

1937

Present: Abrahams C.J.

KALYANARATNE *v.* GUNADASA.

581—P. C. Colombo, 2,700.

*Criminal breach of trust—Property held by accused in trust for his master—
Penal Code s. 388.*

Where a promissory note was made in favour of the accused for the convenience of his employer who lent the money, and the accused misappropriated money paid to him by the maker of the note to liquidate the debt,—

Held, the accused was guilty of criminal breach of trust.
King v. Perera (Times of Ceylon L. R. 72.) followed.

A PPEAL from a conviction by the Police Magistrate of Colombo.

R. C. Fonseka (with him S. W. Jayasuriya), for accused, appellant.

R. G. C. Pereira, for complainant, respondent.

Cur. adv. vult.

October 5, 1937. ABRAHAMS C.J.—

This is a somewhat unusual case and has been argued with commendable ability. The appellant was convicted of criminal breach of trust of Rs. 5 which he had obtained in the following circumstances :—

One T. D. Gunadasa was arrested by civil process for a sum of Rs. 237.50. From jail he requested assistance of the complainant who sent his employee the appellant to the jail with the money to discharge Gunadasa's liabilities. Gunadasa then went to the complainant's boutique and by arrangement signed a promissory note in favour of the appellant. The complainant stated that this was done because he was a busy man and the appellant transacted all his business.

Action was taken on this note and Gunadasa agreed to pay the amount in instalments of Rs. 15 per mensem. He stated that the appellant came to him and asked for an instalment whereupon he gave him Rs. 5.

It is submitted on behalf of the appellant that his liability is civil only since he received the Rs. 5, if he did receive it, by virtue of the promissory note which was made out to him, and that Gunadasa was liable in law to discharge his obligation to the appellant, and the appellant only, who thus received the money in his own legal right. But I think the terms of section 388 of the Penal Code are sufficiently wide to cover a case of this kind, and illustration (a) to that section certainly indicates one instance where the legal owner of property can commit criminal breach of trust in respect of it. If that were not so, many cases of misappropriation by servants and agents of the property for which they are bound to account to their employers would go unpunished. This case does in fact bear a sufficiency of resemblance to the *King v. Perera*¹, where Jayewardene A.J. upheld the conviction for criminal breach of trust of a salesman who misappropriated cheques made out in his own name by purchasers of his employer's goods.

It has also been argued for the appellant that the judgment contained no specific finding that he misappropriated the Rs. 5, in fact there is not

¹ 2 Times of Ceylon L. R. 72.

even any mention that he obtained the money." It is pointed out that the learned Magistrate stated that "the only point is to determine whether the money lent to Gunadasa belonged to the complainant or to the accused". The only defence raised by the appellant was that it was he who actually lent the money. He did not deny that he obtained the Rs. 5, so that it may be implied from the absence of a defence on this material point and the learned Magistrate's concluding words in his judgment to the effect that the appellant having been dismissed by the complainant is trying to take advantage of the fact that the note is in his favour and dishonestly recover money really due to the complainant, that the learned Magistrate accepted Gunadasa's evidence that the Rs. 5 had been actually obtained. At the same time, as I have said before a Magistrate in writing his judgment ought to be careful to find specifically on every fact in issue. Omission to do so gives scope for objections to the judgment and leads to the time of this Court being unnecessarily occupied.

I dismiss the appeal.

Affirmed.

