

Thomas Vs. Emperor

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Court : Chennai

Decided On : Apr-11-1906

Reported in : (1906)ILR29Mad558

Judge : Arnold White, C.J. and; Benson, J.

Appellant : Thomas

Respondent : Emperor

Judgement :

1. In this case the appellant was the head clerk and cashier in the firm of Rungiah Gowndan & Co. He has been convicted of criminal breach of trust by a servant under Section 408 of the Indian Penal Code, in respect of two cheques for Rs. 18 and Rs. 54, respectively. He has been acquitted on a similar charge with respect to a sum of Rs. 60. This charge, as at first framed, was in respect of Rs. 611-11-0 and the items said to have been comprised in that sum numbered some 15 or 20 small sums. At the trial this charge was amended by reducing the amount to Rs. 60, which is the total of three items which, though not specified in the charge, might have been specified, and in respect of which separate evidence was, in fact, given. This amendment of the charge simplified it in the interest of the accused and it was clearly legal with reference to Section 227, Criminal Procedure Code.

2. But the chief point taken in appeal is that as the sum of Rs. 60 in the third charge, as amended, was, in fact, made up of three separate items which could

have been specified and which might have each formed the subject of a separate charge, the accused was really called on to defend himself against five charges in all (including the charges in respect of the two cheques), and that the trial was therefore illegal with reference to Section 234, Criminal Procedure Code, and the decision of the Privy Council in the case of Subrahmania Ayyar v. King-Emperor I.L.R. 25 Mad. 61. The case relied on has no application, since it did not relate to an offence of criminal breach of trust for which Section 222, Criminal Procedure Code, makes a special provision which is in the nature of an exception to the general rule. The general rule is that stated in Section 238 of the Criminal Procedure Code, viz., that 'for every distinct offence of which a person is accused there shall be a separate charge and every such charge shall be tried separately,' except in certain cases. One of these cases is that stated in Section 234 which allows three separate offences of the same kind committed within the space of twelve months to be charged and tried at one trial, Section 222 makes, in effect, a further extension of this rule by enacting that 'when an accused person 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 on 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 include between the first and last of such dates shall not exceed one year.' In the present case the third charge as amended, and even as it originally stood, must, therefore, be deemed to be a charge of one offence only and Section 234 allows three offences of the same kind to be tried together, provided all were committed within the space of twelve months from first to last. In the present case the two offences in respect of the two cheques and the offence in respect of the sum of Rs. 60 were all committed within that space of time, and the trial for all three offences together was therefore legal. We cannot accede to the argument of the learned Counsel for the appellant that Section 222 is only intended to apply to cases where there is a general deficiency in an account and the prosecution is unable to specify the particulars items of the deficiency. Had the Legislature intended to provide for such cases only, it could have found apt words in which to express the intention. The words used do not

contain any such limitation and we are not justified in reading into the section a limitation which its language will not support. As observed by the Privy Council in a recent case : 'The essence of a Code is to be exhaustive on the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction' Gokal Mandar v. Padmanund Singh L.R. 29 IndAp 196. We may add that the accused is not in a worse, but is in a better, position when the items can be, and are, specified, rather, than when they cannot be, or are not, specified. The view that we take is supported by the decisions of the High Courts of both Allahabad and Calcutta Emperor v. Gulzari Lal I.L.R. 24 All. 254 Emperor v. Ishtiaq Ahmad I.L.R. 27 All. 69, and Samiruddin Sarkar v. Nibaran Chandra Ghose I.L.R. 31 Calc. 928 and we are not aware that a contrary view has been taken by any of the High Courts.

3. The trial was therefore not illegal by reason of the charges on which the accused was tried. On the merits we are satisfied that the accused was rightly convicted in respect of the two cheques which formed the subject of the first and second charges.

4. We dismiss the appeal.

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