

(1918) 01 PAT CK 0010
In the Patna High Court

Sital Prasad

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 10-01-1918

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 234, 235
Penal Code, 1860 (IPC) — Section 420, 468, 477

Citation : AIR 1918 Patna 343 : 44 Ind. Cas. 47

Hon'ble Judges : Atkinson, J

Bench : Single Bench

Judgement

Atkinson, J.—The accused Sital Prasad was a servant in the Rayan Sugar Factory and he was charged by the General Manager of the factory with having on the 12th of March 1917 issued two false receipts to tenants who came to the factory with the object of selling and delivering sugarcane to the factory, the substance of the offence being that the accused Sital Prasad issued receipts for sugarcane which never was delivered in fact and thus enabled tenants to obtain money from the factory for sugarcane which had never been supplied.

2. The accused apparently in the month of March 1917 resorted to this form of deception in a series of transactions. A charge was, however, preferred against the accused by Mr. Hoskins, the General Manager of the factory, in respect of two false receipts alleged to have been issued by the accused on the 12th of March 1917 and the accused was charged under Sections 468 and 477(a) of the Indian Penal Code--the charge u/s 468 being for forgery with intent to cheat and the charge u/s 477(a) being in respect of the falsifications of accounts with intent to defraud. These two transactions by no means formed the entire of the accused's defalcations or wrong-doing, because on the 4th and the 8th of March he also issued two other false receipts to two other tenants who came to deliver sugarcane to the factory for sugarcane which was not in fact supplied. The charge that has been preferred by Mr. Hoskins under Sections 468 and 477(a) of the Indian Penal Code has been committed to the Court of Session for trial.

3. A servant of the factory has, since the former case was committed for trial, preferred another charge against the accused u/s 420 of the Indian Penal Code in respect of the false receipts issued by him on the 4th and 8th of March 1917. Apparently from the dates it would appear that these offences, more than three in number, were committed within a space of twelve months from the time the first to the last of these offences were committed.

4. It is contended before me by Mr. Rajender Prasad who appears on behalf of the accused that inasmuch as the charges which have been now made or preferred against the accused are of the same kind as those with which he is being tried in the Sessions Court and exceed three in number, that, therefore, under the provisions of Section 234 of the Code of Criminal Procedure the accused cannot be tried for any such offences in excess of the first batch of three. The learned Judges who granted this Rule seem to indicate that to try the accused for more than three charges if the offences took place within the period of twelve months, would be contrary to the spirit of Section 234 of the Criminal Procedure Code. I myself cannot follow that line of reasoning, which is unsupported by any authority and which is inconsistent with the only authority which has been cited before me, namely, the case reported as *Empress v. Dononjoy Baraj* 3 C. 540 : 1 C.L.R. 478 : 1 Ind. Dec. 927. The provision contained in Section 234 of the Code of Criminal Procedure is merely this; that you shall not, at one trial, try an accused for more than three offences of the same kind committed within the space of twelvemonths from the first to the last. But I do not see any reason for the suggestion that if a person commits 50 different offences within 12 months of the same kind, you can only try him for three and must necessarily abandon the trial of all charges in respect of the remaining 47 offences. In the case referred to as *Empress v. Dononjoy Baraj* 3 C. 540 : 1 C.L.R. 478 : 1 Ind. Dec. 927 the learned Judges, considering Section 453 of the old Code of Criminal Procedure which is almost word for word the same as Section 234 of the present Code, say: "Section 453 of the Criminal Procedure Code modifies Section 452, which requires a separate charge and a separate trial for every distinct offence, by allowing three charges of three distinct offences of the same kind and committed within one year of each other to be tried at the same time; but this does not mean that, if at one time or within one year a man commits fifty distinct offences of the same kind, he shall not in one day be prosecuted for more than three such offences." This decision seems to be directly in point and to be the correct interpretation and construction to be put upon Section 234 of the existing Criminal Procedure Code.

5. In the alternative it is contended that under the provisions of Section 235 the facts out of which the several offences arose formed one and the same transaction and that thus they constituted one offence for which the accused may be charged and tried at one trial as for one offence. The only ground on which it is suggested that these offences formed one and the same transaction is that the motive or object underlying the commission of all these offences was the same, namely, to cheat the factory. It is admitted that the offences were committed on

different dates, namely, on the 4th of March, 8th of March and the 12th of March; but it is contended that inasmuch as the motive or object which actuated the accused in the commission of all the offences was the same, that, therefore, the offences constituted one and the same transaction. Clearly this cannot be the meaning of "one and the same transaction" contemplated by Section 235 of the Code of Criminal Procedure. That section expresses in its own phraseology what constitutes one and the same transaction and provides that if a series of acts are so connected and more offences than one are committed by the same person he may be charged with and tried at one trial for such offences as one offence.

6. In my opinion in this case the acts were distinct and separate and wholly unconnected, and the accused is thus liable to be tried separately for each one of such offences or, as more than three offences of the same kind were committed within 12 months, then in batches of three at each trial under separate charges. The argument which has been addressed to me that the case which has been instituted against the accused u/s 420 of the Indian Penal Code is illegal must therefore, fail and this application must be disallowed.

7. Mr. Rajender Prasad has made a very strong appeal to me on the question of punishment. He says it is undesirable that the cases preferred against the accused being ejusdem generis should be tried by different Courts, because such a course might result in punishment being piled up against the accused by different tribunals, one having no knowledge of the punishment awarded by a different Court in a different case. This argument appeals to me and I consider it right and proper that one Court should have seisin of both cases. I would, therefore, suggest to the learned Deputy Magistrate who has now seisin of the charge u/s 420 of the Indian Penal Code that as soon as the case is ready it would be right and proper to commit it to the Court of Session for trial with the analogous case pending against the accused under Sections 468 and 477(a) of the Indian Penal Code.