

**In Re: Marudayya**

**In Re: Marudayya**

**SooperKanoon Citation :** [sooperkanoon.com/801077](http://sooperkanoon.com/801077)

**Court :** Chennai

**Decided On :** Mar-20-1957

**Reported in :** AIR1957Mad722

**Judge :** Somasundaram, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 403, 408 and 417; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 32, 234, 236 and 237

**Appeal No. :** Criminal Revn. No. 397 of 1956 and Cr. R.P. No. 358 of 1956

**Appellant :** In Re: Marudayya

**Advocate for Def. :** Public Prosecutor and ;T. Venkatadri, Adv.

**Advocate for Pet/Ap. :** V.T. Rangaswami Aiyangar, Adv. for ;V.L. Ethiraj, Adv., ;S. Mohankumaramangalam, ;K.V. Sankaran and ;M. Narayanamurthi, Adv.

**Judgement :**

ORDER

**Somasundaram, J.**

1. The petitioner in this case has been convicted by the Additional, First Class Magistrate, Coimbatore, for an offence under Section 408, I. P. C., and sentenced to one year's R. I. and a fine of Rs. 1,000. The said conviction and sentence were confirmed by the Sessions Judge of Coimbatore. It is against the judgment of the

Sessions Judge of Coimbatore the present revision has been filed.

2. The facts of the case are these -- The petitioner was employed as a cashier in one of the mills in Coimbatore called Kamala Mills. It is alleged that he was so employed almost from the very inception of the Mills, i.e., for over ten years. He was in custody of the cash belonging to the Mills and he had to maintain the rough cash book and prepare the debit vouchers on the authority of which money had to be drawn from the banks by P.W. 8, the managing agent. His duties also included disbursement of the wages to the labourers employed in the Mill every month. The labourers came under two categories, one the permanent employees and the other substitute employees called Badili workers. So far as the wages to the permanent employees were concerned, they were paid once a month. As regards the wages to the Badili workers they were paid once every fortnight. This system was in vogue till about 1950, From 1951 onwards both of them were paid only at the end of each month. The petitioner, taking advantage of the previous system, viz., paying fortnightly to Badili workers, is said to have drawn money payable as wages to the Badili workers for the months of February, March, April, May and September 1951, twice over and paid one set of wages only and appropriated the set to himself. The amount thus drawn twice over and misappropriated by the petitioner is said to be about Rs. 28,000 and odd. This misappropriation is said to have been committed between 1st March 1951 and 31st October of that year. This apparently was not noticed either by the Manager, P.W. 1, who is the son of the managing agent or by P.W. 8, the managing agent, himself presumably due to the extreme confidence enjoyed by the petitioner with both the Manager as well as the managing agent. However, in May 1952, at the time of audit, this was becoming known and at that time the petitioner is said to have admitted the excess drawing of the amount and the misappropriation of the same. He then suddenly disappeared and about 7 or 8 days after his disappearance, he sent a letter, Ex. P-15, dated 16th May 1952, to P.W. 2, who was doing the audit work. This letter was intended to be conveyed to P.W. 8, the managing agent of the Mills. A few days later, the petitioner himself appeared before P.W. 8, who sent for him and at the instance of P.W., 8 he did the work of posting the accounts for the year 1952. Discrepancies were discovered by P.W. 2, the auditor, and a list of these discrepancies was prepared and it is Ex. P-16. This is dated 6th July 1952. The

accused admitted that he was responsible for these discrepancies and in acknowledgment also signed Ex. P-16 on 6th July 1952. He, thereafter, executed Ex. P-17, a promissory note, on that date, for Rs. 1,55,511 and odd, being the amount found short as per the discrepancies and for which he admitted his liability. Then, on 14th July 1952, he wrote a letter, Ex. P-18, to P.W. 5, the Supervisor in the Mills, in respect of the promissory note amount due to the Mills and asking for permission to pay the amount in annual instalments of Rs. 10,000. Subsequently, on 22nd July 1952, the brother of the petitioner also gave a guarantee bond, Ex. P-19, for the amount due under the promissory note, Ex. P-17. So, from 16th May 1952 till 22nd July 1952, there was not only a series of admission of liability for the amount found short but also arrangements were being made for the payment of the amount by means of a promissory note which was further secured by the guarantee bond executed by the brother of the petitioner. Subsequently, on account of some other reasons, differences arose between the Mills, i.e., P. W. 8 and P. W. 1, on the one side and the petitioner on the other and complaints were filed by the petitioner against P.Ws. 8 and 1 and also by some other share-holders of the Company. It is after all this that P.W. 1 came forward with a complaint to the police on 8th April 1953, and on 9th April 1953 to the Magistrate. The police complaint was investigated and a charge-sheet was filed against the petitioner. The private complaint was clubbed along with this and the petitioner was tried and convicted and sentenced as aforesaid.

3. Before the Additional First Class Magistrate, to questions put to him by the Court, the petitioner admitted the second drawal for the months except February 1951. He also specifically admitted all the documents prepared by him excepting the total in the wage abstracts. The case had a prolonged trial and in the course of the examination of P.W. 8 and P.W. 1 suggestions were thrown that they were party to this misappropriation; in short, it was vaguely hinted that it was they who misappropriated the money and they are making a cat's paw of the petitioner herein. Needless to say, this suggestion was wholly unfounded. The documents executed by the petitioner, i.e., Exs. P-15, P-16, P-17, P-18 and Ex. P-19 (the last one being the guarantee bond executed by his brother) clearly show that the petitioner must have misappropriated the money, as otherwise, there is no likelihood of his executing these documents. Even assuming that some of these

documents were executed under pressure, certainly the guarantee bond would not have been executed by the brother. All this supports the prosecution case that the letter Ex. P-15 was voluntarily written. A reading of Ex. P-15 will confirm it.

4. In the revision before me, on the merits of this case, except reiterating the contentions raised in the lower Courts, nothing fresh was advanced and these arguments have been dealt with fully both by the trial Court as well as the Sessions Judge of Coimbatore. I entirely agree with both the Courts below that on the merits it is clearly made out that the petitioner is undoubtedly guilty of misappropriating the sum.

5. A point of law was argued both before the appellate Court as well as before me, viz., that the offence will not amount to criminal breach of trust. The argument is based upon the decision of a Full Bench decision of this Court in *Emperor v. John Mc-Iver* : AIR1936 Mad353 . It was held in that case that when money is obtained by trickery, the money so obtained by the person who obtained it cannot be said to have been entrusted to him. In this case, there is no doubt that when the petitioner placed the debit vouchers and other papers before P.W. 8 for the purpose of drawing cheques, he had included amounts to be paid to Badili workers which had already been paid. To that extent, there was undoubtedly an implied false representation. It was the confidence reposed in the petitioner by P.W. 8 that made P.W. 8 not even question the correctness of the amounts and made him merely draw the cheques as wanted by the petitioner. In inducing P.W. 8 to draw cheques for the amounts he wanted which included amounts that had already been paid, there was cheating by the petitioner. The amount so obtained by the petitioner from P.W. 8 cannot, therefore, be said to be entrustment as pointed out by the Full Bench decision of this Court in the : AIR1936 Mad353 , referred to above. The conviction, therefore, for the offence under Section 408, I. P. C., must be set aside.

6. But then, under Sections 236 and 237, Crl. P. C, a person who is charged for criminal breach of trust can be convicted of the offence of cheating also. It is contended by the Public Prosecutor that this is a case in which this offence of cheating has been clearly made out, even it the contention of the petitioner's

counsel that it will not amount to criminal breach of trust in view of the decision in 1936 MWN 49; AIR 193 Mad 353 (A), is to be upheld. But then, the cheating was on four different occasions and under Section 234, Cr. P. C., more than three offences of the same kind cannot be tried together. So though under Sections 236 and 237, Cr. P. C., the petitioner can be convicted for cheating, on account of the prohibition contained in Section 234, Cr. P. C., he cannot be now convicted of offences of cheating, as more than three offences are disclosed.

7. But, in any event, although money was obtained under false pretences and although money cannot be said to be entrusted to the petitioner, still the money drawn was intended not for his personal use but for distribution to the permanent workers and the Badili workers. The excess amount that was drawn, i.e., the second set of wages for the Badili workers, was misappropriated by the petitioner, as the same was not returned to the Company, The facts though they disclose no offence of criminal breach of trust on account of the ruling in *McIver's case* (A), and though, on the facts as they are, the petitioner cannot be convicted for the offence of cheating, would still make out an offence of misappropriation within the meaning of Section 403, I. P. C. This offence is a minor offence to the one under Section 408, I. P. C., and the conviction for the lesser offence can well be sustained. No reason has been shown as to why the petitioner cannot be convicted for this offence under Section 403. I. P. C. I, therefore, set aside the conviction under Section 408, I. P. C and convict the petitioner for the offence under Section 403 I. P. C.

8. The charge is for misappropriating nearly Rs. 25,000. A bond has been executed by the petitioner for that amount and he has made his brother also give a guarantee bond. The full amount has not been paid, but some sums have been paid. So far as P.Ws. 8 and 1 are concerned, they were not anxious to proceed against the petitioner on account of the fact that he had been long in their service and presumably for other reasons which might have well justified not filing the complaint. But they have been driven to file the complaint on account of the subsequent attitude of the petitioner towards them. Whatever may be the reasons, the fact remains that this offence was committed in 1951 and the complaint was filed only in 1953. A bond has been executed by the petitioner for the amount

misappropriated and a guarantee bond has also been executed by the brother of the petitioner. The petitioner was charged with a serious offence but is now convicted only for a minor offence. All these are factors which may be taken into consideration on the question of sentence. In the circumstances, I think a sentence of 8 (eight) months' R.I. and a fine of Rs. 1,000 will meet the ends of justice.

I, therefore, convict the petitioner for an offence under Section 403, I. P. C., and sentence him to 8 (eight) months' R.I. and a fine of Rs. 1,000, in default, 3 months' R.I. The fine amount, if collected, will be paid to P.W. 8 as compensation.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**