

(1969) 07 CAL CK 0022

Calcutta High Court

Case No: Criminal Appeal No. 528 of 1962

Manick Chand Bagri

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: July 18, 1969

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 342, 540
- Evidence Act, 1872 - Section 47
- Penal Code, 1860 (IPC) - Section 109, 120A, 120B, 409, 465

Hon'ble Judges: K.K. Mitra, J; Das, J

Bench: Division Bench

Advocate: A.K. Dull, Dilip Kumar Dutta and Amitava Guha, for the Appellant; Surathi Mohan Sanyal, for the Respondent

Final Decision: Allowed

Judgement

Das, J.

Appeals Nos. 528, 529 and 530 of 1962 arise out of the same order of conviction by a learned Presidency Magistrate, Calcutta. The Appellants were convicted u/s 120B/409, I.P.C, for conspiracy, while Appellant Haridas Mundra was further convicted u/s 409, I.P.C. and sentenced to various terms of imprisonment.

2. Prosecution case is as follows:

The proceeding was initiated on the complaint of the Registrar of Companies on April 16, 1956. The Appellants were Directors of M/s F.C. Osler (India) Ltd., hereinafter referred to as Osier, between June, 1950 and June 30, 1951. They were also Directors of M/s S.B. Industrial Development Company Ltd., hereinafter referred to as S.B.I.D. which was the managing agent of Osier. Appellant Haridas Mundra was the Managing Director of S.B.I.D.

3. The Appellants and another G.D. Binani, since, acquitted, entered into a criminal conspiracy for committing breach of trust in respect of Rs. 18,91,025 belonging" to Osler between June 1, 1951 and June 30, 1951 and pursuant to this conspiracy, Haridas Mundra committed breach of trust of Rs. 10,00,000 on or about June 30, 1951 and thereafter criminal breach of trust of another sum of Rs. 8,91,025 on or about June 30, 1952. The total amount was, transferred without any authority or resolution from the fund of Osler to S.B.I.D., which again was transferred" to the personal account of Haridas Mundra, maintained with S.B.I.D. for purchasing 5000 shares of Brahmoputra Tea Co. Ltd., hereinafter referred to as B.T.C. B.T.C. is an English company incorporated in England. In order to get controlling interest in B.T.C. the funds of Osler were utilised for purchasing these shares. Later on, to regularize the proceedings of a meeting of the Board of Directors of Osler, purported to have been held on May 23, 1951, was interpolated in the resolution book Under the signature of M.G. Bagri as Chairman, who thereby committed forgery and the Appellants G.D. Mundra, father of Haridas Mundra and H.D. Mundra himself abetted commission of this forgery.

4. The defence version is one of not guilty. Appellants G.D. Mundra and M.C. Bagri contend that there was no meeting on May 23, 1951 and M.C. Bagri, besides deny that he signed as Chairman of the meeting. He stated that though a Director, he never attended to day to day affairs Osier, which was managed by S.B.I.D., through its Managing Director, Haridas Mundra. G.D. Mundra at first claimed that he attended such a meeting but later took up the defence that there was no meeting on May 23, 1951 and he should not have been shown as having attended such a meeting. H.D. Mundra also denied that he was present in any such meeting. His contention appears to be that there was a discussion amongst Directors of Osier, who approved of the investment of Rs. 18,91,025 in the shares of B.T.C. and this investment was in the interest of Osier and legal and proper and duly approved by the shareholders of Osier. This investment is mentioned in the balance-sheet of Osier for the year ending March 31, 1952 and this balance-sheet was signed by the Directors of Osier and certified by the company's auditors, M/s Price Waterhouse Peat and Company. The auditors gave a dean certificate." The investment was at the same price at which it was purchased at London and Reserve Bank of India sanctioned foreign exchange after scrutiny by Ministry of Commerce and Industries, Government of India. Funds from Osier for purchase of these shares came to S.B.I.D., its Managing Agent and not to Appellant personally. He was merely a post box for remitting the money through Bank of India with permission from Reserve Bank of India and Government of India and he did not derive any benefit from the transaction. For investments, a formal permission is not necessary and in the instant case it was done after a discussion with Directors and their approval for the benefit of Osier and hence it is legal and proper. He contended that the tampering of the minute book was by some malicious persons after audit, as otherwise they would have reported it.

5. Prosecution examined 23 witnesses in course of a trial of a little over six years in 288 sittings and the learned Magistrate framed seven charges by an order dated December 8, 1958. The general charge is one of conspiracy against all; two charges of criminal breach of trust u/s 409, I.P.C., against Haridas Mundra for a total sum of Rs. 18,91,025; two charges u/s 409/109, I.P.C., against Appellant G.D. Mundra and M.C. Bagri for abetment of criminal breach of trust by Haridas Mundra in respect of charges 2 and 3 and a charge u/s 465, I.P.C. against M.C. Bagri in respect of resolution of the Board of Directors on May 23, 1951 and another charge of abetment of forgery u/s 465/109, I.P.C. against the other Appellants in respect of charge of forgery against M.C. Bagri, were framed.

6. The learned Magistrate found all the Appellants guilty u/s 120B/409, Haridas Mundra, guilty u/s 409, I.P.C. and acquitted them of the rest of the charges including charge of forgery and abetment.

7. The learned Magistrate held that there was a conspiracy of commit criminal breach of trust to the extent of Rs. 18,91,025 and that Haridas Mundra, G.D. Mundra and M.C. Bagri were parties to the conspiracy. He also found that Haridas Mundra committed criminal breach of trust to this extent. The learned Magistrate, however, found M.C. Bagri not guilty of the offence of forgery u/s 465, M.C. Bagri and G.D. Mundra of the charge of abetment.

8. After the prosecution witnesses were cross-examined, the learned Public Prosecutor filed a petition for examination of the handwriting expert u/s 540, Code of Criminal Procedure and the learned Magistrate by his order No. 184 dated January 10, 1961, allowed this application. Section 540, Code of Criminal Procedure, enables a Court to summon material witness at any stage; first part of the section is discretionary, while the second part is mandatory, if new evidence is found essential for a just decision of the case. The learned Magistrate by his order dated December 2, 1960, fixed December 12, 1960, for examination of the accused persons u/s 342, Code of Criminal Procedure and apparently he did not consider examination of handwriting expert as Court witness at this stage necessary for just decision of the case. This application by the Public Prosecutor was heard on January 3, 1961 and by his order dated January 10, 1961, the learned Magistrate agreed to call the handwriting expert as Court witness on prayer of, prosecution. The manner of exercising this power u/s 540, Code of Criminal Procedure and the reasons given for so exercising the power, have been rightly subject to severest criticism by the learned Advocates for defence and has made the learned Magistrate vulnerable to the charge of bias. Prosecution even at that stage could have legally examined the handwriting expert as its own witness. If it does not do so; knowing full well that the onus is heavily on them, how can they persuade the learned Magistrate to do it? This is not a case where the Magistrate considers examination of the witness essential for a just decision, as, disclosed by his fixing a date for examination under, Section 342 of the Code of Criminal Procedure, but he proceeds to oblige the Public

Prosecutor, who unfairly persuaded him to examine handwriting, expert as a Court witness. Extracts from the reasons read as follows:

it is necessary to resolve the uncertain position and enquire into, the truth in the matter irrespective of the result being, for or against the prosecution, by calling a handwriting expert.

9. The benefit of the uncertain position resulting from prosecution's failure to prove the signature goes to the accused and it is not for the learned Magistrate to come to the aid of the prosecution by way, of resolving the doubts, particularly when it was, open to prosecution to examine the witness. The learned. Magistrate's order, thereafter reads as follows:

there is nothing in the Evidence Act which requires the evidence of an expert pr for that matter evidence of hand writing expert, on disputed signatures to be corroborated before it can be acted upon.

forgetting that the handwriting expert's evidence is not substantive evidence but merely corroborative.

10. At one place in the same order, the learned Magistrate observed as follows:

There is considerable evidence to show that the minutes Ex. 14/3 of the supposed meeting of the Directors held on 23rd May 1951, containing the resolution for purchase of Brahmaputra Tea shares at ₹24 per share to the extent of Rupees Twenty lakhs through the accused Mundra is false as no such meeting was held at all.

Expression of such opinion is likely to create an apprehension in the mind of the accused that the Magistrate had a close mind even before prosecution closed its evidence and the confused decision shows that the learned Magistrate could never rise above it during the trial. About this handwriting expert's opinion we would deal with later at the appropriate place.

11. All Appellants have been convicted u/s 120B for being parties to a conspiracy to commit an offence of criminal breach of trust by Haridas Mundra in respect of Rs. 18,91,025 belonging to Osier; Appellant Bagri and G.D. Mundra are Directors of Osier and they were parties to the conspiracy, having abetted H.D. Mundra by forging the resolution dated May 23, 1951, which Bagri signed as Chairman and which was attended by G.D. Mundra. There are also specific charges against Bagri u/s 465, I.P.C., for forgery and against both M.C. Bagri and G.D. Mundra for intentionally abetting H.D. Mundra in the conspiracy, but they were acquitted. Mr. Dutta, learned Advocate for M.C. Bagri, has submitted that the order of acquittal u/s 465 of M.C. Bagri and u/s 465/109 of G.D. Mundra is inconsistent with their conviction u/s 120B, for the conspiracy charged is by way of abetment by incorporating a forged resolution in the resolution book.

12. There is some force in this contention and the two findings are apparently inconsistent. The part alleged to have been played by M.C. Bagri and G.D. Mundra in the conspiracy is by way of abetment by forging an ante-dated resolution authorising purchase of Rs. 18,91,025 Worth of shares by Haridas Mundra. There is a substantive charge of the same forgery against Bagri and of abetment against G.D. Mundra and both of them were acquitted of the same charge. This means that M.C. Bagri did not forge the ante-dated resolution nor did G.D. Mundra abet by way of conspiracy towards commission of the offence of the criminal breach of trust by Haridas Mundra. They cannot, therefore, be held to have entered into a conspiracy to abet commission of the crime and consequently on the finding earlier made, they should be absolved of the charge of conspiracy. The offence of conspiracy to commit a crime is undoubtedly a different offence from the crime itself, because conspiracy precedes the commission of crime and it is completed before the crime is attempted. In the instant case, the charge is for conspiracy to commit criminal breach of trust and also commission of criminal breach of trust as a result of abetment and therefore, if the abetment is not proved, the conspiracy cannot stand and the two findings are inconsistent. The conspiracy charged is by way of abetment and prosecution has to prove that conspiracy and cannot substitute a new conspiracy. The abetment was by forging, an ante-dated resolution and incorporating it in the resolution book, but this having failed, the conspiracy charge cannot be said to be proved. It is well-settled that the prosecution has to prove the kind of conspiracy charged and if the charge relates to conspiracy by way of abetment by a forged resolution by the Appellants M.C. Bagri and G.D. Mundra, the prosecution has to prove the same conspiracy and cannot attempt to prove a new kind of conspiracy. The Appellants, Bagri and G.D. Mundra, therefore, are not liable to conviction for conspiracy u/s 120B of the Indian Penal Code.

13. The learned Magistrate's finding with respect to the charge of forgery is, however, the product of confused thinking. We have already commented upon the manner of introducing the hand-writing expert as a Court witness after he was persuaded to believe by the Public Prosecutor that there was uncertainty in the evidence of the two witnesses examined by the prosecution--witnesses Nos. 9 and 14--for the purpose of proving the signature of Bagri in the impugned document, Ex. 14/3. The learned Magistrate found as follows:

The circumstantial evidence shows that it was none but Bagri, the accused No. 4, who was signed in the minute, Ex. 14/3.... The cumulative effect of the circumstantial evidence the evidence of P.W. 14 and the corroborative evidence of the handwriting expert is, that M.C. Bagri, the accused No. 4, signed in the minute, ex- 14/3 and I found accordingly.

If that was the finding of the learned Magistrate, we do not see how Bagri could be acquitted of the charge of forgery. It seems to us that the learned Magistrate was under the impression that if the resolution was passed after expiry of conspiracy,

the forger could not be convicted on the substantive offence of forgery also. The learned Magistrate wrote as follows:

As there is an element of doubt regarding, the creation, of the forgery, Ex. 14/3, within the period of conspiracy the accused No. 4 is to be acquitted of the charge of forgery as per count No. 6 of the charge and the accused, Nos. 1 to 3 are to be acquitted of the charge of abetment of forgery in furtherance of their common intention as per count No. 7 of the charge and it is found accordingly.

14. The substantive offence of forgery has nothing to do, with the period of conspiracy and consistent with his finding that Bagri signed, as Chairman an ante-dated resolution, he ought to have immediately proceeded to find him guilty of the charge of forgery which however he did not do. It seems to us that thereafter hold him guilty of the charge of conspiracy by way, of abetment by introduction of a forged resolution is the result of sheer confusion in the mind of the Magistrate and that, Although he found Bagri not guilty of the charge of forgery, he was mentally working on the basis that he forged the document and thereby became a party to the conspiracy. That only explains behaving acquitted Bagri of the charge of forgery and G.D. Mundra of the charge of abetment he could have found both of them guilty for conspiracy.

15. In view of the finding of the learned Magistrate it is not necessary for us to go into the question as to whether Bagri forged the document, but in view of the inconsistent finding by the learned Magistrate, it seems to us that we should attempt to clear up the charge as to whether Bagri signed a forged resolution ante-dating it. The resolution is purported to be signed by M.C. Bagri as Chairman of the meeting in which G.D. Mundra also was present. G.D. Mundra has denied his presence in the meeting and there is no evidence to show that he was present. The writer of the resolution of the meeting had not been examined and no authentic and dependable witness was brought by the prosecution to prove that there was such a meeting attended by G.D. Mundra and Bagri or that Bagri signed as Chairman. So far as Bagri's signature is concerned Bagri has denied the same. Prosecution examined two witnesses, P.Ws. 9 and 14 and even the learned Magistrate in his order dated January 10, 1961, pointed out that an Uncertain position was created by the evidence of the two witnesses, meaning thereby that the evidence was not sufficient to hold that Bagri signed that resolution. In his judgment also the learned Magistrate stated that the uncertainty in the evidence of P.Ws. 9 and 14 regarding the signature of M.G. Bagri in the minute, Ex. 14/3, has been resolved by the examination of Sri Sridhar Chatterjee, C.W. 1, who has given reasons for holding that the signatory of the minute, Ex. 14/3, is Sri M.C. Bagri.

Finally he held:

The cumulative effect of the circumstantial evidence, the evidence of P.W. 14 and the corroborated evidence of the handwriting expert, C.W. 1, is that M.C. Bagri accused not 4 signed in the minute.

16. If the evidence of witnesses Nos. 9 and 14 is inconclusive and if there is uncertainty in their evidence, that cannot be resolved by examination of the handwriting expert whose evidence is at best corroborative. Corroboration connotes that there is evidence on the point at issue and that evidence finds support from the evidence of the handwriting expert, but if there is any uncertainty, the benefit goes to the accused and not to the prosecution and the manner in which the handwriting expert was introduced as a Court witness, makes the trial Magistrate Vulnerable to criticism.

17. Coming to the evidence of P.W. 9 we find, that he stated that he knew the signature of the accused Bagri quite well and that the signature reading M.C. Bagri in Ex. 14/8 was not of the accused Manick Chand Bagri. This is clear evidence against the prosecution and no uncertainty is left therein, P.W. 14 is an employee of S.B. Industrial Development Company and he stated that Ex. 14/3 was signed by M.C. Bagri whose handwriting was known to him. In cross-examination he stated that Bagri did not perform any office function, in the office of F. and C. Osler and connected offices. He never saw him writing anything in their office. He did not see him writing at any time. M.C. Bagri did not sign any document in his presence. He saw signatures as M.C. Bagri in share-scrip, such signatures, he was told by his office colleagues as those, of M.C. Bagri. During trial a similar signature was proved in the minute book and so he indentified it as signature of M.C. Bagri. He is not really acquainted with writing of M.C. Bagri; he has not seen M.C. Bagri write, he has not received documents in his writing in answers to documents in his writing and in ordinary course of business documents written by him have not been habitually submitted to him and he is sot, therefore, competent to prove the signature u/s 47 of the Indian Evidence Act. He frankly confessed that he never saw him write and he never saw him sign any document, but was only told by his colleagues that certain signatures were that of M.C. Bagri. These colleagues were not examined and in the absence of that statement that the office colleagues told him that certain signatures were that of M.C. Bagri is not admissible in evidence. Therefore, he is a man without any knowledge of the writing or signature of Bagri. There was no uncertainty left in the prosecution evidence and the prosecution failed to examine a single witness to prove that the signature Ex. 14/3 as Chairman was that of M.C. Bagri. In the absence of any evidence on the point the question of corroboration does not arise at all and the manner in which the handwriting expert was introduced has already been commented upon by us. The handwriting expert summoned in such circumstances obviously starts with a bias and we are not prepared to give any importance to this opinion even as corroborating evidence. Therefore, there was no evidence worth the name to prove that M.C. Bagri signed as Chairman in Ex. 14/3 nor is there any evidence that G.D. Mundra was present in the meeting. The prosecution did not take

any step to prove the signature of the presence of the two accused persons and the learned Magistrate should have immediately found that the prosecution failed to prove the signatures of Bagri or the presence of G.D. Mundra in the meeting and then acquitted both of them on the charge of forgery and abetment.

18. In any view, therefore, after this finding in respect of the charge of forgery and abetment neither of them could be found guilty on the charge of conspiracy and both M.C. Bagri and G.D. Mundra must, therefore, be acquitted of the charge.

19. In deciding the charge of conspiracy against Bagri the learned Magistrate not only referred to Ex. 14/3 but also pointed out that Bagri was interested in Osler and S.B.I.D. and also interested in B.T.C. and that he was authorised to operate the banking accounts of Osler and he was also Director of several companies. We have already pointed out that the charge of conspiracy related to abetment particularly by the resolution Ex. 14/3 and the fact that he had interest in Osler or S.B.I.D. or even B.T.C. is not sufficient for drawing an inference that he was a party to any conspiracy to enable Haridas Mundra to commit criminal breach of trust of the funds of Osier, Indeed, the prosecution case is that Bagri abetted the commission of the criminal breach of trust by forging the resolution and the conspiracy also was by way of abetment and the prosecution having failed to prove that the other circumstances, namely, his interest in certain companies was not sufficient for drawing an inference that he was in the conspiracy. So far as his interest in B.T.C. is concerned, there is no evidence except that in a certain meeting held on December 6, 1951, Haridas Mundra objected to his taking part in the proceeding as he was going to acquire interest in, the B.T.C. but there is no evidence that Bagri actually acquired any interest in the B.T.C. and he had not in any case any share in B.T.C. on May 23, 1951. As a Director he was authorised to operate banking accounts of Osier, as several other Directors were also authorised to do so. But that authority came prior to the time of conspiracy and cannot, therefore, be taken as an element for drawing an inference of conspiracy. This is also true of G.D. Mundra and in neither case the prosecution has been able to produce sufficient materials for drawing an inference that they were parties to any conspiracy.

20. The Appellant Haridas Mundra was also convicted on a charge of conspiracy. The prosecution case is that the four accused persons, i.e. two Mundras, Bagri and Binani, since acquitted, entered into a conspiracy for committing criminal breach of trust by Haridas Mundra. Binani has been acquitted by the learned Magistrate and in view of our finding that G.D. Mundra and Bagri cannot be convicted for conspiracy, we are left with Haridas Mundra alone. By the definition of criminal conspiracy u/s 120A, I.P.C., it is made clear that there ought to be two or more persons who must be parties to an agreement and one person alone can never be held guilty of criminal conspiracy for the simple reason that one cannot conspire with oneself. This view was taken by the Supreme Court in [Topandas Vs. The State of Bombay](#), . There were four named individuals charged with an offence u/s 120B,

I.P.C. Three out of these four were acquitted of the charge it was held that the remaining one accused could never be held guilty of the offence of criminal conspiracy.

21. The charge of conspiracy is principally based on abetment by forged resolution dated May 23, 1951, alleged to have, been signed by M.C. Bagri as Chairman. The learned Magistrate held that this resolution was forged outside the period of conspiracy and this is why he refrained from convicting Bagri of the charge of forgery. Appellant Haridas Mundra alone, therefore, cannot be convicted on a charge of conspiracy and his conviction u/s 120B, I.P.C., must therefore be set aside.

22. We are now left with the charge of criminal breach of trust against Appellant Haridas Mundra. Appellant Haridas Mundra was Director of Osler and Managing Director of S.B.I.D. Company and S.B.I.D. Company is the Managing Agent of Osier. He acquired certain share of B.T.C., a company registered in England. There was a proposal for sale of 5,900 shares acquired by Haridas Mundra to Osler and Osler purchased these shares for a sum of Rs. 10,00,000 and Rs. 8,01,025. We have already discussed the circumstances in which this deal was made. There is no dispute that Haridas Mundra acquired 22,900 shares of B.T.C. in England at the rate of ₹24 per share and that he had the sanction of the Reserve Bank of India and the Ministry of Commerce, Government of India, for foreign exchange to the extent of ₹5,56,000 for the said purchase. This foreign exchange was credited to him in England through the Bank of India. It is no use saying now that those shares could have been obtained at a lesser price and we are not concerned with it, but the very fact that the Reserve Bank of India and the Ministry of Commerce and Industries, Government of India, were apprised of the nature of the purchase before sanction of the foreign exchange for the purpose and that money was transmitted through Bank, it is sufficient for showing that the Appellant Haridas Mundra acquired these shares; nor is this acquisition denied at all. There was then this deal with Osler and the evidence shows that the deal was completed. From the entries in the book of accounts of S.B.I.D. Co and the vouchers exs. 106 and 107 it appears that S.B.I.D. Company was credited with the sums of Rs. 10 lakhs and Rs. 8,91,025 on June 30, 1951 and June 30, 1952, respectively and Osler was debited to the extent of these amounts for purchase of 5,900 shares of the B.T.C. Ltd. on Osier's account; this amount was thereafter credited to the personal account of Haridas Mundra in the S.B.I.D. The allegation is that Haridas Mundra, as Chairman of S.B.I.D., which was the Managing Agent of Osier, has committed criminal breach of trust to the extent of Rs. 10 lakhs and Rs. 8,91,025 in the share deals for the purchase of 5,900 shares of B.T.C. It appears from the prosecution evidence that there was no cash payment for the deal with Haridas Mundra but only there was only a book debit to Osler and credit to S.B.I.D. of which the Managing Agent was Haridas Mundra and thereafter to personal account of H.D. Hundra in S.B.I.D. This transfer of account was shown in the balance-sheet of Osler and was subject to audit by Price Waterhouse and Company, Auditors of Osier, who certified that the balance-sheet was duly prepared.

The balance-sheet was signed by the other directors and the general meeting passed this balance-sheet. Apparently, therefore, there was no hide and seek of this transaction and in dealing with this case u/s 409, I.P.C., we are not concerned with the propriety or the profit and loss of this deal. The learned Magistrate laid great stress on the fact that the investment was not justified from the Osier's point of view and that Osier was not in the least benefitted by this investment. That is a matter for Osier and u/s 409, I.P.C., we are concerned with whether there was dishonest misappropriation or conversion of funds of Osier as a result of which Haridas Mundra may be liable for criminal breach of trust. It is in evidence that the shares came into the custody of Osier and that thereafter the shares were lodged in the bank and it is also in evidence that, for the transfer of the shares to Osier, Haridas Mundra signed blank transfer forms. P.W. 16, assistant attached to Grindlay's Bank, proves letter dated November 9, 1953, from the General Manager of Osier to Manager of Grindlay's Bank which shows that 5,900 shares of B.T.C. were lodged with the bank for safe custody on behalf of M/s Osier and the details of the shares including their distinctive numbers were recorded in a sheet enclosed. Out of these shares 100 shares were withdrawn on February 17, 1953 and the remaining lot of 5,800 withdrawn by Osier on December 28, 1954. This shows that the share-scrips of the shares sold by Haridas Mundra to Osier were physically in the control and custody of Osier and therefore, the deal was not fictitious and there is no material in evidence to hold that the amount was misappropriated. The share-scrips were actually taken custody of by the Police on being produced by the company. The learned Magistrate laid much stress on the absence of completion of the deal by way of registration of shares with the B.T.C. But that in our view is also of little importance. Bank transfer is not unknown in the commercial world at the time of the deals nor did it normally affect the rights of the transferee. It is well-known that these transfers were not often registered with the parent company to avoid registration fees and also it is not an unusual transaction to bodily hand over the shares on the basis of the blank transfer form. Blank transfer is not an offence; far less an offence under the Indian Penal Code and the argument founded on that cannot be accepted. It was argued that the B.T.C. might have refused to register those transfers, but that is a different matter and we cannot speculate. Haridas Mundra again was not paid in cash but it was only a transfer of account and we wonder if Osier would not have cancelled this transfer of account if there was any difficulty in registration with B.T.C. for any inherent defect in the shares. Journal entry only created a liability and there was no payment in cash. The position therefore, is likely this : "If you give me the shares, I pay you" and this is not breach of trust. What is necessary for the prosecution to prove in a charge of criminal breach of trust is fraudulent misappropriation or conversion of the property. On the facts of the present case, it is clear that the scrips of shares, which were purported to be purchased by Osier, were handed over to Osier by the said seller Haridas Mundra and the payment was made only by a book transfer and there is no dispute that Haridas Mundra acquired these shares for a considerable sum in England. This

clearly disproves the prosecution contention that the amount was criminally misappropriated. The learned Magistrate holds that the transfer of the entire sum is nothing but a dishonest misappropriation of the sum of Rs. 18,91,025 by Haridas Mundra on a show of investment of the funds of Osler in these shares and according to him, this inference is heightened by the fact of lack of authority for making the investment, lack of ratification of the investment, absence of justification for making the investment from Osler's point of view and by the acts of sale of all the Tea Gardens of the B.T.C. Ltd., except one to the B.T.C. (India) Ltd., floated, amongst others, by Haridas Mundra himself. We cannot go into the question of propriety of investment or of the justification for sale of the Tea Gardens of B.T.C. or of the floating of B.T.C. (India) Ltd. in the light of subsequent events and this is beyond the scope of enquiry in this trial except in a very remote way. These are matters for the share-holders and the Board of Directors and for the administrators under the Companies Act. What we are concerned with is whether there was a sale of the shares of B.T.C. to Osler for which Osler paid Rs. 18,91,025 and whether Osler got the share-scrips purchased by Haridas Mundra at the agreed price. That appears to be a fact in the present case and that rules out the question of criminal breach of trust in respect of money of Osler for which Haridas Mundra has been charged. The learned Magistrate thinks that the Auditor has not done his duty. These are, in our view, beyond the purview of the Court in this trial. But the evidence from the prosecution clearly shows that Haridas Mundra acquired the shares for valuable consideration in England and he parted with the shares in favour of Osler on payment which was made by transfer and Osler had custody of the shares and that the absence of registration with the B.T.C. of these shares is not an unusual thing and therefore, we are unable to agree with the learned Magistrate's finding that the Appellant Haridas Mundra committed criminal breach of trust and therefore, his conviction u/s 409, I.P.C., cannot be justified.

23. In the result, these appeals are allowed and the conviction of the Appellants and the sentence imposed on them are set aside and they are acquitted. They are discharged from the bail bonds.

R.K. Mitra, J.

24. I agree.