

(1934) 01 CAL CK 0002**Calcutta High Court****Case No:** None

Prokash Chandra Sircar

APPELLANT

Vs

Mohin Chand Haldar

RESPONDENT

Date of Decision: Jan. 25, 1934**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 408

Citation: 148 Ind. Cas. 736**Hon'ble Judges:** S.K. Ghose, J; Mukerji, J**Bench:** Division Bench**Judgement**

Mukerji, J.

This Rule has been issued at the instance of a complainant who instituted a complaint u/s 408, Indian Penal Code. The Complaint related to. a sum of Rs. 1,033 and odd and purported to be against the accused as a Gomastha attached to the Sudder Kutcherry of the estate of Sri Sri Radha Madan Mohan Jew which is situated at No. 3, Gokul Mitter Lane, Calcutta. The complainant's case is that the accused as such Gomastha in the said estate was m charge of collection from tenants in various Mouzas in the District of Burdwan and that it was his duty to remit all realizations made by him and to render an account in respect of the same in the said Sudder Kutcherry. The complaint was based on the allegation that there was no account rendered in respect of the amount in question. After summons was issued the accused appeared and the case came on before Mr. H. K. De, fourth Presidency Magistrate, Calcutta. Mr. De heard both sides on the question of jurisdiction and came to the conclusion that no part of the offence was committed within the jurisdiction of the Court o♦ the presidency Magistrate and that the entiie offence was committed within the jurisdiction of the Burdwan Court. Being of that opinion, he made an order transferring the case to the District Magistrate of Burdwan and forwarding the case to his tile. The order of transfer, it may be pointed out, is not strictly in accordance with Section 186 of the Code. That, however, is a very small

matter. What is important is that the case has been disposed of by the learned Magistrate on the ground that he had no jurisdiction to entertain it. It is against this order that the present Rule has been obtained.

2. There can be no question that if the decision of this Court in the case of Gunananda Dhone Vs. Lala Santi Prakash Nandy, be correct, then the Calcutta Court has jurisdiction to entertain the present case. To that decision, I was a party but for my present purposes, it is not necessary for me to endeavour to justify what was said in that decision. The decision has been doubted in a later decision of this Court in the case of G.N. Pascal Vs. Raj Kishore Mathur, and dissented from in the case of Paul De Flondor Vs. Emperor. In the former of these cases the facts had not been investigated and no definite rule was laid down. But it is clear that even upon the view which has been taken in the latter case, the Court of the Presidency Magistrate of Calcutta has ample jurisdiction to deal with the present case. In the case of Paul De Flondor Vs. Emperor, it has been said:

If there is no evidence as to where the misappropriation was committed other than the fact of non-accounting, then the failure to account may itself be taken as evidence of intention to misappropriate and the offence being thus taken to have been committed at the place where the accused ought to have rendered the account the venue may be laid there.

3. In the present case it has not been alleged by the complainant that there was misappropriation committed in respect of the sum which forms the subject-matter of this case or any component parts of it at any particular place but the whole of the case as to misappropriation is founded upon the allegation that there was no accounting in respect of the money. Account, as already stated, was to be rendered at the Sudder Kutcherry in Calcutta. I am unable to see how it can be said as has been stated by the learned Magistrate in his explanation, that in the present case if there has been any misappropriation such misappropriation must have taken place in Burdwan. There is no such allegation, nor is there any evidence to that effect.

4. The Rule accordingly should be made absolute. The order which the learned Magistrate has made to which reference has been made above is set aside and it is ordered that the case be now taken up by the learned Magistrate, and dealt with in accordance with law.

S.K. Ghose, J.

5. I agree.