

In Re: Rambilas and Three ors.

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Court : Chennai

Decided On : Oct-21-1914

Reported in : AIR1915Mad600; (1915)ILR38Mad639

Judge : Ayling and ;Hannay, JJ.

Appellant : In Re: Rambilas and Three ors.

Judgement :

1. Petitioners, who are stated to be brokers carrying on business in the Bombay Presidency, are accused in two cases on the file of the Sub-Divisional Magistrate of Erode. The complaint against them is that they committed criminal breach of trust in respect of the proceeds of certain hundis, entrusted to them for encashment by the complainants, merchants of Dharapuram in the Erode Sub-division.
2. The question is whether the Erode Sub-Divisional Magistrate has jurisdiction to try the cases.
3. From the recitals in the complaints, it is clear that the hundis were received and cashed by the accused (petitioners) in Bombay and that the cash proceeds were retained and misappropriated there.
4. It is conceded in the course of the hearing before us that the accused have been, and still are, residing outside this Presidency: so that Section 185 of the Criminal Procedure Code does not apply.

5. The Sub-Divisional Magistrate has held the cases to fall within his jurisdiction in virtue of Section 179 of the Criminal; Procedure Code on the ground that the wrongful loss occasioned by accused's acts accrued to complainants at their residence and place of business, Dharapuram.

6. We have carefully considered the effect of Section 179 of the Criminal Procedure Code read with Section 405 of the Indian Penal Code: and are clearly of opinion that it cannot be interpreted as giving jurisdiction to the Erode Sub-Divisional Magistrate to try the present cases. The offence of criminal breach of trust is completed (assuming a preliminary trust) by the misappropriation or conversion of the property (in this case the cash proceeds of the hundis) dishonestly, i.e., with the intention of causing wrongful gain or wrongful loss. It is only the intention which is essential. Whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence, and a person is not accused of the offence by reason of it. The learned Public Prosecutor has drawn our attention to the second part of Section 405, which deals with dishonest use or disposal of property in violation of law or contract. He says accused had contracted by letters received at Dharapuram to remit the amounts to the complainants there; and argues that the contract was broken by failure to deliver the money at Dharapuram, and that this fact gives jurisdiction to the Erode Court.

7. We are unable to follow this reasoning. In the first place the present case falls under the first, and not the second part of the section: the complaint clearly charges dishonest misappropriation to accused's own use, and not use or disposal in violation of law or contract. Secondly, if it were otherwise, the offence would be committed where the dishonest use or disposal took place not where the contract was made or should have been performed.

8. No authority has been quoted in support of this last argument: but the Sub-Divisional Magistrate has based his decision on two rulings of the Allahabad High Court *Queen-Empress v. O'Brien* I.L.R. (1897) All.111 and *Emperor v. Mahadeo* I.L.R. (1910) All. 397. These cases are undoubtedly in point, and afford some authority in support of his view. We observe that in the first case the Court was

proceeding under Section 185 of the Criminal Procedure Code: and appears to have been influenced to some extent by considerations of convenience. The second case was decided by a single Judge, who was disposing of a revision petition against a conviction. In declining to interfere, he quoted *Queen-Empress v. O'Brien* I.L.R. (1897) All. 111 and was prepared to follow it, but he also relied on Section 182 of the Criminal Procedure Code as giving jurisdiction, and, further, on Section 531 of the Criminal Procedure Code as justifying his refusal. This decision certainly adds nothing to the earlier one: and, if the latter is to be taken as an expression of opinion on the strict interpretation of Section 179, then with all respect we are unable to follow it.

9. In a later case-*Ganeshi Lal v. Nand Kishore* I.L.R. (1912) All. 487-another learned Judge of the same Court, Karmat Husain, J., while distinguishing *Queen-Empress v. O'Brien* I.L.R. 31 (1897) All. 111 on the facts, discussed the meaning of Section 179 of the Criminal Procedure Code in relation to a similar case to the present one and expressed exactly the same view as we are inclined to adopt. In a still later case *Langridge v. Atkins*. I.L.R. (1913) All. 29, another learned Judge (Muhammad Ragiq, J.) elected to follow *Queen-Empress v. O'Brien* I.L.R.(1897) All. 111 but did not discuss the point apart from the rulings thereupon.

10. The only case of this Court to which we are referred is *Assistant Sessions Judge of North Arcot v. Ramaswami Asari* : AIR1914 Mad830 . This arose out of an application to quash a commitment: and the main point for determination was the applicability of Section 188 of the Criminal Procedure Code and the necessity of a certificate from the Political Agent Spencer, J., remarked that the loss occasioned by the breach of trust in that case was a 'consequence' within the meaning of Section 179 of the Criminal Procedure Code sufficient to give jurisdiction and quoted *Queen-Empress v. O'Brien* I.L.R.(1897) All. 111 and *Langridge v. Atkins* I.L.R. (1913) All. 29 as authority. But the bulk of the judgment of both the learned Judges was devoted to the effect of the want of a certificate and with all respect we do not feel compelled to treat this as a considered ruling on the point binding upon us.

11. These are all the cases to which we are referred: and we do not think their effect would justify our adopting a different interpretation of Section 179 of the Criminal Procedure Code and Section 405 of the Indian Penal Code to that which a careful consideration of the sections themselves seems to indicate.

12. We set aside the order of the Sub-Divisional Magistrate, and direct the discharge of the petitioners.

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