

Raman Behari Das Vs. Emperor

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Court : Kolkata

Decided On : Dec-17-1914

Reported in : (1914)ILR41Cal722

Judge : Holmwood and ;Sharfuddin, JJ.

Appellant : Raman Behari Das

Respondent : Emperor

Judgement :

Holmwood and Sharfuddin, JJ.

1. This is an appeal from the judgment and sentence of the learned Sessions Judge of Sylhet who in partial agreement with both the Assessors convicted the appellant, Raman Behari Das, of three offences under Section 477A and three offences under Section 409 of the Indian Penal Code, and sentenced him to two years' rigorous imprisonment under each section, the sentences to run concurrently.

2. We are met at the outset by the objection that this trial is wholly void by reason of misjoinder of charges, and that this is so is perfectly clear from the authority of Kashi Viswanathan v. Emperor (1907) I.L.R. 30 Mad. 328. The same principle has been affirmed in more than one case recently decided by the Criminal Bench of this Court, and there cannot be the slightest doubt that Section 222 does not cover

two sets of offences any number of which may be tried together. The second clause of the section refers to cases of criminal breach of trust or dishonest misappropriation of money, and it is held that it is not necessary to specify the separate sums which have been embezzled, provided that the time included between the first and the last date, on which the sums were misappropriated, shall not exceed one year. This sub-section cannot be applied to Section 477 A of the Indian Penal Code, as was pointed out in the case of *Queen-Empress v. Mati Lal Lahiri* (4.899) I.L.R. 26 Calc. 560. Section 233 must be strictly followed, save and except where the law itself provides an exception, and this joinder of three charges under Section 409 and three charges under Section 477A is not covered, as was pointed out in the Madras ruling, by any of the exceptions provided in the subsequent sections of the Code. It is true that it was not necessary for the learned Judge to have drawn up three charges under Section 409, inasmuch as, by reason of Section 222, one charge would have been sufficient. In the same way it is perhaps doubtful whether it is necessary to draw up three charges under Section 477A. A series of alterations in accounts made to cover a defalcation might all be charged in one charge under the provisions of Section 477A, and there are not three distinct offences committed by an accused person merely by reason of the fact that he makes more than one false entry to cover one defalcation. But the false entries in that case can only relate to one defalcation. It is impossible to take a series of false entries referring to three different defalcations in the same trial although it might be possible to try three defalcations in one charge, or to try a whole series of falsified accounts in one charge. The two could not be combined in the manner in which they have been combined in this case. Such misjoinder is, since the well-known ruling of the Privy Council in the case of *Subrahmania Ayyar v. King-Emperor* (1901) I.L.R. 25 Mad. 61 absolutely fatal to the trial which must accordingly be held to be void.

3. We have heard the learned Counsel at some length upon the merits, and we do not wish to say anything which could prejudice the case, inasmuch as, after giving the matter our most patient attention, we are convinced that this is a case where the ends of justice require that there should be a retrial, and that that retrial should be held upon the charges under Section 477A upon which the accused was originally committed to the Court of Session. The charge should be framed as

nearly as possible in the words of the section itself. We may refer to the ruling in *Emperor v. Rash Behari Das* (1908) I.L.R. 35 Calc. 450 as showing what we mean. It was there held that where an accused in making entries which are charged against him was in reality furthering a fraud that had already been committed, that fell within the purview of Section 477A. But it would appear upon that ruling to be safer to set out the separate items of falsification in separate charges. We, therefore, on the whole, think that the case should, be re-tried upon the three charges under Section 477A as originally committed to the Sessions.

4. The conviction and sentence passed upon the appellant are set aside, and he will remain on the same bail pending his re-trial before the Court of Session as ordered above.

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