

## SUPREME COURT OF INDIA

State of M.P.

Vs.

K. P. Ghiara

Crl.A.No.4 of 1955

(N. H. Bhagwati, S. J. Imam and P. Govinda Menon, JJ.)

19.09.1956

### JUDGEMENT

#### GOVINDA MENON, J –

1. On the 18th December, 1951, the Inspector of Police C.I.D., Nagpur filed a charge sheet, which was transferred for disposal to the 1st class Magistrate, Nagpur, against the respondent herein, under Section 408 of the Indian Penal Code, on the footing that the respondent being the personal adviser of Sir Maneckji Dadabhoy, Chairman and Managing Director of the Nagpur Electric and the Power Co. Ltd., Nagpur, and entrusted in that capacity with a car C.P. M-9 Plymouth, belonging to the company for sale, sold the same to Dr. C.V. Patel on the 12th of January, 1950, and embezzled the sale proceeds, with the result that an offence under the section aforesaid was committed by him. On objection being taken before the Magistrate that he had no jurisdiction to entertain the complaint, evidence was taken regarding that question and that officer by his order dated the 2nd December 1952, held the offence under Section 408, Indian Penal Code, could be tried by him and directed the case to proceed. The respondent thereupon applied to the Session Court of Nagpur to revise the Magistrate's order referred to above and the learned Sessions Judge was of opinion that the provision of law applicable being Section 182 of the Criminal Procedure Code, the Nagpur Court had jurisdiction to entertain the complaint. On a further revision to the High Court of Nagpur, the orders of the courts below were set aside on the ground that the proper court to try the case was the one at Bombay and the proceedings were, therefore, quashed. Special leave to appeal against that order to this court was granted to the State of Madhya Pradesh which is the appellant now before us.

2. The venue of enquiry or trial of a case like the present is primarily to be determined by the averments contained in the complaint or charge-sheet and unless the facts there are positively disproved, ordinarily the court, where the charge-sheet or complaint is filed, has to proceed with it, except where action has to be taken under Section 202 of the Criminal Procedure Code.

3. On a review of the admitted and proved facts, the jurisdiction of the Nagpur Court cannot be doubted and we may, therefore, for the purpose of deciding the question of law, summarise the facts. There can be no question whatever that the respondent as adviser to Sir Maneckji Dadabhoy, was an agent or servant of the company in question whose head office was situated at Nagpur where the books were maintained and the staff located. The Board of Directors functioned at Nagpur and the employment of the respondent was also at Nagpur, though he stayed for a time at Bombay. The entrustment of the car on the 12th January 1950, was also in Nagpur and the legal relationship between the respondent and the company was that of an agent and principal. Though the exact date

of sale and the receipt of money cannot be ascertained with accuracy it is clear that the sale took place in Bombay and the proceeds were paid over to the respondent at Bombay between the 13th and the 14th of January 1950. It is also clear from the evidence that the respondent reached Nagpur on the 17th of January 1950, but the sale proceeds were not credited in the company's book, nor the money paid over to the company then or thereafter. Between the months, March and April 1950 the respondent made at least six trips between Bombay and Nagpur, but there is no indication whatever that he paid over the amount to the company. It was only some time in October 1950, when at a general meeting of the share-holders of the company when Sir Maneckji Dadabhoy was questioned about the sale proceeds of the car and on his direction that the respondent would answer the interrogation, that the respondent replied that the proceeds were entered in the books of the company which admittedly was a false statement.

4. On the above mentioned facts the prosecution alleges that there has been an embezzlement of the sale proceeds by the respondent which should be enquired into or tried under section 408 of the Indian Penal Code.

5. The learned Attorney-General appearing for the State of Madhya Pradesh contends that in the circumstances it is uncertain whether the offence of embezzlement was committed at Bombay or Nagpur, and that being the case, paragraph 1 of Section 182 of the Criminal Procedure Code applies, with the result that the offence can be enquired into by a court situated either in Nagpur or in Bombay. On the other hand, Mr. Dadachanji, counsel for the respondent, stressed that no question of uncertainty arises, because if at all there had been any dishonest intention to misappropriate the money that was on the 13th or the 14th of January 1950 the same having germinated immediately with no appreciable time intervening between the receipt of the money and the intention to embezzle the same. If that be so, the offence can be enquired into or tried only by a court situated in Bombay. The relevant section applicable to the case, according to the respondent, is Section 182(2) and not Section 182 of the Criminal Procedure Code. On the principal expressio unius est exclusio alterius (The express mention of one thing implies the exclusion of another) the contention is put forward that Section 182, Criminal Procedure Code being the general provision, cannot be attracted when there is a special provision in Section 181(2) of the Criminal Procedure Code.

6. As stated already, the charge-sheet does not either specifically or by necessary implication, refer to the embezzlement in Bombay, nor does it indicate that it took place in Nagpur. The fact that the charge-sheet was filed at Nagpur suggests that the prosecution considered Nagpur as the place where the offence was committed, but that is not conclusive and the place where the offence was committed still remains in doubt so far as that document is concerned.

7. The learned Attorney-General further contends that Section 182, Criminal Procedure Code, is a specific provision and not a general principal of law, and in fact, Section 182 is supplemental to the 3rd clause of Section 181(2). We are of opinion that the Contention on behalf of the State of Madhya Pradesh is well founded.

8. A perusal of the evidence of P. W. 2 and P. W. 11 leads to the inference that prior to the respondent's leaving for Nagpur, he had not entertained or even been animated with an intention to misappropriate the sale proceeds; for one thing is clear and that is that the period that intervened between receipt of the money in Bombay and the accused's departure for Nagpur was too short and there is nothing to show that the respondent had utilised the funds during the period of his stay at Bombay for four days for his own use. If by the cross-examination of the prosecution witnesses or by letting in evidence of a concrete character the respondent had shown when and where the

animous of misappropriation had germinated, then the situation would have been different. On the very face of it, it is understandable as to why no such course was taken. The prosecution was in doubt as to when the idea of embezzlement took root and the only course for the prosecution was to file a charge-sheet in the manner it did basing the same on uncertainty.

9. The finding of the learned Judge of the High Court that the intention to misappropriate was formed at Bombay, is unsupported by any evidence on record and therefore, the decided cases on which he placed reliance can have no application. We cannot read the charge-sheet as the learned Judge of the High Court has done in definitely fixing the place of embezzlement as Bombay. In the view which we take about the certainty of the place where the offence was committed, it is unnecessary to refer to or discuss the decisions relied on by the learned Judge of the High Court. Section 182, Criminal Procedure Code, definitely applies and the order of the Nagpur High Court has, therefore, to be set aside and that of the Additional Sessions Judge restored. The 1st Class Magistrate of Nagpur will proceed with the inquiry from the stage it had reached before him.

Appeal allowed.

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