

G.N. Pascal Vs. Raj Kishore Mathur

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Court : Kolkata

Decided On : Dec-04-1930

Reported in : AIR1931Cal521

Appellant : G.N. Pascal

Respondent : Raj Kishore Mathur

Judgement :

Rankin, C.J.

1. In this case, the question arises whether a certain prosecution which is proceeding before the Additional Presidency Magistrate of Calcutta is without jurisdiction; in other words, whether the prosecution, if it is to take place at all, should take place in the District of Patna. Now, on the footing of the complainant, the case made is that the accused man was in charge of the Patna branch office of a certain business whose head office is in Calcutta, that he realized amounts from different hirers of motor cars and never deposited these amounts to the credit of the firm, that the accused professed to have paid these sums to the firm at Calcutta but ha never did so and that consequently he has committed an offence under Section 406, I. P.C.

2. The Magistrate has taken certain evidence. He has examined the complainant; but he has come to no finding whatsoever about any question of fact. The question before us has been argued 1931 C/66 & 67 on the footing that, as the accused

man had to remit to Calcutta and account in Calcutta, the offence is necessarily triable here. By Sub-section (2), Section 181, Criminal P.C. the offence is triable within any district where any part of the property was received or retained or the offence was committed. Certainly there does not seem to be any direct evidence in this case that the money was received or retained anywhere other than Patna. Decisions have been cited to us which show that, in a case of this character, the offence is held to be triable at the place where the person entrusted ought to have accounted and that has been justified under the concluding words of Sub-section (2), Section 181, Criminal P.C. At one time apparently this was justified on the footing that the loss had happened at the place of accounting and that the matter came under Section 179, Criminal P.C. I agree in the view that has now been arrived at on the decisions that that view is untenable. In the case of *Gunananda Dhone v. Lala Santi Prakash Nandy* : AIR1925 Cal613 Mukerji, J., came to the same conclusion with reference to Sub-section (2), Section 181. He put his point thus:

Mr. Chatterjee has contended that these overt acts are but evidence of the fact that the offence of criminal breach of trust has already been committed by the accused, and from these acts dishonesty may very well be inferred but that these acts are not essential ingredients of the offence itself which must have been complete before the acts are done. There is, in my opinion, considerable force in this contention; but at the same time looking to the word of Section 405, I. P.C. I am disposed to take the view that if there is a contract that the accused is to render accounts at a particular place and fails to do so as a result of his criminal act in respect of the money, he can, without unduly straining the language of the section, be said to dishonestly use the money, at that place as well, in violation of the express contract which has made touching the discharge of the trust by which he came by the money, and so commits the offence of criminal breach of trust at that place also.

3. I am bound to say that, while I much appreciate the great convenience that will arise if this view is accepted, I doubt extremely whether the learned Judge is right in saying that this does not unduly strain the language of Section 405, I. P.C. The language of Section 405 is -- confine myself to that part of it which deals with the

committing of the offence.--

misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation, etc.

4. The fact that a man fails to account in Calcutta does not seem to me to be the same thing as that he dishonestly uses the money in Calcutta or that he dishonestly disposes of the money in Calcutta. However in the present case, the position is that there is no certainty as to the facts. We do not know whether it may not yet be shown that this money was dishonestly disposed of in Calcutta or dishonestly misappropriated in Calcutta; and it is quite impossible that, upon a nebulous state of facts such as this case presents, we should interfere with the prosecution. If the petitioner is so advised at the end of the day, should he be convicted, he will be entitled still to come to this Court upon a proper basis and it may be possible then for him to repeat his present argument; but it is not possible in this case that we should now interfere and make the rule absolute. The rule must therefore be discharged.

Mallik, J.

5. I agree.

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