A

RANCHHODLAL

v.

STATE OF MADHYA PRADESH

November 27, 1964

B

[K. SUBBA RAO, RAGHUBAR DAYAL AND N. RAJAGOPALA AYYANGAR, JJ.]

Criminal Procedure Code, 1898, (*Act 5 of* 1898), *ss.* 222, 233, 234 *and* 235—*Indian Penal Code*, 1860 (*Act* 45 *of* 1860), *s.* 409—*Criminal Breach of Trust—Separate Trials—Sentence Awarded—To run consecutively—Whether illegal.*

C

The appellant was convicted in four cases for an offence under s. 409 I.P.C. He was sentenced to imprisonment and fine in the first two cases. The sentences imposed in the other two cases for the offence under s. 409 I.P.C. were to run consecutively. The High Court dismissed the appellant's appeal.

D

HELD: (i) There had been no illegality in the Court's trying the appellant in four cases regarding amounts embezzled within a few months and in not ordering the various sentences awarded in different Sessions Trials to run concurrently. [288 C]

The normal rule is that there should be a charge for each distinct offence, as provided in s. 233 of the Code. Section 222 mentions what the contents of the charge should be. It is only in certain circumstances

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that the court is authorised to lump up the various items with respect to which criminal breach of trust was committed and to mention the total amount misappropriated within a year in the charge. When so done, the charge is deemed to be the charge of one offence. [286 H-287 B]

(ii) Section 234 is an enabling provision and is an exception to s. 233 of Code of Criminal Procedure. There is nothing illegal in trying each of

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the several offences separately. [287 E]

(iii) Assuming without deciding, that these offences could be said to have been committed in the course of the same transactions, the separate trial for certain specific offences is not illegal. Section 235 too is an enabling section. [287 F-G]

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 218 to 221 of 1964.

Appeals by special leave from the judgment and orders, dated May 21, 1964 of the Madhya Pradesh High Court (Indore Bench) at Indore in Criminal Appeals Nos. 30 and 31 of 1962 Nos. 246 and 258 of 1963 respectively.

H

Jai Gopal Sethi, R. C. Mukati and *R. L. Kohli*, for the appellant (in all the appeals).

I. N. Shroff, for the respondent (in all the appeals).

The Judgment of the Court was delivered by

Raghubar Dayal, J. The appellant, in these four appeals by special leave, was convicted in four cases of an offence under s. 409 I.P.C. and was sentenced to 4 years' rigorous imprisonment and fine in the first two cases on January 17, 1962, by the First Additional Sessions Judge, Ujjain, Shri H. B. Aggarwal. He was also convicted in these two cases of offences under s. 467 read with s. 471 and s. 477A I.P.C. The sentences imposed for these offences were to run concurrently with the sentence of imprisonment for the offence under s. 409 I.P.C. The sentences imposed in the two cases for the offence under s. 409 I.P.C. were to run consecutively as no order had been made by the Sessions Judge for the sentence in the case in which judgment was pronounced later, to run concurrently with the sentence imposed in the other case.

In each of the other two cases, the appellant was sentenced to 3 years' rigorous imprisonment under s. 409 I.P.C. by Shri Dube, First Additional Sessions Judge, Ujjain, on July 20, 1963. The Sessions Judge ordered the sentences in these two cases to run concurrently, but did not order them to run concurrently with the sentence awarded in the first case on January 17, 1962.

The appeals against the conviction of the appellant in the four cases were dismissed by the High Court. With respect to the sentence in the appeal against the first conviction in Sessions Trial No. 35 of 1961, the High Court said :

> "Coming to the sentences, the basic offence is criminal breach of trust under section 409 IPC and a sentence of four years' rigorous imprisonment cannot, in these circumstances, be considered excessive. If anything, I would call it somewhat lenient."

The sentence of fine of Rs. 1,000 was considered to be 'feeble'.

In disposing of the appeal against the conviction in the second case, Sessions Trial No. 36 of 1961, the High Court said with respect of the sentence :

> "The sentence of imprisonment is also low; but possibly the Sessions Court took account of the fact that there were other and similar cases against Ranchhodlal in which there was a possibility of a conviction."

In the third appeal from the order in Sessions Trial No. 55 of 1962, the High Court said :

> "If there had been an application for enhancement of sentence, I would not have hesitated to increase the

A sentence because this paying himself on the part of the appellant is a very serious matter. But there being no such prayer by the State, the matter has to be left at that."

In the fourth appeal, the High Court said :

"The trial Court has awarded a sentence of three
B years without fine. It is quite lenient."

The result of the four convictions and sentences passed in these cases is that the appellant has to undergo imprisonment for 11 years for mainly committing the offences under s. 409 I.P.C. with respect to different amounts, in his capacity as Sarpanch of the Mandal Panchayat, Ujjain.

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Special leave was granted on the question of sentence only. One of the grounds taken in the special leave petitions was that his being tried in four cases for committing criminal breach of trust with respect to different amounts, led to the petitioner's prejudice and harassment inasmuch as he was to undergo sentences
D of imprisonment consecutively.

Sub-section (1) of s. 397, Cr. P.C. provides that when a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such imprisonment shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the sub-
E sequent sentence shall run concurrently with such previous sentence. It follows that a subsequent sentence of imprisonment is ordinarily to commence at the expiration of imprisonment under the previous sentence, and that the Court recording the conviction has the discretion to order that the later sentence would run concurrently with the previous one.

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The Additional Sessions Judge who convicted the appellant in two cases in January 1962 did not exercise his discretion in favour of the appellant. The other Sessions Judge who convicted the appellant in two cases in 1963 exercised his discretion to the extent that he made the sentences in those two cases concurrent and did
G not make those sentences concurrent with the earlier sentences imposed on the appellant in January 1962. The judgments in the four Sessions Trials are not before us and we are not in a position to say whether this aspect of the matter was urged before the Sessions Judges when they recorded the convictions and sentenced the appellant in the four Sessions Trials.

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It was not urged before the High Court that the sentences in all the four cases be made to run concurrently. If it had been urged, the decision might have gone against the appellant if one

considers the remarks of the High Court on the nature of the sentence in each case. The High Court considered that the sentences were inadequate.

Learned counsel for the appellant has not urged that there is any illegality in the sentences awarded to the appellant in the various Sessions cases or in not making them run concurrently with the sentence awarded in the first Sessions Trial No. 35 of 1961. He has, however, urged that the various acts of criminal breach of trust which formed the basis of the convictions took place within a period of a few months, from November 19, 1955 to February 23, 1956, and that therefore the appellant should have been charged for committing criminal breach of trust with respect to the total amount he had misappropriated, in view of s. 222 Cr. P.C. and that if he had been so charged, the charge for misappropriating the total amount would have been the charge for one offence and the appellant would have been tried on such one charge at one trial and, on conviction, would have been awarded only one sentence which would not have ordinarily exceeded 4 years' rigorous imprisonment.

Section 222 Cr. P.C. reads :

> "(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
>
> (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :
>
> Provided that the time included between the first and last of such dates shall not exceed one year."

Sub-section (2) is an exception to meet a certain contingency and is not the normal rule with respect to framing of a charge in cases of criminal breach of trust. The normal rule is that there should be a charge for each distinct offence, as provided in s. 233 of the Code. Section 222 mentions what the contents of the charge should be. It is only when it may not be possible

A to specify exactly particular items with respect to which criminal breach of trust took place or the exact date on which the individual items were misappropriated or in some similar contingency, that the Court is authorised to lump up the various items with respect to which criminal breach of trust was committed and to mention the total amount misappropriated within a year in the charge. B When so done, the charge is deemed to be the charge of one offence. If several distinct item with respect to which criminal breach of trust has been committed are not so lumped together, no illegality is committed in the trial of those offences. In fact, a separate trial with respect to each distinct offence of criminal breach of trust with respect to an individual item is the correct C mode of proceeding with the trial of an offence of criminal breach of trust.

Learned counsel for the appellant also relied on s. 234 Cr. P.C. and urged that three offences of criminal breach of trust could have been tried at one trial as s. 234 provides that when a person D is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for any number of them not exceeding three. This again, is an enabling provision and is an exception to s. 233 Cr. P.C. If each of the several E offences is tried separately, there is nothing illegal about it. It may also be mentioned that the total number of items charged in the four cases exceeded three.

Lastly, reference was made, on behalf of the appellant, to s. 235 Cr. P.C. and it was urged that all these offences were F committed in the course of the same transaction, and therefore, they should have been tried at one trial. Assuming, without deciding, that these offences could be said to have been committed in the course of the same transaction, the separate trial of the appellant for certain specific offences is not illegal. This section too is an enabling section.

G Apart from the fact that the separate trials of the appellant in four cases for committing breach of trust with respect to several items was not illegal, there is nothing on record to show that the investigating agency had worked out all the cases of criminal breach of trust prior to prosecuting the appellant for the offences of which he was tried at Sessions Trial No. 35 of 1961. If all the offences H had not been worked out prior to that, there could not have been a joint trial for all of them even if that could have been thought to be more reasonable way of proceeding against the appellant.

The fact that the first two Sessions Trials ended in a conviction in January 1962 on commitments made sometime in 1961 and that the Sessions Trials ending on July 20, 1963 were on commitments made sometime in 1962, *prima facie* indicate that the investigating agency submitted the charge sheets against the appellant for the offences tried in 1963 after—and possibly long after—it had submitted charge-sheet with respect to the first two cases. There cannot therefore be any design in prosecuting the appellant for different offences in four cases.

We are, therefore, of opinion that there had been no illegality in the Court's trying the appellant in four cases and in not ordering the various sentences awarded in different Sessions Trials to run concurrently with the sentences awarded in Session Trial No. 35 of 1961.

It has been strongly urged that the total sentence of 11 years which the appellant has to undergo for committing the various offences of criminal breach of trust is severe and that if he had been tried for these offences at one trial after taking advantage of the provisions of s. 222 Cr. P.C., the sentence which would have been awarded to him would not have exceeded 4 years, as that is the normal maximum sentence awarded for an offence under s. 409 I.P.C. An offence under s. 409 I.P.C. is punishable up to imprisonment for life or imprisonment up to 10 years. The measure of the sentence is usually governed by the nature of the offences committed and the circumstances of their commission and it cannot be held as a hard and fast rule that a sentence is not to exceed a certain period of imprisonment when the law has itself laid down the extent up to which a sentence can be inflicted for a certain offence and has left discretion to the Court to adjust the sentence according to the circumstances of each case. We need not detail the circumstances of these cases, but would simply note that they do not justify taking any lenient view about the sentences for the offences committed by the appellant who held a very responsible position as Sarpanch of the Societies and as such had to deal with the proper disbursement of public money for the purposes of public benefit. He miserably failed in discharging these duties in the manner expected of him. A deterrent sentence is always essential so that others in such responsible positions and having occasions to deal with large sums of public money do not fall victim to greed and dishonesty.

We, therefore, dismiss these appeals.

Appeals dismissed.