

# VERDICTUM.IN



2024:KER:76979

CrI.R.P.1006/2024

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

THURSDAY, THE 17<sup>TH</sup> DAY OF OCTOBER 2024 / 25<sup>TH</sup> ASWINA, 1946

CRL.REV.PET NO. 1006 OF 2024

CRIME NO.250/2013 OF Kasaragod Police Station, Kasargod

AGAINST THE JUDGMENT DATED 21.11.2023 IN CA NO.197 OF 2019 OF  
ADDITIONAL DISTRICT COURT & SESSIONS COURT - III, KASARAGOD  
ARISING OUT OF THE JUDGMENT DATED 06.09.2019 IN CC NO.879 OF 2014  
OF CHIEF JUDICIAL MAGISTRATE, KASARAGOD

REVISION PETITIONER/APPELLANT/ACCUSED:

SURENDRA KUMAR,  
AGED 50 YEARS,  
S/O BABU, K.B HOUSE, MAYKAP, KUMBLA, EDANAD VILLAGE,  
KUMBLA, MANJESHWAR TALUK, KASARGOD, PIN - 671321.

BY ADVS.  
P.K.SUBHASH  
DANIC ANTONY

RESPONDENT/RESPONDENT:

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, PIN - 682031.

SENIOR PUBLIC PROSECUTOR SRI RENJIT GEORGE

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 27.09.2024, THE COURT ON 17.10.2024 ORDERED THE FOLLOWING:



**“C.R”**

***A. BADHARUDEEN, J.***

=====  
*Crl.R.P.No.1006 of 2023*  
=====

*Dated the 17<sup>th</sup> day of October, 2024*

***ORDER***

The sole accused in C.C.No.879/2014 on the files of the Chief Judicial Magistrate, Kasaragod, who is aggrieved by the conviction and sentence imposed on 06.09.2019 and its modification by the appellate court as per the judgment dated 21.11.2023 in Crl.Appeal No.197/2019 on the files of Additional Sessions Court-III, Kasaragod, has filed this Criminal Revision Petition under Sections 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short).

2. Heard the learned counsel for the revision petitioner/accused and the learned Public Prosecutor in detail. Perused the verdicts under challenge.

3. The prosecution case is that the accused herein



committed offences punishable under Sections 406, 465, 468, 471 and 420 of the Indian Penal Code ('IPC' for short) and the precise allegation is that the accused, who is none other than the husband of the second witness, obtained 50 sovereigns of gold ornaments gifted to her by her mother during marriage with promise to keep the same in a bank locker. In violation of the entrustment, he had pledged the same in Muthoot Fincorp, Kasaragod, without the consent of the second witness and thereby committed the offence of breach of trust. The other allegation is that he also created forged document for the said purpose and used the same as genuine and thereby cheated the second witness.

4. After investigation, the police laid charge for the said offence and the learned Magistrate took cognizance of the same and on completion of pre-trial formalities, tried the matter. PW1 to PW7 were examined and Exts.P1 to P5 were marked. No defence evidence was adduced. Finally, on appreciation of evidence, the learned Magistrate found that the prosecution successfully proved commission of offence punishable under Section 406 of IPC by the accused while acquitting the accused for the other offences. Accordingly, he was convicted and



sentenced to undergo simple imprisonment for six months for the offence punishable under Section 406 of IPC.

5. The accused filed Crl.Appeal No.197/2019 challenging the verdict of conviction and sentence. Similarly, the victim also filed Crl.Appeal No.17/2020 challenging the same verdict whereby the accused was acquitted for the other offences. The learned Sessions Judge considered both the appeals together and finally on re-appreciation of evidence, found that the conviction imposed against the accused/revision petitioner for the offence punishable under Section 406 IPC is sustainable and also found that his acquittal for the other offences also as sustainable. But thereby Crl.Appeal No.197/2019 at the instance of the accused was dismissed, while partly allowing Crl.Appeal No.17/2020 filed by the victim and modifying the sentence as under:

*“Crl.Appeal No.17/2020 is partly allowed by modifying the sentence as follows:*

1. *That the accused shall undergo simple imprisonment for six months for commission of offence under Section 406 of IPC.*

2. *That the accused shall also pay compensation of Rs.5,00,000/- to the petitioner IDSI six months*



*under Section 357(3) Cr.P.C. If compensation is realized it shall be paid to PW1.*

3. *Set off if any is allowed against substantive sentence.*

*Crl.Appeal No.197/2019 is dismissed.”*

6. While assailing the concurrent verdicts of conviction and modified sentence imposed by the appellate court, the learned counsel for the accused argued at length to substantiate that the offence punishable under Section 406 of IPC is not made out from the evidence and, therefore, the trial court as well as the appellate court went wrong in finding that the appellant committed offence punishable under Section 406 of IPC. The learned counsel for the accused also challenged the sentence imposed by the trial court for 6 months and also the modified sentence imposed by the appellate court. Going by the verdict of the trial court, the trial court has given emphasis to the evidence of PW1 supported by the evidence of PW2, the mother of PW1, apart from the evidence of PW3, the manager of Muthoot Fincorp, to hold that the accused, after getting entrustment of the 50 sovereigns of gold ornaments as a trustee with offer to keep the same in a bank locker, dishonestly pledged the gold ornaments and thereby committed the offence punishable under Section 406 of IPC. Evidence of



PW1 is that the marriage between the accused and PW1 was solemnised on 18.12.2009. At the time of marriage, 50 sovereigns of gold ornaments were entrusted as gift. The above gold ornaments were entrusted in the custody of the accused to keep the same in a bank locker with undertaking to return the same when demanded. When PW1 asked the gold ornaments back, the accused told her that gold ornaments were pledged in Muthoot Fincorp and the above pledging was without her knowledge or consent. Thereafter the marital relationship was broken and she returned back to her parental home. There was an agreement executed in between the accused and PW1, due to intervention of the mediators, and as per the agreement the accused admitted pledging of gold ornaments without her consent. Ext.P1 series are the photographs of the gold ornaments so entrusted and the same was identified by PW1. That apart, the gold ornaments pledged with Muthoot Fincorp in custody of PW3 also produced before the court and identified the same and the same were returned after comparing the same with Ext.P1 series. PW2, the mother of PW1, also supported evidence of PW1 about gifting of gold ornaments to PW1 and entrustment of the same with accused/revision petitioner and pledging of the ornaments



by the accused. Pledging of gold ornaments proved by evidence of PW3 manager of Muthoot Fincorp also on production of the gold ornaments before the court after preparation of search list during investigation regarding the same. Even though PW1 to PW3 were cross examined, nothing extracted to disbelieve their version. PW5 Investigating Officer found that the accused herein committed offence punishable under Section 406 of IPC. In the decision reported in [(2003) 7 SCC 399], *Kailash Kumar Sanwalia v. State of Bihar* and also in *S.W.Palanitkar v. State of Bihar*, [2002 SCC (Cri) 129], the Apex Court considered the ingredients to constitute the offence of criminal breach of trust as under:

(i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so as to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.



7. It is true that a mere breach of contract doesn't constitute an offence under Section 406 IPC and the ingredients are to be satisfied to hold that the accused had committed offence under Section 406 of IPC. In the instant case the prosecution case is that the mother of PW1 gifted 50 sovereigns of gold ornaments to PW1 and the same was entrusted by PW1 to the accused for keeping the same as a trustee in a bank locker. The accused instead of keeping the gold ornaments in a bank locker, dishonestly misappropriated and converted that property for his own use by pledging the same in Muthoot Fincorp and thereby violated the trust and thereby PW1 suffered loss out of the same. Thus, in the instant case, the ingredients to attract offence under Section 406 of IPC is fully made out. In such a case, there is no reason to disbelieve that the accused committed the offence punishable under Section 406 of IPC. In the decision in *Rashmi Kumar v. Mahesh Kumar Bhada*, [(1997) 2 SCC 397 : 197 SCC (Cri) 415] the Apex Court considered the question of entrustment of stridhana property with the dominion of that property to the husband and held that when the husband or any other member of the family dishonestly misappropriates stridhana or converts it to his own use,





he is guilty for criminal breach of trust. Thus it appears that the trial court rightly found that the accused is guilty for the offence punishable under Section 406 of IPC.

8. The appellate court re-appreciated the evidence meticulously and concurred the finding of the trial court. Even though the appellate court dismissed the appeal at the instance of the accused, allowed the appeal in part and modified the sentence by directing payment of Rs.5 lakh and on failure to return of gold ornaments and on failure to pay the fine, the accused has to undergo default imprisonment for six months.

9. It is argued by the learned counsel for the revision petitioner that the punishment imposed by the trial court and modified by the appellate court is on higher side and the same would require modification. Going by the punishment provided for the offence punishable under Section 406 IPC, the same is imprisonment of either description for a term which may extend to three years, or with fine, or with both. In the instant case, nothing available to see that the misappropriated gold ornaments pledged by the accused were returned to PW1. This is the context in which the learned appellate Judge confirmed 6



months imprisonment imposed against the revision petitioner and also directed to pay compensation to the tune of Rs.5 lakh. Having considered the factual matrix of the case, there is no reason to find that the sentence imposed by the trial court and modified by the appellate court is on higher side on the facts of the given case, where PW1, in fact, sustained loss of 50 sovereigns of gold ornaments.

10. In view of the matter, this Revision Petition is liable to fail and is accordingly dismissed.

Registry shall forward a copy of this order to the jurisdictional courts for information and for further steps.

*Sd/-*

**(A. BADHARUDEEN, JUDGE)**

*rtr/*