

Present : De Sampayo J.

1920.

THE KING v. KABEER.

60—D. C. (Crim.) Kandy, 3,155.

Criminal breach of trust—Accused entrusted with railway warrant to get ticket and deliver to another person—Sale of ticket so obtained to a third party—Criminal misappropriation.

The accused, a jail guard, was entrusted with a railway warrant (that is to say, an order upon the proper officer of the railway to issue a ticket in exchange for the warrant) and was asked to accompany a prisoner, who had served his sentence, to the railway station, and to give him a railway ticket. The accused obtained the ticket in exchange for the warrant, but sold it to another.

Held, that he was not guilty of criminal breach of trust (Penal Code, section 392) in respect of the railway warrant.

“The true offence of the accused probably is criminal misappropriation of the railway ticket.”

THE facts appear from the judgment.

Brilo-Muttunayagam, C.C., for the Crown, appellant.

May 28, 1920. DE SAMPAYO J.—

The accused was charged on the indictment with having committed criminal breach of trust in respect of a railway warrant entrusted to him, and the charge was laid under section 392 of the Penal Code. The facts of the case are not in dispute. The only question is whether the charge can be sustained in respect of the

¹ (1871) *Vanders* 180.

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law. The accused is a jail guard, and it appears that on the day in question a prisoner, who had served his sentence and had been discharged, was to have been sent by train to Colombo, and the accused was asked to accompany the prisoner to the railway station. He was at the same time entrusted with what is called a railway warrant, that is to say, an order upon the proper officer of the railway to issue a ticket in exchange for the warrant. The accused's duty then was to have presented this warrant to the proper officer, to obtain a ticket for the prisoner, and to see that he went by the train with the ticket. The accused went to the station with the warrant and the prisoner. He presented the warrant to the proper officer and obtained a ticket. It appears that instead of handing it to the prisoner, he sold it to a person who was travelling by the same train, and the question in these circumstances is whether the accused can be charged under the particular section of the Code with criminal breach of trust in respect of the railway warrant. I agree with the District Judge in thinking that the trust, so far as the railway warrant was concerned, was that the accused should deliver it to the proper officer at the railway station and receive a ticket in exchange. It is true that he failed to perform the further duty of handing the ticket to the prisoner. But that had no immediate connection with the trust in respect of the railway warrant, and I cannot agree with Crown Counsel when he argued that this was a dishonest use of the railway warrant in breach of an implied contract to receive and hand the ticket to the prisoner. Here Crown Counsel utilizes certain words in the definition in section 388 of the Code. But all these sections have reference to a trust in respect of property. The property in this case is the railway warrant, and so there was no contract implied or express in respect of the railway warrant as contended for. The true offence of the accused probably is, as Crown Counsel secondly urged, criminal misappropriation of the railway ticket, in that, instead of delivering it to the prisoner he disposed of it to a stranger for a money consideration. From the judgment of the District Judge it appears that the prosecuting counsel desired to amend the indictment by including therein a charge under section 386 of the Penal Code. The District Judge refused to accede to this request, though, I think, he might well have done it without prejudice to the accused. Without expressing an opinion as to whether the case could, as a matter of fact, be brought under section 386 in respect of the railway ticket, I am prepared to send the case back in order that there might be a fresh trial on a charge under section 386. I therefore affirm the present acquittal, and send the case back for further proceedings in the manner I have indicated.

Sent back.