

(1921) 10 BOM CK 0011

Bombay High Court

Case No: Criminal Application for Revision No. 318 of 1921

Emperor

APPELLANT

Vs

Ramratan Chunilal

RESPONDENT

Date of Decision: Oct. 27, 1921

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 179
- Penal Code, 1860 (IPC) - Section 409

Citation: (1922) 24 BOMLR 46

Hon'ble Judges: Norman Macleod, J; Kanga, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Norman Macleod, Kt., C.J.

The complainant in this case charged the accused with the commission of the offence of criminal breach of trust punishable u/s 409 of the Indian Penal Code. The complaint was lodged in the Court of the Sub Divisional Magistrate, First Class, Ahmednagar. After a charge had been framed and after the accused had recalled some of the prosecution witnesses for cross-examination and cited witnesses in his own defence an objection was taken that the Court had no jurisdiction to try the case. The Magistrate held that the objection could not be sustained as Section 179 of the Criminal Procedure Code applied. The accused has applied to this Court in revision to set aside this order of the Magistrate. Section 179 says:-

When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

2. In this case the complainant had sent cotton from Ahmednagar to Bombay to the accused for sale as his commission agent. The charge that has been framed against

him is u/s 409 of the Indian Penal Code which deals with criminal breach of trust by a public servant or by a banker, merchant or agent. Now it seems clear that one of the consequences of criminal breach of trust, if committed by an agent, would be loss to the person to whom the property entrusted to the agent belonged, and therefore as the complainant would be entitled to get the proceeds of the cotton sent to Bombay paid to him in Ahmednagar, if the proceeds were not paid to him, loss would be incurred at Ahmednagar and therefore the Court at Ahmednagar would have jurisdiction. Reliance is placed on Section 181(2) of the Criminal Procedure Code but that section in no way restricts the provisions of Section 179, since it merely provides that-

The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

3. There is nothing, therefore, in that section which prevents a Court within whose local limits any consequence of an offence has ensued, having jurisdiction to try the offence.

4. Counsel for the accused relied on the case of *Simhachalam v. Emperor* I.L.R (1916) Cal. 912. The important paragraph of the judgment in that case is at the bottom of p. 915 :-

Now, for the application of Section 179 it is essential that the offence should depend on an act done and on a consequence which has ensued. But loss to one person, though a normal result of an act of misappropriation by another, is not an essential ingredient of the offence of criminal misappropriation. The offence is complete if the conversion is done with the intention of causing wrongful gain to the offender irrespective of any loss which may ensue to any other person. The offence does not depend on the consequence which has ensued but only on the act which has been done. Section 179, therefore, does not in terms apply.

5. In *Re Rambilas* I.L.R (1914) Mad. 639 the learned Judges said:-

The offence of criminal breach of trust is completed (assuming a preliminary trust) by the misappropriation or conversion of the property (in this case the cash proceeds of the hundis) dishonestly, i.e., with the intention of causing wrongful gain or wrongful loss. It is only the intention which is essential. Whether wrongful gain or loss actually results is immaterial; it is a consequence, but no essential part of the offence and a person is not accused of the offence by reason of it.

6. A contrary view was taken in *Queen-Empress v. O'Brien* I.L.R (1896) All. 111 Edge C.J. said :-

The case against the applicant is one of an offence alleged to have been committed by him u/s 408 of the Indian Penal Code. The contention on his behalf is that, if he

committed any offence, it was committed in Lower Bengal and not within the Magistrate's jurisdiction at Cawnpore of course I express no opinion whatever as to whether the applicant committed an offence at all. That matter has yet to be decided. If, however, he parted with goods of his employers in Lower Bengal and did not remit the price of those goods, as he was bound to do, to his employers in Cawnpore, it appears to me that the case comes within Section 179 of the Code of Criminal Procedure; that the consequence of the applicant having made away with, for his own purposes, goods of his employers in Lower Bengal, or the price of them, if he did so, was that a loss of the value of those goods ensued to his employers in Cawnpore. It might be very difficult to prove where the actual offence of breach of trust was committed. Of course the applicant denies he has committed any. At one time he said the goods were on their way to Cawnpore. Another time he said the goods were at Lucknow. The goods have disappeared. The applicant went to Cawnpore and failed to account. The matter can be inquired into at Cawnpore, and the Magistrate at Cawnpore has jurisdiction in the case.

7. In my opinion, the argument of the learned Chief Justice should be preferred to the arguments of the learned Judges in *Simhachalam v. Emperor* and *Re Rambilas*. The decision in *Queen-Empress v. O'Brien* I.L.R(1896) All, 111 was followed by the Allahabad High Court in *Langridge v. Atkins* I.L.R (1912) 35 All. 29. The whole question seems to me to depend on whether we must give to the word "consequence" in Section 179 its ordinary grammatical meaning or whether we are bound to restrict it to meaning a consequence which is a necessary ingredient of the offence. I see no justification for holding that the ordinary meaning should not be given to the word "consequence" in Section 179 and the argument in *Queen-Empress v. O'Brien* seems clearly pertinent in reference to this point. For instance, an agent might be given goods by his employer to sell at various places, and if he performed the trust imposed upon him he would be bound to pay the proceeds of the goods which had been sold to his employer. If he did not, and if his employer charged him with criminal misappropriation, it would be exceedingly difficult to prove at what place he had sold any part of the goods and misappropriated the proceeds. It seems to me that Section 179 was intended to apply to such cases so as to enable an employer to file his complaint in the Court within whose jurisdiction the loss was alleged to have been incurred. In my opinion, therefore, the decisions of the Allahabad High Court should be followed and there is no reason to admit this application for revision of the Sub-Divisional Magistrate's order.

Kanga, J.

8. I agree.