PETITIONER:
KRISHAN KUMAR

Vs.

RESPONDENT:
THE UNION OF INDIA

DATE OF JUDGMENT:
21/05/1959

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
IMAM, SYED JAFFER

CITATION:
1959 AIR 1390 1960 SCR (1) 452

ACT:
Criminal Trial-Misappropriation-Servant receiving goods but failing to account to master--Proof of conversion, if necessary--False explanation by servant, whether can be taken into consideration-Prevention of Corruption, 1947 (II Of 1947), s. 5(1)(c).

HEADNOTE:
The appellant was employed as an Assistant Store Keeper in the Central Tractor Organisation, Delhi. He took delivery of a consignment of iron and steel received by rail for the Organisation and removed them from the railway siding. The goods did not reach the Organisation. The appellant absented himself from duty on the following days and when he was called he gave a false explanation that he had not taken delivery of the goods. The appellant 1 was tried for misappropriation of the goods, under S. 5(1)(c) of the Prevention of Corruption Act, 1947. At the
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trial, he took the defence that he had moved the goods to another siding but this was not accepted and the appellant was convicted. The appellant contended that his conviction was bad as the prosecution had failed to prove that he converted the goods to his own use and did not apply them to the purpose for which he had received them.
Held, that the appellant had been rightly convicted. The offence of misappropriation was established when the prosecution proved that the servant received the goods, that he was under a duty to account to his master and that he had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it was for him to explain the loss; it was not for the prosecution to eliminate all possible defences or circumstances which may exonerate him. The giving of a false explanation was an element which the Court could take into consideration in determining the guilty intention.
Harakrishna Mehtab v. Emperor, A.I.R. (1930) Pat. 209; Larnier v. Rex, (1914) A.C. 221; Emperor v. Santa Singh, A.I.R. (1944) Lah. 338; Emperor v. Chattur Bhuj, (1935) I.L.R. Pat. 108; Rex v. William, (1836) 7 C. & P. 338 and Reg v. Lynch, (1854) 6 Cox. C. C. 445, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 114 of 1957.

Appeal by special leave from the judgment and order dated December 6, 1955, of the Punjab High Court (Circuit Bench) Delhi in Criminal Appeal No. 25-D of 1953, arising out of the judgment and order dated August 27, 1953, of the Court of the special judge at Delhi in Criminal Case No. 3 of 1953.

R. L. Anand, and S. N. Anand, for the appellant.

H. J. Umrigar, and R. H. Dhebar, for the respondent.

1959. May 21. The Judgment of the Court was delivered by

KAPUR J.-This appeal by special leave is brought against the judgment and order of the High Court of the Punjab confirming the order of conviction of the appellant under s. 5(1)(c) of the Prevention of Corruption Act, 1947 (11 of 1947) (hereinafter referred to as the Act). The High Court reduced the sentence of the appellant to nine months' rigorous imprisonment.

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The appellant was employed as an Assistant Store keeper in the Central Tractor Organisation at Delhi and amongst other duties his duty was the taking of delivery of consignment of goods received by rail for Central Tractor Organisation and in that capacity he is alleged to have misappropriated a major portion of a wagon load of iron and steel weighing about 500 Mds. received at Delhi Railway Station from the Tata Iron & Steel Co., Tatanagar, under Railway Receipt No. 039967 dated August 12, 1950. This consignment of goods was taken delivery of on October 2, 1950 at the Lahori Gate Depot. The consignment had been lying at the Railway depot for a considerable time and the Central Tractor Organisation was, before taking the delivery, making efforts to have the wharfage and demurrage charges reduced but it only succeeded in getting a reduction of Rs. 100. The appellant paid Rs. 2,332-4-0 for demurrage by means of credit notes P. N. and P. 0. on October 2, and on the following day he paid a further sum of Rs. 57-3-0 by a credit note P. Q. The prosecution case was that this consignment never reached the Central Tractor Organisation and that the appellant had removed these goods and had misappropriated them. He was absent from work after October 4, 1950, on the alleged ground of illness but he was sent for on October 7, and appeared before the Director of Administration Mr. F. C. Gera and he gave an explanation that he (the appellant) had lost the Railway Receipt along with another Railway Receipt and blank credit notes which had been signed by the Petrol and Transport Officer. He also stated that he did not know that the goods covered by that Railway Receipt had been cleared. After this explanation the appellant was. handed over to the police and a case was registered against him at the instance of Mr. F.C. Gera on October 7, 1950.

On the following day, that is, October 8, 1950, the appellant made a statement to Sub-Inspector Sumer Shah Singh that he had given the goods to Gurbachan Singh who was traced and in the presence of this Sub-Inspector who was not in uniform at the time Gurbachan Singh handed over Rs. 200 to the appellant

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which the Sub-Inspector took possession of and then Gurbachan Singh took the party which consisted of the Sub-

Inspector, Dharam Vir of the Central Tractor Organisation and witness Kartar Singh to the premises, of Amar Singh at Kotia Khan where iron and steel goods were seized and recovery memos prepared. Of the goods covered by the consignment seven packages were later recovered from the Lahori Gate Goods Depot.

The defence of the appellant was that he took delivery of the goods on October 2 and 3 and removed them to another Railway Siding known as Saloon Siding where the goods of the Central Tractor Organisation used occasionally to be stacked in order to save wharfage and demurrage. In his evidence he stated that he removed these goods to the Saloon Siding on October 2 and 3 by means of a truck of the Central Tractor Organisation which was driven by Sukhdev Singh. The appellant produced Sukhdev Singh and two chowkidars in support of his defence that he had removed these goods from the Lahori Gate Depot to the Saloon Siding by means of the truck of Sukhdev Singh and on some on carts. The High Court has not accepted this evidence. Therefore the position comes to this that the goods received in that consignment were, according to the appellant's own showing, removed from the Lahori Gate Depot but it is not proved that they reached' the Saloon Siding and they did not reach the Central Tractor Organisation. There is also the fact that the appellant gave false explanation on October 7, 1950, as to what had happened to the Railway Receipt or the credit notes which he had received from the Central Tractor Organisation and there is the further fact that the appellant was absent from duty from October 4 to October 7 till he was sent for Mr. F.C. Gera.

The prosecution also tried to show that the goods were removed by Gurbachan Singh to Amar Singh's place from where certain iron and steel goods were recovered. Now these iron and steel goods do not tally with the goods which were received from Tatanagar under Railway Receipt No. 039967 and the goods

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seized from Amar Singh's place have not been shown to be of the Tata Iron & Steel Co's manufacture. Therefore the case reduces itself to this that the appellant took delivery of the goods. These goods were removed-from the Lahori Gate Railway Depot by the appellant and they never reached the Central Tractor Organisation. The prosecution sought to connect the goods found at Amar Singh's place with the goods received, taken delivery of and removed by the appellant but they failed to do so because neither the identity of the goods is the same nor has Gurbachan Singh been produced to depose that it was the appellant who asked him to remove the goods for being taken to Amar Singh's place.

In this view of the matter the question for decision is whether the case of the prosecution should be held to be proved that the appellant had misappropriated the goods. It emerges from the evidence of both parties that the goods were received by the appellant and removed by him; and they never reached the Central Tractor Origanisation. Indeed before the High Court it was not disputed that the appellant took delivery of the whole consignment at Lahori Gate Depot and " he was responsible for the actual removal of two considerable portions of the consignment on the 2nd and 3rd of October. "

The offence of which the appellant; has been convicted is s. 5(1) (c) of the Act which is as follows:-

> 5. (1) " A public servant is said to commit the offence of criminal misconduct in the discharge of his duty

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do ";

The word dishonestly' is defined in s. 24 of the Indian Penal Code to be

" Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person. is said to do that thing dishonestly'.

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" Fraudulently has been defined in the Indian Penal Code in s. 25 as follows:

" A person is said to do a thing fraudulently if he does that thing with intent to defraud but, not other-, wise."

Wrongful gain includes wrongful retention and wrongful loss includes being kept out of the property as well as being wrongfully deprived of property. Therefore when a particular thing has gone into the hands of a servant he will be guilty of misappropriating the thing in all circumstances which show a malicious intent to deprive the master of it. As was said by Fazl Ali, J., in Harakrishna Mahtab v. Emperor (1):

" Now I do not mean to suggest that it is either necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was spent or appropriated by the accused; because under the law, even temporary retention is an offence, provided that it is dishonest..... I must point out that the essential thing to be proved in case of criminal breach of trust is whether the accused was actuated by dishonest intention or not. As the question of intention is not a matter of direct proof, the Courts have from time to time laid down certain broad tests which would generally afford useful guidance in deciding whether in a particular case the accused had or had not mens area for the crime. So in cases of criminal breach of trust the failure to account for the money proved to have been received by the 'accused or giving a false account of its use is generally considered to be a strong circumstance against the accused."

The offence under s. 5(1)(c) is the same as embezzlement, which in English law, is constituted when the property has been received by the accused for or in the name or on account of the master or employer of the accused and it is complete when the -servant fraudulently misappropriates that property. (Halsbury's Laws of England, Vol. 10, 3rd Edition, p. 787) In Larnier v. Rex (2) the offence of embezzlement was

(1) A.I. R. (1930) Patna 209. (2) (1914) A.C. 221,

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described as a wilful appropriation by the accused of the property of another. A court of Justice, it was said in that case "cannot reach the conclusion that ,the 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."

So the essence of the offence with which the appellant was charged is that after the possession of the property of the

Central Tractor Organisation he dishonestly or fraudulently appropriated the property entrusted to him or under his control as a public servant and deprived the owner, i.e., Central Tractor Organisation of that property.

It is not necessary or possible in every case to prove in what precise manner the accused person has dealt with or appropriated the goods of his master. The question is one of intention and not a matter of direct proof but giving a false account of what he has done with the goods received by him. may be treated a strong circumstance against the accused person. In the case of a servant charged with misappropriating the goods of his master the elements of criminal offence of misappropriation will be established if the prosecution proves that the servant received the goods, that he was under a duty to account to his master and had not done so. If the failure to account was due to an accidental loss then the facts being within the servant's knowledge, it is for him to explain the loss. It is not the law of this country that the prosecution has to eliminate all possible defences or circumstances which may exonerate him. If these facts are within the knowledge of the accused then he hag to prove them. Of course the prosecution has to establish a prima facie case in-the first instance. it is not enough to establish facts which give rise to a suspicion and then by reason of s. 106 of the Evidence Act to throw the onus on him to prove his innocence. See Harries, C.J., in Emperor v. Santa Singh In the present case the appellant received the consignment of goods which came from Tatanagar. It is admitted that he removed them and it was found by

(1) A.I.R. (1944) Lah. 338 at P. 346.

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the High Court that they never reached the Central Tractor Organisation. He gave an explanation in court which has been found to be false. Before Mr. F. C. Gera he made a statement to the effect that he had lost the Railway Receipt and therefore had never got the delivery of the goods which was also false. In these circumstances, in our opinion, the court would be justified in concluding that he had dishonestly misappropriated the goods of the Central Tractor Organisation. The giving of false explanation is an element which the Court can take into consideration. (Emperor v. Chattur Bhuj (1)). In Rex v. William (2). Coleridge, J., charged the jury as follows :"

> The circumstances of the prisoner having quitted her place and gone off to Ireland is evidence from -which you may infer that she intended to appropriate the money and if you think that she did so intend, she is guily of embezzlement".
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> Again in Reg v. Lynch (3), Moore, J., said:-
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> " You have further the fact that, after getting the money, the prisoner absconded and did not come back till he was in custody. You may infer that he intended to appropriate this money, and if so, he is guilty of embezzlement."

The appllent's counsel relied on certain observations in certain decided cases which, according to his submission, support his contention that the prosecution has to prove not only receipt of goods by the accused but also to prove that he converted them to his own use and did not apply them to the purpose for which he received them. He referred to Ghulam Haider v. Emperor(4) ;In re Ramakkal & Others (5); Bolai Chandra Khara v. Bishnu Bejoy Srimani (6) Bhikchand v. Emperor (7) ;Pritchard v. Emperor (8). So broadly stated

this submission does not find support even from the cases relied upon by the appellant's counsel. They are all decisions on the peculiar circumstances of each case. In Ghulam Haider's case (4)

(1) (1935) I.L.R. 15 Patna 108. (5) A.I.R. 1938 Mad. 172.
(2) (1836) 7 C. & P. 338. (6) A.I.R. 1934 Cal. 425.
(3) 1854 6 Cox. C.C. 445. (7) A.I.R. 1934 Sindh 22.
(4) AI.R. 1938 Lah. 534. (8) A.I.R. 1928 Lah. 382.

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the proposition was qualified by saying that proof of receipt and failure to account " is a long way towards proof of misappropriation but not the whole way." In that case the books in which receipts ought to have been entered were not produced and there was absence of " clear accounts." In Ramakkal's case (1) the accused was the receiver of a currency note found by a child and it was held that' mere intention to misappropriate or even preparation to that end was not an offence. It was a case brought to the High Court at an intermediate stage for quashing the charge and the High Court did not do so. Bolai Chandra Khara's case (2) only emphasised that proof of one element of the criminal breach of trust is not enough for conviction and proof of non-payment of money collected by a gomastha must be given by the prosecution. In Bhikchand's case (3) it was held that it is only on proof of non-payment of money received by the accused that " presumption will arise of misappropriation." In Pritchard's case (4) also the prosecution did not produce the books of account showing nonpayment. All these decisions must be confined to their peculiar facts and in their ultimate analysis do not support the proposition contended for by the appellant.

What the prosecution have proved in this case is that the appellant took delivery of the goods on October 2 and 3. His own statement on oath shows that he removed these goods from the Railway Siding. This removal is also proved by documentary evidence in the form of gate passes. There is also proof of the fact that the goods did not reach the Central Tractor Organisation. The appellant has given an explanation that he removed these goods to the Saloon Siding. This explanation has not been accepted. The prosecution have also proved that the appellant in the first instance gave a false explanation that he had not taken delivery of the goods. He had absented himself from duty and had to be called by the Officer-in-charge. He has set up the defence of removal to the Saloon Siding which was not accepted.

(1) A.I.R. 1938 Mad. 172. (3) A.I.R. 1934 Sindh 22.
(2) A.I.R. 1934 Cal, 425. (4) A.I.R. 1928 Lah. 382.

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The prosecution also set out to prove that the goods were disposed of by the appellant by giving them to one Gurbachan Singh who in turn put these at the premises of Amar Singh and some steel goods were' recovered from there but the prosecution have neither produced Gurbachan Singh nor has it been proved that the goods are part of the consignment which was taken delivery of by the appellant. If under the law it is not necessary or possible for the prosecution to prove the manner in which the goods have been misappropriated then the failure of the prosecution to prove facts it set out to prove would be of little relevance. The question would only be one of intention of the appellant and the circumstances

which have been above set out do show that the appellant in what he has done or has omitted to do was moved by a guilty mind.

In our opinion the appellant was rightly convicted and we would therefore dismiss this appeal.

Appeal dismissed.