

Kaushalya Meherani and ors. Vs. State

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Court : Orissa

Decided On : May-04-1963

Reported in : AIR1964Ori93; 29(1963)CLT579; 1964CriLJ421

Judge : R.L. Narasimham, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 406

Appeal No. : Criminal Revn. No. 303 of 1962

Appellant : Kaushalya Meherani and ors.

Respondent : State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : P.C. Chatterji, ;Ranjit Mohanty and ;S.K. Ray, Advs.

Disposition : Petition allowed

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a revision against the appellate judgment of the Sessions Judge of Bolangir maintaining the conviction of the petitioner under Section 406 I. P. C. and the sentence of fine passed on him for that offence by a first class Magistrate of Bolangir.

2. The prosecution case against the petitioner, which was believed by the two lower courts, was that the complainant (P. W. 1) had pledged a pair of gold ornaments (Karnaphula and Dandi) and a pair of silver bangles (Kaliari) for a sum of Rs. 260/- with one Tila Meher sometime in 1958. As he was unable to pay interest on the same, he executed another document for Rs. 301/- on 12-11-58. On 6-7-60 he went to the house of the petitioner for redeeming the ornaments and paid him Rs. 311/- (including the principal sum of Rs. 260/- and interest of Rs. 51/-). The petitioner thereupon placed the ornaments in the hands of P. W. 1. But when P. W. 1 examined the same, he found that they had been used in the meanwhile. Hence he expressed his unwillingness to pay interest, whereupon the petitioner is alleged to have snatched away the ornaments from his hand and also refused to pay back the sum of Rs. 311/- paid to him : by P. W. 1. Then the matter was reported to the authorities after failure to settle the matter amicably.

3. On the facts as stated I think this is a case of civil nature as the necessary dishonest intention, which is a necessary element for criminal offence under Section 406 I. P. C., is not made out. The very fact that, the petitioner handed over the gold ornaments to P. W. 1 when he paid him the sum of Rs. 311/-, shows that he had no dishonest intention whatsoever. It was only subsequently when the complainant (P. W. 1) expressed his unwillingness to pay the interest alleging that the ornaments have been used in the meanwhile that the petitioner refused to part with the money and took away the ornaments from the hands of the complainant (P. W. 1). This subsequent conduct of the petitioner, in not returning either the sum of Rs. 3117- received by him or the ornaments to the complainant may furnish a cause of action for recovery in a civil court. But in the circumstances of this case, it would not be proper to hold that there was the necessary dishonest intention for a criminal offence. Similarly, his subsequent conduct in repudiating the transaction during the criminal trial has no bearing on dishonest intention at the time of the alleged transactions. The revision is, therefore, allowed. The conviction and sentence are set aside and the petitioner is acquitted. Fines, if paid, shall be refunded.

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