

1943.

*Present : Wijeyewardene J.*THE KING *v.* GOONEWARDENE.78—*M. C. Colombo, 44,694.*

*Falsification of accounts—Defalcation of several sums of money—Number of false entries—Proof of facts beyond the period of 12 months—Criminal Procedure Code, s. 179—Penal Code, s. 467.*

Section 179 of the Criminal Procedure Code, which enacts that the offences of the same kind included in one and the same indictment should be committed within the space of twelve months, does not require that the facts that may be proved in establishing the guilt of the accused should be confined within such period.

Where a person is charged with defalcation of several sums of money by means of falsification of accounts a number of false entries may be proved to cover each defalcation without offending against the provisions of section 179 of the Criminal Procedure Code.

**T**HIS was a case heard before Wijeyewardene J. and a Jury in the 1st Western Circuit, 1943.

*R. L. Pereira, K.C.* (with him *W. S. de Saram, Suntheralingam* and *Rajaratnam*), for accused.

*D. Janszé, C.C.*, for the Crown.

February 9, 1943. WIJEYWARDENE J.—

The accused stood charged on the following counts in the indictment:—

(1) That on or about 30th September, 1941, at Colombo, he being employed in the capacity of Ledger Clerk under the Indian Bank Ltd., Colombo, did, wilfully and with intent to defraud, falsify a book belonging to his employer, to wit, the Current Account Ledger No. 3, marked P 1, by making the following false entry at page 799 in the account of K. D. Peter & Bros.:—

“September 30, Chq. 1,500/-” on the credit side,

meaning thereby that a sum of Rs. 500 had been deposited by cheque to the credit of K. D. Peter & Bros. in the said bank, on the 30th September, 1941, whereas in fact no such sum had been deposited by cheque to the credit of K. D. Peter & Bros. on the said date; and that he has thereby committed an offence punishable under section 467 of the Penal Code.

(2) That on or about 26th February, 1942, at the place aforesaid, he being employed as aforesaid, did, wilfully and with intent to defraud, falsify a book belonging to his employer, to wit, the Sectional Day Book, marked P 6, by making the following false entries at pages 228 and 229, respectively:—

“141 K. R. Mathavan 485 1542/03” on the debit side, and

“804 K. D. Peter & Bros. D 1029/45” on the credit side,

meaning thereby that a sum of Rs. 1,542.03 had been withdrawn by K. R. Mathavan from his account in the Indian Bank on cheque No. 446,485 and that a sum of Rs. 1,029.45 had been deposited by cheque to the credit of K. D. Peter & Bros. in the said Bank on the 26th February, 1942, whereas in fact a sum of Rs. 542.03 had been withdrawn by the said K. R. Mathavan from his account in the said Bank on the said cheque and a sum of Rs. 29.45 had been deposited by cheque to the credit of the said K. D. Peter & Bros. in the said Bank on the said date; and that he has thereby committed an offence punishable under section 467 of the Penal Code.

(3) That on or about 1st April, 1952, at the place aforesaid, he being employed as aforesaid, did, wilfully and with intent to defraud, falsify a book belonging to his employer, to wit, the Current

Account Ledger No. 3, marked P 5, by making the following false entries at pages 142 and 143, respectively, in the account of K. R. Mathavan :—

“ April 1, 1942 Cash 30,000/-” on the debit side.

“ April 1, 1942 D. P. S. Weerasekera 4000/-” on the debit side and at page 599 in the account of Valliyamma Achchi, executrix of the estate of K. M. N. S. P. Natchiappa Chettiar :

“ April 1, 1942 Self 5000/-” on the debit side

meaning thereby that the sum of Rs. 30,000/- and 4,000/- had been withdrawn by the said K. R. Mathavan from his account in the Indian Bank on cheques Nos. 434950 and 434941 in favour of cash and D. P. S. Weerasekera, respectively, and that the sum of Rs. 5,000/- had been withdrawn by the Attorney of Valliyamma Achchi from her account in the said Bank as executrix of the said estate on cheque No. 428035 in favour of self, whereas in fact no such sums had been withdrawn by the said K. R. Mathavan and the said Attorney on the said cheques on the said date ; and that he has thereby committed an offence punishable under section 467 of the Penal Code.

Counsel for the accused objected to the indictment before it was read out to the accused. He stated that he would argue the matter after the Jury was empanelled. Jury was accordingly empanelled and asked to retire during the argument.

Counsel for the accused objected to the inclusion of the Third count in the indictment. His reasons may be summarized as follows :—

- (1) The third count sets out three debit entries on April 1, 1942, which, it is said, the Crown alleges to have been made falsely by the accused in order to balance the books against the false credit entries specified in the first two counts and some earlier entries made in 1940 and 1941. The inclusion of count 3—
  - (a) would make it necessary for the accused to meet again the charges made on counts 1 and 2 when answering the charge on count 3,
  - (b) would bring into consideration entries made before April 1, 1941, and thus contravene the provisions of section 179 of the Criminal Procedure Code.
- (2) That the three counts mention altogether six entries which constitute six different offences and the indictment is therefore bad as only three offences falling under section 179 could be included in an indictment.

I find it difficult to appreciate the reason (1) (a) given by Counsel for the accused. If the Crown fails to prove the first two counts it would not be necessary for the accused in answering count 3 to disprove any allegation of the Crown that the entries referred to in the earlier counts were false entries made wilfully and with intent to defraud.

In support of his ground (1) (b) the accused's Counsel referred me to *Raman Buhary Das v. The Emperor*<sup>1</sup>. In that case the accused was convicted of three offences under section 477 (a) of the Indian Penal Code

<sup>1</sup> A. I. R. (1915) Calcutta 296.

(corresponding to section 467 of the Ceylon Penal Code) and three offences under section 409 of the Indian Penal Code (corresponding to section 392 of the Ceylon Penal Code). An attempt was made to justify the indictment on the ground that the joinder of charges would be permissible in view of section 222 of the Indian Code of Criminal Procedure (corresponding to section 168 of the Ceylon Code). The Court rejected that argument and held that the joinder was illegal. I fail to see how this case supports reason 1 (b) urged by Counsel. Section 179 of the Criminal Procedure Code which regulates the number of offences to be included in an indictment does not have any bearing on the nature or scope of the evidence led to prove that. All that section requires is that the three offences should have been committed within the space of 12 months. It does not confine within that period the facts that may be proved in establishing the guilt of the accused in respect of such offences.

In supporting ground (2) the accused's Counsel relied on *Krishna Lal Mitra v. The Emperor*<sup>1</sup>. In that case there were six distinct and separate charges of falsification of six separate and distinct documents, three pay bills and three monthly cash accounts. The Court held that such a joinder could not be justified under section 234 of the Indian Code of Criminal Procedure (corresponding to section 179 of our Code).

In the present case the accused is charged with falsifying books, the first count referring to Current Account Ledger No. 3, marked P 1, the second count to Sectional Day Book, marked P 6, and the third count to Current Account Ledger No. 3, marked P 5. Each charge proceeds then to give particulars of the manner in which the offence was committed as contemplated by section 169 of the Code.

The learned Counsel for the accused drew my attention to a passage at page 1181 in Ratanlal's "*Law of Crimes*" (15th edition) which he said supported his contention that there was a misjoinder of charges. That statement in Ratanlal is based on the decision in *Prafulla Chandra Khargoria v. The Emperor*<sup>2</sup>. I find that that judgment is, in fact, an authority against the view put forward on behalf of the accused. In the course of that judgment, Suhrawardy J. says:—

"Section 477 (A) (of the Indian Penal Code) is divided into two parts. In other words, it speaks of two offences which are distinct and not interdependent. Cl. 1 of the section makes the falsification of accounts, &c., an offence; and the latter portion of it makes it an offence to make a false entry or omit or alter or abet the omission or alteration of any material particular from or in, &c. The first offence consists in falsifying an account book or paper, writing, or valuable security. The falsification may be made by making false entries in the account or omitting to make entries which should have been made. Cl. 2 of the section contemplates an offence which, apart from the falsification of the book, may be committed by a person by simply making false entries or omitting to make true entries. Now the charge framed in this case is primarily for falsification of certain papers and accounts, namely, the pay sheets of General Workshop and Boilershop. That is one particular

<sup>1</sup> A. I. R. (1927) Calcutta 946.

<sup>2</sup> A. I. R. (1931) Calcutta 8.

document stitched together in the form of a book and marked Ex. 3, which the appellant is accused of having falsified. The method by which falsification is made is detailed in the charge by pointing out four false entries in the accounts, which were made for the purpose of defalcating Rs. 400. What the accused is charged with is that, on certain dates, between March 1 and 13, 1929, he falsified Ex. 3 by making four false entries by overcharge, Rs. 100 on each occasion, with the intention of misappropriating Rs. 400 at the end of the month when the amount was to be paid off. In my opinion, when a person is charged with falsification of accounts, any number of falsifications may be proved in order to sustain the principal charge of falsification."

Again, the following passage occurs in the very case of *Raman Buhary Das v. The Emperor* (*supra*) cited by the Counsel for the accused :—

"A series of alterations in accounts made to cover a defalcation might all be charged in one charge under the provisions of section 477 (a) (of the Indian Penal Code) and there are not three distinct offences committed by an accused person merely by reason of the fact that he makes more than one false entry to cover one defalcation . . . . It is possible to try a whole series of falsified accounts in one charge".

The same view with regard to false entries is expressed by *Gour* in "*The Penal Law of British India*", 5th Ed. p. 1,613, relying on *Aiyagari Venkatramiah v. The Emperor* <sup>1</sup>.

I may add that, in considering the decisions of the Indian Courts with regard to the joinder of charges, it is necessary to keep in mind the fact that our Code of Criminal Procedure differs in one important particular from the Indian Code. Under section 178 of our Code there is an express provision that sections 179, 180, 181, and 184 may be applied in combination while there is no such provision in the Indian Code.

The objections raised against the indictment cannot, in my opinion, be justified, and I therefore overrule the objections.

The trial will now proceed on the indictment as presented by the Attorney-General.

*Objections overruled.*

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