

It not come to the
possession of a



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It is clear from the language of the section that the offence of criminal misappropriation of property can be committed only with respect to a movable property and not against an immovable property. The offender must dishonestly misappropriate such property or must dishonestly convert to his own use such property. In either case, dishonest intention on the part of the offender must always be proved.

This has the same meaning as given under sections 24 and 23 of the Code. Thus, intention to cause wrongful gain or wrongful loss must always be proved against the offender. The word 'misappropriates' means appropriates in an illegal or unauthorised manner, that is to say, to set apart for or assign to the wrong person or a wrong use.

The words 'converts to his own use' mean wrongfully using the property for his own benefit or appropriating it for his own self without any authority. The three illustrations (a), (b) and (c) below the main text help one to distinguish between the offences of theft and criminal misappropriation of property. It is amply clear from these illustrations that before the offence of criminal misappropriation of property is committed by the offender, the movable property which is the subject of this offence is already in possession of the offender innocently. Therefore, where A first commits theft of X's watch and then sells it and utilises the money so earned for himself, A commits only theft and not criminal misappropriation of property because the watch had not come to the possession of A innocently but by theft.

There are two explanations attached to the section. According to the first, a dishonest misappropriation for a time only is also a misappropriation within

the meaning of this section. In other words, it is not necessary that there should be an intention on the part of the offender to cause permanent wrongful loss or permanent wrongful gain. If such intention exists even for a short duration of time, it is punishable under this section. The illustration given under the first explanation illustrates the point clearly.

The second explanation lays emphasis on a finder's duty and on his title. It states that a person who finds such a movable property which is not in the possession of anyone, and he takes such property with a view to protect the same for its owner or for restoring it to him, he does not take the same dishonestly or does not misappropriate it or convert the same to his own use, and thus he is not guilty under this section. But he commits an offence under this section if he dishonestly misappropriates it or converts the same to his own use, when he either knows its owner or has the means of discovering its owner, or before he has used reasonable means to discover and give notice to its owner and has kept the property for a reasonable time to enable its owner to claim it. This explanation also emphasizes that what are reasonable means and what is a reasonable time in such a case is a question of fact, which means that facts and circumstances of each case will have to be considered before this question can be decided and there can thus be no general rules to govern it. The explanation also states specifically that it is not necessary for the finder to know as to who is the owner of such property or that any particular person is its owner.

It is sufficient that at the time of its misappropriation or conversion by him he does not believe it to be his own property, or in good faith believes that its real owner cannot be found. The six illustrations given under the second

explanation illustrate this aspect of the law quite clearly. Where two accused persons took delivery of a necklace from a goldsmith on a false representation with promise to return the same, but subsequently refused to return it, it was held that they were guilty under sections 403 and 420 of the Code. Where the accused found a purse on the pavement of a temple in a crowded gathering and put the same in his pocket but was caught immediately thereafter, it was held that he could not be held guilty under this section because merely picking up the purse did not establish dishonest intention on his part. Where A paid some money to under a mistake, and later on when discovered the mistake even then he did not return the amount to A and appropriated the same for himself it was held that he had committed an offence under this section. Since the offence of criminal misappropriation of property can be committed only after a movable property comes under the possession of the accused innocently, an abandoned property can never become a subject of this offence.

Where the accused took delivery of certain consignment received by rail on behalf of the company in which he was employed, but made no entry of the same in the record of the company and even gave a false information that he had not taken delivery of the same, whereas he had removed them from the railway siding, the offence under this section was held to be committed. Where certain bales of cloth, in custody of the railways, were found unloaded near the godown of the accused and they were later recovered from that godown, it was held that on the basis of this much of facts alone it could not be said that they were dishonestly misappropriated or converted to his own use by the accused, and as such he could not be held guilty under this

section. Where a person is the finder of such a property from the nature of which it was natural to assume that there would be an owner of it, he must take reasonable care of the same and try to make reasonable efforts to locate its owner, but such efforts could not be such as to make him spend quite a bit of money on advertisement. Where the accused had taken a loan from a person but denied having taken it, this in itself would not make him guilty under this section because attempt to evade civil liability does not necessarily mean that the accused had dishonest intention.

Where the accused was the chairman of a 'samiti' and in that capacity had collected dues from its members, but he failed to deposit the same even after a long time had elapsed since his tenure as chairman was over, it was held that he was guilty under this section. The accused bus conductor had failed to deposit the bus fares allegedly collected by him. The prosecution failed to establish that he in fact had collected the fares or the amount had come into his possession thereof.

It was held that he could not be held to have committed an offence under this section. The accused, a servant in the post and telegraph department, secreted two letters in the course of assisting in the sorting of letters, and his intention for doing so was to hand them over to the delivery man and share with him certain money payable on them. It was held that the accused had committed theft and as well as had attempted to commit criminal misappropriation of property. The accused, a principal of a school, allegedly drew an amount for the watchman of the school but this was not borne on the register even though the watchman accepted receipt of the amount. Other payments of similar nature were also not entered in the register.

It was held that this much evidence alone would not be sufficient to convict the principal under this section. In *U. Dhar v. State of Jharkhand*, two contracts, one between the principal and the contractor and the other between the contractor and the sub-contractor, were entered into. On completion of the work the sub-contractor demanded payment to be made to him.

When the same was not done, he filed a criminal complaint alleging that the contractor having received payment from the principal had misappropriated his money. The Supreme Court held that this plea was unsustainable because the contract and the sub-contract were different from each other and the money paid by the principal to the contractor was not money or movable property of the complainant sub-contractor, and hence there was no misappropriation. The dispute being about recovery of money, was a dispute of a civil nature and hence the criminal complaint was not maintainable and was liable to be quashed. *Partner's liability In Velji Raghavji v.*

State, the Supreme Court has held that a partner has undefined ownership along with the other partners over all the assets of the partnership and if he chooses to use any of them for his own purposes he may be accountable civilly to the other partners but he does not thereby commit any misappropriation within section 403 of the Code. Where a partner complained that the other partner had converted the partnership business into ownership business and had not paid him his share of the partnership business, the defaulting partner could not be held guilty under this section unless there was an allegation that the partnership had been dissolved. In <https://assignbuster.com/it-not-come-to-the-possession-of-a/>

Anil Saran v. State the Supreme Court observed that where a partner has been entrusted with property under a special contract and he keeps that property in this fiduciary capacity, misappropriation of that property would amount to criminal breach of trust. Exchanging a railway ticket A and were about to board a train from Benares City. A had a valid ticket to Ajudhia while had a valid ticket to Benares Cantonment.

A voluntarily gave her ticket to to check as to whether her ticket for the journey was valid. While returning A's ticket back to her deliberately substituted his ticket in its place and gave the same to her while keeping her ticket with him. was held guilty of criminal misappropriation of property and not of cheating.

Harvesting crops under attachment Where the accused judgment debtor, whose standing crops had been attached, harvested the same while the order of attachment was in force, it was held that he had committed an offence under this section. The offence under section 403 is non-cognizable, bailable and compoundable when permitted by the court which is trying the case, and is triable by any magistrate.