



2023/KER/67288

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.SOMARAJAN

FRIDAY, THE 13TH DAY OF OCTOBER 2023 / 21ST ASWINA, 1945

CRL.REV.PET NO. 1177 OF 2005

AGAINST THE JUDGMENT dated 24/11/1994 IN CC 60/1992 OF CHIEF

JUDICIAL MAGISTRATE'S COURT, THIRUVANANTHAPURAM

AGAINST THE JUDGMENT dated 4/1/2005 IN CRA 345/1994 OF II

ADDITIONAL SESSIONS COURT, THIRUVANANTHAPURAM

PETITIONER/APPELLANT/1ST ACCUSED:

RAJAPPAN ASSARI,

BY ADV SRI.PIRAPPANCODE V.S.SUDHIR

RESPONDENT/RESPONDENT:

STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
OFFICE OF THE ADVOCATE GENERAL, HIGH COURT BUILDING,
ERNAKULAM, (DETECTIVE INSPECTOR, CRIME BRANCH CID,
(SPECIAL SQUAD NO.I), THIRUVANANTHAPURAM.

SR PP SRI C N PRABHAKARAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR HEARING ON
13.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



CR

ORDER

This revision is by accused No.1, who was convicted for the offence under Section 406 IPC by both the trial Magistrate and the first appellate court.

2. The prosecution case is that the accused No.1 along with other accused were conducting a partnership business in the name of M/s Rajappan Achary and had accepted fixed deposit from different persons offering high interest @ 24% and after getting the deposit, misappropriated the same for their own use. PW3 is one among the victim, who set the criminal law in motion on the allegation of misappropriation of a deposit of Rs.1,54,345/-. It is the pensionary benefit received by PW3 on his retirement. Ext.P4 and P5 are the passbook and Ext.P6 and P7 are the photocopies of the cheques, whereby the abovesaid amount was deposited. He was paid an amount of Rs.3,300/- towards interest. The principal amount and the interest accrued thereafter was not paid as agreed. Both the courts below found that the accused



No.1/appellant is guilty of offence punishable under Section 406 IPC and convicted thereunder and sentenced to undergo rigorous imprisonment for a period of three years by the trial Magistrate. But it was modified by the first appellate court by imposing a lesser sentence of fine of Rs.1,75,000/-, in default, to undergo simple imprisonment for six months. Both the trial court and the first appellate court acquitted accused No.1 of the offences punishable under Section 420 and 120B IPC. It is against the concurrent finding of conviction of accused No.1 for the offence punishable under Section 406 IPC and the sentence imposed, he came up in revision.

3. The material question raised is pertaining to the criminal liability that can be extended under Section 406 IPC when there is neither express nor implied trust and whether both the courts below are justified in convicting the accused for the said offence without satisfying the existence of either express or implied trust.

4. A mere existence of a commercial transaction and deposit of amount with any person or institution would



not attract criminal breach of trust as defined under Section 405 of Indian Penal Code. There should be an express or implied trust of property or entrustment for any specific purpose so as to attract the criminal responsibility punishable under Section 406 IPC. The Explanation No. 1 and 2 incorporated by Act 40 of 1973 with effect from 1/11/1973 is an exception to the abovesaid general principle. Hence, except the case which would fall under Explanation 1 and 2 attached to Section 405 IPC, no criminal liability can be extended for any breach of trust, unless there is an entrustment of property or dominion over the property for any specific purpose. A deposit of amount with a person, if it is intended for keeping the same without the liability of interest or any premium payable on that account would attract the criminal liability under Section 406 IPC, if it was dishonestly misappropriated, converted or dispossessed in violation of any direction prescribing the mode of its user or any legal contract. On the contrary, when the deposit is for the purpose of incurring interest, failure to return the amount as



agreed would not canvass the criminal liability under Section 406 IPC, unless it constitutes entrustment of the said amount or any dominion over the property for any specific purpose either express or implied or to utilise the periodical interest for any such specific purpose, either express or implied. In short, a mere deposit of amount with any banker, financial institution or any person, if it is for getting interest, unless satisfies the abovesaid cardinal ingredients, cannot be brought under the purview of criminal breach of trust as defined under Section 405 IPC and no criminal liability can be fastened for the offence punishable under Section 406 IPC. The Apex Court in **Deepak Gaba and Others v. State of Uttar Pradesh and Another [(2023) 3 SCC 423]** had laid down the ingredients, which would constitute the offence punishable under Section 406 IPC in terms of Section 405 IPC as under :

"(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly use or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion,



use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."

5. In the instant case, what is involved is the deposit of certain amount with the accused on a specific condition that it will be returned with periodical interest thereof, hence failure to comply with the agreement/undertaking to return the amount as agreed would not attract the offence punishable under Section 406 IPC. Hence, the finding of guilt of accused No.1/appellant for the offence under Section 406 IPC suffers material infirmity, liable to be set aside. The accused No.1 is found not guilty of the said offence. The conviction and sentence for the said offence are set aside and the accused No.1/appellant is acquitted and set at liberty. The bail bond, if any executed will stand cancelled.

The Criminal Revision Petition will stand allowed accordingly.

Sd/-

P. SOMARAJAN
JUDGE