

The accused was in charge of a society's affairs. Shortage of funds was detected. It was held that the fact that the accused agreed to make good the shortage at a later point of time could not be treated as an admission of guilt on his part. Ingredients of misappropriation were not made out. The mere discrepancy in amount was not sufficient to sustain the conviction.<sup>433.</sup>

*Prosecution has to prove entrustment and not how property was dealt with.*—The prosecution has to show that the property in question was entrusted to the accused. It is then for the accused to show how he dealt with the property.<sup>434.</sup>

#### **[s 409.22] Previous sanction.—**

In a prosecution against the Vice-chancellor of a University where section 50(2) of the 1994 University Act, 1904 says no prosecution will lie against the appellant without previous sanction of the Syndicate, prosecution cannot be launched in the absence of the previous sanction of the Syndicate.<sup>435.</sup> As far as the offence of criminal conspiracy punishable under section 120-B, read with [section 409 of the IPC, 1860](#) is concerned and also [section 5\(2\) of the Prevention of Corruption Act, 1988](#), are concerned they cannot be said to be of the nature mentioned in [section 197 of the Cr PC, 1973](#).<sup>436.</sup>

#### **[s 409.23] Punishment.—**

The accused, working as an assistant accountant in a company, received on behalf of the company certain recoveries from a firm but did not credit them in the account of the said firm. He was found guilty and was convicted and sentenced to undergo RI of 1 and a half years under section 409 and RI of 1 and a half years under section 477-A. The Apex Court upheld the conviction but considering time factor and age of the accused, the sentence was reduced to six months, RI under each count.<sup>437.</sup>

The accused, a postmaster, was convicted under this section. The offence happened 15 years ago. He deposited the misappropriated amount with interest even before the FIR was filed. He was punished only with fine of Rs. 4,000 without any imprisonment.<sup>438.</sup>

#### **[s 409.24] Moral turpitude.—**

Undoubtedly, the embezzlement of Rs.5000 by the appellant, for which he had been convicted under [section 409 IPC, 1860](#), was an offence involving moral turpitude.<sup>439.</sup>

#### **[s 409.25] Conviction of Employee under section 409.—will release on probation remove the disqualification.—**

Once a Criminal Court grants a delinquent employee the benefit of P.O. Act, 1958, its order does not have any bearing so far as the service of such employee is concerned. The word "disqualification" in section 12 of the Act 1958 provides that such a person shall not stand disqualified for the purposes of other Acts like the [Representation of the People Act, 1950](#) etc. The conviction in a criminal case is one part of the case and release on probation is another. Therefore, grant of benefit of the provisions of Act

1958, only enables the delinquent not to undergo the sentence on showing his good conduct during the period of probation. In case, after being released, the delinquent commits another offence, benefit of Act 1958 gets terminated and the delinquent can be made liable to undergo the sentence. Therefore, in case of an employee who stands convicted for an offence involving moral turpitude, it is his misconduct that leads to his dismissal.<sup>440</sup>.

367. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

368. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] .

369. *Sachindra Das v The State of Tripura*, 2016 Cr LJ 3908 : 2016 (2) GLT 894 .

370. *Lala Raoji*, (1928) 30 Bom LR 624 . *Mohan Tiwari v State of Arunachal Pradesh*, 1992 Cr LJ 737 (Gau), unauthorised extraction of timber by the contractor from a forest officer in connivance with the officials concerned, *prima facie* evidence of guilt.

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

372. *Vishwa Nath v State of J&K*, AIR 1983 SC 174 : 1983 Cr LJ 231 : (1983) 1 SCC 215 .

373. *Vijay Digambar Lanjekar v State of Maharashtra*, 1991 SCC (Cr) 841 : 1991 Supp (2) SCC 8, the court reduced the sentence of 2 years' RI to the period already undergone. Where, on the other hand, credit sale was in vogue and the amounts involved stood deposited before CID probe, the conviction was not sustained. *Narendra Pratap Narain Singh v State of UP*, AIR 1991 SC 1394 [LNIND 1991 SC 186] : 1991 Cr LJ 1816 .

374. *State of MP v Prempal*, 1991 Cr LJ 2878 . The court **followed** *Vishwanath v State of J & K*, AIR 1983 SC 174 : 1983 Cr LJ 231 where the principle laid down was that a public servant entrusted with Government money misappropriates that amount for personal use, refund of that amount, after the act of defalcation is discovered, does not absolve the accused of the offence.

375. See *Ram Mohan Saxena v State of MP*, 1977 (II) MPWN 377; *Bahadur Singh v State of MP*, (1976) JLJSN 120; *Narbada Singh Chouhan v State of MP*, (1971) JLJ SN 11 and *State v Autar Singh*, (1966) JLJ SN 99.

376. *Janeshwar Das Agarwal v State of UP*, AIR 1981 SC 1646 : 1981 All LJ 887 : (1981) 18 All CC 151 : (1981) 3 SCC 10 .

377. *Chandraiah v State of AP*, (2003) 12 SCC 670 : AIR 2004 SC 252 : 2004 Cr LJ 365 .

378. *R Sai Bharathi v J Jayalalitha*, (2004) 2 SCC 9 [LNIND 2003 SC 1023] : AIR 2004 SC 692 [LNIND 2003 SC 1023] : 2004 Cr LJ 286 .

379. *Asoke Basak v State of Maharashtra*, (2010) 10 SCC 660 [LNIND 2010 SC 1699] : (2011) 1 SCC(Cr) 85.

380. *Standard Chartered Bank v Directorate of Enforcement*, (2005) 4 SCC 530 [LNIND 2005 SC 476] .

381. *CBI v Blue Sky Tie-up Pvt Ltd*, 2012 Cr LJ 1216 : AIR 2012 SC (Supp) 613.

382. *Krishna Rao Keshav v State of UP*, 1997 Cr LJ 1129 (All).

383. *NK Illiyas v State of Kerala*, 2012 Cr LJ 2418 : AIR 2012 SC 3790 [LNIND 2011 SC 646] ; *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.
384. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] .
385. *Shabbir Ahmed Sherkhan v State of Maharashtra*, (2009) 5 SCC 22 [LNIND 2009 SC 621] : (2009) 1 SCC (L&S) 1016 .
386. Wharton, 14th Edn, p 109. The relationship of trust can arise between them only under special circumstances. *ANZ Grindlays Bank v Shipping and Clearing (Agents) Pvt Ltd*, 1992 Cr LJ 77 (Cal), paying money after instructions to close account, no cheating. *MV Bany v State of TN*, 1989 Cr LJ 667 (Mad).
387. *Hira Lal*, (1907) PR No. 19 of 1908. A bank manager permitting money to be withdrawn against false drafts signed by him commits this offence. *Adithela Immanuel Raju v State of Orissa*, 1992 Cr LJ 243 . The protections and privileges of a banker are not available to persons who are not legally engaged in the banking business. *AG Abreham v State of Kerala*, 1987 Cr LJ 2009 (Ker). Withdrawal of money from Post Office by forging signature, liability made out. *State of Orissa v Sapneswar Thappa*, 1987 Cr LJ 612 (Ori).
388. *ANZ Grindlays Bank plc v Shipping and Clearing (Agents) Pvt Ltd*, 1992 Cr LJ 77 (Cal).
389. *Punjab National Bank v Surendra Prasad Sinha*, AIR 1992 SC 1815 [LNIND 1992 SC 300] : 1992 Cr LJ 2916 ; *S Jayaseelan v State of SPF*, 2002 Cr LJ 732 (Mad), the cashier received repayment of loan installments, issued receipts and also made entries in the pass book but did not show the repayments in the ledger books. Dishonest intention established. Sentence of 2 years reduced to 18 months because he had paid back. *Bank of Baroda v Samrat Exports*, 1998 Cr LJ 2773 (Kant), the debit by the bank to the guarantor's account in respect of the sum due from the principal borrower was not a dishonest misappropriation. *MN Ojha v Alok Kumar Srivastav*, (2009) 9 SCC 682 [LNIND 2009 SC 1708] : AIR 2010 SC 201 [LNIND 2009 SC 1708] - the averments made in the complaint does not disclose the commission of any offence by the appellant or any one of them. Proceedings quashed.
390. *Sudhir Shantilal Mehta v CBI*, (2009) 8 SCC 1 [LNIND 2009 SC 1652] : (2009) 3 SCC (Cr) 646; *Satyajit Roy v State of Tripura*, 2010 Cr LJ 3397 (Gau)- Where the allegation was of Criminal breach of trust by banker, conviction based on an alleged writing of accused without examining the hand writing expert is held not proper.
391. *R Venkatkrishnan v CBI*, (2009) 11 SCC 737 [LNIND 2009 SC 1653] : AIR 2010 SC 1812 [LNIND 2009 SC 1653] .
392. Wharton, 14th Edn, p 649.
393. *Radhey Shyam Khemka v State of Bihar*, AIR 1993 SCW 2427 : 1993 Cr LJ 2888 : (1993) 3 SCC 54 [LNIND 1993 SC 276] .
394. *Ibid*, p. 400.
395. *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
396. *Ibid*, p. 148.
397. *Stevens v Biller*, (1883) 25 Ch D 31 .
398. Wharton, 14th Edn, p 95.
399. *Chaman Lal v State of Punjab*, (2008) 11 SCC 721 : AIR 2009 SC 2972 [LNIND 2009 SC 721] .
400. The Indian Contract Act (IX of 1872) section 182.
401. *Chandi Prasad*, (1955) 2 SCR 1035 [LNIND 1955 SC 108] .
402. *Muthusami Pillai*, (1895) 1 Weir 432.

403. *Chandra Prasad*, (1926) 5 Pat 578.
404. *RK Dalmia*, AIR 1962 SC 1821 [LNIND 1962 SC 146] : (1962) 2 Cr LJ 805 . A partner of a firm opening an account in the firm name showing himself as a proprietor and depositing firm cheques into it and withdrawing money from it, does not commit an offence under this section or section 419. *Tapan Kumar Mitra v Manick Lal Dey*, 1987 Cr LJ 1483 (Cal).
405. *Sadhupati Nageswara Rao v State of Andhra Pradesh*, (2012) 8 SCC 547 [LNIND 2012 SC 461] : AIR 2012 SC 3242 [LNIND 2012 SC 461] .
406. *SK Agarwal v Manoj Dalmia*, 2001 Cr LJ 3343 (All).
407. *V S Achuthanandan v R Balakrishna Pillai*, AIR 2011 SC 1037 [LNIND 2011 SC 165] : 2011 (3) SCC 317 [LNIND 2011 SC 165] .
408. *Somnath v State of Rajasthan*, AIR 1972 SC 1490 [LNIND 1972 SC 112] : 1972 Cr LJ 897
409. *Sadashiva Rao v State of AP*, 2000 Cr LJ 2110 .
410. *Suresh Tolani v State of Rajasthan*, 2001 Cr LJ 1959 (Raj).
411. *HICEL Pharma Ltd v State of AP*, 2000 Cr LJ 2566 (AP).
412. *Sharon Michael v State of Tamil Nadu*, (2009) 3 SCC 375 [LNIND 2008 SC 2506] : (2009) 2 SCC (Cr) 103.
413. *Roshan Lal Raina v State of J & K*, AIR 1983 SC 631 : 1983 Cr LJ 975 : 1983 2 SCC 429 . See also *Jat Ram v State of HP*, 1991 Cr LJ 1435 , false wage bill, not properly proved.
414. *State of Orissa v Gopinath Panigrahi*, 1995 Cr LJ 4095 (Ori). *Todar Singh Premi v State of UP*, 1992 Cr LJ 1724 (All), no proof of entrustment of money to the accused Government service. *Prafulla Kumar Panda v State of Orissa*, 1994 Cr LJ 3818 (Ori), no proof of entrustment of cheque, the only cheque produced was of personal payment, no offence.
415. *Bansidhar Swain v State*, 1993 Cr LJ 830 (Ori).
416. *Shankarlal Vishwakarma v State of MP*, 1991 Cr LJ 2808 (MP). The Court cited this book at p. 2812 to highlight the **distinction** between Cheating and Criminal Breach of Trust and Criminal Misappropriation. See at p 396 of 26th Edn of 1987 and *State of MP v DN Pandya*, 1983 MPLJ 778 . *Jitendra Nath Bose v State of WB*, 1991 Cr LJ 922 (Cal), no evidence of entrustment; Government and non-Government property lumped together in charge, held not proper, *Baikuntha v Nilamani Bantha*, 1991 Cr LJ 59 (Ori), entrustment of cash not proved.
417. *Fakira Nayak v State of Orissa*, 1987 Cr LJ 1479 (Ori).
418. *Jiwan Dass v State of Haryana*, AIR 1999 SC 1301 [LNIND 1999 SC 204] : 1999 Cr LJ 2034 .
419. *VN Sonal v Nagamanickam*, 2001 Cr PC 3428 (Mad).
420. *Shanmugham v State of TN*, 1997 Cr LJ 2042 (Mad).
421. *Rabindra Nath Bera v State of West Bengal*, 2012 Cr LJ 913 (Cal).
422. *Mustafikhan v State of Maharashtra*, (2007) 1 SCC 623 [LNIND 2006 SC 1076] .
423. *Sushil Suri v CBI*, (2011) 5 SCC 708 [LNIND 2011 SC 494] : AIR 2011 SC 1713 [LNIND 2011 SC 494] ; *Nikhil Merchant v Central Bureau of Investigation*, (2008) 9 SCC 677 [LNIND 2008 SC 1660] distinguished.
424. *S and R, Legal Affairs, West Bengal v SK Roy*, 1974 Cr LJ 678 : AIR 1974 SC 794 [LNIND 1974 SC 35] .
425. *Sardar Singh*, 1977 Cr LJ 1158 : AIR 1977 SC 1766 : (1977) 1 SCC 463 . See also *State of Orissa v Gangadhar Pande*, 1989 Supp (2) SCC 150 : 1991 SCC (Cr) 389, leniency shown to a misappropriating Government servant because of old age and retirement since long. *Kulbir Singh v State of Punjab*, 1991 Cr LJ 1756 (P&H), embezzlement of stone metal, proceedings instituted after a lapse of 9 yrs., quashed.
426. *Mahindra and Mahindra Financial Services Ltd v Delta Classic Pvt Ltd*, 2010 Cr LJ 4591 (Bom).

427. *Vijay Kumar v State of Rajasthan*, 2012 Cr LJ 2790 (Raj).
428. *Shivanarayan*, 1980 Cr LJ 388 (SC).
429. *Narindra Kumar Jain v MP*, 1996 Cr LJ 3200 : AIR 1996 SC 2213 .
430. *Thermax Ltd v K M Johny*, 2011 (11) Scale 128 [LNIND 2011 SC 947] : 2011 (13) SCC 412 [LNIND 2011 SC 947] ; *GHCL Employees Stock Option Trust v India Infoline Ltd*, (2013) 4 SCC 505 [LNIND 2013 SC 232] : AIR 2013 SC 1433 [LNIND 2013 SC 232] - from perusal of order passed by the Magistrate it reveals that two witnesses including one of the trustees were examined by the complainant but none of them specifically stated as to which of the accused committed breach of trust or cheated the complainant except general and bald allegations made therein-proceedings quashed.
431. *Maksud Saiyed v State of Gujarat*, 2008 (5) SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] ; *Pramod Parmeshwarlal Banka v State of Maharashtra*, 2011 Cr LJ 4906 (Bom).
432. *Punjab National Bank v Surendra Prasad Sinha*, AIR 1992 SC 1815 [LNIND 1992 SC 300] : 1993 Supp (1) SCC 499
433. *State of Karnataka v Syed Mehaboob*, 2000 Cr LJ 1184 (Kant).
434. *N Bhargavan Pillai v State of Kerala*, AIR 2004 SC 2317 [LNIND 2004 SC 520] : 2004 Cr LJ 2494 : (2004) 2 KLT 725 .
435. *R Ramachandran Nair v Deputy Superintendent Vigilance Police*, (2011) 4 SCC 395 [LNIND 2011 SC 319] : (2011) 2 SCC (Cr) 251.
436. *Raghunath Anant Govilkar v State of Maharashtra*, AIR 2008 SC (Supp) 1486; *Shreekantiah Ramayya Munipalli v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] and also *Amrik Singh v State of Pepsu*, AIR 1955 SC 309 [LNIND 1955 SC 15] ; *State of UP v Paras Nath Singh*, (2009) 6 SCC 372 [LNINDORD 2009 SC 650] : 2009 Cr LJ 3069 .
437. *Inder Sen Jain v State of Punjab*, AIR 1994 SC 1065 : 1994 Cr LJ 1224 . *Bachchu Singh v State of Haryana*, AIR 1999 SC 2285 [LNIND 1999 SC 1375] : 1999 Cr LJ 3528 , misuse of tax money collected by a *Gram Sachiv*, he was sentenced to six months RI and fine. He had already undergone 4½ months. His sentence was reduced to period already undergone.
438. *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] .
439. *Sushil Kumar Singhal v Regional Manager, Punjab National Bank*, 2010 AIR (SCW) 5119 : (2010) 8 SCC 573 [LNIND 2010 SC 730] .
440. *Sushil Kumar Singhal v Regional Manager, Punjab National Bank*, 2010 AIR (SCW) 5119 : (2010) 8 SCC 573 [LNIND 2010 SC 730] .

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of the Receiving of Stolen Property

#### [s 410] Stolen property.

Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which <sup>441</sup>.<sup>\*\*\*</sup> criminal breach of trust has been committed, is designated as "stolen property", <sup>442</sup>.<sup>442</sup>[whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without <sup>443</sup>.<sup>443</sup>[India]]. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

<sup>441</sup>. The words "the" and "offence of" rep. by Act 12 of 1891, section 2 and Sch I and Act 8 of 1882, section 9, respectively.

<sup>442</sup>. Ins. by Act 8 of 1882, section 9.

<sup>443</sup>. The words "British India" have successively been subs. by the A.O. 1948, the A.O. 1950 and Act 3 of 1951, section 3 and Sch (w.e.f. 1 April 1951), to read as above.

# THE INDIAN PENAL CODE

## CHAPTER XVII OF OFFENCES AGAINST PROPERTY

### Of Theft

### Of the Receiving of Stolen Property

#### [s 411] Dishonestly receiving stolen property.

Whoever dishonestly receives or retains<sup>1</sup> any stolen property, knowing or having reason to believe the same to be stolen property,<sup>2</sup> shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

#### State Amendment

**Tamil Nadu.**—*The following amendments were made by T.N. Act No. 28 of 1993, section 2.*

Section 411 of the principal Act shall be renumbered as sub-section (1) of that section and after sub-section (1) as so renumbered, the following sub-section shall be added, namely—

"(2) Whoever dishonestly receives or retains any idol or icon stolen from any building used as a place of worship knowing or having reason to believe the same to be stolen property shall, notwithstanding anything contained in sub-section (1), be punished with rigorous imprisonment which shall not be less than two years but which may exceed to three years and with fine which shall not be less than two thousand rupees:

*Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than two years."*

#### COMMENT—

Section 410 defines stolen property. A property is stolen for the purpose of this section when its possession is transferred by theft, extortion, robbery, dacoity or criminal breach of trust or which was obtained under misappropriation committed whether in India or outside. An extended meaning is given to the words 'stolen property' which are used in the four subsequent sections. Not only things which have been stolen, extorted or robbed but also things which have been obtained by criminal misappropriation or criminal breach of trust are within the meaning assigned to these words. Section 411 provides punishment to the person who dishonestly receives stolen property. The person must have the knowledge that it is a stolen property. This section as also the succeeding sections are directed not against the principal offender, e.g., a thief, robber or misappropriator but against the class of persons who trade in stolen articles and are receivers of stolen property. Principal offenders are therefore, outside the scope of this section. Accordingly the conviction of the principal offender is also not a prerequisite to the conviction of the receiver of stolen property under this section.<sup>444.</sup>

#### [s 411.1] Essential ingredients.—

(a) Dishonest receipt or retention of stolen property. (b) Knowledge or reason to believe at the time of receipt that the property was obtained in the ways specified in the section. The offence of dishonest retention of property is almost contemporaneous with the offence of dishonestly receiving stolen property. A person who dishonestly receives property and retains it, must obviously continue to retain it. It is the duty of the prosecution in order to bring home the guilt of a person under section 411 to prove:

(1) That the stolen property was in the possession of the accused.

(2) That some person other than the accused had possession of the property before the accused got possession of it and

(3) That the accused had knowledge that the property was stolen.<sup>445</sup> When the field from which the ornaments were recovered was an open one, and accessible to all and sundry, it is difficult to hold positively that the accused was in possession of these articles. The fact of recovery by the accused is compatible with the circumstance of somebody else having placed the articles there and of the accused somehow acquiring knowledge about their whereabouts and that being so, the fact of discovery cannot be regarded as conclusive proof that the accused was in possession of these articles.<sup>446</sup>

As observed by the Apex Court in the case of *N Madhavan v State of Kerala*,<sup>447</sup> as a normal rule after an inquiry or trial when the accused is discharged or acquitted the Court ought to restore the property from the person from whose custody it was taken and in a case of conviction, it is the person from whose possession it was stolen, who would be entitled to its possession when the property seized is referable to such stolen property.

**1. 'Dishonestly receives or retains'.—** To constitute dishonest retention, there must have been a change in the mental element of possession,—possession always subsisting *animo et facto*—from an honest to a dishonest condition of the mind in relation to the thing possessed. Where pursuant to a hire purchase agreement, on the default of the purchaser to pay the instalment amount, the seller of a vehicle repossessed it, it was held that as there was no dishonest intention to retain on his part, the provisions of this section were not attracted.<sup>448</sup>

### **[s 411.2] Identity of stolen property.—**

Before a conviction can be recorded under this section it must be shown that the property recovered and seized was stolen property. Where, therefore, the identity of the property is not established, there cannot be any conviction under [section 411, IPC, 1860](#).<sup>449</sup>

**2. 'Knowing or having reason to believe the same to be stolen property'.—**The offence made punishable is not the receiving of stolen property from any particular person, but receiving such property knowing it to be stolen. The word 'believe' is a much stronger word than suspect, and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property.<sup>450</sup>

### **[s 411.3] Stolen property of the deceased.—**

Where stolen ornaments of the deceased which she had been wearing when she was last seen alive are discovered within three days of the murder in pursuance of an



information given by the accused and there is no other evidence, the accused can be convicted only under section 411 and not under [section 302, IPC, 1860](#), or [section 394, IPC, 1860](#), as there is nothing to connect him with the murder or the robbery.<sup>451.</sup>

#### **[s 411.4] Recent Possession.—**

There is a presumption under the law that where a person is found to be in a recent possession of stolen or robbed articles, he must be the offender himself or must have received them with knowledge. In reference to the meaning of the expression "recent possession", the Supreme Court has suggested that no fixed time limit can be laid down and each matter must go by its own facts. It varies according to whether the property in question in its nature is capable of passing readily from hand to hand. If the goods are not of that kind, even one year may not be too long. In the present case, however, there was no gap of time between the arrest of the accused and the recovery and, hence, the presumption of his guilt.<sup>452.</sup>

#### **[s 411.5] Sentencing.—**

Where the period of 12 years had elapsed since the institution of the case and the accused (revision petitioner) remained in jail for ten months, his sentence was reduced to the period already undergone. The Court did not interfere in the concurrent finding of fact.<sup>453.</sup>

#### **[s 411.6] Presumption from possession.—**

A property which was alleged to have been taken by robbery at the point of pistol was found in the possession of the accused. While the charge of robbery under section 392 failed, that of receiving stolen property became established by reason of the presumption created by [section 114 of the Evidence Act, 1872](#).<sup>454.</sup> When the prosecution established beyond all reasonable doubt that M.O s. 25–27 belonged to the deceased No. 1, were found in the possession of A2, the burden shifts to the accused to explain the same under [section 114-A of the Evidence Act](#). If he has not explained the possession of stolen articles, the presumption is that he is receiver of stolen property or a thief.<sup>455.</sup>

#### **[s 411.7] Probation.—**

The accused was under 21 years of age; has five brothers and sisters; is son of a poor agriculturist and that the stolen articles recovered from him are not so valuable, the sentence of imprisonment imposed by the learned appellate Court is set aside and the petitioner is directed to be released on probation of good conduct for a period of six months.<sup>456.</sup>

444. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .
445. *Mir Naqvi Askari v CBI*, (2009) 15 SCC 643 [LNIND 2009 SC 1651] : AIR 2010 SC 528 [LNIND 2009 SC 1651] .
446. *Trimbak v State*, AIR 1954 SC 39 : 1954 Cr LJ 335 (SC).
447. *N Madhavan v State of Kerala*, AIR 1979 SC 1829 [LNIND 1979 SC 321] .
448. *Rajendra Kumar*, 1969 Cr LJ 243 . *Sheonath Bhar v State of UP*, 1990 Cr LJ 1423 (All), where dishonest retention of stolen watch was proved and fine Rs. 125 only was imposed because a long time had passed and the accused had already remained in jail for a month. *Syed Basha v State of Karnataka*, 2001 Cr LJ 1813 (Kant), the prosecution failed to prove that the accused was in possession of sandalwood billets stolen by someone else. The presumption under section 84 of the Karnataka Forest Act, 1963 regarding ownership of sandalwood trees was held to be not applicable to sandalwood billets. *Jitendra Kumar Agarwal v State of Bihar*, 2001 Cr LJ 3834 (Jhar), charge of receiving ration material not quashed because wheat was found in the compound of the petitioner. *Karni Singh v State of Rajasthan*, 1999 Cr LJ 1791 (Raj), where the accused was not seen anywhere near the house from which things were stolen, he was punished only for receiving stolen property because things were recovered from his possession. *A Devendran v State of TN*, 1998 Cr LJ 814 : AIR 1998 SC 2821 [LNIND 1997 SC 1368] , articles stolen in an incident of murder and robbery were recovered from the house of the accused after two months. Not sufficient to convict him for robbery and murder, but only for receiving stolen property under section 411. See also *Shahul Hameed v State*, 1998 Cr LJ 885 (Mad).
449. *Mahabir Sao v State*, 1972 Cr LJ 458 : AIR 1972 SC 642 : (1972) 1 SCC 505 ; *Chandmal*, 1976 Cr LJ 679 : AIR 1976 SC 917 : (1976) 1 SCC 621 ; *Mewaram v State of UP*, 1988 Cr LJ 1215 All, failure to identify wrist watch recovered, conviction under the section set aside. *Sabitri Sharma v State of Orissa*, 1987 Cr LJ 956 (Ori), mere possession, no liability. *Narayan Das v State of Rajasthan*, 1998 Cr LJ 29 (Raj) failure to prove identity of the stolen property so as to show that it was the same stolen property which was recovered.
450. *Mohon Lal*, 1979 Cr LJ 1328 : AIR 1979 SC 1718 .
451. *Nagappa Dhondiba*, 1980 Cr LJ 1270 : AIR 1980 SC 1753 . See further *Joga Gola v State of Gujarat*, 1982 SCC (Cr) 141 : AIR 1982 SC 1227 : 1981 Supp SCC 66 , possession by the accused of the cows which were in the herd of the deceased at the time of his death was considered to be enough proof for a conviction under the section. See also *Pandara Nadar v State of TN*, AIR 1991 SC 391 : 1991 Cr LJ 468 , where there was neither proof of possession on the part of any of the several persons, who were already acquitted from the charge of belonging to a gang of thieves; *Kedar Nath v State of UP*, AIR 1991 SC 1224 : 1991 Cr LJ 989 , no value of recovery of possession, where appeal being heard 17 years after occurrence. There was no charge in this case under the section. The Supreme Court refused to convict 17 years after the occurrence.
452. *Errabhadrapa v State of Karnataka*, AIR 1983 SC 446 [LNIND 1983 SC 83] : 1983 Cr LJ 846 : (1983) 2 SCC 330 [LNIND 1983 SC 83] .
453. *Kanik Lal Thakur v State of Bihar*, 2003 Cr LJ 375 .
454. *Karni Singh v State of Rajasthan*, 1999 Cr LJ 1791 (Raj). *Public Prosecutor v Yenta Arjuna*, 1998 Cr LJ 179 (AP), no evidence connecting the accused person with murder and robbery, but recovery from him created the presumption under section 114, Evidence Act, 1872 that he was recipient with knowledge. *Preetam Singh v State*, 1998 Cr LJ 1483 (Del) no presumption where the recovery process itself was faulted. *Pentapati Veerababu v State of AP*, 1998 Cr LJ 2505 (AP), recovery of stolen property from an employee of the shop at the instance of the accused from the house of his brother-in-law. Presumption against him because the incriminating evidence.