Manick Chand Bagri Vs The State

Court: Calcutta High Court

Date of Decision: July 18, 1969

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 342, 540
Evidence Act, 1872 â€" Section 47
Penal Code, 1860 (IPC) â€" 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 Osler. 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 Go. 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 Osier, 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 Osler and

legal and proper and duly approved by the shareholders of Osier. This investment is mentioned in the balance-sheet of Osler for the year ending

March 31, 1952 and this balance-sheet was signed by the Directors of Osler 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 Osler 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 hot derive any benefit from the transaction.

For investments, a formal permission is not necessary and in the instant caser it was done after a discussion with Directors and their approval for

the benefit of Osler 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 Ã¯Â¿Â½24 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 Osler 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 beep 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 esolution 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, ff the abetment is riot 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 arid 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 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 change 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 arid 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 s the result

of litter 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 tri 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 Ã¯Â¿Â½24 per share and that he had the sanction of the

Reserve Bank of India and the Minstry of Commerce, Government of India, for foreign exchange to the extent of Ã¯Â¿Â½5,56,000 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 ft, 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 Osler was not in the least benefitted by this investment. That is a matter for Osler and u/s 409, I.P.C., we are concerned with whether there

was dishonest misappropriation or conversion of funds of Osler 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 Osler 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 Osler 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 Osler 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 Osler on

December 28, 1954. This shows that the share-scrips of the shares sold by Haridas Mundra to Osler were physically in the control and custody of

Osler 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 Osler 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 Osler 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

Osier"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.