**Manni Lal Vs. Emperor**

**Manni Lal Vs. Emperor**

**SooperKanoon Citation** : sooperkanoon.com/472208

**Court** : Allahabad

**Decided On :** Oct-28-1931

**Reported in** : AIR1932All324; 140Ind.Cas.78

**Appellant** : Manni Lal

**Respondent** : Emperor

**Judgement** :
ORDER

**Pullan, J.**

1. This is an application in revision from an order of the Sessions Judge of Jhansi, upholding the conviction of one Manni Lal for an offence under Section 406, I.P.C. This Manni Lal owns a flour mill in Thansi, and for the purposes of his mill took electric current from the Jhansi Electric Supply Co. The accounts produced by the company show that he used electrio current to the amount of 554 units in the month of February 1931. On 26th March 1931, he addressed a letter to the company saying that two of the company's servants had removed his meter on the 24th March, saying that they would either return it or inatal another on the following day, and that they had not done so. The company made an inquiry and satisfied themselves that their servants had not removed the meter and they initiated a prosecution for criminal broach of trust. It appears that at that time some consumers in Jhansi had hit upon a means of tampering with the reading of their

meter, and several prosecutions had been instituted. It is suggested in this case that the accused had been tampering with his meter, and fearing discovery, had destroyed the meter, and falsely reported that the meter had been removed. This substantially is the story believed by the Magistrate and the Judge, and the applicant has been sentenced to four months' rigorous imprisonment for an offence under Section 406, I.P.C., and to pay a fine of Rs. 50. It is clear from the judgments of both Courts that in the company's books there is considerable confusion as to the number of the meter supplied to this mill. But the Courts have held as a fact that it was meter No. 77, and that this meter is now missing. They have also held as a fact that the servants of the company, one of whom has subsequently been dismissed, did not remove the meter. Thus sitting as a Court of revision I have to accept the findings of fact that the meter No. 77 was installed in the mill of the accused, that it is not there now, and that the servants of the Electric Company did not remove the meter. But even when these facts arc conceded, it does not appear to me that an offence under Section 406, I.P.C., has been established. The accused was no doubt responsible for the meter. He had given a deposit with the company of Rs. 75, and if at any time he was unable to produce the meter, the price of it could be deducted from his do-posit. But the mere failure of the accused to produce the meter on any particular date does not of itself constitute an offence of criminal breach of trust. In order that this offence must be fairly established, it must be proved that the accused dishonestly misappropriated or converted to his own use the property entrusted to him, or dishonestly used or disposed 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.

2. I do not see how the words of this section embrace the case of a man who has taken an article on hire and fails to produce it. There must be some evidence that he acted dishonestly, and I cannot consider that the proved facts in this case show dishonesty. There is certainly no proof as to what happened to the meter, and I cannot conclude that the accused made any profit out of it. He may have sold it; he may have destroyed it; and somebody else may have stolen it. He is certainly

responsible, to the company for the price of the meter, but his criminal liability appears to me to depend on the strange finding of the Magistrate that the accused deliberately destroyed this meter to do away with the evidence against himself. There is not the slightest evidence either that the accused tampered with his meter or that there was any prospect of a prosecution being instituted against him for so doing. The finding of the Magistrate that the motive for the crime is clearly dishonest is a finding based on a presumption without any evidence, and as such is contrary to law. The Judge mentions the previous prosecutions, but he nowhere states that the motive of the accused was to destroy proof of his own guilt. In fact the Judge appears to think that the mere failure to produce the meter is sufficient to lead to a presumption of criminal breach of trust. He has not touched upon the point of law at all. In my opinion the conviction is illegal, and no offence under Section 406 is established against the accused. I accordingly allow this revision, set aside the conviction and sentence and direct that the fine, if paid, shall be refunded. It will be open to the company no doubt to realize the value of the meter from the deposit which they hold in the name of the accused.