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Court : Kolkata

Decided On : Apr-22-1909

Reported in : 4Ind.Cas.28

Judge : Caspersz and ;Ryves, JJ.

Appellant : Parmeshwar Lal

Respondent : Emperor

Judgement :

1. Parmeswar Lal was tried by a Deputy Magistrate of Howrah on charges of offences punishable under Sections 408 and 420 of the Indian Penal Code. The charges ran as follows: first: That you, on or about the 21st day of September 1908, at Calcutta, being a servant of Seumukh Rai and Lachhiram, and as such, entrusted with two refund cheques, one for Rs. 89 and the other for Rs. 64-9 by the firm on 20th idem, cashed the same at Howrah and committed criminal breach of trust in respect of (the) total sum of Rs. 153-9-0, and thereby committed an offence punishable under Section 408 of the Indian Penal Code.' [This charge was subsequently amended by the addition of the words 'on the 26th September' immediately after the figures Rs. 153-9]; and, secondly: That you on or about the 26th day of September 1908, at Howrah, having assured delivery clerk, Debendra Nath Mukherjee, that you would immediately pay the freight of 185 bags of mustard seed covered by railway receipt No. 94922 of the 9th September 1908 before taking delivery of the goods, thus dishonestly induced the said Debendra

Nath Mukherjee so deceived to deliver the delivery orders of the consignment to you and that you did not pay the freight at all although the goods were removed, and thereby committed an offence punishable under Section 420 of the Indian Penal Code.' He was convicted under both the sections and sentenced to terms of rigorous imprisonment. On appeal, the convictions were upheld.

2. Among other pleas, it was urged, on behalf of the petitioner, that the joint trial of the two charges, under Sections 408 and 420 of the Indian Penal Code, in the circumstances of the case, was illegal. The learned Sessions Judge, however, held that the accused, who was a jamadar in the service of Seumukh Rai and Lachhiram of Barra Bazar, Calcutta, was entrusted with two cheques for encashment on the 20th of September 1908 and told to pay the freight and take delivery of the consignment of mustard seed from the East Indian Railway from the proceeds. Under these circumstances he held that the embezzling of money and the cheating of the Railway Company were all part of one transaction.

3. The petitioner obtained a Rule from us to show cause why the conviction and sentences should not be set aside on the ground that he could not be lawfully tried on the two different charges framed at one and the same trial. We have heard the learned Advocate-General who has shown cause. He relies on the case of Emperor v. Sherufalli Allibhoy 27 B. 135 which was followed by this Court in Emperor v. Sri Narain Prasod 11 C.W.N. 715 and by us in Cr. Rev. No. 131 of 1909. In our opinion, however, this case much more resembles Tilakdhari Das v. The Emperor 6 C.L.J. 757. On the 20th of September, the petitioner received the cheques for encashment. He cashed them on the 21st. On the 22nd, 23rd and 24th when asked by his firm if he had cashed the cheques, he denied having done so. On the 25th of September, he was told to cash the cheques and to pay for and take delivery of the goods from the Railway. On the 26th of September he induced, under promise of immediate payment', a clerk of the Railway to give him delivery of the goods without payment and then absconded. It seems to us the offence of criminal misappropriation, which was an offence against his firm, was complete on the 21st of September when he received the money or, at any rate, on the 22nd when he denied having done so. On the 26th he cheated the Railway Company by deceiving their clerk and inducing him to deliver the goods without

paying for them. The two offences committed against two separate persons seem wholly unconnected.

4. The learned Magistrate who tried the case evidently felt the difficulty and, in order to make it appear that the two offences were committed on the same day and were part of the same transaction, he amended the charge after the evidence in the case had been taken so as to make it appear that the money received by the petitioner for the cheques could not be said to have been criminally misappropriated by him till when, on the 26th, the petitioner got delivery of the goods and did not pay for them out of the proceeds of the cheques. But even if the petitioner had received, say, a hundred rupees from the firm on the 26th of September, and was told to pay that amount due to the Railway Company and take delivery of the goods, if he, the same day, pocketed the money and induced the Railway Company to deliver the goods without payment it is hard to see how the two offences could possibly be regarded as committed in one transaction. The only nexus, or, rather, similarity, between the two would be that both the firm and the Railway Company, were defrauded to the extent of Rs. 100 on the same day.

5. For these reasons, we think that the joinder, in the trial, of the two charges was illegal and, following the ruling of the Privy Council, we must hold that the trial was altogether bad. We, therefore, set aside the conviction and sentences and order the petitioner to be re-tried according to law.

6. The Rule is made absolute.

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