

1952

Present : Swan J.

A. M. JOHARDEEN, Appellant, and T. J. AHMATH (S. I. Police),
Respondent

S. C. 631—M. C. Matale, 1,931

Joinder of Charges—“ In the same transaction ”—Criminal Procedure Code, s. 184.

For joinder of charges in respect of offences committed in the same transaction, it is not necessary that the charges must expressly state that the offences were committed in the course of the same transaction. If the sameness of the transaction is manifest or implicit in the charges themselves there is no misjoinder.

¹ (1932) 34 N. L. R. 33, at 36.

² (1827) 9 Dow. Ry. K. B. 183.

³ 4 Dow. & Ry. M. C. 293.

⁴ 2 B. & Ald. 339 & 479, 106 E. R. 391.

⁵ 6 B. & C. 240, 108 E. R. 441.

⁶ (1866) L. R. 1 Q. B. 433.

⁷ (1882) 1 N. Z. L. R. 129, 16 Emp. Dig. 364 (note).

APPEAL from a judgment of the Magistrate's Court, Matale.

H. V. Perera, Q.C., with *E. R. S. R. Coomaraswamy*, for the 2nd accused appellant.

Boyd Jayasuriya, Crown Counsel, for the Attorney-General.

Cur adv. vult.

November 4, 1952. SWAN J.—

In this case the appellant and one S. Ponnambalam were charged as follows :—

that they did on or about 1st May, 1950, at Matale within the jurisdiction of this Court dishonestly misappropriate a sum of Rs. 117·50 the property of the Matale Co-operative Transport Society, Ltd. and thereby committed an offence punishable under Section 386 of the Ceylon Penal Code

In the alternative

at the time and place aforesaid the 2nd accused being employed as a Cashier-Clerk did wilfully and with intent to defraud falsify an account which belongs to his employer to wit the Honorary Secretary of the Matale Co-operative Transport Society, Ltd. by making the following entry :—

“ a sum of Rs. 117·50 was paid to Messrs. Costa's Motor Works, Matale, on 1.5.1950 ” whereas in truth and in fact no such sum was paid to Messrs. Costa's Motor Works and thereby committed an offence punishable under Section 467 of the Ceylon Penal Code.

Mr. Perera maintains that there is a misjoinder of charges and that the convictions must be quashed. Section 184 of the Criminal Procedure Code permits a joinder of accused in respect of charges committed *in the same transaction*. There can be no question that violation of this rule would make the trial an illegality. It was so held in the case of *Subramania Iyer v. King-Emperor*¹ where the Privy Council was dealing with the construction of Section 239 (d) of the Indian Criminal Procedure Code which corresponds to Section 184 of our Code. This case was referred to in *Choukhani v. King-Emperor*² and Lord Wright who delivered the judgment of the Privy Council said :—

“ It has been taken as settled law on all sides throughout these proceedings that the infringement of Section 239 (d) would, if made out, constitute an illegality, as distinguished from an irregularity, so that the conviction would require to be quashed under the rule stated in *Subramania v. King-Emperor*¹ as contrasted with the result of an irregularity as to which *Abdul Rahaman v. King-Emperor*³ is an authority.

¹ (1901) L. R. 28 Ind. Appeals 251.

² (1398) L. J. R. (P. C.) 38.

³ (1926) L. R. 53 Ind. Appeals 96.

Their Lordships will assume that this is so without thinking it here necessary to discuss the precise scope of what was decided in *Subramania's* case, because in their understanding of Section 239 (d) that question does not arise."

Mr. Perera contends that the charges must clearly state that the offences were committed in the course of the same transaction. He even contended that the omission of the words "*in the course of the same transaction*" were sufficient to indicate that they were not so committed. In this connection he drew my attention to the dictum in *Choukhani v. King-Emperor* ² that the correctness of the joinder, which depends on the sameness of the transaction, is to be determined by looking at the accusation and not by looking at the result of the trial. But as learned Crown Counsel submitted, there is no special magic in the use of the words "*in the course of the same transaction*". If the sameness of the transaction is manifest or implicit in the charges themselves there is no misjoinder. In this case the charges themselves reveal that the offences were committed in the course of the same transaction.

I shall now deal with the appeal of the 2nd accused on the merits.

[His Lordship then considered the merits and reached the conclusion that the conviction of the appellant should be set aside.]

Appeal allowed.
