

Girwar Narain Vs. Emperor

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Court : Kolkata

Decided On : Jan-17-1912

Reported in : 15Ind.Cas.650

Judge : Holmwood and ;Sharfuddin, JJ.

Appellant : Girwar Narain

Respondent : Emperor

Judgement :

1. This was a Rule calling upon the District Magistrate of Bhagalpur to show cause why the conviction and sentence passed on the petitioner should not be set-aside on the grounds, firstly, that there has been misjoinder of charges, and, secondly, that the findings on the evidence do not show that there was specific misappropriation of any portion of the money by either of the accused persons, or that there was complicity between them.

2. We have heard the learned Vakil in showing cause and we have carefully considered the explanation given by the District Magistrate; but we are still of opinion that, having regard to the provisions of Section 222, Clause (2), there has been a misjoinder of charges in this case. It is unnecessary to refer, as the learned Judge does, to Section 234. It is enough to point out that in Section 222 also, the wording of the section refers to a single accused; and it must be so, because it is impossible to hold that two persons can be guilty of misappropriation of the same

parcel of money. One may be guilty of misappropriating a portion of it or one maybe guilty of abetting the other. The misappropriation of the actual money must be the act of a single person, and, therefore, Section 239 has no application, because more than one person could not be charged with this particular offence of misappropriation of a single sum. This really covers the second ground of the Rule, which shows how easily an accused may be prejudiced by a charge drawn up in this vague manner.

3. As far as the finding that there was complicity between the two petitioners goes, that would only amount to a finding that one of them abetted the other. It is extremely difficult, upon the judgment of either of the Courts below, to discover which of the accused was, in their opinion, the principal and which was the abettor. Ordinarily speaking, the person into whose hands the money came and who was bound to account for it and who has not accounted for it is the person who would be liable to be charged with misappropriation. Now, if the patwari was bound to account to the estate through the Tahsildar for moneys collected by him, and the Tahsildar made false entries and thereby facilitated misappropriation of the money, the Tahsildar would be liable to be charged with abetment, but the specific act of misappropriation in the absence of any evidence that the money passed into the hands of the Tahsildar would lie against the patwari alone. The difficulty in this case is that there is no finding that the actual money passed into the hands of the Tahsildar. If the patwari handed over the money he collected to the Tahsildar and the Tahsildar falsified the accounts, then, of course, the Tahsildar alone would be responsible for the misappropriation and there would then have to be a clear finding on evidence that the patwari abetted him. But, be that as it may, the charges against these two persons must be of misappropriation in one case and of abetment in the other. It is open, of course, to the Court to frame charges in the alternative; firstly, that the patwari received money and misappropriated it, the Tahsildar being the abettor; or, secondly, that the patwari handed over the money to the Tahsildar who misappropriated it and that the patwari abetted him in such misappropriation. But if it is found necessary to draw up such charges in the alternative, clearly the different items will have to be distinguished, because the evidence as regards the receipt and credit of each item is different.

4. In setting aside the conviction and sentence and directing a new trial, we, therefore, leave it to the District Magistrate to decide which items should be charged as misappropriated by the Tahsildar or by the patwari with or without abetment of the other. But, if these two persons are tried together, the charge against one must be of misappropriating a sum of money and the charge against the other must be of abetting him in so doing. The materials before us are not sufficient to give any more specific directions.

5. The Rule is made absolute, the conviction and sentence are set aside and there will be a re-trial according to law.

6. The petitioner will remain on the same bail pending the re-hearing.

7. This judgment will govern both the Rules.

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