1955

December 7.

CHANDI PRASAD SINGH

v.

THE STATE OF UTTAR PRADESH.

[VIVIAN BOSE and VENKATARAMA AYYAR JJ.]

Trial before Sessions Judge for an offence under s. 409, I.P.C. with the aid of assessors for misappropriating certain sums of money from three different persons—Received by appellant as Secretary of a Company—And for an offence under s. 477-A, I.P.C. for falsifying a minute book—With the aid of Jury—Same persons acting as assessors and jurors—Verdict of not guilty in respect of both charges—Disagreement with verdict of jury under s. 477-A and reference to the High Court under s. 307 of the Code of Criminal Procedure—Disagreement with the opinion of assessors under s. 409 and conviction of accused—Appeal to the High Court—Appeal and reference both heard together and disposed of by one judgment by High Court—Sessions Judge whether contravened any provision of law or committed illegality in acting as he did—Appellant's status—Whether that of a servant or that of an agent—Servant and agent—Distinction between—Appellant charged with three offences under s. 409, I.P.C. and one offence under s. 477-A, I.P.C.—Whether contravention of s. 234 of the Code of Criminal Procedure—S. 235 of the Code of Criminal Procedure—Applicability of.

The appellant was tried by the Sessions Judge with the aid of assessors for an offence under s. 409, I.P.C. for misappropriating certain sums of money received as promoter of a Company from three different persons for the purpose of allotment of shares and omitted to be brought into the Company after it was formed, and also for an offence under s. 477-A, I.P.C. by the same Sessions Judge with the aid of a jury for the offence of falsifying a minute book, the same persons acting both as assessors and jurors. They returned a verdict of not guilty in respect of both the charges. The Sessions Judge, disagreeing with the verdict of the jury under s. 477-A, referred the matter to the High Court under s. 307 of the Code of Criminal Procedure. Disagreeing also with the opinion of the assessors in respect of the charge under s. 409, I.P.C. he held the appellant guilty and sentenced him to 4 years' regorous imprisonment. Against this conviction the appellant appealed to the High Court. Both the reference under s. 307 of the Code of Criminal Procedure and the appeal were heard together by the High Court which confirmed the appellant's conviction under s. 409 and the sentence passed by the Sessions Judge and disagreeing with the verdict of the jury it held him guilty under s. 477-A and sentenced him to two years' rigorous imprisonment. On appeal by special leave to the Supreme Court :—

Held (i) that the contention that when the Sessions Judge disagreed with the verdict of the jury and the opinion of the assessors,

1955

Chandi Prasad Singh v. *The State of Uttar Pradesh*

he should have referred the whole case under s. 307 of the Code of Criminal Procedure to the High Court and not merely that part of it which related to the charge under s. 477-A, I.P.C. was without force because the Sessions Judge had contravened no provision of law and committed no illegality in deciding the case which related to the charge under s. 409, I.P.C. That s. 307, Code of Criminal Procedure applies in terms only to trials by a jury and the Sessions Judge had no power under that section to refer cases tried with the aid of assessors for the decision of the High Court. In the present case there was the further fact that both the appeal against the conviction under s. 409, I.P.C. and the reference under s. 307 of the Code of Criminal Procedure in respect of the charge under s. 477-A were disposed of by the same judgment;

(ii) that the contention that the appellant's true status was that of a servant and not that of an agent and that he should have been tried not under s. 409, I.P.C. but under s. 408, I.P.C. was also without force inasmuch as his status was that of an agent and not that of a servant in view of his duties as Secretary of the Society. The distinction between the two is this a servant acts under the direct control and supervision of the master, and is bound to conform to all reasonable orders given to him in the course of his work ..An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal;

(iii) that the contention that there had been violation of s. 234 of the Code of Criminal Procedure in that the appellant had been charged with three offences under s. 409, I.P.C. and one under s. 477-A was also without force as the case was governed by s. 235 of the Code of Criminal Procedure as the several offences under s. 409, I.P.C. and s. 477-A, I.P.C. arose out of the same acts and formed part of the same transaction.

Emperor v. *Haria Dhobi*, (A.I.R. 1937 Patna 662), *Pachaimuthu In re*, ([1932] I.L.R. 55 Mad. 715), *Emperor* v. *Lachman Gangota*, (A.I.R. 1934 Patna 424), *Emperor* v. *Kalidas* ([1898] 8 Bom. L.R. 599), *Emperor* v. *Vyankat Sing* ([1907] 9 Bom. L.R. 1057) and *Emperor* v. *Chanbasappa* (A.I.R. 1932 Bom. 61), referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 143 of 1954.

On appeal by leave from the judgment and order dated the 23rd March 1954 of the Allahabad High Court (Lucknow Bench) in Criminal Appeal No. 112 of 1953 connected with Criminal Reference Register No. 15 of 1953 arising out of the judgment and order dated the 24th February 1953 in Sessions Trial No. 5 of 1952 of the Sessions Court at Lucknow.

1955

Chandi Prasad Singh
v.
The State of Uttar Pradesh

B. B. Tawakley, (*K. P. Gupta* and *A. D. Mathur* with him) for the appellant.

S. P. Sinha (*K. B. Asthana* and *C. P. Lal* with him) for the respondent.

1955. December 7. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—This is an appeal by special leave against the judgment of the High Court of Allahabad affirming the conviction of the appellant by the Sessions Judge, Lucknow under sections 409 and 477-A of the Indian Penal Code.

On 12-2-1949 a Society known as the Model Town Co-operative Housing Society, Ltd., was registered under the provisions of the Co-operative Societies Act (II of 1912), its object being to acquire vacant sites in the town of Lucknow and to allot them to its members so as to enable them to build houses of their own. The appellant was the chief promoter thereof, and collected monies from prospective shareholders by way of share money. The first general body meeting of the Society was held on 1-3-1949. At that meeting, the appellant was elected Honorary Secretary and one Sri Munna Lal Tewari as Treasurer. The latter having resigned, one S. C. Varma was appointed Treasurer in his stead. On 22-4-1949, there was a meeting of the Managing Committee, at which the appellant was directed to hand over the accounts of the Society and its funds to its Treasurer. The appellant gave a list of 38 persons as members of the Society, delivery cheques issued by 13 of them as their share money, and paid a sum of Rs. 3,500 being the amount stated to have been received by him from the other 25 members as share money. The Society did not function thereafter.

On 16-7-1949 some of the members wrote a letter to the Registrar of Co-operative Societies pointing out that the Society had not functioned ever since its incorporation, and asking that steps might be taken for examination of its accounts and, if necessary, for its being wound up. On this, there was an investigation of the affairs of the Society by two Assistant

1955

Chandi Prasad Singh
v.
The State of Uttar Pradesh

Venkatarama Ayyar J.

Registrars, and on the basis of their reports dated 22-2-1950 and 18-5-1950 the present prosecution was started against the appellant charging him under sections 409 and 477-A of the Indian Penal Code. The charge under section 409 was that he had received a sum of Rs. 500 from one Sri Chaturvedi, a sum of Rs. 100 from Dr. O. P. Bhanti and another sum of Rs. 100 from Dr. R. S. Seth, all as share money in December 1948, and that he had misappropriated the same. The charge under section 477-A was that on 22-4-1949 the appellant acting as the Secretary of the Society falsified the minute book, Exhibit P-18, by omitting to show therein the share money received from the three persons above mentioned. The defence of the appellant was that the three amounts aforesaid were paid to him not as prospective Secretary for the purpose of allotment of shares, but were deposited with him in his individual capacity for purchasing shares, in case the Society worked well.

The trial of the offence under section 409 was held with the aid of assessors and that under section 477-A with the aid of a jury, the same persons acting both as assessors and jurors, and they returned a verdict of not guilty with reference to the charges under both the sections. The Sessions Judge, disagreeing with the verdict of the jury under section 477-A, referred the matter to the High Court under section 307 of the Code of Criminal Procedure. He also disagreed with the opinion of the assessors with reference to the charge under section 409, and held that the appellant was guilty and sentenced him to four years' rigorous imprisonment and a fine of Rs. 1,000. Against this conviction, the appellant preferred an appeal to the High Court. Both the reference under section 307 and the appeal were heard together by the High Court, which agreed with the Sessions Judge that the appellant had received the three amounts as share money and in his capacity as Secretary, and accordingly confirmed his conviction under section 409 and the sentence passed by the Sessions Judge. Disagreeing with the verdict of the jury, it also held him guilty under section 477-A and sentenced him to

two years' rigorous imprisonment. The present appeal by special leave is directed against this judgment.

Mr. Tawakley firstly contended that the finding of the courts below that the amounts paid by Sri Chaturvedi, Dr. Bhanti and Dr. Seth were paid as share money was erroneous, and in support of this contention relied on a letter written by one of them, Dr. Seth, to the appellant on 3rd May 1951 (Ex. D-5) in which it was stated that the amount was paid on the express understanding that if the Society ran, a share would be allotted to him and otherwise the money would be returned. This letter was written long after proceedings had been taken by the Registrar, and the courts below did not attach much importance to it. On the other hand, Dr. Seth himself gave evidence in these proceedings which deprives Exhibit D-5 of very much of its value. Exhibit P-10 is the receipt granted to Sri Chaturvedi. It expressly recites that Rs. 500 was received as share money for five shares in the Society. Notices were also issued to both Sri Chaturvedi and Dr. Bhanti to attend the general body meeting of the Society to be held on 1st March 1949 for electing the President and members of the Managing Committee of the Society, and Dr. Seth and Dr. Bhanti actually attended it. Sri Chaturvedi and Dr. Bhanti have also given evidence that they paid the amounts only as share capital. The courts below accepted the above evidence, and held that the moneys were not paid to the appellant in his individual capacity. There are no grounds for disturbing that finding in special appeal.

It is now necessary to deal with the several contentions of law urged by Mr. Tawakley in support of this appeal. His first contention was that when the Sessions Judge disagreed with the verdict of the jury and with the opinion of the assessors, he should have referred the whole case under section 307 for the decision of the High Court and not merely that part of it which related to the charge under section 477-A, and that his failure to do so vitiated the conviction. He argued that when the same facts constitute two

1955

Chandi Prasad Singh v. *The State of Uttar Pradesh*

Venkatarama Ayyar J.

distinct offences one of which is triable with the aid of jurors and the other with assessors, and the accused is charged with both, the reference under section 307 must relate to both the charges, if inconsistent findings by different courts with reference to the same matter is to be avoided. What would happen, he asked, if, in the present case, the appellant did not file an appeal against his conviction under section 409, but the High Court came to the conclusion in the reference under section 307 that Sri Chaturvedi, Dr. Bhanti and Dr. Seth did not pay the amounts to the appellant as share money, and that no offence had been committed by him under section 477-A ? The conviction of the appellant under section 409 based on the finding of the Sessions Judge that those amounts were paid as share money would stand, notwithstanding that it would be against the decision of the High Court. This anomaly could be avoided, it is argued, by holding that the reference under section 307 must be of the whole case.

Reliance is placed in support of this contention on the observations in *Emperor* v. *Haria Dhobi*(1). We are unable to agree with this contention. If the procedure adopted by the Sessions Judge is to be held to be illegal, it can only be on the ground that he contravened some provision of law which requires him to refer the whole case to the High Court. It is conceded that the only provision of law dealing with this matter is section 307. But that section applies in terms only to trials with the aid of a jury. There is therefore no power in the Sessions Court to refer cases tried with the aid of assessors for decision of the High Court under that section. That was the view taken in *Pachaimuthu In re*(2), where it was held that the Assistant Sessions Judge had no jurisdiction to refer under section 307 the whole case to the High Court, that he should himself dispose of the charges which were triable with the aid of assessors, and that the reference in respect of those charges was bad, This decision was followed in *Emperor* v. *Lachman*

(1) A. I. R. 1937 Patna 662.
(2) [1932] I. L. R. 55 Mad. 715.

Gangota(1). The same view has also been taken by the High Court of Bombay in a number of cases: Vide *Emperor* v. *Kalidas*(2), *Emperor* v. *Vyankat Singh*(3) and *Emperor* v. *Chanbasappa*(4). We are accordingly of opinion that the Sessions Judge had contravened no provision of law, and had committed no illegality in deciding the case, in so far as it related to the charge under section 409, himself. In this case there is the further fact that the appellant preferred an appeal against his conviction under section 409 by the Sessions Judge, and that appeal was heard along with the reference under section 307 in respect of the charge under section 477-A, and that they were both of them disposed of by the same judgment.

It was next contended that the true status of the appellant was that of a servant and not of an agent, and that he should have been charged not under section 409 but under section 408. The substance of the charge against the appellant is that as the promotor of a Society he lawfully received the amounts paid by Sri Chaturvedi, Dr. Bhanti and Dr. Seth, but that after its incorporation, when he failed on 22-4-1949 to hand over those amounts to the Treasurer and to include their names as shareholders in the minutes book, he committed offences under sections 409 and 477-A. Now, what is the status of the appellant as Secretary of the Society in which capacity he committed the offences, servant or agent? The distinction between the two is thus stated in Halsbury's Laws of England, Volume 22, page 113, para 192:

"A servant acts under the direct control and supervision of the master, and is bound to conform to all reasonable orders given him in the course of his work.....An agent though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal".

Having regard to the nature of the duties of the appellant as the Secretary of the Society, we are clearly

(3) A. I. R. 1934 Patna 424.
(1) [1907] 9 Bom. L. R. 1057.
(2) [1898] 8 Bom. L. R. 599.
(4) A. I. R. 1932 Bom. 61.

1955

Chandi Prasad Singh
v.
The State of Uttar Pradesh

Venkatarama Ayyar J.

of opinion that his status was that of an agent and not a servant. Moreover, whether the appellant should be charged under section 408 or section 409 is of no importance in the present case, as the sentence imposed on him under section 409, *viz.*, four years' rigorous imprisonment could be maintained even under section 408. It was argued by the appellant that an offence under section 408 was triable with the aid of a jury, whereas that under section 409 was triable with the aid of assessors, and that he had been prejudiced in that he had lost the benefit of a trial by jury. But this objection was not taken in the trial court, and is not now open. Vide section 536 of the Code of Criminal Procedure.

It is next contended that there has been a violation of section 234 of the Code of Criminal Procedure in that the appellant had been charged with three offences under section 409 and one under section 477-A. But the case is governed by section 235, as the several offences under sections 409 and 477-A arise out of the same acts and form part of the same transaction. Moreover, the appellant has failed to show any prejudice as required by section 537. This objection must accordingly be overruled.

It was finally contended that there had been no proper examination of the appellant under section 342, and that therefore the conviction was illegal. This objection was not raised in the Courts below, and is sought to be raised in this Court by a supplemental proceeding. We find no substance in this objection.

In the result, this appeal fails and is dismissed.