. 49 (Q). That was a case in which the accused was charged with kidnapping and theft. The Sessions Judge converted the conviction under Section 379, Penal Code into one under Section 411, Penal Code and the point taken in revision was whether he could make such a conversion. It was urged before the High Court that Sections 235 and 236 were mutually exclusive and that if the two offences under Sections 363 and 379, Penal Code could not be tried together under Section 235, Criminal P. C. no recourse could be had to the provisions of Section 236 to alter the conviction under Section 379, Penal Code to one under Section 411. Overruling this contention the learned Judge observed:

'I cannot understand why Sections 235 and 236 should be regarded as mutually exclusive, so that when a person is tried for two or more offences committed in the course of the same transaction, Section 238, Criminal P. C. must be deemed to have been expunged from the Code. It is a rule of interpretation that effect must be given to part of the statute and I see no reason in the present case why Section

235 (1) should not be supplemented by Section 236'.

The latest case of the Allahabad High Court is the Bench decision reported in -- 'Rex v. Daya Sankar', A.I.R. 1950 All. 167 (R) where all the, previous cases have been reviewed and the earlier view has been expressly dissented from. Their Lordships held that there was nothing in Section 233 to indicate that Sections 234, 235, 236 and 239 cannot be read together. An examination of the provisions of these sections leads to the conclusion that the Legislature intended that they should be read as supplementing each other. That was a case where charges for criminal misappropriation and falsification for more than three transactions were joined. Their Lordships however, held:

'In our view the charge or charges of criminal misappropriation in respect of three items may be linked with three charges for falsification of accounts, arising out of the same three transactions'.

The Patna cases were cited, with approval, and the view propounded in 'Michael John's case', was adopted.

11. Learned counsel next brought to our notice the solitary case of the Nagpur Judicial Commissioner's Court reported in -- 'G. S. Ramsheshan V. Emperor', A.I.R. 1935 Nag 178 (S). It was held in that case by a single Judge (who declined to follow the Patna view) that a specific item of embezzlement and a specific item of falsification to conceal that particular embezzlement cannot be considered to be part of the same transaction along with other items.

12. The only case of the Madras High Court brought to our notice is 'Kasiviswanathan's case' reported in '30 Mad. 328 (F)' where it was held that the offence of falsification was not of the same kind as the offence of criminal breach of trust, and was not covered by Section 235 as one act of criminal breach of trust cannot be said to form part of the same transaction with other breaches of trust. It will be noticed that, in that case, there was no charge for a gross sum under Section 222 and on that ground that case is distinguishable from the one before us.

The true line of distinction is that pointed out in -- 'Rama Raju v. Emperor', AIR 1930 Mad 857 (,T) where their Lordships observed:

'Each particular case must be tried on common-sense and common knowledge of language, and it cannot be assumed that if a mandatory provision of the Code has been infringed in framing the charge the Court must of necessity be held to have failed to administer justice to the accused'.

12a The sheet-anchor of the petitioner's case, however, is the latest Full Bench decision of the Bombay High Court reported in -- 'AIR 1952 Bom 177 (B)'. In this case, the accused was charged with having committed criminal breach of trust, and in the alternative with cheating, on two occasions. The question was whether the joinder of the four charges was in accordance with law. This case, I must observe, is no authority for the position taken up by the petitioner. The learned Chief Justice, delivering the leading Judgment of the Full Bench, recognized the possibility of combining charges under Sections 234 and 235 and observed:

'It may be possible in a conceivable case for the prosecution to establish that a case falls under more than one exception; but if it falls under more than one exception, it must so fall that it must not infringe the provisions of any of the three sections'.

The cases of -- 'Emperor v. Tribhuvan Das', 10 Bom. L. R. 801 (U); -- 'In re: Bal Gangadhar Tilak 10 Bom LR 973 (V) and -- 'Emperor v. Manant K. Mehta', A.I.R. 1928 Bom 110 (W) were referred to, and distinguished on the ground that the applicability of Section 236 did not arise in any of those cases and the view of the Allahabad and Patna High Courts was not accepted. The *raison d'être* of this decision is that the provisions of Section 234, Criminal P. C., have been contravened in two respects: firstly because the accused was charged with more than three, offences, and secondly because the offences were not of the same kind. The contention on behalf of the State was that the accused had been charged with having committed only two acts and therefore with only two offences, and since both the acts and the offences were of the same nature the joinder of charges was lawful. In repelling, this contention the learned Chief Justice observed that there was a confusion underlying this argument between 'acts' and 'offences'.

The learned Chief Justice refers to the use of the word 'offences' in Sections 234 and 235 and argues that although two acts may have been committed, four offences have been charged and as Section 234, does not provide that the accused may be charged with having committed three acts, or three series of acts of the same kind, (but of four offences) a clear contravention of the provisions of Section 234 had been made.

With great respect I am unable to adopt this reasoning. An offence is defined in the criminal Procedure Code as meaning any act or omission made punishable by law for the time being in force. The Penal Code defines the word 'offence' as denoting a thing punishable by the Code. A thing means an act, series of acts as well as omissions. The term 'offence' applies to every act which is prohibited by law and does not have a restricted technical meaning dissociated from the act or acts which are prohibited. The Code lays down the procedure not only for the trial of offences but also other acts, including acts of omission, such as person's neglect or refusal to maintain his wife or child. The orders passed by a Magistrate, under Chapters 9, 10, 11, 12, and 13 of the Code are directed not only against offences but also against acts committed or about to be committed. The Code, when it refers to offences, refers only to completed acts which are prohibited by law. The narrow and what appears to me to be a technical interpretation, put upon the word by the learned Chief Justice in the Full Bench decision, seems to me to be an over-refinement of a common expression which everybody understands.

The object of all rules of procedure is to ensure a fair trial, so that justice may be done. Any violation of a rule of procedure which does not result in failure of justice, or embarrasses the accused in his defence, does not necessarily render the trial illegal if the Court is satisfied that justice has been done notwithstanding a technical breach of the rule of procedure. Sub-section (1) of Section 5, Criminal P. C. provides that all offences under the Indian Penal Code shall be investigated, inquired into, and tried and otherwise dealt with according to its provisions. The language of the Code has, therefore, to be construed in accordance with ordinary principles so as to give effect to the plain meaning of the language used, and in a case of ambiguity that meaning must be preferred which is more in accord with justice and convenience. Where the Court realises that improper advantage is

taken by the prosecution and separate offences are joined contrary to the terms of Sections 234 and 235 the conviction has to be set aside. Superior Courts are vigilant enough to see that persons accused of offences are not unfairly dealt with and that the trial is not allowed to become unwieldy, complicated or lengthy.

As their Lordships of the Privy Council observed in --'Kotaya v. Emperor', AIR 1947 PC 67 (X):

'When a trial is conducted in a manner different from that prescribed by the Code (as in --'Subramania Iyer v. Emperor', 28 I. A. 257 (PC) (Y)) the trial is bad & no question of curing the irregularity arises; but if the trial is conducted 'substantially' in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct the irregularity can be cured under Section 537, and nonetheless so because the irregularity involves -- as must nearly always be the case -- a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity 'is one of degree rather than of kind.'

In the light of these observations, I have carefully examined the facts of the present case and given my anxious consideration to see whether the trial has resulted in failure of justice to the petitioner and whether the procedure adopted by the trial Court warrants the setting aside of the conviction.

13. I find that the evidence adduced by the prosecution would be identically the same irrespective of whether the accused had been put on his trial for all the offences at one trial or whether he has been tried separately for each offence. Far from causing any prejudice I think the fact that the charges were all tried together gave notice to the accused as to the kind of evidence that the prosecution was going to adduce against him. I have also examined the authorities to the best of my ability, and find that where an accused is charged with misappropriation of a gross sum the joint trial is warranted by Sections 234 and 235. There is no reported case brought to my notice which goes to the length of laying down that such a procedure should not be adopted. On the other hand, the Patna decisions have dealt with identical cases and have upheld the validity of the trial in such cases. The procedure adopted by the lower Court is, therefore, in my opinion

sanctioned by the law laid down in the reported decisions and by the uniformity of practice so far adopted by the Courts subordinate to this Court.

14. I Would accordingly hold that the trial of the petitioner is not vitiated by any illegality, and that he has been fairly tried and rightly convicted. I would uphold the conviction and sentence and dismiss this revision.

15. NARASIMHAM J.: The only question that requires consideration in this revision petition is whether the trial of the petitioner for offences under Sections 409, 467/471 and 477A, Penal Code is vitiated by misjoinder of charges.

16. The accusation against the petitioner was that while working as Branch Postmaster of Kotpur Post Office, he misused his official position and committed criminal breach of trust of three sums of money covered by three money orders as specified below.

No. of money order	Date	Amount
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89	18-12-48	Rs. 80/-
42	2-2-49	Rs. 60/-
25	2-2-49	Rs. 20/-

TotalRs. 160/-

It was further alleged that with a view to conceal the fraud, the signatures or thumb-impressions of the payees were forged on the acknowledgment receipts and false entries were made in the daily account books of the Post Office showing due payment of the money orders to the payees. There was thus a forged acknowledgment receipt and a false entry in the daily account book in respect of each of the three said money orders,

17. The learned Assistant Sessions Judge relying on Section 222(2), Criminal P. C. framed one charge under Section 409, Penal Code in respect of the total sum of Rs. 160/- covered by the three money orders. He framed three charges for an offence under Section 467/471, Penal Code in respect of the user as genuine of the forged acknowledgment receipt of each of the three money orders. He framed one charge under Section 477A, Penal Code for falsification of the daily account book showing due payment of the first money order No. 89 dated 18-12-48. He

framed another charge under Section 477A, Penal Code for falsifying the daily account book dated 2-2-49 showing due payment of the remaining two money orders.

18. It is not challenged that the series of acts which make up the offence of criminal breach of trust in respect of every one of three money orders would form part of the same transaction as the other acts relating to the user as genuine of the forged acknowledgment receipt and the falsification of accounts in respect of that money order. Thus the act of criminal breach of trust of money order No. 89 dated 18-12-48 for Rs. 80/- would form part of the same transaction as the act of user as genuine of the forged acknowledgment receipt of that money order and the falsification of entries in the daily account book of that date. These acts are closely linked up together as cause and effect and connected by the same community of purpose. In fact, to prove the dishonest intention of the petitioner, which is the essential ingredient of the offence of criminal breach of trust, the prosecution relied on the forged nature of the acknowledgment receipt and the false entries in the account book.

Mr. Mohapatra, however, contended that the three offences committed by the petitioner in respect of money order No. 89 dated 18-12-48 did not form part of the same transaction as the six offences which he might have committed in respect of money orders Nos. 4824 and 4825 dated 2-2-49 and that consequently he could not be tried for all the offences committed in respect of the three money orders in one trial. It was urged that the general design of the petitioner to misuse his official position and the identical nature of the 'modus operandi' adopted on the three occasions were not sufficient to make all the acts part of one transaction.

19. The answer to this question depends mainly on a construction of Sections 234 (1) and 235(1), Criminal P. C. which are as follows:

'234 (1) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not he may be charged with, and tried at one trial for, any number of them not exceeding three.'

'235 (1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.'

It will be noticed that while Sub-section (1) of Section 234 limits the number of offences to be jointly tried to three and further restricts the period of the commission of those offences to twelve months, it omits all references to the sameness of 'transaction' whereas Sub-section (1) of Section 235 emphasises only the sameness of transaction and omits all references either to the number of offences or the period during which they were alleged to have been committed. Therefore, applying the ordinary rules of statutory construction and giving both the provisions their full significance the obvious conclusion is that where several offences are committed in the course of the same transaction they may all be tried jointly, whether those offences are of the same kind or not and whether their number exceeds three or not and irrespective of whether they are committed within a period of one year. On the other hand, where the sameness of the transaction is wanting, only three offences of the same kind alleged to have been committed during the period of one year could be tried jointly. This view gains support from the following passage in the decision of the Privy Council in 'AIR 1938 PC 130 at p. 133 (H)'. (After quoting the passage as given in para 8 of this report His Lordship proceeded.)

In the case of criminal breach of trust of money some difficulty of construction arises mainly because of the provisions of Sub-section (2) of Section 222, Criminal P.C. which runs as follows:

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

This sub-section authorises the framing of one charge specifying the gross sum in respect of which a person is charged with criminal breach of trust and it further says that such a charge 'shall be deemed to be a charge of one offence within the meaning of Section 234.' Doubtless this sub-section does not expressly say that the various acts of criminal breach of trust that might have been committed in respect of the various items which make up the gross sum, shall be deemed to be part of one transaction. The omission of any reference to a 'transaction' in this sub-section has been much relied upon in '30 Mad 328 (P)' and also in 'AIR 1952 Bom 177 (FB) (B)' in support of the opposite view that for the purpose of Section 235 (1) the various acts of misappropriation or of criminal breach of trust would not amount to one transaction. If I may say so with respect, this argument overlooks the definition of the word 'offence' as given in Section 4 (o), Criminal P.C. which is as follows:

' 'offence' means any act or omission made punishable by any law for the time being in force; '.

Section 33, Penal Code further says:

'The word 'act' denotes as well a series of acts as a single act.'

An 'act' and an 'offence' are thus closely linked up.

Thus if the definition of the expression 'offence' as given in Section 4(o), Criminal P.C. read with Section 33, Penal Code is applied in Section 222(2), Criminal P.C. the result is that the series of acts of criminal breach of trust committed in respect of several items of money which are specified in one charge should be notionally deemed to constitute one offence within the meaning of Section 234, Cr. P.C. even though, in reality, they constitute several distinct offences. If a series of acts thus notionally constitute one offence it necessarily follows that notionally they constitute one transaction, it is true that in one transaction several offences may be committed; but I cannot imagine how in one offence (whether notionally or in reality) there could be more than one transaction. This notional assumption of one transaction arises as a consequential and ancillary effect of the deeming provision in Section 222(2), Cr. P.C. Hence when several distinct acts of criminal breach of

trust constitute notionally one transaction, other consequential acts such as forgery or falsification of accounts in respect of each act of breach of trust, should also notionally form part of the same transaction as the principal offence. Thus the combined effect of Sections 222(2), 234(1), Cr. P.C. is that the three acts of criminal, breach of trust of the three sums of money received during the course of one year become part of the same transaction as the falsification of accounts of the daily account books of the Post Office and the user as genuine of the forged acknowledge receipts and a joint trial in respect of all the offences would be legal provided of course the charge of criminal breach of trust of money is framed in accordance with the provisions of Section 222(1), Cr. P.C. as has been done in this case. If, however, three separate charges of criminal breach of trust in respect of each of the money orders had been framed the position may differ inasmuch as the deeming clause of Section 222(2) Cr. P.C. may not apply. This distinction was pointed out in '30 Mad 328 (F)' which, though the leading decision for the opposite view, contains the following significant words:

'In the present case the charge of criminal breach of trust has not been drawn under Section 222, but alleges three distinct offences under Section 409, I. P.C. and three other distinct offences under Section 477A, I. P.C.'

It was urged that the words 'within the meaning of Section 234' occurring in Sub-section (2) of Section 222, Cr. P.C. expressly limit the application of the deeming clause to Section 234 only and that the notional assumption of one offence could not be utilised while construing other provisions of the Criminal Procedure Code. This argument if taken to its logical conclusion would result in an obvious absurdity. For instance, if it be held that a charge framed under Section 222 (2), Cr. P.C. shall be deemed to be a charge of one offence only for the purpose of Section 234 (1) a question arises as to whether for the purpose of Section 258, Cr. P.C. the deeming clause would apply. There can be only one conviction under that section and only one sentence on that charge even though in reality several distinct offences of criminal breach of trust have been committed. Thus the more reasonable view would be that though, in terms, Sub-section (2) of Section 222 refers only to Section 234, all consequential and ancillary results which flow from the deeming provision of that sub-section should be taken to be included within its

scope even though their application may depend on other provisions of the Code such as Sections 235 (1), 258 etc.

20. The result is that the three acts of criminal breach of trust must be deemed to be one offence for the purpose of Section 234 (1) by applying Section 222 (2) and therefore they form part of one transaction. The ancillary effect which flows from this notional assumption is that the other acts so intimately connected with the acts of criminal breach of trust also become part of the same transaction and applying Section 235 (1) the joint trial in respect of all the offences becomes justifiable.

21. The question is undoubtedly not free from difficulty as pointed out by my learned brother and the decisions of the various High Courts are conflicting. But the Patna High Court has all along taken the view that one trial in the aforesaid circumstances is permissible under Section 234 read with Section 235 (1), Cr. P.C. -- 'A.I.R. 1920 Pat 775 (C): 'AIR 1931 Pat. 349 (D)', 'A. I. R. 1934 Pat 232 (A). These decisions have thus settled the procedure in this State and the main question for us to decide now is whether these decisions require revision. The contrary view which was first taken by the Madras High Court in '30 Mad 328 (F)', has been followed in several subsequent decisions of the Calcutta High Court and the Bombay High Court referred to in the judgment of my learned brother; the latest one being the Pull Bench decision of the Bombay High Court reported in A.I.R. 1952 Bom. 177 (B)' on which Mr. Mohapatra relied very much. But the Calcutta High Court in 'A.I.R. 1931 Cal. 8 (J)' and 'A.I.R. 1935 Cal 312 (K)' has followed the Patna view. Again as recently as 1950 the Allahabad High Court in A.I.R. 1950 All 167 at p. 175 (R)', (paras 30 and 31) has adopted the same view. I am not satisfied that adequate grounds have been made out for this Court to refer the question to a larger Bench for the purpose of reviewing the correctness of the Patna decision.

22. For these reasons I agree that the revision petition should be dismissed.