

[IN THE COURT OF CRIMINAL APPEAL]

1956 *Present* : Basnayake, C.J. (President), de Silva, J., and Sansoni, J.

REGINA *v.* G. G. GUNewardENE

*Appeal No. 5 of 1956 with Application No. 7*

*S. C. 1—M. C. Kurunegala, 4,793*

*Co-operative Societies Ordinance, as amended by Act No. 21 of 1949—Criminal breach of trust by officer—Section 50B—"Books of accounts".*

*Held (by the majority of the Court), that a conviction for criminal breach of trust under section 50B of the Co-operative Societies Ordinance may be based on evidence furnished by not only the account books kept by the accused person but also by reference to documents other than those books.*

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

*Colvin R. de Silva*, with *M. I. S. Jayasekera*, for accused-appellant.

*V. T. Thamotheram*, Crown Counsel, for Attorney-General.

*Cur. adv. vult.*

MAY 7, 1956. BASNAYAKE, C.J.—

The appellant was indicted on four charges, one of them punishable under section 50B of the Co-operative Societies Ordinance as amended by Act, No. 21 of 1949, and the other three punishable under section 467 of the Penal Code. On the first charge he has been sentenced to ten years' rigorous imprisonment, on each of the second and third charges to seven years' rigorous imprisonment. He has been acquitted on the fourth charge.

His conviction on the second and third charges was challenged on the ground of misdirection. We are satisfied that there has been no substantial misdirection on any matter of law by the learned Commissioner, and the appeal in respect of the conviction of those charges is therefore dismissed.

The appeal on the first charge in the indictment was pressed on the ground that the charge has not been established by the prosecution.

The facts material to this charge are as follows:—

The accused was the Administrative Secretary of the Weuda Willi Hatpattu Co-operative Societies Union. On an audit on the account books, it was found that he should have had in his hands a cash balance of Rs. 144,329/55, whereas, in fact, he had in cash only a sum of Rs. 32,794/23. On 1.9.53 after an audit he signed a statement to the following effect:—

“I, G. G. Gunewardene, Administrative Secretary of the Weuda Willi Hatpattu Co-operative Societies Union Ltd., do hereby certify that I produce before Mr. Hector Silva, Auditor, for the purpose of checking cheques to the value of Rs. 19,708/29, money orders for Rs 7,319/71 and cash Rs 5,766/23, making a total of Rs 32,794/23 (Rupees thirty-two thousand seven hundred and ninety-four, and cents twenty-three) out of a sum of Rs. 39,507/53 (Rupees thirty-nine thousand five hundred and seven, and cents fifty-three) the amount which should have been in my custody on 1.9.53 according to the cash book:

(Sgd.) G. G. Gunewardene  
1.9.53.”

On his own admission, out of a sum of Rs. 39,507/53 he was able to produce only Rs. 32,794/23. He was unable to account for two sums of Rs. 100,000 and Rs. 4,822/02. After a further audit examination he was called upon by the Commissioner for Co-operative Development on 26.11.53 to pay over a sum of Rs. 111,535/32 comprising the following items :—

	Rs. c.
“(1) Balance in hand on 1.9.53 .. .. .	39,507 53
(According to cash book which was accepted by you)	
Less amount produced by you .. .. .	32,794 23
	6,713 30
(2) Amount by which you have increased the total in purchases column and in the general total column on 21.4.53 (vide p. 228 of cash book) .. .. .	100,000 00
(3) Unsupported items of expenses on 21.4.53 (vide p. 230 of cash book) .. .. .	4,822 02
	111,535 32

Section 50B of the Co-operative Societies Ordinance reads as follows :—

“ 50B : It shall be lawful for the Registrar, after the accounts of a Registered Society have been audited as provided in section 17 or after an inquiry or inspection into the affairs of a Registered Society has been held under section 35 to require any person, being a person entrusted with or having the dominion of any money in his capacity as an officer or a member or a servant of the Society to pay over or produce 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 or due from him as such officer, member, or servant ; and if such person, upon being so required, fails to pay over or produce such amount of money or balance thereof forthwith or to duly account therefor, he shall be guilty of the offence of criminal breach of trust, and shall on conviction be subject to imprisonment of either description for a term which may extend to 10 years and shall also be liable to a fine ”.

It was contended on behalf of the appellant that the entire sum of Rs 111,535/32 was not shown in the books of accounts or statements kept or signed by the appellant within the meaning of section 50B of the Co-operative Societies Ordinance and that therefore the conviction was bad in law. It was conceded that the sum of Rs. 100,000 was shown in the books of accounts. It was also conceded that the sum of Rs. 6,713/30 was also shown in the books of accounts as due from the appellant and admitted by him as due from him. But it was contended that the item of Rs. 4,822/02 was not shown in the books as due from the

appellant and that for the purpose of ascertaining whether that sum was due it was necessary to look at the books of a branch society—The Rambodagalla Society.

Learned Counsel contended that the words “shown in the books of accounts” mean appearing on the face of the books kept by the appellant and not ascertained by reference to documents other than those books.

The majority of us are unable to uphold this contention. The section authorises the Registrar to demand the amount shown in the books after an audit. For the purpose of an audit of the accounts of a society it is necessary to examine not only the books of accounts actually kept by the officer, member or servant but also other books and documents in order to ascertain whether the items in the books of account are supported by receipts, vouchers, bills, etc. It would be taking too narrow a view of the words “shown in the books of accounts or statements” if the section was confined to the interpretation submitted by Counsel. It would be impossible to carry out a satisfactory audit if the auditor were confined to the books of accounts kept by the officer, member or servant. Such a construction of the section would negative the whole object of an audit and enable an officer to so falsify the books as to conceal the fact that any money is due from him.

The majority of us are of opinion that the appeal on this Count also should be dismissed.

*Appeal dismissed.*

---