

(1896) 02 CAL CK 0015
In the Calcutta High Court

Queen-Empress on the prosecution of Coverjee Hari Dass	APPELLANT
Vs	
Pursotam Dass Morarjee	RESPONDENT

Date of Decision : 26-02-1896

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 234
Penal Code, 1860 (IPC) — Section 477

Citation : (1897) ILR (Cal) 193

Hon'ble Judges : Hill, J

Bench : Single Bench

Judgement

Hill, J.—Suggested that as it would be inconvenient to keep the jurors in attendance during the argument the prisoner might be called on to plead to all the counts, stating that if after hearing Counsel he should hold the objection good, he would order the third count to be struck out.

2. A jury was accordingly empanelled, the prisoner pleading not guilty to all counts of the indictment.

Mr. J. G. Woodroffe.

3. The third count, though apparently in form, is in reality unsustainable. It is only sufficient if it deals with a single transaction. But it appears from the depositions that the sum alleged in that count to have been embezzled represents a general deficiency in the prisoner's account. A general deficiency may be constituted by a number of distinct embezzlements. The misappropriation of each separate item is a separate offence. *Chetter v. The Queen* 15 W. R. Cri. 5. When a number of sums are separately embezzled they cannot be added all together and treated as one embezzlement of the whole ; *Rex v. Williams* 6 C. & P. 626. In *The Queen v. Balls* L. R. 1 C. C. R. 328 there was to be a weekly accounting; moreover the account was onesided. As two offences have been already charged in the first two counts, the third is bad. u/s 234 of the Criminal Procedure Code only three offences of the same kind can be charged. In this case more than three offences have in effect been charged. If an

embezzlement takes place on two dates, and consists of two separate transactions, there must be two charges, and a trial held contrary to the provisions of Section 234 is wholly inoperative; In the matter of Luchminarain ILR 14 Cal. 128, Queen-Empress v. Juala Prasad ILR 7 All. 174 . I refer to the unreported decision of Wilson, J., in The Queen v. Counsel cited in The Queen-Empress v. Shama Churn Sen tried in 1890 before Prinsep, J. and a special jury; also to the decision of Fabian, J., in the Bombay case of The Queen-Empress v. De Silva 1894 They are directly in point as to the unsustainability of the third count. The Queen-Empress v. Kellie ILR 17 All. 153 is against me; but it is submitted that this Court will follow its own previous rulings and that of the Bombay High Court. As the law now stands some specific sum must be proved to have been embezzled; it will not suffice to prove a general (sic) in the prisoner's account; Reg. v. Jones 8 C. & P. 288 Reg v. Chapdefici C.& K. 119 Reg. v. Moah Dear C. C. 626 Reg. v. Wolstenholme man J. C. C. 313, 2 Russell on Crimes, 376, 377, 380, Roscoe's Cr. Ev., 450. I (sic) Eision in Rex v. Grove 7 C. & P. 635 proceeded merely on the (sic) that particular case as is pointed out in Reg. v. Jones 8 C. & P. Facts Moreover seven out of the fifteen Judges dissented from that P. 288. 2 Russell on Crimes 377. The case of The Queen v. Lambert decision: C. 309 is not opposed to this general rule, as is explained 2 Cox. Cell on Crimes, 377 note, which is further supported by the decision in Russ (sic) he Indian Courts already cited, with the exception of the The Queen Empress v. Kellie ILR 17 All. 153. The amendment of the Penal Code Section 4 of Act III of 1895 deals only with the offence of falsification of accounts, which though an offence of a kindred, is yet of a different, nature. It reproduces the provisions of 38 and 39 Vic., Cap., 24; see Statement of Objects and Reasons, Gazette of India, March 24, 1894 ; Reg. v. Butt 15 Cox. C. C. 564. The proviso applies to charges u/s 477 A of the Penal Code only. This is not a charge under that Section. Had the Legislature intended to make the proviso of general application, it would have so enacted. If it will not be sufficient to prove a general deficiency in order to make out the commission of the offence, the Court will not permit evidence to be given, which will only have the effect of prejudicing the prisoner. On this ground as on the first it is submitted the third count should be struck out.

4. The Standing Counsel (Mr. P.O" Kinealy).---Unless evidence be admitted of a general deficiency, it would be extremely difficult, if not impossible, to prove the commission of the offence in these cases. See remarks of Erle, J.,