

1963

*Present : Weerasooriya, S.P.J.*

K. A. D. V. S. BASNAYAKE, Petitioner, *and* INSPECTOR  
OF POLICE, P. I. B. (C), Respondent

*S. C. 104/63—Application for Revision in M. C. Colombo, 24753/B*

*Criminal breach of trust—Requirement of proof of entrustment—Penal Code, ss. 388,  
389.*

In the absence of entrustment there can be no criminal breach of trust committed in respect of a sum of money received as security by an employer from an employee.

**A**PPPLICATION to revise an order of the Magistrate's Court, Colombo.

*Neville Wijeratne*, for the accused-petitioner.

*N. B. D. S. Wijesekera*, Crown Counsel, for Attorney-General.

September 13, 1963. WEERASOORIYA, S.P.J.—

It is quite clear that there has been no entrustment of the sum of Rs. 2,000 paid to the accused by the virtual complainant Rodrigo. In the absence of entrustment there can be no criminal breach of trust committed in respect of that sum.

The accused was the Post-Mistress at a Sub-Post Office, where she had employed Rodrigo as a "substitute". In connection with his employment Rodrigo paid the accused a sum of Rs. 2,000 as security. The conditions subject to which the security was paid are set out in the document P3 signed by the accused. Although these conditions are not exhaustive of the rights and liabilities of the parties, they provide for the payment by the accused of interest on the money at 5 per cent. per annum and also for the refund of the full amount to Rodrigo on his resigning from his post and giving three months' notice to the accused.

It would seem, therefore, that subject to these conditions the accused was free to utilise the money. The fact that she delayed to return the money (which has since been paid by her in full to Rodrigo) did not have the effect of converting what was a purely civil liability into one of a criminal nature.

The order made under section 325 of the Criminal Procedure Code binding over the accused to be of good behaviour is set aside and the accused acquitted.

*Application allowed.*

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