

In Re: Luchminarain

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SooperKanoon Citation : sooperkanoon.com/853213

Court : Kolkata

Decided On : Nov-23-1886

Reported in : (1887)ILR14Cal128

Judge : W. Comer Petheram, C.J. and ;Beverley, J.

Appellant : In Re: Luchminarain

Judgement :

ORDER

W. Comer Petheram, C.J.

1. In this case the prisoner, who was a clerk in the Post Office Savings Bank, has been charged and tried for embezzling various sums of money which were deposited by various depositors in the same Bank, and the present application is really an application upon a rule which has been obtained to quash the whole proceedings on the ground that the trial is illegal, because the prisoner has been tried for four offences of the same kind at the same trial, whereas under Section 234 of the Code of Criminal Procedure he could only be tried for three such offences.

2. It is clear from the terms of that section that a man can only be tried for three separate offences of the same kind at the same trial, and, speaking for myself, I think that if a man were tried for four specific offences at one trial, it would not be merely an irregularity which could be cured by Section 537 of the Code, but a

defect in the trial which would render the whole trial inoperative, unless it were cured by some subsequent proceeding by striking out some portion of the charge, and as to the propriety and legality of such a proceeding we do not at present express any opinion.

3. The first question is whether the prisoner was tried for more than three distinct offences. The charges in respect of which the trial took place were charges for embezzling the money of the Post-Master-General, the money having been deposited in his hands, and he being the person responsible for it. What appears to have been proved was that the prisoner was the man whose duty it was to receive deposits and make payments, and also to enter in the books of the Post Office, and also in the pass books supplied to the customers the amounts received by the Post Office and the amounts paid out by him. In some way or other suspicion arose and enquiries were made, and as the result of those enquiries it was ascertained that this man's cash was short by a certain sum of money. Having found out that, the next thing to be done was to enquire what had become of it, and it does appear from the books kept by him that this deficiency was in respect of the accounts of three depositors. Those depositors' accounts showed that they had received particular sums of money, but on an enquiry being made from the depositors it was found that they had not received them, and the inference was that the cash of the prisoner being short by those amounts, and the depositors not having received them, those sums were embezzled by him.

4. As to two of the depositors, the entries made in the books of the prisoner were entries of sums which were alleged to have been paid by him on one particular date, but that is not made out, the fact being that the money having been embezzled by him, the entries were made by him on that particular date for the purpose of concealing the embezzlement, but in the case of these depositors, no question arises to there being more than one offence, and there is no ground for suggesting that more than two offences were committed.

5. In respect of the third depositor, the amount was short by Rs. 195 that is the amount by which his cash would be short, and is the amount which he says he has not received: The first step to be taken in regard to that was to examine the books

which were kept by him in order to see what had become of the money, and that appears in his own hand an entry which shows that he paid the money to this depositor on two different occasions, and he says so in his statement. The statement that he paid the money is proved to be untrue, and is a statement which was made to conceal the fraud and the embezzlement of the money of which he had been guilty.

6. Then the question arises, does the entry clearly show that the embezzlement of this sum of Rs.195 took place on two dates and consisted of two separate transactions, so that it was an offence on which the man would have to be charged on two charges. But the offence is an offence of embezzling the sum of Rs. 195 so far as we know, it may have been embezzled at one and the same time, and the only use of two false entries was to make them part of the evidence in the general charge of embezzlement. Under these circumstances, I am of opinion that the embezzlement of the Rs.195 was really one offence, and could be included in one charge, and though it covers the two entries it is not shown that it was two-offences.

7. Under these circumstances, I do not think it is shown that the prisoner was tried for more than three offences in one trial, and that there is any ground for saying that the trial was illegal; and therefore the rule must be discharged.