

State Vs. Moti Singh

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Court : Rajasthan

Decided On : Mar-17-1961

Reported in : AIR1962Raj35

Judge : C.B. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 222(2) and 234;
Indian Penal Code (IPC) - Sections 409, 468 and 477A

Appeal No. : Criminal Ref. No. 17 of 1961

Appellant : State

Respondent : Moti Singh

Advocate for Pet/Ap. : B.C. Chatterjee, Deputy Govt. Adv.

Disposition : Reference accepted

Judgement :

ORDER

C.B. Bhargava, J.

1. This is a reference by the learned Sessions Judge, Jhunjhunu, recommending that the order of commitment passed by the Sub-Divisional Magistrate, Nawalgarh for the trial of the accused under Sections 409, 468 and 477A I.P.C be quashed.

2. The facts which led to the prosecution of the accused are that that he was Branch Post-Master in village Parasrampura from 3rd March, 1953 to 12th June, 1953, and during this period he received a number of money orders and insured letters to be delivered to their respective addressees, but instead he misappropriated the amounts to his own use, forged the receipts of the addressees and made false entries in the account books of the Branch Post Office. The number of items in respect of which misappropriation and falsification of accounts, is said to have been committed by him, is 19. In each case the addressee is different and the money orders and the insured letters were also to be delivered on different dates. The police after investigation submitted seven challans against the accused in the Court of the Sub-Divisional Magistrate, Nawalgarh. The learned Sub-Divisional Magistrate at first held separate trials. In each case, he examined some witnesses but later on he consolidated all the cases and framed charges under Section 409, 468 and 477A I.P.C. and committed the accused to the Court of the Sessions Judge, Jhunjhunu.

When the case came up before the learned Sessions Judge it was pointed out on behalf of the prosecution that all the 19 offences of which the accused was charged could not be jointly tried, as they were not committed in the course of the same transaction so as to attract Section 235 of the Code of Criminal Procedure. The learned Sessions Judge accepted the contention of the prosecution and has made this reference. One more ground for quashing the order of commitment mentioned by the learned Sessions Judge is that the learned Sub-Divisional Magistrate did not comply with the procedure laid down in Section 207-A of Code of Criminal Procedure, inasmuch as he did not examine all the witnesses to the commission of the crime before passing the order of commitment.

3. The relevant provisions which deal with the joining of charges and joint trials are contained in Sections 233 to 239, Cr. P. C. Section 233 provides that,

'for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239.'

Separate trial for every offence is the general rule and a joint trial can be justified only if it comes within the exceptions mentioned in Sections 234, 235, 236 and 239. There is one more section, which needs to be noticed and that is Section 222(2) of the Code of Criminal Procedure, which provides that,

'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 and last of such dates shall not exceed one year.'

4. Therefore, so far as the offence under Section 409 is concerned, there can be one joint trial in respect of all the 19 items by virtue of Section 222(2) Cr. P. C. if the charge mentions the gross sum in respect of which the offence is alleged to have been committed. But Section 222(2) has no application to the charges under Sections 468 and 477-A. A joint trial for these offences, can only be justified if it comes within the exception mentioned in Sections 234, 235, 236 and 239 Cr. P.C. The learned Sub-Divisional Magistrate in his explanation has stated that as he considered that all the 19 offences were committed in the course of the same transaction, he ordered a joint trial in the case. This, however, does not appear to be correct, because the offences were committed on different dates, involved different items and related to different addressees. Sections 236 and 239 obviously were not applicable in the present case.

The only section under which a joint trial could be held was Section 234. Under Section 234, the accused could be tried and charged with offences not exceeding three of the same kind having been committed within the space of twelve months. In the present case the offences are of the same kind. The Supreme Court case reported in Chandi Prasad Singh v. State of U. P., (S) AIR 1956 SC 149, to which reference has been made by the learned Sub-Divisional Magistrate in his explanation, has no application to the facts of this case. In that case along with the

three offences under Section 409 another offence under Section 477 was tried and a joint trial was held to be justified because all the offences were committed in the course of the same transaction and Section 235 was held to be applicable. A joint trial of all the 19 offences though of the same kind and committed within the space of 12 months was bad being in violation of Section 234 of the Code, as not more than three offence, could be jointly tried. This being the case, the order of the learned Sub-Divisional Magistrate consolidating all the offences and committing the accused to the Court of the Sessions Judge, Jhunjhunu cannot be sustained.

5. This reference is, therefore, accepted, the order of commitment passed by the learned Sub-Divisional Magistrate is set aside and the case is sent back to his court for trial according to law.

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