

1948

Present : Basnayake J.

CHELLAPPAH, Appellant, and CHELLIAH, Respondent.

*S. C. 1,271—M. C. Batticaloa, 4,213.*

*Criminal breach of trust—Retention of property in bona fide assertion of a claim—Key of Co-operative Stores—Refusal to hand over to new president—Validity of election disputed—Penal Code, section 388.*

Accused who was the president of a Co-operative Stores Society was not re-elected at the last meeting. The accused and others disputed the validity of the election of the new president and the accused refused to hand over to him the key of the premises of the Society. The accused was convicted of criminal breach of trust of the key.

*Held*, that the ingredients of the offence of criminal breach of trust had not been established. The retention of property in the *bona fide* assertion of a claim to retain it does not amount to criminal breach of trust.

**A**PPEAL from a judgment of the Magistrate, Batticaloa.

*G. E. Chitty*, with *H. Wanigatunga*, for the appellant.

*C. V. Ranawake*, for the respondent.

*Cur. adv. vult.*

February 27, 1948. BASNAYAKE J.—

The appellant was convicted of the offence of criminal breach of trust of the key of premises No. 27, 28, and 29, Bar Road, Kodamunnai, in Batticaloa, and sentenced to pay a fine of Rs. 50.

It appears from the evidence that the appellant who is a teacher in a Government School was till May 25, 1947, the president of the Kodamunnai Co-operative Stores Society. At the Annual General Meeting of the Society held on that date the appellant was not re-elected. There

seems to have been some dissatisfaction over the proceedings of that meeting and the appellant and others disputed the validity of the new election. The appellant therefore refused to hand over, to the new president, the stores as well as the key of the premises at which the business of the Co-operative Society was conducted. It is also in evidence that the dissentients were in correspondence with the Registrar of Co-operative Societies who intervened in order that the public may not be denied essential supplies pending a settlement of the dispute. The appellant does not deny that he did not part with the key of the premises above mentioned till August 4, 1947. He claims that he was under no obligation to hand it over to the newly elected president. He asserted that the landlord of the premises was entitled to it as he had given notice of termination of the tenancy of the Society. The key was eventually handed to the accused's brother, the brother-in-law and agent of the landlord. The evidence as to how the appellant came into possession of the key is vague and indefinite nor is there anything to indicate that the appellant was under a legal obligation to hand over the key to the incoming president who claimed it. No evidence has been led to show that the President of the Society was the person entitled to hold the key of the Society's business premises.

On this evidence I am not prepared to hold that the offence of criminal breach of trust as defined in section 388 of the Penal Code has been committed.

The essential ingredients of an offence against that section are that—

- (a) the accused was entrusted with the property or with dominion over the property referred to in the charge,
- (b) he misappropriated or converted to his own use, or used or disposed of the property in respect of which the charge is laid,
- (c) he did so dishonestly,
- (d) he did so in violation of any direction of law prescribing the mode in which such trust was to be discharged or in violation of any legal contract, express or implied, which he has made touching the discharge of such trust, or that he wilfully suffered any person to do any of the acts mentioned in (b), (c) and (d).

None of the above ingredients have been established against the appellant. The retention of property in the *bona fide* assertion of a claim to retain it as in this case does not in my opinion bring a person within the ambit of section 388 of the Penal Code.

I set aside the conviction and sentence and acquit the accused.

*Accused acquitted.*

