

**APPELLATE CRIMINAL***Before Bhandari and Soni, JJ.*

THE STATE,—Appellant,

*versus*

1951

March 16th

JAGE RAM, son of DATTA RAM,—Accused-Respondent.

**Criminal Appeal No. 320 of 1950**

*Indian Penal Code (Act XLV of 1860)—Section 406—Criminal breach of trust—essential ingredient of the offence—relationship of trust and confidence—Difference between bailment and trust.*

The accused borrowed a bicycle from the complainant promising to return the same within a period of two or three days. He failed to fulfil the promise, disposed of the machine and appropriated the proceeds to his own use.

*Held*, that the relationship between the complainant and the accused was that of a bailer and bailee as the complainant had delivered his bicycle to the accused 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 and in disposing of the machine dishonestly and appropriating the money to his own use the respondent was guilty of an offence punishable under section 406 of the Indian Penal Code.

The offence of Criminal breach of trust within the meaning of section 406 of the Indian Penal Code, may be broadly defined as the fraudulent appropriation of another's property by a person to whom it has been entrusted or into whose hands it has lawfully come. To bring a case within the mischief of the 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 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.

*Lake v. Simmons* (1), relied upon.

Difference between bailment and trust, pointed out.

*State appeal from the order of Shri Madan Mohan Singh, Sub-Judge, 1st Class, exercising the powers of a Magistrate of 1st Class, Panipat, District Karnal, dated the 25th March 1950, acquitting the respondent.*

HARBANS SINGH GUJRAL, for the Advocate-General for Appellant.

In person in police custody (Respondent).

## JUDGMENT

BHANDARI, J. The decision of this case turns on the construction of the expression "entrusted" appearing in section 405 of the Indian Penal Code.

The State  
v.  
Jage Ram,  
son of  
Datta Ram  
—  
Bhandari J.

The facts of the case are simple and not in dispute. On the 21st February 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 under section 406 of the Penal Code had been made out against the accused and directed that he be acquitted. The Provincial Government has come to this Court in appeal and the question for this Court is whether the Court below has come to a correct determination in point of law.

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."

**The State**  
*v.*  
**Jage Ram,**  
 son of  
**Datta Ram**  
 ———  
**Bhandari J.**

The view taken by the learned Magistrate appears to me to be wholly misconceived. Section 405 of the 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 another’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.

The State  
v.  
Jage Ram,  
son of  
Datta Ram

Bhandari J.

This brings me to a consideration of the meaning and content of the expressions 'trust' and 'entrusted' which appear repeatedly in section 405 of the Penal Code.

A trust, as defined in section 3 of the Indian 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 another, or of another 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 another 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 another.

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 of the Indian Contract Act, 1872, and according to this definition a "bailment" is the delivery of goods by one person to another 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

The State  
v.  
Jage Ram,  
son of  
Datta Ram  
—  
Bhandari J.

to the chattle. 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. 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 another person for the benefit of the former or of a third person depends upon 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.

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* (1), "entrusted" is not necessarily a term of law. It may have different implication 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".

The State  
v.  
Jage Ram,  
son of  
Datta Ram  
Bhandari J.

The offence of criminal breach of trust by a bailee which is punishable in India under section 406 of the 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 there 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* (2), 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.,

(1) (1927) 96 L.J.K.B. 621—625.

(2) (1883-84) 13 Q.B.D. 29.

The State  
*v.*  
 Jage Ram,  
 son of  
 Datta Ram  
 —  
 Bhandari 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* (1), 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.

In their commentary on section 406 of the Indian 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 under section 406 of the Indian Penal Code. In *Emperor v. Ghanshamdas* (2), 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* (3), 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.

The relationship between the complainant and the respondent in the present case was that of a bailor and bailee as the complainant had delivered his bicycle to the respondent for use for a specific purpose and a specified period upon contract that after the expiry of the said period the machine would be

---

(1) Cr. App. R. 18.

(2) (1928) 29 Cr. L.J. 431.

(3) (1935) 36 Cr. L.J. 119.

returned to him. He dishonestly disposed of the machine and appropriated the money to his own use. He is in my opinion guilty of an offence punishable under section 406 of the Penal Code.

The State  
v.  
Jage Ram,  
son of  
Datta Ram

For these reasons, I would accept the appeal, and set aside the order of acquittal and convict the respondent under section 406 of the Indian Penal Code. I would sentence him to six months' rigorous imprisonment.

Bhandari J.

SONI, J. I agree. There is any how no doubt whatsoever that an offence under section 403 was committed and the Magistrate had no justification in acquitting the respondent.

Soni J.

I agree with the sentence proposed.

### FULL BENCH

#### MATRIMONIAL REFERENCE

*Before Bhandari, Harnam Singh and Soni JJ*

PARBATI MUKERJEE,—*Petitioner,*

*versus*

SAMRENDRA NATH RAKSHIT,—*Respondent.*

1951

April 2

#### Matrimonial Reference No. 4 of 1950

*Special Marriage Act (III of 1872) sections 2 (3) and 17—Marriage—Person below 21 years—without guardian's consent—Annulment.*

P. M. married S. N. R. under the Special Marriage Act. Later on she brought a suit for the annulment of the marriage on the ground that she was below the age of 21 and had not obtained the consent of her father to the marriage.

*Held,* that the marriage was null and void in view of sections 2 (3) and 17 of the Special Marriage Act.

*Basara Sen v. Aghora Nath Sen* (1), *Dolly Bathera v. Shaik Fazle Ellahi* (2), relied upon and *Ganesh Prasad-Ram Prasad v. Damavanti* (3), dissented.

(1) 1929 A.I.R. (Cal.) 631. (2) 1942 A.I.R. (Cal.) 42.  
(3) 1946 A.I.R. (Nag.) 60.