

*Present* : Pathirana J., Ismail J. and Weeraratne J.

H. SUMANADASA *v.* THE STATE

S.C. 26/74—D.C. *Balapitiya*, 465/53548

*Criminal Law—Criminal breach of trust—essential elements to be proved—Penal Code S. 329.*

The appellant, the manager of a Wholesale Co-operative Store, was charged with and convicted of criminal breach of trust of goods entrusted to the Co-operative Society.

*Held* : That in a prosecution for criminal breach of trust, the fact that a shortage of goods has occurred is by itself not evidence from which a dishonest misappropriation can be inferred. The prosecution must eliminate the possibility that the shortage could have occurred by any other means except dishonest misappropriation.

**A**PPPEAL from a judgment of the District Court, *Balapitiya*.

*Nimal Senanayake* with *Rohan Perera* for the Accused—Appellant.

*Upawansa Yapa*, State Counsel, for the Attorney-General.

July 14, 1975. PATHIRANA, J.—

The appellant was the Manager of the Maha Edanda Wholesale Co-operative Store. He and the 2nd accused, the bill clerk, were charged with having between 29th April, 1967 and 4th June, 1967, committed criminal breach of trust of goods to the value

of Rs. 9,513.81 entrusted to them by the Co-operative Society, an offence punishable under Section 329 of the Penal Code. The major item in this shortage was 131 cwts. and 29 lbs. of sugar valued at Rs. 8,767.58

The 2nd accused was acquitted after trial. The 1st accused was found guilty of the charge and sentenced to 18 months' rigorous imprisonment. The appeal is against this conviction and sentence.

It would appear according to the evidence that this particular Co-operative Society drew its supplies, including sugar, from the main Co-operative Union. The quantities of sugar etc, supplied to the accused's Co-operative Store are reflected in "D" forms. These goods are brought from the main Union Co-operative Store and stored at the accused's Co-operative Store for distribution to retail Co-operatives.

The prosecution, in order to establish that there was a shortage of 131 cwts. and 29 lbs. of sugar, had to rely on these "D" forms and also on the Analysis Report, P5, dated 2.6.1967, the latter of which had been signed by the Manager but in fact prepared by the bill clerk, the 2nd accused, who is now acquitted. On 3rd June, 1967 the 1st accused was absent on leave. On a checking and audit carried out on 4th June, 1967, after deducting 8 cwts. and 1 lb. of sugar sold on 2nd June, 1967 there should have been with the Manager on 4.6.1967, 215 cwts. and 29 lbs of sugar but a physical check revealed only 84 cwts. at the accused's store, indicating a shortage of 131 cwts. and 29 lbs.

In a prosecution of criminal breach of trust, in view of the case reported in *The King v. Pulle* 12 N.L.R. 63, the fact that a shortage has occurred is by itself not evidence from which a dishonest misappropriation can be inferred. In this case, the prosecution must eliminate the possibility that the shortage could have occurred by any other means, except dishonest misappropriation. The prosecution is unable to prove any direct evidence of dishonest intention on the part of the accused of misappropriation of any of the goods nor are there any circumstances from which the dishonest element of misappropriation can be inferred. On the other hand there is evidence as shown in P11a, (d) (e) (f) (g) (h) (k) (l) (m) and (n) that certain quantities of sugar from the main Union Co-operative Stores were taken charge of by the drivers of the Co-operative Society and not signed by the Manager in respect of these deliveries to the accused's store.

Even the document P5, dated 2.6.1967, has been drawn up, not by the accused, but by the 2nd accused and this accused has only signed that document. This document is based on the stock

as revealed in the "D" forms. The prosecution has also not produced the Analysis Report for 3.6.1967 to show the balance stock in hand. On this day the appellant was on leave.

On the totality of the evidence we find that there is neither direct nor circumstantial evidence to indicate that although there has been a shortage that the accused either misappropriated any of these articles or acted with a dishonest intention in relation to the shortage that has occurred.

In all the circumstances of this case, we do not think it is safe to allow the conviction of the appellant to stand on the evidence. We accordingly give the benefit of the doubt to the accused.

The appeal is allowed. The conviction and sentence are set aside and the appellant is acquitted.

ISMAL, J.—I agree.

WEERARATNE, J.—I agree.

*Appeal allowed.*

