
(1902) 03 CAL CK 0008
In the Calcutta High Court

Emperor	Vs	APPELLANT
Preo Nath Chowdhry		RESPONDENT

Date of Decision : 07-03-1902

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 432
Penal Code, 1860 (IPC) — Section 408, 95

Citation : (1902) ILR (Cal) 489

Hon'ble Judges : Stevens, J;Harington, J

Bench : Division Bench

Judgement

Stevens and Harington, JJ.—This is a reference u/s 432 of the Code of Criminal Procedure made by one of the Honorary Presidency Magistrates.

2. The defendant was in the service of Messrs. Kilburn & Co., and he received from his employers some bags of waste paper with an order to take them to the Company's yard at Garden Reach and there to burn and destroy the papers. The defendant instead of destroying the papers brought some of them to Bow Bazar. The Honorary Magistrate is of opinion that the defendant disobeyed the orders of his masters and converted the papers to his own use. He adds that, though the papers are of no value to the firm, they might be misused by designing persons for the purpose of committing forgery.

3. The question which the learned Magistrate refers to us is, "having regard to Section 95 of the Indian Penal Code and the case of the Empress v. Wilkinson C. W. N. 216., did the defendant commit any offence u/s 408 of the Indian Penal Code?"

4. We think that Section 95 of the Indian Penal Code would have no application, unless the act in question amounted to an offence under the Code, but for the operation of that section.

5. As regards the question whether the act committed in itself amounted to an offence u/s 408, we think that the case is closely analogous to that of the

Empress v. Wilkinson 2 C. W. N. 216., to which the learned Honorary Magistrate refers, and in accordance with the view expressed in that case we hold that the act of the defendant did not amount to criminal breach of trust.

6. Let this answer be returned to the Honorary Magistrate.