Mangal Chandra Dan Vs. the State

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Court : Orissa

Decided On : Sep-06-1954

Reported in : AIR1954Ori251; 20(1954)CLT558

Judge : Narasimham and ;Misra, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 222, 233, 234, 235, 236, 237, 238, 239 and 537; Indian Penal Code (IPC) - Sections 409, 467 and 471

Appeal No. : Criminal Appeal No. 105 of 1953

Appellant : Mangal Chandra Dan

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Shovash Chandra Roy, Adv.

Disposition : Appeal allowed

Judgement :

Narasimhm, J.

1. This is an appeal from the judgment of the Sessions Judge of Koraput-Jeypore convicting the appellant under Sections 409 and 467/471, I. P.C., and sentencing him to various terms of imprisonment and fine.

2. The appellant was a temporary postman attached to Jeypore post office during April and May, 1952. It was alleged that during that period he received three money-orders payable to three different persons named Bansulia Dombru, Guru Mohuria and Ratni Ghasiani and that he committed criminal breach of trust of the amounts covered by the three money-orders and either forged the thumb-impressions of the payees on the money orders forms or used those money-order forms as genuine knowing them to contain forged thumb impressions.

The full particulars of the money-orders are given below:

Money-order No.Name of payee.Date of entrustment with the appellant.Alleged date of payment

2419 Bansolia Dambaru28-4-521-5-523675 Ratani Ghasiani26-5-5229-5-523674 Guru Mahuria26-5-5229-5-52

The learned Magistrate framed six charges against the appellant, three of them were under Section 409, I. P. C.? in respect of the alleged commission of breach of trust of the sums of Rs. 10/-, Rs. 25/-and Rs. 50/- respectively covered by the three money-orders. The remaining three charges were under Section 471/467, I. P. C., which dealt with forgery of the acknowledgment receipt and the money order forms in respect of each of the charges.

3. Mr. Ray, on behalf of the appellant' urged 'that the trial was vitiated by misjoinder of charges and that' Sections 234 and 235, Cr, P. C., on which the learned Sessions Judge has relied would not apply to the facts of this case. It is not the case of the prosecution that the criminal breach of trust in respect of the three money-orders' and the forgery of the thumb-impressions of the payees in respect of each of the money-orders were all done in the course of the same transaction though the general design of the appellant as Postman to misuse his official position and commit criminal breach of trust of the money-orders entrusted with him, especially when the payees were illiterate persons, appears to have been implied in the prosecution case.

Doubtless, the offence under Section 409, I. P. C. and the offence under Section 471/467, I. P. C. in respect of each of the money-orders were done in the course of the same transaction. Mr. Ray urged that though the trial of the appellant for the three charges under Section 409, I. P. C. would be permissible under Section 234, Cr. P. C. and his trial for the three charges under Section 471/467, I. P. C. would also be permissible under the same section, joint trial for all the six charges would not be permissible inasmuch. as the offences committed in respect of the first money-order were not part of the same transaction as the offences committed in respect of the second money-order and the third money-order.

4. Section 234, Cr. P. C. permits the joint trial of three offences of the same kind committed during the course of one year. An offence under Section 409, I. P. C. is undoubtedly not of the same kind as an offence under Section 471/467, I. P. C. Hence, Section 234, Cr. P. C. would not apply to the present case. Section 235 (1), Cr. P. C. says that any number of offences whether of the same kind or not and whether committed during the period of one year or not may be tried at one trial if they all form part of one transaction. This section also would not help in the present case inasmuch as the offences committed in respect of the three money-orders did not form part of the same transaction.

Mr. Roy relied on a Madras decision reported in -- 'Kasi Visvanathan v. Emperor', 30 Mad 328 (A) where on facts very similar to the present one, it was held that such joint trial was illegal. He also relied on -- 'H. F. Bellgard v. Emperor', AIR 1941 Cal 707 (B).

5. Sections 234 and 235, Cr. P. C. came up for consideration before a Division Bench of this Court in -- 'Guru Charan Samal v. The State', AIR 1953 Gal 258 (C). There the facts were slightly different. A Post Master was charged with having committed criminal breach of trust in respect of a gross sum consisting of the total of three sums covered by three money-orders and with forgery, falsification of accounts to facilitate the commission of that offence. There was, however, only one charge for the offence under Section 409, I. P. C. which was framed relying on Section 23.2. (2), Cr. P. C. which says that when a person is charged with criminal breach of trust of money it shall be sufficient to specify the gross sum in respect of

which the offence is alleged to have been committed and such a charge shall be deemed to be a charge of one offence within the meaning of Section 234, Cr. P. C.

Having thus framed one charge under Section 409, Cr. P. C. the trial Court in that case framed three charges under Section 467/471, I. P. C. in respect of each of the money-orders and three other charges under Section 477A, I. P. C. in respect of those money-orders. A Bench of this Court held that there was no misjoinder inasmuch as the main charge under Section 409, I. P. C. should by virtue of the deeming provision of Section 222(2), Cr. P. C. be held to be a charge of one offence only and all other offences under Sections 467/471 and 477A, I. P. C. were connected with the main offence and formed part of the same transaction so as to attract the principles of Section 235, Cr. P. C.

Mr. Ray, however, distinguished that case by pointing out that there was only one charge under Section 409, I. P. C. whereas in the present case three separate charges under Section 409, I. P. C. had been framed in respect of each of the money-order. Hence, the deeming provision of Section 222(2), Cr. P. C. was not available. Mr. Roy relied in particular on the following observations of mine in that judgment:

'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.'

I also relied on certain observations in 30 Mad 328 (A) where the absence of one charge under Section 409, I. P. C. by taking recourse to Section 222(2), Cr. P. C. was used as a circumstance for holding that there was misjoinder.

6. I am inclined to accept Mr. Roy's contention. In all the reported decisions where it was held that a joint trial for various acts of criminal breach of trust of money, forgery and falsification of accounts to cover up that breach of trust was permissible the main offence under Section 409, I. P. C. was the subject matter of only one charge and not of separate charges. Thus in the earliest Patna case on the subject -- 'Gajadhar Lal v. Emperor', AIR 1920 Pat 775 (D) there was one charge under Section 408, I. P. C. in respect of the gross sum that was said to have been misappropriated and three charges under Section 477A, I. P. C. for

falsification of accounts in respect of certain items included in the total sum alleged to have been misappropriated. It was held that there was no misjoinder.

Similarly, in -- 'Ramkishoon Pershad v. Emperor', AIR 1934 Pat 232 (E), where the previous decisions on the subject were fully reviewed there was only one charge under Section 409, I. P. C. based on Section 222(2), Cr. P. C. though the various items of money that were said to have been misappropriated were specified in that charge. It was held that there was no misjoinder if there was a joint trial for that offence and for two offences under Section 477A, I. P. C. dealing with falsification of accounts to cover up the various acts of misappropriation.

Doubtless, in the last portion of the judgment in that case the learned Judges held that even if three charges under Section 409, I. P. C. had been framed there would be no misjoinder. This portion of it was not necessary for the decision of that case. The main reason for holding that there was no misjoinder was that by virtue of Section 222(2), Cr. P. C. the charge of criminal breach of trust should be deemed to be a charge of one offence. Similarly, in a recent Allahabad case reported in -- 'Rex v. Dayashankar', AIR 1950 All 167 (F) there was only one charge under Section 408, I. P. C. in respect of the gross sum said to have been misappropriated.

7. It appears to me that if a Court does not rely on Section 222(2), Cr. P. C. and frames three separate charges under Section 409, I. P. C. for the three sums said to have been misappropriated there would be a misjoinder if those offences are tried jointly with the offences under Sections 467/471 or 477A, I. P. C. arising out of each act of misappropriation. The Madras case referred to above is a direct authority on this point. Similarly, the Calcutta decision reported in AIR 1941 Cal 707 (B) and a decision of the Bombay High Court reported in -- 'D.K. Chandra v. The State', AIR 1952 Bom 177 (G) support the view that three offences of the same kind under Section 234, Cr. P. C. cannot be jointly tried with other offences which may form part of the same transaction as each of those three offences of the same kind, unless all the offences taken together can be said to form part of one transaction. Thus in Calcutta case there were three charges under Section 420, I. P. C., three charges under Section 467 and three other charges under

Section 477A, I. P. C.; the offences under Sections 467 and 477A, I. P. C. were alleged to have been committed for the purpose of committing the offence of cheating. Yet it was held that the trial was vitiated by misjoinder. Similarly, in AIR 1952 Bom 177 (G), two separate charges under Section 409, I. P. C. and two alternative charges under Section 420, I. P. C. were held to be bad.

8. It is true that on the general principles of construction of statutes Sections 234, 235, 236, 237, 238 and 239, Cr. P. C. should be construed as supplementing one another and dealing with those exceptions to the general rule of separate trial for every distinct offence as provided in Section 233, Cr. P. C. But where neither Section 234 nor Section 235, Cr. P. C. would apply the trial must be held to be clearly vitiated by misjoinder and it will not be proper to rely on Section 234 for some of the charges and on Section 235 for the rest. The special position arising out of the application of Section 222(2), Cr. P. C. has been fully dealt with in the Bench decision of this Court cited above. In other cases the general rule of separate trial for every distinct offence would prevail. I would, therefore, hold that the trial was vitiated by misjoinder and the defect cannot be cured.

9. The next question is whether there should be a separate trial of the appellant in respect of the offence said to have been committed in relation to each of the three money-orders. So far as the second and third money-orders are concerned, on the evidence before the lower Court it appears that the misappropriation was only temporary inasmuch as the appellant eventually paid the sum due to the payees. I do not think it advisable at this belated stage to order retrial for those offences. As regards the 1st money-order, however, he ought to be tried afresh for the offences under Sections 409 and 471/467, I. P. C.

10. I would therefore, allow the appeal, set aside the conviction and sentence and direct a fresh trial of the appellant for the offence under Sections 409 and 471/467, I. P. C. said to have been committed in respect of money-order No. 2419. As more than two years have elapsed, the trial should be expedited.

Misra, J.

11. I agree.