

[IN THE COURT OF CRIMINAL APPEAL]

1960 Present : Basnayake, C.J. (President), Sansoni, J., and  
H. N. G. Fernando, J.

THE QUEEN *v.* D. METIAS DE SILVA

*Appeal 153 of 1960, with Application 172*

*S. C. 75—M. C. Avissawella, 34117*

*Co-operative Societies Ordinance (Cap. 107), as amended by Acts Nos. 21 of 1949 and 17 of 1952—Criminal breach of trust—Section 50 B—Applicability of it to a person who has ceased to be an officer.*

A person who has already ceased to be an officer of a co-operative society at the time when he is called upon to pay over or duly account for a sum of money is not liable to be convicted of criminal breach of trust under section 50 B of the Co-operative Societies Ordinance as amended by Acts Nos. 21 of 1949 and 17 of 1952.

**A**PPPEAL against a conviction in a trial before the Supreme Court.

*Colvin R. de Silva, with M. L. de Silva, K. Shinya, Nimal Senanayake and V. Karalasingham, for Accused-Appellant.*

*J. G. T. Weeraratne, Crown Counsel, with J. A. D. de Silva, Crown Counsel, for Attorney-General.*

October 13, 1960. BASNAYAKE, C.J.—

The accused-appellant was indicted on the following charge :—“ That he being a person entrusted with or having dominion of money in his capacity as Treasurer of the Dehigampalkorale and Lower Bulathgama Co-operative Stores Societies Union Limited a Society registered under the Co-operative Societies Ordinance (Cap. 107) as amended by Acts, No. 21 of 1949 and No. 17 of 1952 and being required by the Registrar of Co-operative Societies in the exercise of the powers vested in him by section 50B of the said Ordinance as so amended, by his letter No. DA/KU331/18 dated the 16th day of October, 1957, and served on him on the 25th day of October, 1957, to pay over on the 1st day of November, 1957, to A. P. Jayasekera, Assistant Commissioner Co-operative Development (Audit) at Colombo a sum of Rs. 24,446/37 shown in the books of accounts and statements kept and/or signed by him as due from him as Treasurer of the said Co-operative Stores Societies Union Limited, did fail to pay over on the 1st day of November, 1957 or thereafter the said sum of money or any part thereof or to duly account thereof (*sic*), and that he is thereby guilty of the offence of criminal breach of trust punishable under section 50B of the Co-operative Societies Ordinance (Cap. 107) as amended by Acts, Nos. 21 of 1949 and 17 of 1952.”

The accused was convicted and sentenced to undergo a term of five years' rigorous imprisonment. Many points were urged by learned counsel for the appellant, but it is not necessary for the purpose of our decision to refer to them all. At the time the accused was called upon to pay over, or produce or duly account for the sum of Rs. 24,446/37 he had ceased to be the Treasurer of the Co-operative Society. An audit of the accounts of the Societies was carried out between 1st and 14th October, 1953, and in the course of the audit it was discovered that a sum of Rs. 24,446/37 which the appellant had entered in the books cannot be accounted for. The appellant ceased to be the Treasurer of the Co-operative Stores Societies Union on the 5th of October, 1953, and he was called upon to pay over, under section 50B of the Co-operative Societies Ordinance, to the Assistant Commissioner of Co-operative Development the sum of Rs. 24,446/37 on the 16th of October, 1957. Section 50B of the Co-operative Societies Ordinance, in our opinion, applies to a case of an officer, member or servant of a Co-operative Society who is an officer, member or servant at the time he is required by the Registrar of Co-operative Societies to pay over or produce or account for “ such amount of money or balance thereof which is shown in the books of accounts or statements kept or signed by such person as held by or due from him as such officer, member or servant ”. In the instant case the appellant had ceased to be the Treasurer at the time he was called upon to pay over the sum of Rs. 24,446/37, and section 50B has no application. The conviction of the appellant cannot therefore be sustained.

We accordingly quash the conviction and direct that a judgment of acquittal be entered.

*Appeal allowed.*