

(1951) 03 P&H CK 0005

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No. 320 of 1950

The State

APPELLANT

Vs

Jage Ram

RESPONDENT

Date of Decision: March 16, 1951

Acts Referred:

- Contract Act, 1872 - Section 148
- Larceny Act, 1916 - Section 1
- Penal Code, 1860 (IPC) - Section 403, 405, 406
- Trusts Act, 1882 - Section 3

Citation: AIR 1951 P&H 103

Hon'ble Judges: Savinder Singh Sodhi, J; Bhandari, J

Bench: Division Bench

Advocate: Harbans Singh Gujral, for Advocate General, for the Appellant;

Judgement

Bhandari, J.

The decision of this case turns on the construction of the expression "entrusted" appearing in Section 405, Penal Code.

2. The facts of the case are simple and not in dispute. On 21-2-1949 Jage Ram Respondent borrowed a cycle from Duni Chand complainant promising to return the same within a period of two or three days. He failed to fulfil his promise and the complainant accordingly reported the matter to the police. During the course of investigation, it transpired that shortly after borrowing the machine from the complainant the accused sold it to one Kashmiri Lal for a sum of Rs. 125/ -. The learned Magistrate came to the conclusion that on the facts found no case u/s 406, Penal Code, had been made out against the accused and directed that he be acquitted. The Provincial Govt. has come to this Court in appeal and the question before this Court is whether the Court below has come to a correct determination in point of law.

3. In the course of his Judgment the learned Magistrate observed as follows:

In the present case, the accused was not entrusted with the cycle. It was not a voluntary act on the part of Duni Chand to have the cycle in the custody of the accused relying on his honesty. On the other hand, the accused actually asked for the cycle for temporary use and it was given to him. Failure to produce it or its conversion would give rise to a civil liability but would not constitute a criminal offence as the essential ingredient of trust is absent. Accordingly I hold that the accused was not entrusted with the cycle. He Was only a borrower of the cycle.

4. The view taken by the learned Magistrate appears to me to be wholly misconceived. Section 405, Penal Code is in the following terms:

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

The offence of "criminal breach of trust" may be broadly defined as the fraudulent appropriation of Anr. "s property by a person to whom it has been entrusted or into whose hands it has lawfully come. It is akin to cheating, theft and criminal misappropriation but differs from them in important respects. In criminal breach of trust the property is lawfully acquired or acquired with the consent of the owner, but dishonestly misappropriated by the person to whom it is entrusted. In cheating the property is wrongfully acquired in the first instance by means of a false representation. In theft the property is taken without the consent of the owner and the dishonest intention to take property exists at the time of such taking. In criminal misappropriation the property is innocently acquired, often casually and by chance, but by a subsequent change of intention the retaining becomes wrongful and fraudulent. The character of the crime depends on the secret intention of the parties which is often difficult to ascertain. To make out a case of criminal breach of trust it is generally necessary to show that the property belonged to some one other than the accused, that the accused acquired it lawfully or with the consent of the owner, that it was in the physical or constructive possession of the accused at the time of the conversion, that the accused occupied a fiduciary relationship, that his dealing with the property constituted a conversion or appropriation of the same to his own use or the use of any person other than the owner and that there was a fraudulent intent to deprive the owner of his property.

5. This brings me to a consideration of the meaning and content of the expressions "trust" and "entrusted" which appear repeatedly in Section 405, Penal Code.

6. A trust, as defined in Section 3, Trusts Act, 1882 is an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of Anr. , or of Anr. and the owner. In its legal acceptance, a trust is a fiduciary relationship with respect to property subjecting the person by whom the property is held to equitable duties to deal with the property for the benefit of Anr. person which arises as a result of a manifestation of intention to create it. The person in whom the interests are vested has title to the interests, whether he holds them for his own benefit or for the benefit of Anr. .

7. But there are a number of other legal relations which appear to resemble trust, but which are not trust, although the term "trust" is sometimes used loosely to cover such relationships. Bailment for example, closely resembles trust but is completely different from it. The expression "bailment" has been defined in Section 148, Contract Act, 1872, and according to this definition a "bailment" is the delivery of goods by one person to Anr. for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. There are important differences between a bailment and a trust. The subject-matter of a bailment is always a chattel; the subject -- matter of a trust may be land as well as chattels. A bailee of a chattel has possession of but does not have the title to the chattel. A trustee of a chattel has title to the chattel. The interest of a bailor is a legal interest whereas the interest of a beneficiary of a trust is an equitable interest. The duties of a bailee to a bailor are legal duties whereas the duties of a trustee are equitable duties. A bailee having merely possession of and not title to the chattel, normally has no power to transfer the chattel free of the bailor's interest. On the other hand, a trustee of a chattel has power to transfer the chattel free of the trust to a "bona fide" purchaser as soon as the trustee has title to the chattel although holding it subject to the equities of the beneficiary and can transfer it free of equities. Whether a trust or a bailment is created upon the delivery of a chattel by the owner to Anr. person for the benefit of the former or of a third person depends upon the manifestation of the intention of the parties. If the manifestation of the intention is that the person to whom delivery is made shall thereby acquire the title to the chattel the transaction creates a trust. If the manifestation of the intention is that he shall not thereby acquire the title to the chattel, but that he shall acquire only the interest of a possessor, the transaction creates a bailment.

8. The language which the framers of the Code have thought fit to employ in Section 405 is of wide generality and is designed to cover as large an area as possible. The word "trust" which appears in the Section is a comprehensive expression which has been used not only to cover the relationship of trustee and beneficiary but also those of bailor and bailee, master and servant, pledgor and pledgee, guardian and ward, and all other relations which postulate the existence of a fiduciary relationship between the complainant and the accused. The expression "entrusted" has a

corresponding meaning and embraces all cases in which goods are "entrusted" (that is voluntarily handed over for a specific purpose) and are dishonestly disposed of in violation of any direction of law or in violation of the contract. To bring a case within the mischief of this section it must be established that there was a relationship of trust and confidence. If no fiduciary relationship is set up by the transaction under which the offender obtained the property and if the relation between the complainant and the accused with reference to the property is that of debtor and creditor etc., a charge under this Section cannot be brought home to the accused. As pointed out in *Lake v. Simmons* (1927) 96 LJ KB. 621 at p. 625, "entrusted" is not necessarily a term of law. It may have different implications in different contexts. In its most general significance all it imports is a handing over the possession for some purpose which may not imply the conferring of any proprietary right at all. Indeed the words in any manner" appearing in the opening line of the Section appear to indicate that the legislature did not intend that any narrow or technical meaning should be attached to the expression "entrusted".

9. The offence of criminal breach of trust by a bailee which is punishable in India u/s 406, Penal Code, is in England punished by the proviso to Section 1 of the Larceny Act, 1916, which enacts that a person may be guilty of stealing any such thing (that is anything capable of being stolen) notwithstanding that he has lawful possession thereof, if, being a bailee or part owner thereof, he fraudulently converts the same to his own use or the use of any person other than the owner. The expression "bailee" has not been defined but "here can be no doubt that it means a person to whom goods are entrusted for a specific purpose without any intention of transferring the ownership to such person. In *R v. De Banks* (1884) 13 Q.B.D. 29, the prosecutor gave a mare of his into the care of the prisoner, telling him that it was to be sold on the next Wednesday. On that day the prosecutor did not go himself to sell the mare, but sent his wife, who went to where the prisoner was, and saw him ride the mare about a horse fair, and sell her, and receive on such sale some money. The prosecutor's wife then asked the prisoner to give her the money, saying that she would pay his expenses, which however he declined to and he absconded with the money. The jury having found upon these facts that the prisoner had authority to sell the mare and had converted the money to his own use, it was held (Stephen, J., dissenting) that the prisoner was a bailee of the money so paid to him and was rightly convicted of stealing it. In *R v. Wakeman* 8 Cr. App. R. 18, the prisoner borrowed a bicycle from the prosecutor's wife promising to return it the same evening but failed to do so and on being taxed with the non -- return claimed to be entitled to hold it as a security for a claim against the prosecutor, but on arrest told a different story and many lies. It was held that there was evidence from which the jury could find a fraudulent intention and a sufficiently positive act of detention.

10. In their commentary on Section 406, Penal Code, the learned authors of the Law of Crimes have collected a number of cases of bailment in which property was dishonestly misappropriated and in which a conviction was recorded u/s 406, Penal

Code. In Emperor v. Ghanshamdas 29 Cr.L.J. 431 it was held that the word "entrusted" when used with respect to money means that the money has been transferred to the accused under circumstances which show that notwithstanding its delivery to the accused, the property, in it continues to vest in the prosecutor and the money remains in the possession or control of the accused as a bailee and in trust for the prosecutor as a bailor, to be restored to him or applied in accordance with his instructions. In Chanan Singh v. Emperor 36 Cr.L.J. 119 a person was entrusted with property attached by an order of a civil Court. He deliberately refused to produce the property when called upon to do so. It was held that his conduct amounted to a repudiation of his trust and he was guilty of criminal breach of trust.

11 The relationship between the complainant and the Respondent in the present case was that of a bailor and a bailee as the complainant had delivered his bicycle to the Respondent for use for a specific purpose and a specific period upon contract that after the expiry of the said period the machine would be returned to him. He dishonestly disposed of the bicycle and appropriated the money to his own use. He is in my opinion guilty of an offence punishable u/s 406, Penal Code.

12. For these reasons, I would accept the appeal, set aside the order of acquittal and convict the Respondent u/s 406, Penal Code. I would sentence him to six months rigorous imprisonment.

Soni, J.

13. I agree. There is anyhow no doubt whatsoever that an offence u/s 403 was committed and the Magistrate had no justification in acquitting the Respondent.

14. I agree with the sentence proposed.