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Dinkarray Raghnath Vs. the State

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Court : Gujarat

Decided On : Aug-08-1961

Reported in : AIR1963Guj15; 1963CriLJ162; (1962)GLR701

Judge : Shelat and; Mehta, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 222(2), 233, 234, 235, 235(1) and 537; Indian Penal Code (IPC) - Sections 477A; Criminal Law; Code of Criminal Procedure (CrPC) (Amendment) Act, 1952 - Sections 7(3)

Appeal No. : Criminal Appeal Nos. 460 and 588 of 1960

Appellant : Dinkarray Raghnath

Respondent : The State

Advocate for Def. : B.R. Sompura, Asst. Govt. Pleader

Advocate for Pet/Ap. : H.P. Shukla,; E.N. Mankad, Adv. and; Y.S. Mankad, Ad

Judgement :

Shelat, J.

12. On behalf of the accused, Mr. Mankad raisedcertain questions of law regarding the jurisdiction of thelearned trial Judge and misjoinder of charges. Briefly stated, his contentions were as follows:

(1) That the learned Special Judge had no jurisdiction to try the accused on the charge under Section 477A of the Penal Code.

(2) That the trial suffered from illegality as the

charges were in contravention of Sections 233 and 234 of the Code of Criminal Procedure inasmuch as the offences or criminal breach of trust under Section 409 of the Penal Code, misconduct arising from the acts of criminal breach of trust and falsifications of accounts in respect of the sums of Rs. 40/-, Rs. 15/- and Rs. 392/- could not be joined together and the accused could not be validly tried in one joint trial.

(3) That the acts of misconduct as defined in 5. 5 (1) (c) of the Prevention of Corruption Act were in respect of four distinct sums, viz., Rs. 40/-, Rs. 15/-, Rs. 20/-end Rs. 392/- and as the provisions of Section 222 (2) of the Code of Criminal Procedure only apply to a charge of criminal breach of trust but not to acts of misconduct, the accused could not be tried on these charges together with charges under Section 477-A of the Penal Code, which were on two counts viz., (i) in respect of Rs. 40/- and Rs. 15/-and (ii) in respect of Rs. 392/-. These charges would not fait under S. 234 of the Code as these were not offences of the same kind and, therefore, there was multiplicity of charges; and

(4) That the jurisdiction of the learned Special Judge was derived from a valid sanction to prosecute the accused; tut as there was no valid sanction In regard to the sum of Rs. 392/-, the learned Special Judge had no jurisdiction to try the accused in respect of that amount under Section 409 of the Penal Code.

13. The question raised by Mr. Mankad is in reality two-fold -- (1) whether the learned Special Judge was fight in joining In one trial charges in respect of offences under Section 409 of the Penal Code with offences under Section 5 (1) (c) of the Prevention of Corruption Act with reference to the three sums of Rs. 40/-, Rs. 15/- and Rs. 20/-, which, according to Mr. Mankad, were acts of misconduct, each in itself a completed offence; and (2) whether the learned Special Judge had Jurisdiction to try the accused on the charge under Section 477-A of the Penal Code as his jurisdiction was confined to offences enumerated in Sections 6 and 7

of the Criminal Law (Amendment) Act, 1952; and the offence under Section 477-A was not one of them and,

therefore, was triable by the learned Sessions Judge, Kutch, as the offence arose within the jurisdiction of that Judge.

14. Relying on Umar Saheb Bura Saheb v. State, 61 Bom LR 1001 : (AIR 1960 Bom 205), Mr. Mankad contended that this was an infringement of a provision as to the manner of trial and not merely an irregularity as to misjoinder of charges which can be cured under Section 53/-of the Code of Criminal Procedure, and, therefore, such an infringement vitiated the entire trial. Now, it Is clear from the record that as the Special Judge, Kutch, had given sanction to prosecute the accused, this case, which was originally numbered as Special Case No. 8 of I960 was assigned to the Special Judge, Jamnagar, who was specially appointed to try that case. As we have said, the charge-sheet filed in the Kutch Court contained charges of criminal breach of trust of the aggregate sum of Rupees 467/- consisting of Rs. 40/-, Rs. 15/-, Rs. 20/- and Rs. 392/-, of misconduct in respect of these sums and of falsification of accounts by making two false entries in respect of Rs. 40/- and Rs. 15/- on the one hand and of Rs. 392/- on the other. The learned Special Judge, Jamnagar, felt that there would be lour charges in all, viz., one charge under Section 409 of the Penal Cade, one under Section 5 (1) (c) of the Prevention of Corruption Act and two charges under Section 477-A of the Penal Code and, therefore, as a matter of caution, he split up the charges into two separate trials.

15. It was contended that the learned Special Judge had no jurisdiction to try the accused under Section 477-A even in a separate trial as these charges were not in regard to an offence in respect of which the Criminal Law Amendment Act conferred jurisdiction upon the learned Special Judge. So far as Special Case No. 1 of 1960 was concerned, It was argued that a charge for the Aggregate sum misappropriated can be framed under Section 222 (2) of the Code of Criminal Procedure. The rule in that section, however, did not apply to offences under Section 5 (1) (c) of the Prevention of Corruption Act and, therefore, there were more than three charges in respect of offences which were not of the same kind

and, therefore, there was infringement of Section 234 of the Code. It was also contended that Section 235 of the Code also could not apply as these acts could not be said to be acts arising from the same transaction. Making a false entry or. entries to screen a single act of defalcation may constitute the same transaction but not the making of false entries to cover up several acts of breach of trust. In other words, if an accused were to commit three acts of misappropriation and to cover them up he were to make false entries, a false entry made to screen the corresponding sum misappropriated may be an act in the same transaction but not the entries made to screen the other two acts of misappropriation.

16. Mr. Mankad relied principally upon two decisions, Emperor v. Manant K. Mehta, 27 Bom L R 1343 : (AIR 1926 Bom 110) and D. K. Chandra v. The State : AIR1952 Bom177 (FB). tn 27 Bom LR 1343: (AIR, 1926 Bom 110), the accused was convicted at one trial on three charges of criminal breach of trust in respect of three amounts of money on different dates within the space ot one year and also on three more charges of falsification of accounts with reference to the same three items. It was held that the joinder of charges was illegal and vitiated the trial; for the two offences combined were not of the same kind within the meaning of Section 234 of the Criminal Procedure Code, nor were the different misappropriations and false entries so connected as to form part of the same transaction within the meaning of S. 235 of the Code. At page 1345 of the report (Bom LR) : (at pp. 111-112 of AIR), Coyajee, J. upheld the contention on behalf of the Defence that the charge alleged more than three distinct offences; that it was not covered by S. 234 of the Code inasmuch as offences of criminal breach of trust and of falsification of accounts were not offences of the same hind. He negatived the plea on behalf of the State that the case would fall under Section 235 on the ground that there were three defalcations committed on different occasions, and the false entries connected with one defalcation cannot be said to form part of the same transaction with the (other defalcations and falsifications. Referring to this misjoinder of the charges, Fawcett, J., who formed the Bench with Coyajee, J., however, observed at p. 1349 of the report (Bom LB) : (at page 114 of AIR), that in the case of alleged embezzlement, there is generally evidence of falsification of accounts to conceal that embezzlement, and unless the Magistrate knows, or has his attention drawn to, the rulings of the Courts about the illegality of

Joining three charges of embezzlement with three charges of connected falsification of accounts, he, not unnaturally would think that they can be the subject of one trial and was very likely to fall into the error that occurred in that case. He then observed as follows:

'If the Magistrate had been aware of the danger anaexercised a little more care, he might I think at any rate,according to the view adopted in Raman Behari Das v.Imperor, ILR 41 Cal 722 : (AIR 1915 Cal 296J, have legally framed his charge so as to comprise only one offenceof criminal breach of trust for the aggregate amount alleged to have been embezzled and one other offence for theentire falsification of the accounts In 'regard to that embezzlement.'

Since, however, the charge was not framed taking the benefit of Section 222 (2) of the Code, but had been framed on three distinct acts of misappropriation and three items of falsification of accounts, Fawcett, J. said that they had no option but to set aside the order of conviction of the accused passed by the learned Magistrate. The decision in ILR 41 Cal 722: (AIR 1915 Cal 296), referred to By fawcett, J., was also a case in which Section 222(2) of the Code of Criminal Procedure was not taken advantage of. There were in fact in that case also three separate charges under Section 409 and in addition there were three charges under Section 477-A of the Penal Code, it was there held that a Joinder of three charges under S. 409 with three under Section 477-A of the Penal Code relating to different transactions was not warranted by any of the exceptions provided in the Code and was, therefore, illegal. While holding that the six charges before them could not validly be Joined together in a single trial, the learned Judges deciding that appeal observed that a series of falsification ot accounts made to cover a single act of defalcation may be laid in one charge under Section 477-A of the Penal Code, and would not constitute distinct offences merely by reason of a plurality of false entries intended to cover the same defalcation. At page 725 of the report (ILR Cal) (at p. 296 of AIR), the learned Judges also pointed out that it was not necessary for the trial Judge to have drawn up three charges under S. 477-A. A series of alterations in accounts made to cover a defalcation might all be covered in one charge under the provisions of Section 477-A, and there would not be three distinct offences committed by an accused person merely by reason of the fact

that he made more than one false entry to cover one defalcation. They also observed that false entries in that case could only relate to one defalcation. It was Impossible to take a series of false entries referring to three different defalcations In the same trial although it might be possible to try three defalcations in one charge, or to try a whole series of falsified accounts In one charge. The two could not be combined in the manner in which they were combined in that case. The observations made at pages 725 and 726 of the report (ILR Cal) : (at pp. 296 and 297 of AIR), in Raman Behari Das's case, ILR 41 Cal 722 : (AIR 1915 Cal 296), would seem to lay down that (1) defalcations of various sums can be lumped into one charge under S. 409 of the Penal Code by virtue of Section 222 (2) of the Code of Criminal Procedure; (2) the learned Judges were not quite sure that charges under Section 477-A need be drawn up separately corresponding to entries in respect of each item of misappropriation and

(3) while observing that it was impossible to take a series pf false entries referring to three different defalcations in the same trial, they stated that It might be possible to try these defalcations in one charge under Section 409 ot the Penal Code and to try the whole series of falsified Accounts in one charge under Section 477-A of the Penal Code. It was on the authority of this decision that Fawcett, J. in Mananfs case, 27 Bom ILR 1343 : (AIR 1926 Bom 110), expressed the view that there can legitimately be one charge of criminal breach of trust under S. 409 in respect of the aggregate amount defalcated by an accused and one charge under Section 477-A of the Penal Code in respect of all the false entries made to cover up the misappropriation of the several amounts, in : AIR1952 Bom177 , relied upon by Mr. Mankad, the accused was charged under Section 409 of the Penal Code for having committed criminal breach of trust on April 12, 1949, in respect of a sum of Rs. 2500/- and he was also charged alternatively for an offence under Section 420 of the Penal Code for cheating in respect of the same sum on the same Way. He was further charged for an offence under Section 409 of the Penal Code committed on April 20, 1949, in respect of a sum of Rs. 900/- and he was also charged alternatively for an offence under Section 420 of the Penal Code in respect of the same amount on the same day. The accused was thus tried on four charges. Considering the decision in Manant's case, 27 Bom LR 1343 (AIR 1926 Bom 110), the Full Bench held that such a joinder of charges against the accused

did not fall under any or the three exceptions to Section 233 of the Code and was therefore illegal and contrary to law. It was also held that It contravened the provisions of Section 234 (1) of the Criminal Procedure Code as the accused was charged with more than three offences and the offences were not of the same kind. It also contravened the provisions of Section 235 (1) of the Coda as the four offences did not arise out of the same transaction.

17. It may be observed that these three decisions deal with cases where the benefit of Section 222 (2) of the Cods of Criminal Procedure was not taken. In all the three of them, the acts of misappropriation committed on different dates were made the subject-matter of separate charges and to these three charges were added other charges of falsification of accounts in respect of the corresponding sums defalcated as in Manant's case, 27 Bom ILR 1343 : (AIR 1926 Bom 110) and in Raman Behari Das's case, ILR 41 Cal 722 : (AIR 1915 Cal 296) and two acts of cheating as in D. K. Chandra's case : AIR1952 Bom177 . it js obvious that since there were separate charges in respect of each defalcation and separate charges also in respect of each false entry made to cover a particular defalcation one falsification of accounts to screen the corresponding act of defalcation only were held to he acts arising from the same transaction. On that reasoning it must follow that other falsifications of accounts made to cover the other two acts of defalcations cannot be said to be acts arising out of the same transaction. It must, however, be borne in mind that In neither of the two Bombay cases, the question was considered as was hinted in Raman Behari Das's case ILR 41 cal 722 : (AIR 1915 Cal 296), whether it was possible or not to Join in one trial one charge framed under Section 222 (2) of the Code in respect of an aggregate amount defalcated as one offence with one charge covering the entire falsitcation of accounts committed by making a series of false entries to cover up the defalcations made from time to time. Such a proposition does not appear to have been overruled or negatived, at any rate, in either of the two Bombay cases.

18. Mr. Mankad, however, relied upon Kasi Vishwanathan v. Emperor, ILR 30 Mad 328, as establishing the proposition that even if the offences of defalcations were to be lumped up in one charge of a criminal breach of trust under Section 222 (2) of the Code, they can at the most be regarded as offences of a similar kind under

Section 234 of the Code but they would not constitute one transaction. The case of ILR 30. Mad 328, was also a case like Mananl's case, 27 Bom LR 1343 ; (AIR 1926 Bom 110), where three distinct acts of misappropriation were charged separately together with three distinct acts of falsification of accounts and thus there were six distinct offences in all charged against the accused. It was observed that such a joinder of charges was illegal, as these could not be regarded as acts arising from the same transaction. But that was in answer to the argument of the learned Public Prosecutor as framed in a particular manner. It would be seen from page 329 of the report that the learned Public Prosecutor argued that under Section 222 of the Code, the three acts of criminal breach of trust could be regarded as one offence and that all the acts of falsification of accounts to conceal that offence could also be regarded as part of the same transaction within the meaning of Section 235 of the Code. The answer that Benson and Wallis, it gave to this argument was that though it was true that Section 222 of the Code provided for a charge being framed In respect of the gross sum misappropriated within twelve months from first to last and enacted that a charge so framed should be deemed to be a charge of one offence Within the meaning of Section 234, it did not provide that the acts so charged should be deemed to be one transaction within the meaning of Section 235 of the Code, it is, however, clear from the observations made on that very page by the learned Judges that they were principally guided by the fact that in the case before them one charge of criminal breach of trust was not framed under Section 222 (2) of the Code but it alleged three distinct offences under Section 409 and three other distinct offences under Section 477-A of the Penal Code and, therefore, they said that there was nothing in the Code to Justify such a charge. These Reservations Indicate that the objection was that Section 222 (2) of the Criminal Procedure Code was not availed of, with the result that there were acts of defalcations charged separately and joined with three acts of falsification ot accounts and, therefore, these acts of the accused could not be said to be the acts arising from the same transaction. With the greatest respect, it is, somewhat difficult to appreciate as to why in a case where an accused commits a series of acts of defalcations with a continued purpose and intent to defraud, his acts cannot be said to be acts arising from the same transaction, In fact, the observations made in

Kasi Vishwanathan's case, ILR 30 Mad 328, that the several defalcations would rot form one transaction were regarded as obiter dictum in Kashiram Jhunjhun Walla v. Emperor : AIR1935 Cal312 .

19. Now it Is not easy to give an exact definition of the word 'transaction' but one may safely say that a 'transaction' means a group of facts so connected together as to involve certain ideas, viz., unity; continuity and connection. In order to determine whetner a. group of facts constitutes one transaction, it would be necessary to ascertain whether they are so connected together as to constitute a whole which could be properly described as a 'transaction.' As observed by Costello, J., In Kashiram's case : AIR1935 Cal312 , where a clerk or a cashier sets out to rob his employer, having regard to the fact that Section 222 (2) provides that he may be charged with having misappropriated the total of whatever sums he may have misappropriated in course of any one year, it is not unreasonable to say that for the purposes of the section that year's illicit operations can tie regarded as one transaction. As the word 'transaction' is unfortunately not defined in the Code, the meaning to be attached to it must be gathered from the context in which in occurs in various sections and illustrations. According to its dictionary meaning it means 'carrying through' and suggests not necessarily proximity in time so much as continuity of action and purpose, in Section 235 of the Code, the phrase 'same transaction' is used in a way which implies that there may be a series of acts, yet they may be separated by interval of time but the essential is the progressive action pointing to the same object. This is illustrated by illustration (1) to Section 235. Similarly in Section 239 of the Code, a series of acts separated by intervals of time are not excluded provided that those jointly tried have throughout been directed to one and the same object. If the accused started together for the same goal, this would suffice to justify a joint trial even if incidentally one of the accused jointly tried had done an act for which the other may not be responsible.

20. In Emperor v. Datto Hanmant Shahapurkar, ILR 30 Bom 49, the question was whether the accused who were jointly in charge of trust funds, which were defalcated could be jointly tried in one trial under Section 239 of the Code. There is no doubt that the words 'same transaction'' occurring in Section 239 must have the same meaning as those very words in S, 235 (1) and it is for that purpose that

the decision in ILR 30 Bom 49, would be of use for our purpose. There it was held that S. 222 of the Code clearly admitted of the trial of any number of acts of breach of trust committed within the year as amounting only to one offence. The section does not require any particular formulation of the accusation but only enacts that it is sufficient to show the aggregate offence without specifying the details. Though it dispenses with the necessity of amplification, it does not prohibit enumeration of the particular items in the charge. Section 239 of the Code admits of a joint trial when more persons than one are accused of different offences committed in the same transaction. It suffices for the purpose of justifying a joint trial that the accusation alleges the offences committed by each accused to have been committed in the same transaction, within the meaning of Section 239. It was further held that if the accused started together for the same goal, this would suffice to justify a joint trial, even if incidentally, one of those jointly tried has done an act for which the other may not be responsible. The foundation for the procedure In section 239 is the association of two persons concurring from start to finish to attain the same end.

21. In Prafulla Chandra v. Emperor : AIR1931 Cal8 , the contention was that joinder of charges in respect ot four false entries made for the purpose of defalcating Rs. 400/- was contrary to Section 234 of the Criminal Procedure Code. The charge framed in that case by the committing Magistrate was as follows:

'That you on or about the dates between 1st March 1929 and 13th March 1929 at Digbol, being a clerk in employment under the Assam Oil Company limited, wilfully and with intent to defraud, falsified certain papers and accounts to wit, the pay sheets of General Workshop and Boller-shop for the month of February 1929 (Ex. 3) by making false entries in respect of the aggregate sum ot Rs. 400/- in the totals under the column Net Amount Payable, at pp. 3, 6, 11 and 13, viz.:

1. Rs. 1937-10-0 (or Rs. 1887-10-0 at p. 3.

2. Rs. 1160-1-0 for Rs. 1080-1-8 at p. 6.

3. Rs. 1673-0-0 for Rs. 1873-0-3 at p. 11.

4. Rs. 849-8-0 for Rs. 749-8-0 at p. 13.

which papers and accounts belonged to the said Assam Oil Company Limited, your employer, and thereby committed an offence punishable' under Section 477-A, I.P.C., and within my cognizance.'

Suhrawardy, J., who delivered the judgment for the Bench, dealing with this charge and the contention of misjoinder observed that when a person is charged with falsification of accounts, any number of falsifications may be proved in order to sustain the principal charge of falsification. What the accused was charged within that case was that on certain dates, between 1st and 13th March 1929, he falsified Ex. 3 by. making four false entries by overcharging, Rs. 100/- on each occasion with the intention of mis-appropriating Rs. 400/- at the end of the month when the amount was to be paid off. On these facts, it was heia that the real charge under Section 477-A was falsification ot accounts and In order to support it, there was no reason why the prosecution should be restricted only to three instances of falsification and not more. It was observed that if the intention of the accused was to defalcate a certain amount, the actual method adopted in order to facilitate the defalcations ought to be taken as forming one transaction with the defalcation within the meaning 01 Section 235, as part of res gestae. Similarly, if the intention was to defalcate a certain amount, any act done to achieve the object such as making false entries must form part of the same transaction. For this statement of the law, Suhrawardy, J. relied on the observations made In Ranian Behari Das's case, 1LR 41 Cal 722 : (AIR 1915 Cal 296), referred to above. In our view, the decision in Pratulla Chandra's case, : AIR1931 Cal8 , is an authority for the proposition that where an accused makes a number of false entries, he can be tried on one charge of falsification ot accounts and a charge in respect of each false entry as forming a distinct offence need not be framed. This decision is also an authority for the proposition that if it is proved that the intention of the accused was to defalcate a certain amount, the method adopted by him in order to facilitate the defalcation must be taken as forming one transaction with the defalcation within the meaning of Section 235 (1) of the Code.

22. A case somewhat similar to the one before us was : AIR1935 Cal312 . The prosecution case there was that Kashiram in his capacity as the manager and cashier of the complainant tirm, Hurdut Rai Gopal Rai, had in his charge certain cheque boons, which had been signed by the complainant to facilitate withdrawal Of money from the bank when necessary. Taking advantage bf the fact that these cheque books were in his possession, the accused drew from the bank certain sums of money and misappropriated a part of those sums and then sought to cover up his defalcations by making entries on the counter-foils of the cheque books of amounts smaller tnan the sums for which the cheques were actually drawn and monies received by him. The main charge against him was that he had misappropriated a total sum of Rs. 2200/-, which was made up of seven separate items. He was also charged with falsification in respect of two entries in the counterfoils and in his books of sums smaller than those actually drawn from the bank. He was in fact inflicted on a charge of criminal breach of trust under Section 408 and on two separate charges of falsification of accounts under Section 477-A of the Penal Code. The learned Judges there held that if a person is charged with one offence, namely, that of misappropriation of a gross sum as provided in Section 222 (2) then that one offence ought to be deemed to have arisen out of one transaction so as to enable the prosecution to join with it in the same trial a charge of some other offence constituted by the series of Acts or some of the series of acts, which connected together would form that transaction. They also observed that having regard to the fact that Section 222 (2) provided that an accused may be charged with having misappropriated the total of whatever sums he may have appropriated in the course of any one year, it was not unreasonable to say that for the purposes of that section the year's illicit operations can be regarded as one transaction. Ghosh, J., who was party to this judgment observed at page 813 of the report (ILR Cal) : (at p. 314 of AIR), that where an accused was charged with one charge of criminal bread of trust and in respect of a portion of the money it was shown that he falsified the accounts in order to commit the misappropriation, there could be no doubt that an act of criminal breach of trust formed the same transaction together with an act of falsification of accounts which was made in order to facilitate the breach of trust, and the two charges of criminal breach of trust and falsification of accounts could be tried together under section

235 of the Code.

23. Thus, the view of both the Bombay and we Calcutta High Courts is that where an accused commits acts of defalcations in pursuance of a deliberate and continuous purpose to defraud the several acts of defalcations can legitimately be said to form one transaction, though Section 222 (2) of the Code while providing that these acts can be charged as one offence, does not In terms describe them as one transaction. With respect, we agree with the reasoning contained in the Judgment of Costello and Ghosh, JJ. In : AIR1935 Cal312 and of Russell and Batty, JJ. in ILR 30 Bom 49. We are further fortified in our conclusion by the Supreme Court's decision in Chandi Prasad Singh v. State of Uttar Pradesh : 1956 CriLJ322 , where the appellant was tried for an offence under Section 409 of the Penal Code for misappropriating certain sums of money received as a promoter of a Company from three different persons for the purpose of allotment of shares and omitted to be brought into the Company after it was formed, and also for an offence under Section 477-A of the Penal Code for falsifying a minute book. On behalf of the defence, a contention was raised that there was violation of Section 234 of the Code in that the appellant had been charged with three offences under Section 409, I.P.C. and one under Section 477-A. That contention was negatived on the ground that the case was governed by Section 235 ot the Code as the several offences under Section 409, and Section 477-A, I. p. C. arose out of the same acts and formed part of the same transaction, in order to appreciate as to how the several acts of misappropriation ana falsification of accounts were said to arise out of the same transaction, it would be necessary to state a few facts in that case. On February 12, 1949, a Society known as the Model Town Co-operative Housing Society Limited was registered under the Co-operative Societies Act, Its object being to acquire vacant sites in Lucknow and to allot them to its members so as to enable them to build houses of their own. The accused was the chief promoter thereof and collected monies from prospective shareholders by way of share money. The first general body meeting of the Society was held on March 1, 1949. At that meeting the appellant was elected the Honorary Secretary. On April 22, 1949, there was a meeting of the Managing Committee, at which the appellant was directed to hand over the accounts of the society and its funds to its Treasurer. The appellant gave a list of 38 persons as members of the Society,

delivered cheques issued by 13 of them as their share money, and paid a sum of Rs. 3500/-being the amount stated to have been received by mm from the other 25 members as snare money. The Society did not function thereafter. In July 1949, some of the members wrote to the Registrar of Co-operative Societies pointing out that the Society had not functioned ever since its incorporation, and asking that steps might be taken for examination of its accounts and, if necessary, for its being wound up. On this, there was an investigation of the affairs of the Society and on the basis of the investigation reports, prosecution was started against the accused charging him under Ss. 407 and 477A of the Penal Code. The charge under Section 407 was that he had received a sum of Rs. 500/-, Rs. 100/- and 100/- from three different persons, all as share money in December 1948 and that he had misappropriated the same. The charge under Section 477-A was that on April 22, 1949, the accused falsified the minute books by omitting to show therein the share money received from the said three persons above-named. On a contention raised by the defence on these charges on the ground that there was an infringement of Section 234 of the Code, viz., that the accused had been charged with three offences under Section 407 and one under Section 477-A, it. was held that the contention could not be sustained as the case was governed by Section 235 of the Code as tne several offences under Section 407 I.P.C. and Section 477-A I.P.C. arose out of the same acts and formed part of the same transaction.

24. Apropos the contention of Mr. Mankad that an infringement of Section 234 of the Criminal Procedure Code would not be merely an irregularity but an infringement in the mode of trial, we may observe that their Lordships at page 1042 (of SCR): (at p. 153 of AIR) in this decision observed that the appellant had failed to show any prejudice as required by Section 537 and on that basis also the defence contention as to the violation of Section 234 was overruled. The decision in Chandi Prasad's case : 1956 CriLJ322 is a clear case of a trial, where the offences charged were more than three and not of the same kind as contemplated by Section 234 of the Criminal Procedure Code; but, as we have observed, the case was brought under Section 235 of the Code and, therefore, tne charges, though more than three, were held to be legal. Though there were three omissions to enter the three amounts received as share money, all the three omissions were

treated as one offence, viz., falsification of accounts which could be joined under Section 235 of the Code with the three offences of criminal breach of trust.

25. On the authority of these decisions it is clear (1) that under Section 222(2) of the Code, several defalcations made at different times, provided they are made within the course cf one year, can be joined together as one offence of criminal breach of trust; and (2), that such a charge can be joined with another charge or charges under Section 477-A, even though there may be a number ot false entries made to cover several acts of defalcations, provided the case falls under Section 235(1) of the Code. It false entries are made for the purpose of covering a defalcation their plurality would not preclude them from being joined in one charge. A charge under Section 477-A is one of falsification of accounts and not for making false entries. False entries made for screening an offence ot criminal breach of trust may therefore constitute one offence.

26. The expression 'same transaction' used in Section 235 Of the Code is difficult if not incapable of exact definition. The question whether the acts are so connected together as to form one transaction or not would depend on facts and circumstances of a particular case. It is not possible to lay down any comprehensive formula of universal application. The real and substantial test for determination of the question, is the continuity of action and purpose. Under Section 235 of the Code, the first element to establish is a series of acts, which would necessarily imply the acts being connected together; hut this would not be enough and it would have to be established further that the acts formed the same transaction. Mere sequence in time may establish the first element but not necessarily the other. But the expression 'so connected together as to form the same transaction' must be given a reasonable and rational meaning and cannot be stretched into series of acts, which have no relation to each other. There must, therefore, be one continued thread of common purpose running through the acts to support a joinder of charges in respect thereof. However, mere difference in time or place between the commission of one offence and of another will not necessarily imply want of such continuity. They may yet be linked together to form the same transaction. In our view, this test has been complied with in the case before us. In that view, it cannot be said that there was either any infringement in

the mode of trial or that there was any misjoinder of charges. Therefore, no question either of illegality of the trial or one of jurisdiction ot the learned Special Jutfge can possibly arise.

27. As regards the objection that the learned Special Judge had no jurisdiction to try the accused under Section 477-A of the Penal. Code, we think that in the view that we take, viz., that the case fell within the purview of Section 235 (1) of the Criminal Procedure Code, it was not necessary for the learned Special Judge to have split up the case in respect of the charge under Section 477A of the Penal Code. Even if he did so by way of ex majore cautela, it makes no difference as the acts of criminal breach of trust the acts of misconduct as defined in Section 5(1) (c) of the Prevention of Corruption Act and the acts of making false entries were acts arising out of the same transaction and, therefore, triable in one trial as contemplated by sub-section (3) of Section 7 of the Criminal Law Amendment Act, 1952. In our view, the facts clearly disclose that the object of the accused was to defraud the Government of monies that came to him from time to time in his capacity as a Clerk of the Court and in-charge Nazir of the Court at Nakhatrana. Though each act of defalcation may form a complete act, each of such act was linked with the other by the continuity of purpose and action, the main purpose of the accused being to defraud the Government. Each such act of defalcation was sought to be covered or facilitated with the making of a false entry. In our view, the facts in this case disclose 3 continuity of action and common purpose, each act of defalcation and falsification of accounts being related to each other the main purpose being to defraud the Government. In any event there is nothing to show that any prejudice was caused by the joinder, of these charges in one trial. For these reasons, the contentions raised by Mr. Manhad cannot be upheld.

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