

State Vs. Ram Kanwar

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Court : Delhi

Decided On : Apr-03-1984

Reported in : 1984(1)Crimes1040; 1984(7)DRJ63

Judge : Jagdish Chandra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 212(2), 219 and 482

Appeal No. : Criminal Reference No. 1 of 1983

Appellant : State

Respondent : Ram Kanwar

Advocate for Pet/Ap. : M.L. Sachdev and; Dinesh Goel, Advs

Judgement :

Jagdish Chandra, J.

(1) This order shall dispose of the reference made on 28-7-1983 under Section 395(2) of the code of Criminal Procedure, 1973 (in short Cr. P.C.) by Sh. S.M. Aggarwal, Special Judge, Delhi. The question posed by this reference is whether it shall be just and proper to subject Ram Kanwar accused to the present fresh trial under Sees. 409/477-IPC and Section 5(l)(d) of the prevention of Corruption Act, 1947 in respect of 8 items of criminal breach of trust of money alleged to have been committed for a total sum of Rs. 10,048.13 P. during the year 1978 by

employing the modus operandi of falsification of accounts in his capacity as cashier in the office of Director General of Civil Aviation, R.K. Pnram, New Delhi on the basis of a complaint of Shri R.N. Dass, Assistant Director (Admn.) made by him to the C.B.I, on 19-12-1979, registered with the Cbi and incorporated into R.C. No. 50/79 on 26-12-1979 and wherein the charge sheet was filed on 31-8-1981, in the face of his previous trial which ended into his conviction passed by Shri R.P. Gupta then special judge, Delhi in respect of 4 other items of the same year i.e. of 1978 wherein the charge sheet had been filed on 1-7-1980 and the report wherein was dated 21-4-1979 on the basis of source information. In other words was it incumbent upon the investigating agency Cbi to have deferred the filing of the charge sheet in respect of 4 items in the earlier case on 1-7-1980 and waited the completion of the charge sheet in respect of the remaining 8 items in the subsequent case (present case) and then filed the charge sheet of all the 12 items of the year 1978.

(2) The learned Additional Sessions Judge after setting out the provisions of law contained in Sections 212(2), 219(1), 220(1) and 220(2) Criminal Procedure Code . was of the view that reading of the aforesaid provisions of law harmoniously together there was left no manner of doubt that the prosecution was under the legal duty to have filed a composite charge sheet against accused Ram Kanwar for all the items i.e. 4 of the previous charge sheet plus 8 of the present charge sheet regarding which accused, has allegedly committed the various offences of criminal breach of trust and falsification of accounts and criminal misconduct during the year 1978. The learned Additional Sessions Judge while reading the aforesaid provisions in conjunction with Section 300 Cr. P.C., was further of the opinion that the accused could not be tried for misappropriating another gross sum of money covered by the period for which he had been already tried and convicted in the previous case and that the charge in the previous case should be taken to include all the items allegedly misappropriated by him in the course of the same transaction during the year 1978. He was also of the opinion that otherwise it seemed difficult to conceive that the Legislature should have intended that under Section 212 the Prosecutor should be at liberty to prosecute for a gross sum misappropriated during a particular period consisting of certain items more than three in number and obtain in conviction for the same and then choose another

gross sum consisting of different items alleged to have been misappropriated during the same period and have a separate trial for the second group of items. He ultimately came to the conclusion that what the Legislature apparently intended was where there was a different trial for misappropriation of the gross sum, there should be only one trial for such an offence committed within the period covered by the defalcation and thus opined that with the subsequent (present) trial of the accused was uncalled for as also unjust and grossly improper amounting to abuse of the process of the court and that the quashing thereof would serve the ends of justice. The order under reference also observes that the Cbi and its investigating Officers were very well aware that the accused had been alleged to have committed the offences of criminal breach of trust, falsification of account and criminal misconduct for the 4 itmes pertaining to the year 1978 in addition to the remaining 8 items of the same year which were under investigation by the Cbi as on 19-12-1979 on which date the complaint in the subsequent case was made and that the charge sheet in the first case had been filed on 1-7-1980 about 61 months after the complaint had been filed on 19-12-1979 in the subsequent case and that the Cbi had failed to give any Explanationn for not including the remaining 8 items of the present charge sheet with the charge sheet filed, tried and concluded earlier and that the accused having already suffered a conviction in the earlier case, would stand greatly prejudiced if the further trial of truncated charge sheet of the same period was allowed to continue, even through there is no legal bar to the prosecution now pending against him.

(3) In order to appreciate and adjudicate upon the question subjectmatter of this reference, it would be desirable to set out the provisions of law contained in Secs. 212, 218, 219, 220 and Section 300 Criminal Procedure Code . and the same are set out below :- 'Section 212-Particulars as to time, place and person :

(1)The charge shall contain such particulars as to the time and place of the alleged offence, and the person' (if any against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2)When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property 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 219 :

Provided that the time including between the first and last of such dates shall not exceed one year. Section 218 Separate charges for distinct offences :

(1)For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately: Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby, the Magistrate may try together all or any number of the charges framed against such person.

(2)Nothing in Sub-section (1) shall affect the operations of the provisions of Sections 219, 220, 221 and 223.

Section 219 Three offences of same kind within year may be charged together :

(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.

(2)Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:

Provided that, for the purposes of this section, an offence punishable under Section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under Section 380 of the said Code, and that an offence punishable under any Section of the said or of any

special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence. Section 220
Trial for more than one offence :

(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.

(2) When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in Sub-section (2) of Section 212 or in Sub-section (1) of Section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts he may be charged with, and tried at one trial for, every such offences.

Section 300 Person once convicted or acquitted not to be tried for same offence:

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.'

(2) A person acquitted or convicted of any offence may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under Sub-section (1) of Section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the firstmentioned Court is subordinate.

(6) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code.

Explanationn :-The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purposes of this section.'

(4) The total gross amount of the four items subject-matter of the earlier case was to the tune of Rs. 11,339-50 and the two terminal dates of those items were 6-3-1978 and 3-5-1978 during which the breach of trust of those 4 items took place whereas in the subsequent (present) case the gross amount involved of the 8 items is Rs. 10,048-13P. and the terminal dates thereof are 23-5-1978 and 19-7-1978 during which those 8 items of criminal breach of trust occurred and thus it would be seen that there is no overlapping of the dates of the commission of the offences of criminal breach of trust.

(5) From the aforesaid provisions of law it is made out that formally there should be a separate charge for every distinct offence of which any person is accused and every such charge is to be tried separately, but exceptions to this rule find mention in Secs. 212(2), 219, 220, 221 and 223 Criminal Procedure Code . The exceptions including the one contained in Section 212(2) Criminal Procedure Code . are only enabling in character and do not appear to bind the prosecution to act necessarily in the manner prescribed therein. Separate trials need not be held in cases covered by the aforesaid exceptions and even Section 300 Criminal Procedure Code . appears to have no application to a case where the subsequent offence .'for which the accused was being tried did not form part of or had nothing

to do with the offence for which he had already been tried. There is no warrant for the proposition that merely because Section 212(2) Criminal Procedure Code . enables the prosecution in cases of criminal breach of trust or dishonest misappropriation of money to specify only the gross sum and the dates between which the same are alleged to have been committed, without specifying the particular items or exact dates thereof, that only one offence has arisen out of the different items of misappropriation, criminal breach of trust or defalcation, and that it must be regarded as one transaction. This provision of law simply incorporates a deeming provision whereby the charge framed there under shall be deemed to be a charge of one offence within the meaning of Section 219 Criminal Procedure Code . and not that it is one offence. All that. Section 212(2) Criminal Procedure Code . contemplates is that all the items of misappropriation including in the gross sum need not be specified nor the exact date of each one of them. They can be grouped together into one lump sum and that can be shown as a sum misappropriated. There is nothing in the sub-section to show that all the items misappropriated within the space of one year must necessarily be included in the gross sum. In other words, this sub-section is only enabling and not obligatory for the prosecution. This is all the more so when the investigation in respect of only some of the items has been concluded and the investigation in respect of the remaining items of the same year still remains to be conducted and concluded and the gap between the conclusion of the two investigations is quite considerable and the filing of the charge sheet in the first set of items of misappropriation can wait only not without prejudice to the trial thereof till the completion of the investigation of the remaining items of misappropriations occurring during the same year)

(6) The learned counsel for the Cbi has relied on the Supreme Court authority reported as Ranchhod Lal v. State of Madhya Pradesh 1965(2) Cr. L.J. 253 which was an authority under the earlier Code of Criminal Procedure of 1898 wherein Secs. 222(2), 233, 234 and 235 correspond to Secs. 212(2), 218, 219 and 220 of the Code of Criminal Procedure of 1973. It was held as follows in the aforesaid Supreme Court authority :- 'Sub-section (2) of Section 222 Criminal Procedure Code . is an exception to meet a certain contingency and is not the normal rule with respect to framing of a charge in cases of criminal breach of trust. The normal rule is that there should be a charge for each distinct offence, as provided in

Section 233 of the Code. Section 222 mentions what the contents of the charge should be. It is only when it may not be possible to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contingency, that the court is authorised to lump up the various items with respect to which criminal breach of trust was committed and to mention the total amount misappropriated within a year in the charge. When so done, the charge is deemed to be the charge of one offence. If several distinct items with respect to which criminal breach of trust has been committed are not so lumped together, no illegality is committed in the trial of these offences. In fact, a separate trial with respect to each distinct offence of criminal breach of trust with respect to an individual item is the correct mode of proceeding with the trial of an offence of criminal breach of trust.....
..... Section 234 is also an enabling provision and is an exception to Section 233 Criminal Procedure Code . If each of the several offences is tried separately, there is nothing illegal about it where offences have been committed in the course of the same transaction, the separate trial of the accused for certain specific offences is not illegal. Section 235 is an enabling section. Apart from the fact that the separate trial of the appellant in four cases for committing breach of trust with respect to several items was not illegal, there is nothing on record to show that the investigating agency had worked out all the cases of criminal breach of trust prior to prosecuting the appellant for the offences of which he was tried at Sessions Trial No. 35 of 1961. If all the offences had not been worked out prior to that, there could not have been a joint trial for all of them even if that could have been thought to be a more reasonable way of proceeding against the appellant

(7) It was strenuously contended by the learned counsel for the Cbi on the support of the aforesaid Supreme Court authority that working out of the subsequent 8 items was necessary which took the Cbi about 14 months and without having gone through that process charge sheet in respect of those items could not be filed and thus there could not have been a joint trial for all the 12 items even if that could have been thought to be a more reasonable way of proceedings against the accused and that the matter stood concluded by the aforesaid authority. The aforesaid period of 14 months referred to by the learned counsel for the Cbi is

from 1-7-1980 on which date charge sheet was filed in the earlier case to 31-8-1981 when the charge sheet was filed in the subsequent case.

(8) On the other hand, the learned counsel for the accused contended that in the Supreme Court authority in Ranchhod Lal's case (supra) all the four trials had concluded and the only point involved was the legality of the conviction and sentence while the propriety or desirability of any subsequent trial was not in issue there as legality and desirability of trial are two separate questions and even though the subsequent trial in the case in hand may not be illegal the propriety and desirability thereof is certainly not there when the prosecution had already taken resort to 'gross amount' of the 4 items as against individual items of defalcation, and had knowledge of the subsequent 8 items of criminal breach of trust. He has cited some authorities also in support of his contentions. Sidh Nalh Awasthi v. Emperor : AIR1929 Cal457 hold as under :-

'If a person commits breach of trust of or misappropriates different sums of money he commits so many offences. But it is not desirable that he should be tried as many times when he could have been tried for all of them at one trial.'

(9) The perusal of this authority shows that in the challan submitted by the police it was stated that the accused had committed criminal breach of trust in respect of gross sum of Rs. 3,651-5-3. Charges in respect of three items, viz. Rs. 257-8-3, Rs. 1,855-0-3 and Rs. 178-11-3 were framed against the accused as being the items in respect of which criminal breach of trust was committed by the accused on 6-6-1927 and he was convicted on those charges and was sentenced to undergo R.I for 3 months. Subsequently another challan was submitted by the police stating that the petitioner had committed criminal breach of trust of 3 sums of money Rs. 700.00 Rs. 100.00 and Rs. 100.00 , on 6-6-1927, 27-5-1927 and 24-5-1927 respectively, the other particulars. being the same as in the pervious challan. The accused, in that case, put in a petition objecting to the second trial on the ground that the items subject-matter thereof were included in the gross sum of Rs. 3,651-5-3 and maintained that he had already been tried for the whole offence that he had committed, and so under Section 403 Criminal Procedure Code , 1898 (Section 300 Criminal Procedure Code ., 1973) he could not be tried again. It

was held that though Section 403 (now Section 300) may not strictly apply in terms to such a case still there was abundant authority for the view that a second trial in circumstances such as these ought not to have been allowed to be held. It was further observed that if the accused had moved High Court for stopping his second trial he would have found no difficulty in getting the order in his favor but after the trial was over it was not possible to hold on this ground alone that the conviction was illegal and under these circumstances even though upholding the conviction the sentence was reduced to the minimum, i.e. a day's rigorous imprisonment. Thus, the distinct feature in the afforesaid authority was that even though each of the two challans pertained to the three, different items each, the gross sum of all the six items already found mention in the previous challan and interests of justice naturally required that the second trial ought not to have been allowed to be held but as it was already held before the matter came up before the High Court, the conviction could not held to be illegal but the sentence was reduced to the minimum.

(10) The next authority cited by the learned counsel for the accused is Chudamn Nairayan Patil v. State of Maharashtra, : AIR1969 Bom1 according to which where a prosecution for a criminal breach of trust in respect of certain sum, during a particular period had ended in conviction, a subsequent trial for the same offence in respect of other sums of money, is not barred under Section 403 (now Section 300) Criminal Procedure Code . if the period covered by the subsequent prosecution over-lapped the period covered by the earlier prosecution, but the High Court has the power under Section 561-A (now Section 482) Cr. P.C. to disallow the subsequent prosecution on the ground that it would not be in the interest of justice to allow the case to proceed. In this it is observed that authority it is clear that as a matter of legality, a person who commits breach of trust in respect of several amounts can be prosecuted as many times as the number of individual items misappropriated by him but whether the interests of justice required that this should not be permitted to be done is another question. In that case the accused had been convicted and sentenced under Section 409 Indian Penal Code for having committed criminal breach of trust in respect of a sum of Rs. 583.00 . Subsequently 'two more charge-sheets were filed against him under Section 409 Indian Penal Code One of these charge- sheet pertained to the

criminal breach of trust in respect of two sums, i.e. Rs. 53.00 and Rs. 106.00 . Even though the subsequent two prosecutions were held in that authority, not barred under Section 403 (now Section 300) Cr. P.C. and yet it was held that the subsequent two prosecutions would not be in the interests of justice and that the High Court had inherent powers to quash the same under section 561-A (now Section 482) Criminal Procedure Code . In that authority it was further observed that the only question which remained to be considered was whether the ends of justice required that the two subsequent cases pending against the accused should not be allowed to proceed, and what constituted sufficient reason for not permitting subsequent proceedings to continue must evidently depend upon the facts and circumstances of each case and the Bombay High Court was of the opinion that that was one of these cases in which it was in the interests of justice that the proceedings must be quashed and the reasons given for quashing those subsequent charges were that the amount covered thereby had already been recovered from the accused who had undergone one sessions trial and had already suffered a sentence of the one year and had paid the fine of Rs. 500.00 which was imposed upon him, and the amounts which formed the subject-matter of the subsequent two proceedings were paltry and the accused who was a Government servant had already been subjected not only to the agency and humiliation of a criminal trial but he would have to face the necessary consequences, namely that he would lose his job and would find it hard to get any others.

(11) In *Gangadhar Panda v. The State* : 45(1978)CLT373 an authority of Orissa High Court in the previous trial which ended in acquittal the prosecution was knowing the fact that there were some more items of defalcation committed by the same accused and there had been no Explanationn why those items were not included in the previous trial, still they did not include those items in the previous trial and later on lauched a new trial for those items. It was held that in the absence of such Explanationn, it would not be conducive to proper justice to continue second trial as the accused would thereby be prejudiced and harassed even though a fresh trial was not legally barred. In coming to this finding the Orissa High Court had relied upon *Chittaranjan Saha v. The State*, : AIR1960 Pat168 which was a case of embezzlement and wherein it was held that the trial in

respect of a gross sum alleged to have been embezzled between two specified dates did not bar a second suit in respect of another sum embezzled on intermediate days but not included in the gross sum for which the earlier charge was framed in terms of Section 222(2) (now Section 212(2)) Criminal Procedure Code . but if there was nothing on the record to show that the items of defalcation for which the accused had been subsequently charged were not within the knowledge of the prosecution why those items were not included in the previous trial, and in the absence; of any adequate Explanationn for its non-inclusion in the previous trial in spite of the resort to Section 222(2) now Section 212(2) it would not be conducive to justice but rather it would be vexatious to have a piecemeal trial.

(12) In re, Osman Ah, : AIR 1959 AP520 (DB) Section 222 (now Section 212) Criminal Procedure Code . was held only an enabling section and not a disabling one, enabling the prosecution, when it considers taking such a course as appropriate, or convenient, or necessary, to put in a gross sum representing the total amount misappropriated by the accused, instead of framing a large number of separate charges in respect of small sums of money which go to make up the gross amount and to spell out from such an enabling section a disability on the part of the prosecution to follow the procedure which is enjoined by the sections of the Code, such as Section 233 (now Section 218), is wrong. Regarding the propriety of second trial this authority observed that one, could not agree with the view that where the subsequent charges were based on identical evidence, when the charges on which the accused had been previously tried and acquitted, it would not be proper to try the accused over again as the evidence on any one charge can in no case be exactly identical with the evidence on another charge for which reason no case can serve as a precedent of facts as the facts always vary. It was further observed that to lay down such a proposition would lead to the most serious consequences for, when fresh evidence is forthcoming and when the subsequent charges can be supported on that evidence, and particularly when the nature and availability of that evidence could not have been anticipated, before the trial on the earlier charges-is held, it would defeat the ends of justice to prevent the trial of the subsequent charges simply because the previous charges ended in an acquittal. Regarding the applicability of Section 403 (now Section 300) it was held

that it had no application in such cases. This authority also took note of an earlier authority of Andhra Pradesh High Court, namely, Ramchandra Chetty v. State of Andhra Pradesh Air 1956 AP 102 wherein the question of extending the principles underlying Section 403 (now Section 300) Criminal Procedure Code . came up for discussion wherein reliance was placed in that decision on the case reported in Sidh Nath v. Emperor : AIR1929 Cal457 . But the principles laid down in Air 1929 Calcutta 457 had been dissented from and over-ruled by the Full Bench of the Calcutta High Court in Purnananda Das Gupta v. Emperor, : AIR1939 Cal65 and this Full Bench decision had not been brought to the notice of the learned Judge who decided the case Air 1956 AP 102 (supra).

(13) Giving my thoughtful consideration to the relevant provisions of the law as also the aforesaid various authorities and especially the Supreme " Court's authority in Ranchhod Lal's case (supra), I am of the view that the separate charges are to be normally framed for each offence of criminal breach of trust or dishonest misappropriation of money or defalcation of accounts as is the general rule enunciated in Section 218 Criminal Procedure Code . but by way of an exception the provision contained in Sub-section (2) of Section 212 Criminal Procedure Code . may be resorted to by the prosecution so as to specify the gross sum of the various items of criminal breach of trust, misappropriation of money or defalcation of accounts and also the two terminal dates between which those offences are alleged to have been committed, without specifying the particular items or exact dates on which those offences were committed, and the charge as framed in respect of all those items shall be deemed to be charge of one offence within the meaning of Section 219 Criminal Procedure Code . provided that the time intervening the two terminal dates does not exceed one year, and this provisions of law is an enabling one for the prosecution and cannot be converted into a disabling one. Further more. Section 300 Criminal Procedure Code . enunciating the English rule of autrefois acquit and authrefoid convict applicable to criminal trials to also not applicable when recourse is had by the prosecution to the aforesaid exceptional rule contemplated by Sub-section (2) of Section 212 when challan or charge-sheet is filed by the prosecution against the accused person in respect of various items of misappropriations defalcation, trial held resulting in conviction or acquittal and subsequent charge-sheet/challan is filed in respect of

other items of misappropriation occurring during the same period of the two terminal dates or within the same year to which the items of the previous charge-sheet pertained Even the conviction in the subsequent trial though for the items of the same period or of the same year .to which the items of the earlier charge-sheet pertained, would not be illegal) However, there may be cases where apart from the illegality, the question of propriety and desirability may arise and the ends of justice may demand that the proceedings for the subsequent trial may be quashed under the inherent powers of the High Court under Section 482 Criminal Procedure Code . in order that the accused is not unnecessarily harassed for the second time. Such instances may occur when having resorted to Sub-section (2) of Section 212 Criminal Procedure Code .. the prosecution chooses certain items of misappropriation occurring within two certain terminal dates and files the charge-sheet/challan in respect of the same mentioning the gross sum of those items occurring within those two terminal dates, and subsequently files another charge-sheet/challanage at very accused person in respect of the one or more items of misappropriation the amounts of which stood already included in the gross sum of the earlier charge-sheet but the items were not as such mentioned therein implying. necessarily that the subsequent items were in the know of the prosecution when the earlier charge-sheet was filed; or where the subsequent items pertained to the period intervening the same terminal dates which were of the earlier charge-sheet and the prosecution was fully aware of those items at the time of the filing of the earlier challan. In both such instances it would be imposing gross injustice upon the accused to harass him with the subsequent trial and the continuance thereof. The inherent powers of the High Court under Section 482 Criminal Procedure Code . cannot be limited to any number of such instances and rather exercise thereof shall depend upon the peculiar facts and circumstances of each particular case. However, no injustice muchless gross injustice can be seen when the subsequent charge-sheet/challan pertains to items of misappropriations/defalcation in accounts or criminal breach of trust if the same pertain to a period subsequent to the period in which the earlier items of misappropriation were alleged to have been committed by the same accused meaning thereby that the gross sum and the two terminal dates of the various items of the earlier case should both be different from the gross sum and two

terminal dates of the subsequent case, though all the items of both the cases occur during the period of 12 months reckoned from the first item of the first case to the last item of the subsequent case especially when there is nothing on the record to show that the Investigating Agency had worked out and investigated all the items of criminal breach of trust etc. prior to prosecuting the accused person for the items of the earlier charge-sheet, inasmuch as if all the items are not worked out prior to that, there could not be a joint trial of all the items occurring during the period of 12 months, even if that could have been thought to be a more reasonable way of proceeding against the accused person and the Supreme Court authority in Ranchhod Lal's case (supra) is a complete answer not only to the legality but also to the propriety/desirability of the case in hand inasmuch as even though the Investigating Officers of the C.B.I, were well aware that the accused had been alleged to have committed the offences of criminal breach of trust, falsification of accounts and criminal misconduct for the earlier 4 items pertaining to the year 1978 in addition to the remaining subsequent 8 items of the same year which were under investigation by the C.B.I, as on 19-12-1979 on which date the complaint in the subsequent case was made and the charge-sheet in the first case was filed on 1-7-1980 about 6' months after the complaint had been filed on 19-12-79 in the subsequent case, because filing of the complaint is not the same thing as the filing of the charge-sheet/challan in court and in fact first of all the complaint is filed with the Cbi which registers the same thereafter and then works out and investigates the same and finding a prima facie truth therein then files the charge-sheet/challan in court and the working out and investigation of the allegations naturally take the investigating agency quite a considerable time and therein lies the error into which the learned Additional Sessions Judge has fallen in this case in opening that it would be unjust to draw the accused in the subsequent trial. In this case, there is not only nothing on the record to show that the working out and investigation of the subsequent 8 items by the Cbi was complete when the earlier charge-sheet was filed in Court by it and on the contrary the learned counsel for the Cbi has pointed out that it took the Cbi as many as 14 months to complete the investigation of the subsequent 8 items after the charge-sheet had been filed on 1-7-1980 in the earlier case, the charge-sheet in the subsequent case having been filed subsequently on 31-8-1981. It would be further worthwhile to note that the

amounts of the subsequent 8 items of criminal breach of trust are not petty but total up to quite a huge sum of Rs. 10,048.13 P. and even from that standpoint there is no warrant for the exercise of inherent powers by the High Court under Section 482 Criminal Procedure Code . to quash the proceedings of the subsequent trial even though the items in the subsequent cases being petty constituted one of the elements in Chudaman Narayan Patil's case (supra) in quashing the subsequent trial. As already pointed out above the two terminal dates in the subsequent case being 23-5-1978 and 19-7-1978 for the remaining 6 items being for a period distinctly subsequent to the period of the two terminal dates 6-3-1978 and 3-5-1978 of the earlier charge-sheet comprising 4 items, and their respective gross sums distinct from each other, ends of justice would in no way be offended by the continuance of the subsequent trial and the reference stands answered accordingly.

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