

## Ram Charan And Anr. vs Devendra Kumar on 29 January, 1954

**Equivalent citations: AIR1954ALL648**

ORDER

Roy, J.

1. This is a reference by the Sessions Judge of Bijnor recommending that the trial court's order assuming jurisdiction to try the case, be set aside.

2. The complainant Devendra Kumar is a partner in a cloth firm of Najibabad in the district of Bijnor, styled as Yogendra Kumar Devendra Kumar, while the firm of the accused works as commission agents in cloth business at Delhi. The complainant's case was that it had been agreed upon between the two firms that the accused firm was to purchase 60 bales of cloth from the Delhi Cloth Mills at Delhi as agents of the complainant & deliver the same to the complainant's firm at Najibabad; that the accused was to render accounts to the complainant's firm at Naji-babad, that in consequence of the agreement the accused had first received the sum of Rs. 6,000/- by means of a draft at Delhi, whereafter 63 bales; had been dispatched by them from Delhi to the complainant at Najibabad under a railway receipt "to self" through the Bharat Bank, Bijnor, which Bank was directed by the accused to pass the railway receipt to the complainant on receiving payment of a sum of Rs. 72,000/-; that out of the total receipts of Rs. 78,000 /- which had been received by the accused the latter had rendered accounts for Rs. 65,000/- only but did not render accounts for the remaining amount of Rs. 13,000/- and that this sum was criminally misappropriated.

3. On behalf of the accused it was not disputed that they as commission agents had received the sum of Rs. 6,000/- by means of a draft at Delhi and had also received another sum of Rs. 72,000/- through the Bharat Bank, Bijnor, after they had sent 63 bales of cloth under a railway receipt, and that this subsequent amount of Rs. 72,000/- had been received under a 'hundi' for which the accused had sent a letter dated 18-1-1949. In that letter, the accused-firm had written to the complainant's firm that the former had sent a 'hundi' to be honoured by the complainant's firm and that the complainant was to pay the amount of the 'hundi' to the Bharat Bank, Bijnor. The case of the accused was that out of the amounts, received by them they had purchased and handed over cloth worth Rs. 64,184/11/- to the complainant's firm and the remaining sum of Rs. 12,815/5/- which had been left with the accused had been credited in part payment of some previous account.

In the trial court two objections were taken on behalf of the accused: The first was that the court at Bijnor had no jurisdiction. And the second was that the dispute was essentially of a civil nature and could not be taken cognisance of by the criminal court. The trial court held that the Bijnor court had jurisdiction and that the matter was not of a civil nature. Upon revision before the learned Sessions Judge, the Sessions Judge has been of the opinion that the courts at Bijnor have no jurisdiction to try the case. The Sessions Judge has therefore referred the matter to this Court with the

recommendation that the trial court's order assuming jurisdiction to try the case be set aside.

4. The question turns upon the construction of Section 181(2), Criminal P. C. That section lays down that the offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed. The question in the present case would be whether the sum of Rs. 72,000/- "was received or retained" by the accused person at Bijnor. The learned Sessions Judge observed that the word "received" in Section 181, Sub-cl. (2), Criminal P. C., would mean "actually received" and that the sum of Rs. 72,000/-, although paid to the Bharat Bank at Bijnor under the instructions of the accused, had not actually been received by them at Bijnor but had been received by them actually at Delhi subsequently.

5. The Bharat Bank, Bijnor, acted, as the agent of the accused and for all practical purposes the payment that had been made to the Bharat Bank was payment to the accused. Consequently, since that payment was admittedly made at Bijnor, the Bijnor court had jurisdiction to try the case. The word "actually" is not to be found in Section 181, Sub-cl. (2), Criminal P. C., and we cannot import into the section something which is not really to be found there in order to support the contention of the accused that money "received" by their agent at Bijnor for them would not come within the four corners of that word in Section 181(2), Criminal P. C., and that that word must be restricted in its meaning to the place where the money is actually delivered by the agent to them viz., to Delhi. The decision of the proper venue for the trial of a charge of criminal breach of trust has been taken entirely outside the ambit of Section 179 by the provisions of Section 181(2), and the local jurisdiction of a court to try a charge of criminal breach of trust must be decided solely with reference to Sub-section (2) of Section 181, Cr. P. C. Where the accused is under a liability to deliver goods at a particular place and also to render accounts at that particular place and fails to do so by reason of having committed an offence of criminal breach of trust which is alleged against him the court, within the local limits of whose jurisdiction that place is situated; may enquire into and try the offence under the provisions of Section 181(2), Cr. P. C. It is not essential under Section 181(2) that at the time the property is said to be received or retained by the accused person he must have a dishonest intention to misappropriate it or to commit criminal breach of trust with reference to it. It is enough for the purposes of the section if the property which is the subject of the offence was received or retained by the accused at a particular place to give jurisdiction to the magistrate of that place to try the case even if the property was received quite properly and innocently at that place and was subsequently dealt with at another place dishonestly. In the present case, the money was received by the accused at Bijnor through their agents. Consequently, the Bijnor court has jurisdiction to enquire into and try the alleged offence of criminal misappropriation or of criminal breach of trust. The reference is accordingly rejected.

8. The record be sent back to the trial court through the Sessions Judge for proceeding with the trial in accordance with law.

7. Leave to appeal is refused.