

**The State Vs. Mithalal**

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**SooperKanoon Citation :** [sooperkanoon.com/750678](http://sooperkanoon.com/750678)

**Court :** Rajasthan

**Decided On :** Aug-08-1955

**Reported in :** AIR1956Raj20; 1956CriLJ107

**Judge :** Wanchoo, C.J. and; Dave, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 405 and 406

**Appeal No. :** Criminal Appeal Nos. 66, 95 and 96 of 1953 and 5, 6 and 7 of 1954

**Appellant :** The State

**Respondent :** Mithalal

**Advocate for Def. :** Gumanmal, Adv.

**Advocate for Pet/Ap. :** Kansingh Deputy, Govt. Adv.

**Disposition :** Appeal allowed

**Judgement :**

Wanchoo, C.J.

1. These are six connected appeals by the State against the acquittal of Mithalal accused by a First Class Magistrate. As the main point involved in all these appeals is the same, we propose to dispose of them by one judgment.

2. The case for the prosecution may be briefly stated. Mithalal is a goldsmith and carries on the work of preparing ornaments in Jodhpur. The six complainants in these six cases either gave gold only or gold as well as, cash or cash only to Mithalal for the purpose of preparing ornaments. The case of these six complainants was that Mithalal misappropriated the gold or cash given to him and disappeared from Jodhpur. Consequently, they reported the matter to the police and Mithalal was prosecuted under Section 406, Penal Code.

3. The Magistrate took evidence and framed a charge against Mithalal under Section 406, Penal Code. But after the case was over, he did not decide questions of facts raised in these cases and acquitted the accused on the ground that there had been no entrustment to him as required by Section 405 Penal Code.

He relied on the decision of the Calcutta High Court in -- 'Kanai Lal v. The State', AIR 1951 Cal 206 (A). The State Government has come up in appeal and it is contended by the learned Deputy Government Advocate that the Magistrate was wrong in acquitting the accused on the basis of Kanai Lal Dutta's case (A)

4. The argument on behalf of the state is that Kanai Lal Dutta's case (A) has no application whatsoever in those cases in which gold was given to the applicant for preparation of ornaments. It is also urged that in the one case (Criminal Appeal No. 5 of 1954) where cash only was given, the facts justified the inference that there was entrustment of money and the decision in 'Kanai Lal Dutta's case (A),' is not applicable.

5. Section 405 of the Indian Penal Code defines criminal breach of trust and the first ingredient that has to be proved in a case of criminal breach of trust is that there should be entrustment of property or dominion over property in any manner. Now, entrustment will arise whenever some thing whether it be money or any other thing is given to some person with some direction as to how it should be dealt with.

This is also clear from Illust. (c) to Section 405. Penal Code which shows that where there is an express or implied contract between two persons that sum

remitted by one to the other shall be, invested, according to the direction of the remitter there is entrustment of the sum remitted. In five of the six appeals before us, the complainants gave either gold to the goldsmith for making ornaments for them or gave gold and some money for the purchase of more gold for the preparation of ornaments.

Where gold is given to a goldsmith whose business is merely to prepare ornaments, there is, in our opinion, clearly entrustment of that gold to the goldsmith for the purpose of preparing the ornaments desired by the person who gives the gold. Kanai Lal Dutta's case (A) has no application whatsoever where gold is thus given to a goldsmith for preparing ornaments. It only deals with a case of payment of money. So far, therefore, as five cases in which gold was given are concerned there was clearly an entrustment at least of the gold and the order of the Magistrate will have to be set aside and the case sent back for retrial on the merits.

6. As to the case in which only cash was given, we have to see how far Kanai Lal Dutta's case (A), can be applied. It may be noted that Kanai Lal Dutta is mentioned as a jeweller and not a goldsmith. Mithalal is, however, only a goldsmith, viz. a person who makes ornaments and is paid for his labour. In Kanai Lal Dutta's case (A), the learned Judges were of opinion that where money is given to a jeweller for preparation of a gold ornament, it was only an advance payment of the price and did not amount to entrustment of the money to the jeweller.

It is, in our opinion, a question in each case depending upon the facts of the case whether payment of money would amount to entrustment or merely to payment of price in advance. Where, for example, the person to whom the payment is made is, as appears to be the case in Kanai Lal Dutta's case (A), a jeweller and has stock of gold, ornaments and precious stones with him, the payment would generally be an advance of price. But where the money is paid to a goldsmith viz. a person who makes ornaments and charges for his labour, it is to our mind quite clear that the payment amounts to an entrustment of the money to the goldsmith with a direction that he should use it for purchasing gold from the market and preparing the ornaments desired by the person, making the payment.

Such a case would be similar to the case in Illust. (c) to Section 405, where money is sent by one person to another with a direction as to how it should be used. In the case of a goldsmith, whose job it is to make ornaments and charge for his labour the payment of money with a direction that he should purchase a certain quantity of gold and prepare ornaments would amount to entrustment and if such goldsmith dishonestly converted it to his own use in violation of the implied contract that he should use it to purchase gold and prepare ornaments, he will be guilty of criminal breach of trust.

In this case, the evidence does not show that Mithalal is a jeweller who keeps a stock of gold, ornaments and precious stones. He has throughout been called a goldsmith and not a jeweller. Under these circumstances, payment of money to him for the purchase of gold and preparation of ornaments amounts to entrustment of the money with an implied contract that it will be used in a particular manner. If there is dishonest misappropriation or conversion of the money to his own use, there will be a breach of that implied contract and an offence under Section 406 I. P. C. will be made out.

7. We, therefore, allow the appeals, set aside the orders of acquittal passed by the Court below and send the cases back for retrial in the light of the observations made above.

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