

In Re: Appadurai Ayyar

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Court : Chennai

Decided On : Dec-01-1915

Reported in : 32Ind.Cas.158

Judge : Abdur Rahim and ;William Ayling, JJ.

Appellant : In Re: Appadurai Ayyar

Judgement :

ORDER

Abdur Rahim, J.

1. The subject-matter of the charge out of which Criminal Revision Case No. 207 arises was a gross sum of Rs. 2,738 which was said to have been misappropriated by the 1st accused, who is petitioner before us, during the period from 18th March 1911 to the 26th October 1911. The subject-matter of the charge in the case out of which Criminal Revision Case No. 203 has arisen, is another gross sum which is said to have been misappropriated by the same accused between the 14th April 1911 and 26th October 1911. So that the period included in the latter case is entirely covered by the period comprised in the former charge. The 1st accused was employed by a firm, and was in charge of the accounts and the cash of the firm during the above period, and he was charged with having misappropriated the above sums of money in collusion with two other men who have been acquitted on appeal by the Sessions Judge.

2. In Criminal Revision Case No. 207, it is first of all argued on the merits that there is no evidence to sustain the conviction for dishonest misappropriation.
3. The evidence in the case mainly consists of false entries and omissions in the accounts kept by the 1st accused; in some cases he has not credited moneys which he collected on behalf of the firm and which ought to have been credited to the firm, and in others he has credited amounts less than what he collected. In my opinion the number of false entries in the accounts is sufficiently good evidence to show that the accused who had the charge of the money and kept the accounts, misappropriated the sums of money to which the false entries or omissions relate. We are dealing with this case in revision and not in appeal; and it is sufficient for us in revision to say that there is no justification for interfering with the conviction, as we find that there is prima facie good evidence which, if believed by, the Magistrate and by the Appellate Court, as it has been in fact, is sufficient for conviction.
4. It is also argued by Mr. Barton in support of the petition for revision that the trial was bad, inasmuch as the three accused persons were tried together in this case, that is, in Criminal Revision Case No. 207. The other two persons, as I have already said, have been acquitted; and it does not appear to us that the 1st accused was in any way prejudiced by the joint trial. Apart from that, I do not think that the law debars a joint trial in a case of this nature. The charge is that all, the three persons in collusion misappropriated a total sum of Rs. 2,738. They were all employed together, and it was not possible for the employer to say how much of the money was misappropriated by a particular person. As it happened, the evidence for the prosecution was not sufficient to bring home the responsibility to the 2nd and 3rd accused. But that is another matter. Mr. Barton cited a ruling of the Calcutta High Court, *Girwar Narain v. Emperor* 15 Ind. Cas. 650, in support of his proposition. It is laid down that Section 222 of the Code of Criminal Procedure shows that the trial contemplated there is of one person only at a time. I must confess that I find nothing in the language of that section which compels such an inference. If a person entrusts a sum of money to more than one person, and those persons in collusion commit criminal breach of trust or dishonestly misappropriate the amount, surely one would expect that the Legislature would

have used very clear and explicit language if it intended that in such a case those persons ought not to be tried together. The transaction is one and the same, and the evidence would probably be the same. Besides, the matter is also covered by Section 239, Criminal Procedure Code, which expressly authorises the joint trial of more than, one person who are accused of the same offence committed in the course of one transaction; and I should say that, having regard to the case alleged against the three accused, a joint trial was the only proper trial in the case. Otherwise the same evidence would be repeated and the same accounts would have to be gone through in the case of each accused. See *Emperor v. Datto Hanmant Shahapurkar* 7 Bom. L.R. 633. That disposes of the objections to the conviction so far as Criminal Revision Case No. 207 is concerned.

5. In Criminal Revision Case No. 206, the first objection--and in my opinion a fatal objection--to the conviction is that the accused could not be tried for misappropriating another gross sum of money covered by the period for which he has been already tried and convicted in the other case. The second clause of Section 222 of the Code of Criminal Procedure says 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.' Section 234 permits the trial of a person in one and the same trial for three offences committed within a space of twelve months. The question is whether Section 403, which bars a second trial for the same offence of a person who has once been tried and convicted, applies. Here the accused has already been tried and convicted for misappropriating a gross sum of money during the same period and the charge in the previous case should be taken to include all the items misappropriated by him in the course of the same transaction during that period. I think that ought to be the interpretation of the section, because otherwise it seems difficult to conceive that the Legislature should have intended that under Section 222 the prosecutor should be at liberty to prosecute for a gross sum misappropriated during a particular period consisting of certain items more than 3 in number and obtain a conviction for the same, and then

choose another gross sum consisting of different items alleged to have been misappropriated during the same period and have a separate trial for the second group of items.

6. What the Legislature apparently intended was that where there is to be a trial for misappropriation of a gross sum, there should be only one trial for such an offence committed within the period covered by the defalcation. I think, therefore, that the conviction and sentence in Criminal Revision Case No. 206 should be set aside and the fine, if paid, will be refunded and the bail bond discharged. The conviction and sentence in Criminal Revision Case No. 207 will be maintained.

Ayling, J.

7. I agree.

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