

Harendra Kumar Ghosh Vs. Emperor

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Court : Kolkata

Decided On : May-03-1926

Reported in : AIR1927Cal409,101Ind.Cas.597

Judge : Suhrawardy and ;Duval, JJ.

Appellant : Harendra Kumar Ghosh

Respondent : Emperor

Judgement :

1. The rule was obtained by the petitioner Harendra Kumar Ghosh who was the Tax Daroga and cashier of Mymensingh Municipality against his conviction under Section 409 and concurrent sentence of 1 year's rigorous imprisonment under each of the three heads contained in the charge and fine of Rs. 1,000 under the first two counts on four grounds. The first is that the elements constituting an offence under Section 409, I.P.C., were not proved or found. The Courts below have found that the petitioner was a tax daroga and cashier of the Municipality, that the amounts which he is said to have embezzled were received by him and he failed to account for them. These being the findings we think that all the elements constituting an offence under Section 409, I.P.C., have been found and this ground must fail.

2. The second ground on which the rule was issued was that the burden of proof was wrongly placed upon the petitioner. There is no substance in this ground

either. The Courts below have found that certain sums of money came into the hands of the petitioner and that he has failed to account for them in other words he has failed to prove how that money was legitimately used. The burden was initially placed on the prosecution and when the prosecution succeeded in proving the receipt by the petitioner of the several amounts it was for the petitioner to show that he had not converted them to his own uses. In these circumstances we do not think that the burden was wrongly placed upon the petitioner.

3. The third ground is that the first charge is bad in law inasmuch as it consists of 4 different items for different holdings realized by 4 different receipts and entered in the books under 4 different heads and accordingly the charge as framed contravenes the provisions of Section 234, Criminal P.C. What has been found is that the petitioner realized Rs. 236-10-0 on the 19th June 1923 in respect of four holdings from the firm of Maharaja Harendra Kumar Roy Chowdhury. Though the amount was composed of different sums payable in respect of four different holdings it was realized at the same time and one receipt was originally granted by the petitioner for the whole amount. On this finding, it cannot be said that there were four different items in respect of which he was charged. There was one item of Rs. 236-1-0 which he had realized. This ground also fails.

4. The last ground is that there has been a contravention of the provisions of Section 234, Criminal P.C. inasmuch as the third charge consisted of a total amount which was made up by adding together the several amounts which the petitioner was said to have embezzled during different periods. The petitioner was charged under this count under Section 222(2), Criminal P.C., for misappropriating a certain amount between April of 1923 and the 31st March 1924. In ascertaining the amount misappropriated the learned trying Deputy Magistrate had to go into details and found the different dates on which the different amounts came into his hand. He found that on some dates certain sums were realized by him and that between some other dates certain; other sums were realized by him. The method adopted by him was to facilitate the calculation of the total amount for the misappropriation of which he was charged. It is not a fact that the petitioner realized and misappropriated different periods. The finding arrived at by the trial Magistrate in a very careful and lucid judgment is that the petitioner

misappropriated the sum of Rs. 1,618-8-6 between April 1923 and 31st March 1924. The learned Judge in an equally lucid judgment has also found that and further observed that in the circumstances of the case the charge that was framed was right and that there was no contravention of the provisions of Section 234, Criminal P.C.

5. All the grounds, therefore, fail and this rule is discharged. The petitioner must surrender to his bail.

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