

an offence under this section.³¹⁹ Where the wife was turned out of the house by the husband who refused to return the 'streedhan' despite repeated requests and persuasions, it was held that criminal breach of trust is a continuing offence and fresh cause of action accrues to the wife till the return of the property.³²⁰

It has been held that taking away by the mother-in-law of gifts and cash offerings to the wife at the time of her marriage amounts to misappropriation of *streedhan*. It was further held that offering of 25 lakh rupees for grant of divorce by mutual consent as compensation to the complainant did not *per se* constitute any offence under the section. Any gift made to the bridegroom or her parents, whether in accordance with any custom or law also did not constitute an offence under the section. The proceedings were directed to be continued only against the mother-in-law.³²¹

[s 406.11] Pledgee.—

where, in derogation of the statutory requirement of giving reasonable notice before disposing of the articles pledged, the pledgee sells them and the price obtained is also not commensurate with the real value of the goods, the Delhi High Court expressed the opinion that it may amount to criminal breach of trust.³²²

[s 406.12] Vehicle delivered under hire-purchase.—

When hirer himself committed default by not paying the instalments and under the agreement, the appellants have repossessed the vehicle, the respondent-hirer cannot have any grievance as the vital element of 'dishonest intention' is lacking. The element of 'dishonest intention' which is an essential element to constitute the offence of theft cannot be attributed to a person exercising his right under an agreement entered into between the parties as he may not have an intention of causing wrongful gain or to cause wrongful loss to the hirer.³²³ Where a person to whom a truck was delivered under hire-purchase scheme, altered the identity of the vehicle by tampering with numbers, it was held that an offence under section 406 was made out. The accused was convicted to four years R1.³²⁴

[s 406.13] Default in refunding share application money.—

A person, who makes a public issue for inviting applications for shares and who becomes liable to refund the share application money because of refusal by a stock exchange to approve his securities and fails to refund the money, can be prosecuted for criminal breach of trust.³²⁵

[s 406.14] Money saving scheme.—

The petitioner was running money saving scheme. He used to collect money from the members for different committees and disbursement to them. The disbursement was stopped because of non-payment by members of the amount due. It was held that there was no dishonest intention to misappropriate money and offences under sections 406 and 420 were not made out.³²⁶

[s 406.15] Re-payment of loan.—

Where the accused sold machinery and goods which had been hypothecated to bank and the amount not paid to bank for repayment of loan, Court held that dispute in question is of civil nature and the trial Court justified in dismissing complaint under section 203.^{327.}

4. 'Legal contract express or implied'.—Violation of a contract in order to amount to criminal breach of trust has to be in respect of a legal or valid contract, and not one for a criminal purpose, e.g., purchase of stolen property, etc.^{328.}

[s 406.16] CASES.—Breach of trust.—

Where a retired employee of a company wrongly occupied the Company quarters for more than 18 years, dismissal of complaint under [section 630 Companies Act, 2013](#) and [section 406 IPC, 1860](#) on technical grounds by the magistrate was held untenable.^{329.} The complaint does not contain the averment that Rs.5 lakhs was entrusted to the appellant, either in his personal capacity or as the Chairman of MSEB and that he misappropriated it for his own use. The said amount was deposited by the complainant company with MSEB and there is nothing in the complaint which may even remotely suggest that the complainant had entrusted any property to appellant or that the appellant had dominion over the said money of the complainant, which was converted by him to his own use, so as to satisfy the ingredients of [section 405 IPC, 1860](#). Proceedings quashed.^{330.} Where the accused took a jeep on loan for a specific purpose and for a particular period but refused to return it on demand by the complainant after the purpose had been served and the stipulated period was long over, it was held that there was a *prima facie* case of criminal breach of trust and as such the complaint could not be thrown out.^{331.}

[s 406.17] Refusal to return *streedhan*.—

Where the husband and the father-in-law turned out a Hindu woman from the marital home and refused to return her ornaments, money and clothes despite repeated demands, it was held that an offence of criminal breach of trust as defined in [sections 405 and 406, IPC, 1860](#), was *prima facie* made out and the case could not be quashed. [Section 27 of the Hindu Marriage Act, 1955](#) and [section 14 of the Hindu Succession Act, 1956](#), nowhere provide that the concept of *streedhan* is abolished or that a remedy under the criminal law is not available.^{332.}

[s 406.18] Violation of legal contract.—

where there is a mere breach of the contract terms, such as default in payment of an instalment, a liability of civil nature only would arise.^{333.} Where a contractor was given cement for construction work by the Minor Irrigation Department, Government of Bihar under a specific agreement that he would return unused cement but instead of doing so he sold the cement to outsiders, it was held a fiduciary relationship had been clearly established in the instant case and the contractor was liable to be convicted under [section 406, IPC, 1860](#).^{334.}

[s 406.19] Acting contrary to directions of person entrusting money.—

One of the accused persons, a registered stock broker, purchased mutual fund securities in the name of a bank and later on sold them. The sale was contrary to the terms subject to which securities were issued (sale before completion of lock-in period). But otherwise there was no violation of any statutory provisions. Neither the name lending bank nor the issuing institution objected to the sale. It was held that the accused was the real owner of the securities. There was no breach of trust on his part because the property sold was his own. The securities were purchased by another financial institution and the other accused was an officer of that institution. He was also acquitted of similar charges. He could not be convicted under the [Prevention of Corruption Act, 1988](#) for the reason that purchase of securities to the tune of 33 crores could not have been done without authorisation from higher authorities. The transaction was also legal.^{335.}

[s 406.20] Civil wrong when becomes crime.—

A distinction must be made between a civil wrong and a criminal wrong. When dispute between the parties constitute only a civil wrong and not a criminal wrong, the Courts would not permit a person to be harassed although no case for taking cognizance of the offence has been made out^{336.} An act of breach of trust *simpliciter* involves a civil wrong of which the person wronged may seek his redress for damages in a civil Court but a breach of trust with *mens rea* gives rise to a criminal prosecution as well. The element of 'dishonest intention' is therefore, an essential element to constitute the offence of Criminal Breach of Trust.^{337.} Breach of trust may be basically a civil wrong, but it gives rise to criminal liability also when there is *mens rea*.^{338.} The difference between the two lies in dishonest intention.^{339.} If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.^{340.} A civil suit was filed alleging negligence and breach of contractual obligations. The Court said that a breach of contract *simpliciter* does not constitute any offence. The criminal complaint must disclose the ingredients of the offence. For ascertaining the *prima facie* correctness of the allegations the Court can look at the correspondence between the parties and other admitted documents. Criminal proceedings should not be encouraged when they are found to be *mala fide* or otherwise an abuse of the process of the Court.^{341.} Merely because a civil claim has been raised by the complainant regarding the breach of agreement, it cannot prevent him from initiating criminal proceedings.^{342.} Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Having regard to the relevant documents including the trust deed as also the correspondence following the creation of the tenancy, the submissions advanced on behalf of the parties, the natural relationship between the settlor and the trustee as mother and son and the fall out in their relationship and the fact that the wife of the co-trustee was no more interested in the tenancy, it must be held that the criminal case should not be continued.^{343.}

[s 406.20.1] Matters under special laws.—

The act of taking away dowry articles by the husband and in-laws, being in violation of special legislation contained in the [Dowry Prohibition Act, 1961](#), such offence should be tried under the special legislation rather than under the general provisions of [IPC](#),

1860. The Supreme Court also pointed out that if any article was given by way of dowry, the question of its entrustment on behalf of wife would not arise.^{344.}

[s 406.21] Arbitration clause.—

The presence of an arbitration clause between the parties does not bar criminal proceedings under section 406. Both civil and criminal proceedings can be there side by side.^{345.}

[s 406.22] Period of Limitation.—

The Punjab and Haryana High Court is of the view that the offence under the section is of continuing nature. Every day a fresh cause of action keeps accruing until the property is actually returned.^{346.}

[s 406.23] Sanction for prosecution.—

In a charge against a Government servant under the section read with section 120B (conspiracy), sanction for prosecution is not necessary.^{347.} Since transaction for offences involved took place in a foreign country, sanction from Central Government is a must to enable Court to take cognizance of offences and proceed further in case. The High Court held that trial has proceeded without sanction and, thus, rendering it invalid, and in course of such invalid trial magistrate passed order for further investigation, which too was invalid.^{348.}

[s 406.24] Compromise.

Compounding was denied on the ground that section 406 not compoundable as amount involved was more than Rs. 250. The Supreme Court held that it is perhaps advisable that in disputes where the question involved is of a purely personal nature, the Court should ordinarily accept the terms of the compromise even in criminal proceedings as keeping the matter alive with no possibility of a result in favour of the prosecution is a luxury which the Courts, grossly overburdened as they are, cannot afford and that the time so saved can be utilized in deciding more effective and meaningful litigation. This is a common sense approach to the matter based on ground of realities and bereft of the technicalities of the law.^{349.}

[s 406.25] Jurisdiction.—

The *Streedhan* was handed over at one place and misappropriated at another place. It was held that there was no jurisdiction at the place where it was entrusted because at that time there might have been no intention to misappropriate. Thus jurisdiction was only at the place where misappropriation was committed.^{350.}

[s 406.25.1] Entrustment of cheque.—

A cheque has been held to be a property within the meaning of section 405. A blank cheque was issued to a person who misappropriated the same or used it for a purpose for which it was not given. The case under section 406 was held to have been made out.³⁵¹.

[s 406.26] Dishonour of cheque.—

There were regular business dealings in the course of which payments were made by cheques. One such cheque was dishonoured for which the criminal complaint was instituted. There was nothing in the complaint to show that the intention was to cheat the complainant by giving him the cheque as a camouflage. The transaction under which the cheque was given was a mere agreement to sell without any actual transfer of goods. Thus the offence of cheating or of criminal breach of trust was not made out. The complaint was quashed.³⁵².

286. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646.
287. *CM Narayan*, AIR 1953 SC 478 [LNIND 1952 SC 159] : 1954 Cr LJ 102 .
288. *Velji Raghavji Patel*, 1965 (2) Cr LJ 431 : AIR 1965 SC 1433 [LNIND 1964 SC 350] .
289. *Anil Saran v State of Bihar*, AIR 1996 SC 204 [LNIND 1995 SC 819] : 1996 Cr LJ 408 .
290. *Daityari Tripatti v Subodh Chandra Chaudhuri*, (1942) 2 Cal 507 .
291. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
292. *Satyendra Nath Mukherji*, (1947) 1 Cal 97 . This case was **approved** by the Supreme Court in *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 . *Dani Singh*, AIR 1963 Pat 52 ; *Ram Niranjana*, (1964) 1 Cr LJ 614 .
293. Per Lord Haldane in *Lake v Simmons*, (1927) AC 487 . *VR Dalal v Yougendra Naranji Thakkar*, (2008) 15 SCC 625 [LNIND 2008 SC 1222] : AIR 2008 SC 2793 [LNIND 2008 SC 1222] , "entrustment" being the first ingredient of breach of trust, if it is missing, there would be no criminal breach of trust. *Onkar Nath Mishra v State (NCT) of Delhi*, (2008) 2 SCC 561 [LNIND 2007 SC 1511] : 2008 Cr LJ 1391 , entrustment of property to in-laws or any misappropriation by them found lacking, charge not made out.
294. Per Lord Sumner in *ibid*.
295. *Jaswantlal*, AIR 1968 SC 700 [LNIND 1967 SC 338] : 1968 Cr LJ 803 .
296. *State of HP v Karanvir*, 2006 Cr LJ 2917 : AIR 2006 SC 2211 [LNIND 2006 SC 394] : (2006) 5 SCC 381 [LNIND 2006 SC 394] .
297. *Khuman Chand v State of Rajasthan*, 1998 Cr LJ 1693 (Raj).
298. *Rajkishore v State*, AIR 1969 Ori 190 [LNIND 1969 ORI 35] .
299. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 .
300. *Kesar Singh v State*, 1969 Cr LJ 1595 .
301. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] . It made no difference to the criminal liability that the money was quickly recovered and Departmental action was taken against bank officials.

302. *Ibid.*
303. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 .
304. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .
305. *Krishan Kumar*, 1959 Cr LJ 1508 (SC) : AIR 1959 SC 1390 [LNIND 1959 SC 135] .
306. *JM Desai*, 1960 Cr LJ 1250 : AIR 1960 SC 889 [LNIND 1960 SC 79] ; See also *Bipin Chandra*, 1964 (1) Cr LJ 688 (Ori).
307. *Nirmalabai v State*, (1953) Nag 813.
308. *Ramdeo Singh v State of Bihar*, 2013 Cr LJ 891 (Pat).
309. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC(Cr) 646.
310. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] .
311. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .
312. *Velji Raghavji*, (1964) 67 Bom LR 443 SC : AIR 1965 SC 1433 [LNIND 1964 SC 350] : (1965) 2 Cr LJ 431 .
313. *Alagiri v State*, 1996 Cr LJ 2978 (Mad).
314. *Anwarul Islam v WB*, 1996 Cr LJ 2912 (Cal). *Nandlal Lakotia v State of Bihar*, 2001 Cr LJ 1900 (Pat), a partner becomes the owner of his share only after settlement of accounts and allotment of his share to the partner. The partner in this case was a working partner. He dishonestly misappropriated the property to the firm entrusted to him. He was liable for criminal breach of trust.
315. *Turner Morrison & Co, Bombay v KN Tapuria*, 1993 Cr LJ 3384 .
316. *BP Gupta, v State of Bihar*, 2000 Cr LJ 781 (Pat).
317. *Thermax Ltd v KM Johnny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
318. *SK Alagh v State of UP*, (2008) 5 SCC 662 [LNIND 2008 SC 368] : AIR 2008 SC 1731 [LNIND 2008 SC 368] : 2008 Cr LJ 2256 : (2008) 3 All LJ 588.
319. *Madhu Sudan Malhotra v Kishore Chand Bhandari*, 1988 BLJR 360 : 1988 SCC (Cr) 854 : 1988 Supp SCC 424 .
320. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 792 (P&H).
321. *Bhaskar Lal Sharma v Monica*, (2009) 10 SCC 604 [LNIND 2009 SC 1432] : (2009) 161 DLT 739 .
322. *JRD Tata, Chairman TISCO v Payal Kumar*, 1987 Cr LJ 447 (Del).
323. *Charanjit Singh Chadha v Sudhir Mehra*, AIR 2001 SC 3721 [LNIND 2001 SC 2906] : (2001) 7 SCC 417 [LNIND 2001 SC 2906] .
324. *State of UP v Sita Ram*, 1998 Cr LJ 4225 (All), the court said that ingredients of the offence under section 420 were not made out.
325. *Radhey Shyam Khemka v State of Bihar*, 1993 AIR SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .
326. *Ghansham Das v State of Haryana*, 1992 Cr LJ 2594 (P&H).
327. *Kaumudiben Harshadbhai Joshi v State of Gujarat*, 2012 Cr LJ 4720 (Guj).
328. *Gobardhan Chandra Mandal v Kanai Lal Mandal*, (1953) 2 Cal 133 .
329. *Automobile Products India Ltd v Das John Peter*, (2010) 12 SCC 593 [LNIND 2010 SC 624] : (2011) 1 SCC(Cr) 768.
330. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85 ; *Chandralekha v State of Rajasthan*, JT 2012 (12) SC 390 [LNIND 2012 SC 809] : 2012 (12) Scale 692 [LNIND 2012 SC 809] – FIR filed after six years of the incident-Continuation

of proceedings is an abuse of process of law-FIR quashed; Also see *MM Prasad Khaitan v RG Poddar*, (2010) 10 SCC 673 [LNIND 2010 SC 991] .

331. *Halimuddin Ahmad*, 1976 Cr LJ 449 (Pat).

332. *Pratibha Rani*, 1985 Cr LJ 817 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1983) 2 SCC 370 .

For other cases of prosecution of the same kind, see *Manas Kumar Dutta v Aloka Dutta*, 1991 Cr LJ 288 (Ori); *Bairo Prasad v Laxmibai Pateria*, 1991 Cr LJ 2535 : AIR 1985 SC 628 [LNIND 1985 SC 86] : (1985) 2 SCC 370 [LNIND 1985 SC 86] . Where the amount defalcated was surrendered by the accused and he was released on bail. His sentence of one year R.I. was reduced to the period already undergone. *Diannatus v State of Kerala*, 1988 SCC (Cr) 57 (II) : 1987 Supp SCC 189 . Such a proceeding cannot be stayed under writ jurisdiction. *C Laxmichand v State of TN*, 1991 Cr LJ 1647 (Mad).

333. *Sunil Ranjan Ghose v Samar Roy*, 1987 Cr LJ 1603 (Cal).

334. *Kalaktar Singh*, 1978 Cr LJ 663 (Pat); *State v Jaswantlal Nathalal*, 1968 Cr LJ 803 (SC) **distinguished** on the ground that in the latter case the contract was not produced in evidence nor any oral evidence led to prove the terms of the contract. See further *Madhavrao J Scindia v SC Angre*, AIR 1988 SC 709 [LNIND 1988 SC 100] : 1988 Cr LJ 853 : (1988) 1 SCC 692 [LNIND 1988 SC 100] , where elements of a crime were wanting and, therefore, proceedings, were quashed; *Bal Kishan Das v PC Nagar*, AIR 1991 SC 1531 : 1991 Cr LJ 1837 , where arbitration proceedings about the matter in question had been going on for more than 17 years, the Supreme Court rejected prosecution under this section. The matter was of civil nature; *AL Panian v State of AP*, 1990 Supp SCC 607 : 1991 SCC (Cr) 84, failure to pay on due date on the expiry of credit period of sale is not a matter covered by this provision. *Central Bureau of Investigation v Duncan Industries*, AIR 1996 SC 2452 [LNIND 1996 SC 1028] : 1996 Cr LJ 3501 , the allegation in the complaint that the goods in respect of which floating charge was created in favour of banks were disposed by the debtor company, does not constitute criminal breach of trust.

335. *S Mohan v CBI*, (2008) 7 SCC 1 [LNIND 2008 SC 1234] : (2008) 106 Cut LT 360, **following** the *Canbank Financial Services Ltd*, case (2004) 8 SCC 355 [LNIND 2004 SC 892] : AIR 2004 SC 5123 [LNIND 2004 SC 892] , where it was held that the accused had a transferable interest in the securities purchased in the name of Andhra Bank and its subsidiary.

336. *Joseph Salvaraj A v State of Gujarat*, AIR 2011 SC 2258 [LNIND 2011 SC 576] : (2011) 7 SCC 59 [LNIND 2011 SC 576] ; *Devendra v State of UP*, (2009) 7 SCC 495 [LNIND 2009 SC 1158] : (2009) 3 SCC Cr 461.

337. *Venkatakrishnan v CBI*, 2010 SC 1812 : (2009) 11 SCC 737 [LNIND 2009 SC 1653] ; *SW Palanikar v State of Bihar*, 2002 (1) SCC 241 [LNIND 2001 SC 2381] .

338. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC Cr 646.

339. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .

340. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650.

341. *All Cargo Movers India Pvt Ltd v Dhanesh Badarmal Jain*, (2007) 14 SCC 776 [LNIND 2007 SC 1227] : AIR 2008 SC 247 [LNIND 2007 SC 1227] .

342. *Lee Kun Hee v State of UP*, (2012) 3 SCC 132 [LNIND 2012 SC 89] : AIR 2012 SC 1007 [LNIND 2012 SC 443] : 2012 Cr LJ 1551 ; *Arun Bhandari v State of UP*, (2013) 2 SCC 801 [LNIND 2013 SC 18] : 2013 Cr LJ 1020 (SC)- Case is not purely in civil nature- High Court erred in quashing the order of cognizance; See also *Adarsh Kaur Gill v State of NCT of Delhi*, 2013 Cr LJ 1955 (Del).

343. *Thermax Ltd v KM Johny*, (2011) 13 SCC 412 [LNIND 2011 SC 947] : (2012) 2 SCC (Cr) 650; *Nagawwa v Veeranna Shivalingappa Konjalgi*, 1976 (3) SCC 736 [LNIND 1976 SC 188] : AIR 1976 SC 1947 [LNIND 1976 SC 188] ; *State of Haryana v Bhajan Lal*, 1992 Supp (1) SCC 335 : AIR 1992 SC 604 .

344. *Harmanpreet Singh Ahluwalia v State of Punjab*, (2009) 7 SCC 712 [LNIND 2009 SC 1121] : 2009 Cr LJ 3462.
345. *Sham Lal v State of Punjab*, 2001 Cr LJ 2987 (P&H).
346. *Balram Singh v Sukhwant Kaur*, 1992 Cr LJ 972 (P&H). The court surveyed a number of authorities on the concept of continuing offence. *State of Bihar v Deokaran Kenshi*, AIR 1973 SC 908 [LNIND 1972 SC 392] : 1973 Cr LJ 347 and *Bhagirath Kanoris v State of MP*, AIR 1984 SC 1688 [LNIND 1984 SC 377] : 1984 Lab IC 1578 , wherein the Supreme Court explained the concept of a continuing offence. *Best v Butter*, (1932) 2 KB 108 , wherein it was held under the *Trade Unions Act* that every day that the moneys were willfully withheld, the offence was committed. The court noted the **contrary** view expressed in *Waryam Singh v State of Punjab*, 1982 Cr LJ (NOC) 117 (P&H) and *State of Punjab v Sarwan Singh*, 1981 Cr LJ 722 (SC) : 1981 PLR 451 : AIR 1981 SC 1054 [LNIND 1981 SC 201] , but **distinguished** them because there in the opposite party had conceded to the proposition. In *Gurcharan Singh v Lakhwinder Singh*, (1987) 1 Recent CR 424 it was again taken for granted without argument that the offence under the section was not of continuing nature.
347. *State of Kerala v V Padmanabhan*, AIR 1999 SC 2405 [LNIND 1999 SC 585] : 1999 Cr LJ 3696 .
348. *P T Abdul Rahiman v State of Kerala*, 2013 Cr LJ 893 (Ker).
349. *Madan Mohan Abbot v State of Punjab*, AIR 2008 SC 1969 [LNIND 2008 SC 755] : (2008) 4 SCC 582; Now section 406 is made compoundable irrespective of the amount involved in the case by the Amendment Act 5 of 2009.
350. *Vijay Kumar v Sunita*, 2000 Cr LJ 4116 (MP).
351. *Suryalakshmi Cotton Mills Ltd v Rajvir Industries Ltd*, (2008) 13 SCC 678 [LNIND 2008 SC 36] : AIR 2008 SC 1683 [LNIND 2008 SC 36].
352. *Sneh Lata v Swastika Agro Industrial Corp*, 2001 Cr LJ 4432 (P&H).

THE INDIAN PENAL CODE

CHAPTER XVII OF OFFENCES AGAINST PROPERTY

Of Theft

Of Criminal Breach of Trust

[s 407] Criminal breach of trust by carrier, etc.

Whoever, being entrusted with property as a carrier,¹ wharfinger or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

COMMENT—

Those who receive property under a contract, express or implied, to carry it or to keep it in safe custody are punishable under this section for a criminal breach of trust with respect to such property.^{353.}

1. 'Carrier'.—A carrier is a person who undertakes to transport the goods of other persons from one place to another for hire.^{354.} It is clear that the expression 'carrier' in [s.407 IPC, 1860](#) includes all types of carriers, including a common carrier or a private carrier.^{355.}

[s 407.1] Jurisdiction.—

Where the accused was entrusted with the carriage of a quantity of coffee from an estate in Mysore to a firm of merchants in Mangalore, and a portion of the goods was abstracted and there was no evidence as to when or where such abstraction took place, it was held that the Magistrate at Mangalore had jurisdiction to try the accused as there was failure to deliver the goods at Mangalore in accordance with the terms of entrustment.^{356.}

Where there was misappropriation of goods entrusted for delivery, the Court said that the Courts at both the places, namely the place of entrustment and place of delivery, would have jurisdiction.^{357.}

^{353.} The section does not apply to a custodian of goods under the [Essential Commodities Act, 1955](#) for violation of certain clauses storage of licence. *Pramod Kumar Nayak v State of Orissa*,

[1989 Cr LJ 1041](#) (Ori). *Surinder Arora v Durga Das*, [1988 Cr LJ 1645](#) , nor to company officers for violation of Gratuity Act, 1972.

354. Wharton, 14th Edn p. 164.

355. *Kanhayalal Baid v RajKumar Agarwal*, [1981 Cr LJ. 824](#) .

356. *Public Prosecutor v Podimonu Beary*, (1928) 52 Mad 61.

357. *Jijo v State of Karnataka*, [2003 Cr LJ 256](#) (Kant).