

CALCUTTA HIGH COURT

Basudeb Patra

Vs

Kanai Lal Haldar

(Harries, C.J. Blank, J.)

17.02.1948

JUDGMENT

Blank, J.

1. This Bule was issued to show cause why the sentence imposed on the accused should not be modified on the ground that the evidence discloses an offence under s, 403 and not under Section 406, Penal Code.

2. The facts in brief are that the complainant is a goldsmith and the accused was his intimate friend. On 15th Baisakh 1352 B. s. (28th April 1945) the accused went to the complainant and told him that the date of the marriage ceremony of his youngest brother, Badal, was very hurriedly fixed for the next day so that there was no time to have ornaments made for the bride, and requested the complainant to "save his prestige", as the learned Magistrate puts it, by lending him some ornaments and promised to return those ornaments as soon as the boubhat ceremony was over. This ceremony is one which takes place after the bride has gone to her husband's house, usually some five or ten days after the marriage ceremony. The complainant gave the accused eight gold churis (bracelets) and a number of other ornaments all of gold, being ornaments belonging to the complainant's daughter. After the boubhat ceremony the accused did not return the ornaments in spite of repeated requests and eventually refused outright to return the ornaments.

3. In view of the nature of the ground on which the rule was issued the facts are no longer open to question. The learned Advocate for the petitioner has endeavoured to convince us that the offence disclosed is one under Section 403, namely, an offence of criminal misappropriation. The learned Advocate has placed before us one reported decision, namely, *Emperor v. Qirji*¹, The head note is in the following terms: The loan of a chattel does not constitute the borrower a person entrusted with the chattel or with, dominion over it within the meaning of Section 406, Penal Code for the borrower is not a trustee but has a beneficial interest given him in the thing lent, The facts however do not appear from the body of the report so that it is impossible to know

whether the facts in that case are comparable with the facts in the present case, far less whether they are on all fours. Moreover on sible to hold that the so-called borrower had any beneficial interest in the property; rather he was a mere custodian, and that for specific purposes.

4. On the broad question raised, namely, the difference between Section 403 and Section 405, Penal Code the answer is clear. The illustrations to Section 403, which are rather statements of principle than mere illustrations, clearly show that the essence of criminal misappropriation of property is that the property comes into the possession of the accused in some neutral manner, whereas the illustrations to Section 405 show equally clearly that the property comes into the possession of the accused either by an express entrusment or by some process placing the accused in a position of trust, for example as given in illus. A, the accused being an executor. On the facts of the pwsent case, which as I have said are not, open to question at this stage, it is quite clear that the ornaments were handed over to the petitioner by the beneficial owner in the confidence that they would be returned to the beneficial owner in due time after having been used for the purpose for which they were handed over. If this is not an entrustment, it is impossible to conceive what can be an entrustment.

5. On the foregoing view, the rule must be discharged. It is accordingly discharged. The petitioner will surrender forthwith to his bail and serve the remainder of his sentence. He will also pay the fine of sloop (one thousand) or in default will suffer rigorous imprisonment for three months as provided in the order moved against. The order for compensation will stand.

Harries, C.J.

6. I agree.

Cases Referred.

¹⁶ Bom. h, B. 1093 : (1 cr. l. J. 1109)