

(1950) 08 CAL CK 0014
In the Calcutta High Court
Case No : Criminal Revn. No. 553 of 1950

Kanai Lal Dutta

APPELLANT

Vs

The State on the complaint of Sisir Kumar De

RESPONDENT

Date of Decision : 02-08-1950

Acts Referred:

Penal Code, 1860 (IPC) — Section 405, 406

Citation : AIR 1951 Cal 206

Hon'ble Judges : Harries, C.J.;Bose, J

Bench : Division Bench

Advocate : Jyotsna Shankar Bhaduri, for the Appellant;

Final Decision : Allowed

Judgement

Harries, C.J.—This is a petition for revision of an order made by a Presidency Magistrate convicting the petitioner of an offence u/s 406, Penal Code, and sentencing him to three months" rigorous imprisonment.

2. The case against the petitioner was that the complainant had instructed the petitioner who was a jeweller to make a neck chain which was to be delivered on 20-9-1949 and had handed to the petitioner a sum of Rs. 308 which was the cost of the gold necessary for a chur and the cost of making it. According to the complainant, the petitioner never delivered the chur and never returned the sum of Rs. 308. Accordingly it is said that he was guilty of an offence u/s 406, Penal Code.

3. Section 406 provides that whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Criminal breach of trust is defined in Section 405, Penal Code, in these 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 trust is to be discharged, or if any legal contract, express or implied, which he has made touching the discharge of trust, or wilfully suffers any other person so to do, commits "criminal breach of trust.""

4. It will be seen from this definition that before a person can be held guilty of criminal breach of trust the property must have been entrusted to him or he must have been entrusted with the dominion or power of control over property and further it must also be shown that he has misappropriated the property so entrusted or has converted such property to his own use.

5. Presumably, the learned Magistrate held that this sum of Rs. 308 had been entrusted to the petitioner and if it had been entrusted I think there could be no question that the offence of criminal breach of trust had been made out. However, I am not satisfied that the payment of Rs. 308 to the petitioner was in any sense an entrustment. The petitioner had been requested to make a gold chur which of course would involve obtaining gold and working upon it to produce a chur. For this purpose, he was paid a sum of Rs. 308 and I imagine that the petitioner could have spent out of that sum immediately the sum required for the purchase of gold. In fact, the money cannot be said to have been entrusted to the petitioner. It was in fact a payment in advance for the chur which was to be made. That being so, the money became the money of the petitioner the moment it was paid to him and though the petitioner is guilty of dishonest and dishonourable conduct in not making the chur, he cannot be said to have misappropriated the money because it was paid to him and it became his. His obligation thereafter was to produce the gold chur. That he failed to do and the complainant could recover the money from the petitioner as money paid on a consideration which had wholly failed. That, however, would not make the act of the petitioner a criminal act and criminal breach of trust. In my view, as there was no entrustment in this case there could be no question of an offence u/s 406, Penal Code, and that being so the petitioner was wrongly convicted.

6. In the result, therefore, this petition must be allowed. The conviction and sentence are set aside and the petitioner is acquitted. He need not surrender to his bail and his bail bond is discharged.

Bose, J.

7. I agree.