

**Bodilal Vs. State**

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**Court :** Rajasthan

**Decided On :** May-22-1970

**Reported in :** 1970WLN343

**Judge :** Kan Singh, J.

**Appeal No. :** S.B. CrI. Appeal No. 638 of 1967

**Appellant :** Bodilal

**Respondent :** State

**Disposition :** Appeal allowed

**Judgement :**

**Kan Singh, J.**

1. This is an appeal by one Bodiial against a judgment of the learned Special Judge, Jaipur District Jaipur, convicting Bodilal for offences under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act, 1947 and Section 477A of the Indian Penal Code. For the first count Bodilal was awarded a sentence of one year's rigorous imprisonment and a fine of Rs. 500/-, in default six months further rigorous imprisonment and for the second count he was awarded one year's rigorous imprisonment. Both the substontive sentances were ordered to run concurrently.

2. The gravamen of the charge against Bodilal was that while he was a Patwari at village Dewan, district Jaipur he fraudulently prepared false counter-foils in respect of various amounts received from the cultivator between January 1961 to June 1961 and misappropriated a total amount of Rs. 227.70. On 4-7-63, P. W. 25 Sualal lodged information with the Inspector General, Anti Corruption Department that Bodilal had realised more land revenues from the cultivators and while he deposited the correct amount in the Government Treasury, he pocketed the excess amount realised by him every year. The Inspector General forwarded the complaint to Deputy Superintendent of Police for investigations. During the investigations the Investigating Officer recovered a number of receipts from various cultivators. The receipts so recovered from the cultivators showed that they did not tally with the counter foils retained in the Tehsil. Also they did not accord with, the 'Dhal Bachh' and 'Siyah' registers maintained by the accused. The 'Dhal Bachh' register shows what amount is recovered from each cultivator. 'Siyah' is the register which shows the receipt of the land revenue from the cultivators.

3. After the necessary investigations a challen was put up against the accused in the court of the learned Special Judge.

4. It will not be necessary to edter into the merits of the evidence as at the fore-front of his arguments learned Counsel for the appellant has put forth the contention that there was mis-joinder of charges and that vitiated the trial. The argument is put in this way: The accused is alleged to have made recoveries from a number of persons within the span of six months. According to the learned Counsel, prima facie the offence would not be of criminal breach of trust or misconduct as contemplated by Section 5(1)(c) of the Prevention of Corruption Act, but would be one of cheating and consequently in accordance with Section 234 Criminal Procedure Code the accused could not be tried for more than three items at one time. Apart from this it is contended that more than three items under Section 477(A) cannot be joined at one trial. Learned Counsel for the appellant relied on Subramania Iyer v. King Emperor 28 Indian Appeals 237 and judgment of Bhargava J. reported as State v. Moti Singh It was also urged by learned Counsel for the appellant that it is not the Patwari who collects the land revenue, but, according to Rule 35 of the Land Records Rules, 1957 it is the Headman who

collects the land revenue and the Patwari is only to assist him by maintaining proper records and issuing the receipts. Learned Counsel further submits that on the facts as presented by the prosecution the offence would, if at all, be one of cheating and not of criminal breach of trust or that under Section 5(1)(c) of the Prevention of Corruption Act.

5. I have heard learned Counsel for the appellant and the learned Additional Government Advocate. Learned Additional Government Advocate submits that on the facts made out the offence would be under Section 409 Indian Penal Code or that under Section 5(1)(c) of the Prevention of Corruption Act. Learned Additional Government Advocate relies on a judgment of Beri J.

6. Now it is obvious that the question which falls to be considered is whether there is alleged mis-joinder of charges and the trial in consequence stands vitiated.

7. It is not each and every breach of the provisions of the Criminal Procedure Code that vitiates the trial of a case. It is only when a trial is conducted in a manner different from that prescribed by the Code that the trial is bad and in such an event the question of curing an irregularity could not arise. It is only where the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct that the irregularity can be cured under Section 537 and nonetheless so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the code (vide *Kottaya v. Emperor*--AIR 1947 Privy Council 67).

8. In *Subramania Iyer's* case (1) quite a large number of charges were dumped together at one trial and the trial was held to be conducted in a manner different from that prescribed by the Code. Section 537 Criminal Procedure Code has been amended in 1956 and the scope of condonable irregularities has been enlarged. Their Lordships of the Supreme Court pointed out in *Madan Lal v. State of Punjab* : 1967 CriLJ1401 that there was some conflict of judicial opinion as to whether a charge of misappropriation where a lump sum consisting of several items together with a charge of falsification of several entries made with a view to screen the misappropriation is correct. However, their Lordships did not decide as to which view was correct and left the question open. *Kottaya's* case, in my humble opinion still

affords the guide lines. It has to be seen in a given case whether the trial was held in a manner different from that prescribed by the Code or it was held substantially in the manner prescribed by the Code. Section 234 embodies one of the exceptions to the rule enacted in Section 233 Criminal Code that for each offence there shall be a separate charge and it be tried separately. According to Section 234 Criminal Procedure Code when a person is accused of more offence 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. In the case, of offences involving criminal breach of trust Section 222 Criminal Procedure Code provides that 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 234, provided that the time included between the first and last of such dates shall not exceed one year. The same position obtains now for offences under under Section 5(1)(c) of the Prevention of Corruption Act with the introduction of Section 6-A therein.

9. In this context, therefore, the question to be considered is whether the facts disclose an offence of criminal brach of trust or the offence would fall under Section 420 Indian Penal Code. If the offence will be of criminal breach of trust then the total amount of embezzlement involved within a space of one year would constitute one offence. If the offence comes under cheating, under Section 420 I.P.C. or Section 6-A of the Prevention of Corruption Act Section 222 Cr. P.C. will be in applicable and the matter will be govetned by the provisions of Section 234 Criminal Procedure Code.

10. The word 'entrustment' has to be construed as it occurs in Section 405 Indian Penal Code. The notion of a trust in the ordinary sense of that word is that there is a person a trustee or one who is entrusted, in whom confidence is reposed by

another who commits the property to him. Such confidence is to be fully reposed. A person who tricks another in delivering property to him bears no resemblance to a trustee in the ordinary acceptation of that term and Section 405 I.P.C. gives no sanction regarding as a trust is the dishonest conversion of property entrusted, but the act of cheating itself involves a conversion. Conversion signifies the depriving of the owner of the use and possession of his property. When the cheat afterwards sells or consumes or otherwise uses the fruit of his cheating he is not committing an act of conversion for the conversion is already done, but he is furnishing evidence of the fraud he practised to get hold of the property. Therefore, cheating is a complete offence by itself (vide *Emperor v. John Mciver* A.I.R. 1939 Madras 353).

11. In *Surendra Pal Singh v. State* : AIR1957 All122 the facts were that from certain cultivators the accused who was a Canal Amin realised certain amounts aggregating to a sum of Rs. 596/14/-. Out of this amount the Canal Amin deposited only a sum of Rs. 398/4/6. The excess amount was not deposited in the Treasury, though it was realised from the cultivators. This excess amount was not really due from the cultivators as canal dues. Thus, the position was that the accused deposited the amount that was due to the Government and appropriated to himself the amount that he realised in excess from the cultivators. Accordingly, it was held that the excess amount was never the property of the Government at any stage. Nor could it be said that the accused had become a trustee for the money on behalf of the cultivators from whom he realised the money, because when they handed over the money to the accused, the cultivators purported to surrender their rights in that money. It was held by the learned Judges that the offence would fall under Section 409 Indian Penal Code. The reason was that the necessary element of entrustment of property was wanting.

12. The Bombay High Court has taken a contrary view in *State v. Dahyylal* AIR 1960 Bom. 53. The accused who was a Talati employed in the Revenue Department was invested with authority to collect land revenue, and fines ordered to be recovered under the Land Revenue Code from land-holders. Any amount collected as a tax or fine, according to the learned Judges, becomes public fund and the accused becomes entrusted with that fund even if it is found that no

money was really due from the land-holders and that the Government could not lawfully enforce the alleged liability of the land-holders. It is to be noticed that according to the Land Revenue Code of the Bombay State a Talati was invested with the authority to collect land revenue.

13. In the present case, according to Rule 35 of the Rajasthan Land Revenue (Land Records) Rules, 1957, though a Patwari is responsible for preparing all such records as are prescribed for the collection of land revenue, he is only to help the Lambardar to make the collections. The rule further provides that the Patwari must not himself receive payments but he shall issue receipts of the collections made by the Lambadar under latter's signature and prepare the form of Arz-Irsal in triplicate and hand it over to the Lambadar and see that the amount collected is deposited in the Tehsil in time. One copy of Arz Irsal has to be collected by the Patwari from the Lambadar and filed with the Siyah. The Bombay case AIR 1960 Bom. 53 is, therefore, distinguishable so far as the collection of land revenue or rent is concerned. If a Patwari collects an amount in excess of what is shown to be due from a cultivator in the Dhal Bachh register and then while depositing the amount as per Dhal Bachh in the Government Treasury appropriates the excess amount to himself then it is difficult to hold that the Patwari would be guilty under Section 409 Indian Penal Code, though he might very well be guilty of an offence under Section 420 Indian Penal Code.

14. Now, I may deal with the judgment in Somnath Puri v. State (S B. Criminal Appeal No. 558 of 1966, decided on 16-4- 69), relied on by the learned Additional Government Advocate. Somnath Puri was a Traffic Assistant in the Indian Air Lines Corporation of India and was posted at Jaipur. He collected certain moneys from intending passengers for trunk call charges and deposited only a part thereof. Beri J. found himself in agreement with what was said in the Bombay case AIR 1960 Bom. 53. Somnath Puri's case is distinguishable on facts. Somnath Puri was taking an amount for defraying the telephone charges. At the time of accepting the money, he could not be sure as to what would be the charges for making telephone calls for a particular passenger. In there circumstances at the time Puri accepted the money it was entrustment. It was only subsequently that when the money, that was actually realised for telephone calls was less than the amount

taken and when the accused had misappropriated the same that it amounted to breach of trust. Thus, at the time the money was taken there was no misrepresentation or an element of dishonesty, The element of dishonesty came when he unutilised amount taken by the accused was misappropriated by him.

15. Now in such a situation as the present I should think the provisions of Section 234 Criminal Procedure Code will be attracted.

16. In State v. Moti Singh , Bhargava J. held that not more than three offences would be jointly tried. The accused in that case was a postmaster and he was charged with misappropriation, forgery and falsification of accounts under Section 409, 468 and 477A of the Indian Penal Code in respect of 19 different items of Money Orders and insured letters relating to different persons, committed on different dates within less than 12 months. The trial was held to be bad as, according to the learned Judge, the provisions of Section 222(2) Criminal Procedure Code has no application. Moreover, when there were other charges besides the charge of embezzlement, provisions of Section 234 Criminal Procedure Code had to be complied with. The joint trial of the offences in that case was held to be illegal by the learned Judge.

17. I am in respectful agreement with the view taken by Bhargava J. and hold that the trial in the present case stands vitiated on account of the several charges being joined at one trial contrary to the provisions of Section 234 Criminal Procedure Code.

18. In the result, I accept this appeal, set aside the judgment of the learned Special Judge, Jaipur District, Jaipur dated 30-11-67 and remand the case to him for splitting the trial according to law, reframe the several charges or amend the charges as may be necessary and retry the case or cases according to law.