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Court : Chennai

Decided On : Aug-28-1939

Reported in : AIR1940Mad329

Appellant : Rex

Respondent : V. Krishnan

Judgement :

Pandrang Row, J.

1. The charge against the accused is on two counts, and I desire that you should pay particular attention to the wording of the charge. In substance it relates to two sums of Rs. 4000 each paid into the hands of the accused by Mrs. Appasami on the 20th November 1933, and the 2nd March 1934, respectively in discharge of a mortgage for Rs. 8000 executed by her husband, the late Dewan Bahadur Paul Appasami in 1923 in favour of the Foreign Mission at Pondicherry of which Father Pinel who was examined before you was Procurator at all material times. The particular point to which I wish to draw your attention is that the charge itself is to the effect that by receiving these amounts in his capacity as an attorney or agent of the Mission and by failing to pay the same to Father Pinel the accused had committed criminal breach of trust. You will thus see that the charge says that the non-payment to Father Pinel after entrustment by Mrs. Appaswami constitutes criminal breach of trust. I will lay stress once more on it, because the point is very

important. The trust that is alleged by the prosecution or the entrustment was by Mrs. Appaswami with the accused. Father Pinel had nothing to do with it. We are dealing not with a breach of trust as between father Pinel and the accused. If the accused has committed any breach of trust vis a vis Father Pinel, that is to say, of anything entrusted to him by Father Pinel, that is not the subject-matter of the charge, and you should not venture to ex-press an opinion on it; in other words, whether the accused has been guilty of a breach of trust as against Father Pinel is not the subject-matter of the charge. The subject-matter of the charge is that he is guilty of a breach of trust reposed in him by Mrs. Appasami when she paid the two amounts of Rs. 4000 each. That is the entrustment in this case. I am afraid a good deal of your time has been taken up with the question whether there was a duty on the part of the accused to pay this amount to Father Pinel's account or whether he had a right to retain this money under the lien granted by law in favour of attorneys and agents. It is unfortunate that I have to raise a point which does not seem to have been emphasized in the course of the speeches addressed to you but I must do my duty and tell you that the breach of trust charged in this case is breach of the trust reposed by Mrs. Appasami in the accused. So you must remember that the genesis of the trust was the delivery of this money to the accused by Mrs. Appasami.

2. I will tell you in formal words what the offence of criminal breach of trust is, but that will come a little later on. To enable you to understand the definition properly, I will put to you an ordinary case. Suppose one of you gives your servant a certain sum of money telling him at the same time : "Go and pay this to the shopkeeper so and so." Here there is entrustment of money by the master to the servant with a direction that he should deal with that money in a particular manner, that is to say, pay it to the particular shopkeeper. If he does not ?do so but pockets the money himself, then there is clear violation of the terms of the contract, which may be either express or implied, which he had entered into at the time of taking charge of the money in regard to the discharge of the trust reposed in him. In other words, the money is entrusted to him for the particular purpose of paying it to a particular person in which case if that has not been done and if the money is utilized by the servant for his own use, then you can say he has acted in violation of the contract, express or implied, entered into regarding the way in which the trust is to be

discharged. If, on the other hand, a man comes to you whom you know to be a bill collector of so and so and brings a bill to you and you pay the money to him without saying anything or doing anything but merely take his receipt and pay the money, then if there is no contract at the time, express or implied, that he would actually go and pay it to the principal you have not imposed any trust in him. If you are satisfied, in other words, that the payment by you to the bill collector is payment to the principal and is binding on him, and you really do not care what he does with it, because you have paid it to the person authorized to receive payment and you have no more concern with it, and if in the circumstances it cannot be reasonably implied that there was any contract between the person making the payment and the bill collector, then there is no trust nor any question of any contract, express or implied, regarding the way in which the trust is to be discharged.

3. With these two concrete cases of a simple nature before you, you will probably be able to understand clearly what I am going to say in a somewhat more formal way as to what the offence of criminal breach of trust is. The words of the Section which define the offence of criminal breach of trust have been read to you and it is unnecessary for me to reproduce the exact words, but hardly any of the words can be left out without dodger of giving rise to misunderstanding. For the purpose of this case it is enough for me to tell you that if any person, who is entrusted with property in any manner, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes 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 he commits 'criminal breach of trust.' You will remember that stress is laid on three important points in the definition of the offence. There must be an entrustment; there must be misappropriation or conversion to one's own use or use in violation of any legal direction or of any legal contract; and thirdly the misappropriation or conversion or disposal must be with a dishonest intention.

4. It is argued that it is unnecessary to consider whether there was an entrustment in this case because that is admitted. The word 'entrusted' which I have used and which is found in this Section is not a legal term which has a definite precise

meaning attached to it. It is an ordinary word, a word in common use. So it is for you as members of the jury to say whether in a particular set of circumstances any property or any money was entrusted by A to B. When money passes from A to B in a certain set of circumstances, was it entrusted by A to B is for you to answer. But in this case it is clearly established by the evidence that the money was paid by Mrs. Appasami to the accused as agent of the Trench Mission at Pondicherry. The entrustment is said to be the payment. It would be an entrustment only if it was in your opinion something more than a mere payment. When a man pays to his creditor what is due to the creditor, there is no entrustment; there is no trust attached to that passing of property. The property passed because it has to pass from one to another according to law and there the matter ends. Every payment of money by one person to another does not amount to entrustment unless there are circumstances attending it from which you can gather that it was an entrustment and not a mere payment. It is necessary for you to understand in this case the importance of deciding this fact whether the so called admitted entrustment was really an entrustment in your opinion. You will remember what Mrs. Appasami herself says. She says that she paid the moneys into the hands of the accused because she knew that the accused was authorized to receive it on behalf of the French Mission to whom the money was due; in other words, she made the payment without making any direction at the same time that the accused who received it should pay it to anybody in particular. All that she apparently wanted was that receipts should be given for the moneys paid and that the original mortgage deed should be given back to her. So far as appears from her evidence that was all that took place. It is however for you to say having regard to the circumstances whether the payment of these two sums of Rs. 4000 each on two different dates must be regarded as, constituting entrustment of the money. I cannot put it more clearly to you.

5. I have already told you that every payment is not an entrustment. It is not a point of law on which I can give you a direction. Whether in a particular set of circumstances a delivery or passing of property from one to another amounts to an entrustment or not is not a point of law on which the Judge can give a binding direction to the jury. Suppose a man who has stolen some property hands it over to a brother thief, is it entrustment? That question does not arise in this case for

you to answer, but that is the sort of case in which the Judge would find it difficult to give a definite direction as to whether it is an entrustment. Suppose a man sends a postal order to the advertiser of a newspaper or certain sums are sent to him, can you say when the postal order or money is received by the advertiser that he was entrusted with the money by the person who sent the postal order or the person who sent the money? You can imagine a number of cases where it may be a matter of some difficulty to declare whether the passing of property amounts to entrustment or not. I have already taken the view - and I have expressed it before - that it is a question of fact to be left to the jury. You just visualize for yourselves what took place when this money was paid by Mrs. Appasami into the hands of the accused. We do not know whether they met face to face. No correspondence has been produced. We do not know whether the money was sent in cash or in notes or by cheque, or whether there was any covering letter if it was sent and not paid face to face. On these points there is no evidence but such of the evidence as you have before you you have had from Mrs. Appasami. Prom her evidence so far as I can recollect, I find no reference made by her to any circumstances under which the payments were made. She simply said : "I have paid these two amounts on two particular dates and I have taken receipts." She also added that the original mortgage was after a few days returned to her by the accused, and she was unable to say whether the mortgage deed bore any endorsement of discharge made by either the accused or Father Pinel, and strangely, even after the validity of these payments was questioned by learned Counsel on behalf of the Mission, Mrs. Appasami appears to have destroyed the original mortgage, so-that we are not now in a position to know whether there was an endorsement on the back of the mortgage deed or not.

6. You will remember in this connexion that this payment took place nearly 51/2 years ago. It is not usual in cases of this kind for such a long delay to occur between the commission of the alleged crime and its trial. The delay is all the more to be deplored because a good deal depends on the actual circumstances under which the moneys were paid by Mrs. Appasami to the accused, and unless there is very clear evidence about these circumstances it may be very difficult for you to say whether there was only a mere payment which closed a particular transaction or whether there was an entrustment which required something to be done by the

person to whom the money was paid besides giving a receipt and handing over the document. For instance, you will remember that in the case of the earlier mortgage of Rs. 6000, which was discharged by Mrs. Appasami in the same way, that is to say, by payment to the accused of the entire sum, she got a receipt and later on got the original endorsed on the back and Father Pinel remembers having done it. In the case of the Rs. 8000 mortgage Eather Pinel has no recollection of having done it, and Mrs. Appasami is unable to say whether there was any endorsement signed by the accused on the back. That is the position in which you are and in view of the long delay that has taken place and the extreme, if I may say so, tenuity of the evidence it makes me hesitate to give any opinion of my own in this matter. I therefore leave it to you to consider in the light of the circumstances attending these two payments of Rs. 4000 each by Mrs. Appasami to the accused whether you can say clearly that there was any entrustment and not a mere payment in full discharge of a debt that was due, to a person authorized to receive payment.

7. The case is peculiar as the accused's counsel remarked at the beginning of his speech. It is peculiar in many ways. It is peculiar because it has a curious origin. So far as I can see there was no criminal complaint by Father Pinel or anyone else on behalf of the Mission. According to the investigating officer the complainant was the Registrar of the High Court who presumably was directed by the then Chief Justice to address a communication enclosing a copy of the letter received by him from the Archbishop of Pondicherry relating to this matter. The complainant has not been cited or examined in this case, and unfortunately this has had the effect of excluding the letter written by the Archbishop to the Chief Justice, which was really and in substance the complaint in the case. It is unfortunate for the accused that it had to be ruled out because if it had been admitted, the result of it would have been favourable to the accused. I think it is my duty to tell you that much, and I can tell you that much because it was not a criminal complaint in the sense that it was not suggested in that letter that there was any criminal offence committed nor any request made that the accused should be dealt with criminally. I have to say it, though the document is not put before you, because the omission on the part of the Crown to examine the complainant which is the invariable practice in all these cases, has led to this result. It is 'not a kind of prosecution

which I can countenance or approve. It is not fair in my opinion for the prosecution to press a case against aman when the complainant is not a witness. The real complainant in this case was not the Registrar who had no knowledge of the case but the Archbishop of Pondicherry. But even he did not, so far as I can see, intend his letter to be treated as a criminal complaint, in other words, a complain tasking that criminal proceedings should be started. * * * *

8. As Mr. Jayarama Iyer has pointed out, the definition of the word 'complaint' in the Criminal Procedure Code is very clear. It means the allegation made orally or in writing to a Magistrate with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer. No doubt the letter of the Registrar addressed to the Commissioner of Police, Madras, who for this purpose is a Magistrate or rather has the powers of a Magistrate so far as receiving the complaint and ordering investigation is concerned, may be treated as a complaint. But if so, it is a case in which the complainant himself had no information to give but merely passed on something which had been received from the Archbishop of Pondichery. It is necessary in this case to lay some stress on this because though it was on the letter addressed by His Grace the Archbishop of Pondichery to his Lordship the Chief Justice at the time that the prosecution was begun, the Archbishop subsequently, when this case was pending, desired that the criminal case should be withdrawn and addressed communications to this effect both to the Chief Justice and to the Commissioner of Police. This was in March 1939 when the matter was in the course of being enquired into by the Presidency Magistrate in Madras. Father Pinel has stated before you that these letters of March 1939 were written at his suggestion and that what is contained therein has his entire concurrence; in other words, he was satisfied that the accused had no criminal intention. You will remember that the fact that these amounts of Rs. 4000 each were received by the accused from Mrs. Appaswami towards the discharge of the mortgage debt of Rs. 8000 was known to the Mission's new solicitor Mr. Pais who displaced the accused some time in December 1934. He came to know of it from the accused own letter dated 28th March 1935, Ex. P. 5. Even before that, it would appear in January 1935 - as appears from Ex. P. 4 - that the accused had, in a covering letter, sent sometime in January 1935, stated that he had not sent the

mortgage of Rs. 8000 along with the other deeds and documents which he had to hand over to the new solicitor. Mr. Pais is unable to recollect exactly what was contained in the covering letter, and at this distance of time, it is no wonder that he is unable to remember. He says, the accused did give some explanation for not sending the mortgage.

9. In these circumstances, it is for you to say whether as a matter of fact, even then the accused did not say that he was not sending the mortgage deed because it had been handed over to Mrs. Appaswami and that was done because the money had been paid. It however does not matter any way whether the accused informed the new solicitor of the French Mission in January or March 1935. There can be no doubt that at least in March 1935 the French Mission including Father Pinel knew that this money had been received by the accused as their agent and that the document had been handed back to Mrs. Appaswami. Nevertheless, you find the extraordinary fact that nearly six months afterwards, a correspondence is started by Mr. Pais with Mrs. Appaswami which proceeds on the basis that neither he nor the French Mission nor Father Pinel knew anything about the payment of this Rs. 8000 mortgage because in the first letter which starts the correspondence this mortgage is shown as subsisting. We have had no explanation for this extraordinary step taken on behalf of the Mission and, as it were, this attempt to make Mrs. Appaswami pay twice over the same debt. Anyhow a reply was sent on behalf of Mrs. Appaswami by another advocate Mr. Coelho (who is now a District ani Sessions Judge) pointing out that the whole mortgage of Rs. 8000 had been discharged by payment in two instalments of Rs. 4000 each and that Mrs. Appaswami was in possession not only of the receipts granted by the accused but also of the original bond which had been returned to her by the accused. It was claimed on behalf of Mrs. Appaswami that payment to the accused was payment to the principal because the accused had authority to receive the payment on behalf of the principal. It was not contended therein that there was any entrustment, or that there was any direction given to the accused at the time the money was paid that he should pay it over to Father Pinel or pay it into the bank account of the Mission. On the other hand, the case put forward in that letter, Ex. D, dated 9th September 1935, is clearly to the effect that payment to the accused was payment to the principal, and these receipts were sufficiently confirmed, as it

were, by the return of the original mortgage deed, and it was added in so many words in that letter that if the Mission had not received the money from the accused, that was a matter between the Mission and the accused with which Mrs. Appaswami had nothing, to do, thereby showing clearly that at the time when that letter was written - presumably under Mrs. Appaswami's instructions - Mrs. Apppswami was not under any impression that when the money was paid by her to the accused, it was accompanied by a direction that he should pay it to Father Pinel or into the Mission's bank account at Madras.

10. An extraordinary coincidence in this case is that the complaint by the Registrar was sent just the day after the written statement had been filed by the accused in the civil suit instituted against him by the Mission. You have got evidence in this case that the civil suit was instituted in respect of the Mission's claim against the accused in which one of the most important items claimed related to the present amount of Rs. 8000. That plaint was presented on 18th February 1937, that is to say, very nearly two years after the accused had admitted having received the amount and acknowledged his liability to account for it, in case it was found that anything was due by him after the taking of accounts. A written statement was filed by the accused in which he raised the contention that this sum of Rs. 8000 was in his hands and that he had with the consent and knowledge of the plaintiffs adjusted the same towards the amount he was entitled to get from the plaintiffs as his remuneration for professional services rendered by him. His claim against the Mission for work done, for out of pocket expenses, etc., was very nearly Rs. 18,000, the plaint claim being very nearly Rs. 15,000. It was on the day after this written statement was filed that the letter of the Registrar was sent to the Police Commissioner and investigation began on the very next day; that is to say, the Registrar's letter is dated 16th March, the Commissioner's order sanctioning investigation is dated 17th March and the investigation was actually begun by the Sub-Inspector (P.W. 5) on 17th March 1937. Though the investigation was begun very promptly very little expedition appears to have been shown in the actual completion of the investigation. For, it is seen that the charge-sheet was not laid till nearly the end of July 1938; that is to say about 15 months after the commencement of the investigation - an unusually protracted investigation - considering the few witnesses examined before you and the comparatively simple

point to be established in the case. Apart from that, you find there was considerable delay in the Magistrate's Court as the committal order was not pronounced till nearly the end of June 1939; that is to 'say, there was another delay of 11 months.

11. I am mentioning these delays to you, not with a view to express my dissatisfaction with the delays, but as features of the case which you are bound to take into account, because the greater the delay the less the chance for an accused to defend himself. You have to look at it from this point of view. The Crown which has considerable facilities at its disposal ought ordinarily, unless for very good reasons, be able to put alleged offenders on their trial within a reasonable time. It is not merely a question of enabling witnesses to have distinct recollection, though that is a very important one, because the greater the lapse of time, the fainter will be the recollection, at least of truthful witnesses who do not imagine or invent, but it becomes more difficult for the accused person to defend himself and all the more difficult if he happens to be an innocent man. You must therefore bear this delay in mind when you consider the question of the accused's not having clearly established what he did with this money.

12. As a matter of law, I can tell you that such a consideration ought not to weigh in your minds, that the accused has not proved his innocence; it may be an ordinary man's outlook, but that is not the outlook of the law. You may well ask : Why cannot the man show that he is innocent if he is innocent? In the first place, he cannot go into the box and give evidence; the law does not allow it. Secondly, the cardinal or basic rule of the administration of criminal justice, according to British notions, is that the prosecution must prove the guilt of the accused, and that the accused need not prove anything. He is entitled to stand on the innocence which the law imputes to him till it is displaced. It is not for you or for me, gentlemen, to ignore this important rule of law.

13. Whatever your own individual notions of the wisdom of such a rule may be, it is a rule which has been described by a great legal authority as the golden thread which runs through the system of British criminal jurisprudence. It will never do for you to disregard or to ignore that rule, and that rule is all the more important to

remember in a case like this, where, as I know, even judicially trained persons are apt to run away with the idea that if a man is shown to have been given some money or entrusted with it and he does not account for it, he must have embezzled or committed criminal breach of trust because it is for him to show what he has done with it; he knows it best and because he has not done it, he must have done something that is wrong and dishonest, that is, criminal misappropriation, with that money. I say that is not the law and I say it with all emphasis. I am glad that Mr. Jayarama Iyer for the accused brought to your notice what Lord Shaw said in a case which went up to the Privy Council from the Isles of Seychelles. It is a peculiar case but some of the words that he read to you are well worth a repetition from me. I shall preface my quotation with one observation. I am reading that to you to show that it is all important to make" a distinction between a civil responsibility and a criminal responsibility or a civil liability and a criminal liability. You are not here to decide the question of civil liability. If I may say so, that question of civil liability has been decided in the best way possible in the High Court by mutual consent. That is the best kind of decision you can expect in the world. Parties themselves agree that such is to be the decision, and the Judge says "yes" after satisfying himself there is nothing illegal or improper about it.

14. It is very essential therefore in this case to remember that you have got nothing to do with the question of civil liability. It may be that the accused is civilly liable for the whole sum. It may be that his claim to appropriate the whole money towards fees is utterly indefensible. But what you have got to decide here is whether first of all he was entrusted with the money and it was not a case of mere payment to an agent with the idea of merely paying the principal thereby and nothing more. When the person making the payment does not look forward to any other thing or expect anything else to be done by the person receiving the money except that he should give receipts and hand over the document, or in other words, the payer is not interested to know what is going to be done with the money but merely says "It is his own affair. I do not care, I am satisfied if I get a receipt and the document;" in these circumstances, is it an entrustment of money? Secondly whether the accused did anything with that money which would show that it was a misappropriation? Misappropriation is the wrongful setting apart or assigning of a sum of money to a purpose or use to which it should not be lawfully

assigned or set apart. It is in this connexion that you have heard a fairly long argument addressed to you about the rights of an agent and the rights of an attorney and so on, to which I shall refer shortly. I am reading one or two sentences from Lord Shaw's judgment just to show that it is all important - and indeed of the greatest importance - that you should always bear in mind the difference between civil and criminal liability especially in dealing with a case of criminal breach of trust because it is not at all uncommon to find cases which are really nothing but cases involving civil liability somehow made to assume the form of criminal cases, and unless one is very careful, the person who gives such colour may succeed in achieving his object. As his Lordship says, and it is needless for me to add that what he says is of the highest authority; it is binding on me as well as on you:

The mixture of the funds of another with one's own funds may be in many cases natural and proper, in other cases convenient but irregular, and in the third both irregular and criminal. The distinctions between these cases require to be treated with the greatest judicial care, so as, while preserving the amplest civil responsibility, to prevent the third or criminal category from being extended to mistaken though convenient acts.

15. That is to say, though it is necessary to preserve in its full implication and in its fullest measure the civil responsibility of one person in respect of property which he has received, it is quite a different matter when you come to deal with a crime alleged against him in respect of that property. Then he says:

A Court of justice cannot reach the conclusion that crime has been committed unless it be a just result of the evidence that the accused in what was done or omitted by him was moved by the guilty mind, and he points out that in the case before him the Acting Chief Justice of Syechelles did not seem to have present to his mind the distinction between criminal liability and civil liability to account. That is the reason why I am repeating the same thing over and over again to you. It is all important for you to remember that you are not dealing with a civil case but with a criminal case, and you have to decide, not whether this money should be accounted for by the accused or should be paid by him and so on but whether he

has committed any crime in respect of it. One thing I might mention that the mere fact that the accused failed to account for the money which he was entrusted with is not in law sufficient to establish that he has committed the offence of criminal breach of trust in the absence of other evidence, unless you prove some kind of conversion, i.e. a wrongful diversion to his own purposes or a purpose not consistent with law or with contract. In this case we have no evidence as to what the accused did with this money, namely Rs. 8000. It is really difficult for me to state the evidence in this case on this point. There was a vague mention - if I am not mistaken - in the opening speech of the Crown Prosecutor that the accused put this money into his own account with the bank. Now that the Crown Prosecutor says he does not recollect having said it, and Mr. Jayarama Iyer for the accused who according to the Crown Prosecutor said it, does not plead guilty to having said it, I think we may leave it out of account. But the point remains that it ought to have been possible, whoever said it or did not say it, for the Crown to show whither the money went and what the accused did with it. If he put it into his account, the account was available for the police for inspection and should have been put before you. Assuming for argument's sake that this Rs. 8000 remained in that account all the time, that he did not actually draw it; if for instance in the account of the accused with the Bank all the time Rs. 8000 was kept without being touched, you cannot say that the mere retention was a criminal breach of trust. It was safer and wiser to keep it in a Bank than at home. I am mentioning this; merely keeping the money and not paying it over as required by law, that is to say, even when an agent may have no claim against the principal, even then if he retains it merely and does not pay it, but does not do anything else with it, there is no criminal breach of trust. It is only a civil liability, and of course the principal can at any time, if he chooses, compel him to pay, send him a notice and file a suit. A criminal complaint is not the way to get one's civil rights established. If money due to a particular person is not paid, the law allows only a civil suit and not a criminal proceeding, for in the case of mere retention without any misappropriation, there is only a civil liability. It may be he may have to pay interest; that is a different matter that also is a civil matter. On the criminal side you can take it from me that mere retention of money entrusted to a person without any misappropriation, even though he was directed by the person to pay it to so and so, or to deal with the

money in a particular way, is not a criminal breach of trust; unless there is some actual user by him which is in violation of law or contract, there is no criminal breach of trust; and even if there is such user there must be a dishonest intention. In the case pf mere retention it is impossible to say it is dishonest. Apart from that, there must be some definite act to show misappropriation. Putting the money into one's own account in the bank may be misappropriation or may not be misappropriation. If it is drawn upon for his own purposes, it is misappropriation. You can then say he drew the money for his own use, but supposing he did not draw on it but kept the money in the bank there is no misappropriation, and no criminal misappropriation, because unless there is misappropriation there can be no question of dishonest misappropriation.

16. As regards the point of law which has been raised I do not think I need say much. It was by virtue of his position as the agent of the French Mission that the moneys were paid by Mrs. Appasami to the accused. That is clear from Mrs. Appasami's evidence. It is not because the accused was an attorney, at.law engaged as an attorney to receive this money that the money was paid by Mrs. Appasami. Mrs. Appasami says:

I knew that he was dealing with such matters as receiving collections, granting receipts in respect of the properties belonging to the Mission in Madras and because he was an agent authorised to do all these things that the moneys were paid to him.

17. So the accused's position as an attorney on the rolls of the High Court has very little bearing on this case, except in so far as it supports his claim for remuneration for appearances and other expenses which he had to incur himself on behalf of the French Mission. So far as the case for the prosecution is concerned, it is not in his; capacity as an attorney that he is supposed to have received the money but in his capacity as agent. The agent's rights are described in Section 221, Contract Act, which has been read to you. In substance the law on the point is as follows : An agent is entitled to retain goods, papers and other property, whether moveable or immovable which will certainly include money of the principal; received by him until the amount due to himself for commission,

disbursements and services in respect of the same has been paid or accounted for by him. As I understood the learned Crown Prosecutor, he laid stress on the saving clause 'in the absence of any contract to the contrary' and he referred to the evidence of Father Pinel on the point. I am unable to say that Father Pinel's evidence is very clear but you have heard it and I shall read to you the relevant portions in his evidence which relate to this matter and leave it to you to form your own opinion. He said at first that the accused had no authority to collect the principal. Later on, in his examination, he admitted that the accused could receive the principal but could not give discharge or claim commission on the principal amount. He added that he had no authority to retain any money received by him. Whether this represents Father Pinel's view of the law on the subject or whether there was any specific understanding or contract between the two that he was not to retain any money received by him is for you to decide. He added that the accused was to remit all the moneys to the Mission's account in the Chartered Bank. He also said that he never authorized the accused to utilize any portions of the collections for meeting any charges such as taxes or repairs and that the accused had no right to use any part of the collections for disbursing anything though he made an exception in the case of collections from Chetput market. He admitted in cross-examination that the accused had to look after the Mission's properties, to look after its investment and to look after the Court work also. He admitted that when accused files suits he has to incur expenses for court-fees and costs, and that he pays the municipal taxes and spends for repairs. He also added that no account was settled between the Mission and the accused during the four years the accused looked after the Mission's affairs and the accused's claims for remuneration or reimbursement were not gone into during that period. What is more important in this case to remember is that even if there was a contract to the contrary and the accused as agent had no legal authority to retain the money in his own hands, mere retention, as I have said already, will not be sufficient to show that he dishonestly misappropriated the money.

18. Another aspect of the case which bears on this point is the subsequent compromise of the suit between the Mission and the accused. It is admitted both by Father Pinel and Mr. Pais that a claim of nearly Rs. 15,000 was settled for Rs. 3000 of which Rs. 700 was paid in cash and a decree was taken for the balance of

Rupees 2300. You will remember in this connexion that the remuneration claimed in the accused's written statement was very nearly Rs. 13,000. You will thus see that the settlement by the two parties was as it were a middle course.

19. The plaintiffs, that is, the Mission, gave up nearly Rs. 12,000 and the accused gave up about Rs. 2000. It is stated before you that both Father Pinel and Mr. Pais were satisfied that this was a reasonable settlement, or in other words, that the difference between what was claimed and what was accepted finally, represented what was just and reasonably due to the accused in respect of various claims for remuneration; out-of-pocket expenses and so on. If that is the case, it is obvious that whether he had a right to retain it or not, he must have retained it in the honest belief that he was entitled to do so when he had a just and reasonable claim to the extent of Rs. 11,000. If a man is proved to have had a reasonable claim against another for more than the sum of money belonging to the other in his hands, his retention of it, and even his user of it for his own purposes I would say, in law, would not amount to criminal breach of trust because the intention could not have been dishonest, that is to say, to cause wrongful loss or wrongful gain. You have to look at these cases from what I may call a common sense point of view. Did the man act as a criminal; did he act with a guilty mind and with the dishonest intention of walking off with somebody else's money? Or was he merely hanging on to it because he knew he was entitled to more than that? It is for you, Gentlemen of the Jury, to look at the case in that way. You have had some evidence as to how the accused was dealing with the affairs of the Mission. You know what large sums he has actually collected for the Mission and remitted into the Bank. You know his status, his antecedents, you know what he has done in respect of this money, and it is for you to consider all these circumstances and say whether it has been established to your satisfaction that he dishonestly misappropriated the money, provided you find in the first instance that there was an entrustment of that money to him. Unless there was an entrustment in your opinion you need not go further and trouble yourselves about the question whether there was a subsequent misappropriation and if there was, whether such misappropriation was dishonest. If there was no entrustment, the case goes and as I said, it is a question for you to decide whether in the circumstances there was an entrustment of this money to the accused by Mrs. Appasami. I would give one

word of caution.

20. There was a so-called admission of entrustment in this case probably made without understanding what exactly it meant. Apparently what was meant was, the receipt of the money was admitted. Because it was put; in the other way as admitting the entrustment, it does not mean that you are relieved of your duty of finding out whether there was entrustment. That admission should not-be taken as settling that question because whatever the advocate may say, it is not binding on the accused; it is the accused's statement that you must consider. What he says is he has received the money. Let not any careless use of the word 'entrustment' in this connection lead you to think "There is the admission on the other side. Why should we trouble about it?" It is not so. It is an essential point for you to determine having regard to all the circumstances appearing in the evidence which surround the passing of the money from Mrs. Appasami into the hands of the accused. You must first decide what those circumstances are, what all happened at the time. And from those, can you say there was an express or implied contract that he would deal with the money in a particular way, if so, in what particular way, and whether be followed it, are questions which arise later. But if it was a mere payment and no entrustment as such, the transaction is not more than a payment. If the person paying intends to repose trust in the other expecting him to dispose of the money in. a particular way, then only there is entrustment. The mere payment by a debtor to a creditor is not entrustment, Mere payment by a debtor to a creditor's agent is not entrustment. I lay stress on the word 'mere.' There may be circumstances from which you can say that it is not a mere payment but was something more than a payment. The trust you can infer either from express words or conduct. It need not be in any specific form of words. If you think that there was a trust in this case, then of course there would be an entrustment and not otherwise. I cannot put it more clearly to you. The word is a common word and I need not say more about it. I have gone so far just to make you understand the exact importance of the question which you have to solve or answer. Only one other thing I wish to say to you. In this case the evidence could not have given you much difficulty, so far as the decision of its truth is concerned, because no witnesses were examined whose veracity was questioned; but if you have any doubt as to what is the reasonable or safe inference to draw from the evidence,

that is, if you entertain any reasonable doubt it means that the prosecution has failed to establish the guilt of the accused and you have to return a verdict of not guilty. Gentlemen, please consider your verdict.

Verdict of the jury.

First Count. - Unanimously not guilty.

Second Count. - Unanimously not guilty.

ORDER

21. In accordance with the verdict of not guilty returned by the jury, the accused is acquitted and his bail bond is cancelled.

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