indra Narayan Roy Vs. the State

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Court : Kolkata

Decided On : Aug-18-1960

Reported in : AIR1963Cal64,1963CriLJ156

Judge : S.K. Sen and ;K.C. Sen, JJ.

Acts : Indian Penal Code (IPC), 1860 - Sections 109, 120B, 405, 422 and 409; ; Code of Criminal Procedure (CrPC) , 1898 - Sections 235 and 239

Appeal No. : Criminal Appeal No. 8 of 1958

Appellant : indra Narayan Roy

Respondent : The State

Advocate for Def. : A.K. Basu, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutt and ;Prasun Chandra Ghose, Advs.

Disposition : Appeal allowed

Judgement :

S.K. Sen J.

1. The appellant Indra Narayan Roy has been convicted under Sections 409/109 of the Indian Penal Cods and sentenced to rigorous imprisonment for five years by Guha, J. at a High Court Sessions trial agreeing with the majority verdict of six to

three. The prosecution case was briefly as follows: The Calcutta National Bank Ltd. was started by Sachindra Mohan Bhattacharjee and it began doing business on a small scale in 1930 in a building at 3 and 4 Hare Street. It was registered as an incorporated Company on 25-5-35 and had become a scheduled bank, in October 1938; it shifted to its own premises at P. 2, Mission Row Extension in 1940. S. M. Bhattacharjee became the Managing Director of the Calcutta National Bank Ltd. in 1937 and he continued as such until the 30th June, 1946, when the Articles of Association of the Banking Company were altered and the post of the Managing Director was abolished, and it was provided that the management of the bank would henceforth be done by a Board of Directors headed by a Chairman, and S. M. Bhattacharjee was elected as the first Chairman of the Board of Directors and began to function as such from the 1st July, 1946. On 21-2-50 the Board of Directors passed a resolution as to amalgamation with other banks against the wishes of S. M. Bhattacharjee; and S. M. Bhattacharjee thereupon resigned from the Board of Directors on 21-2-50; but with effect from the 1st June, 1950, he began to function again as the Chairman of the Board of Directors, having, been reelected as such because in the meantime the other directors had come over to his view and decided against amalgamation with other banks. T. C. Chatterjee became a director of the bank with effect from the 7th July, 1939 and continued as such to the end. The appellant Indra Narayan Roy first became a director of the Calcutta National Bank Ltd. on the 26th December, 1948 and he was also elected as a member of the Investments and Advances Committee, which Committee was entrusted with the responsibility to examine and approve of all proposals for investments and advances of the funds of the bank. The first members of the Committee were S. M. Bhattacharjee and T. C. Chatterjee.

2. The Calcutta National Bank Ltd. financed a large number of subsidiary or sister concerns and in this appeal we are particularly concerned with one of them, namely, India Construction Company Ltd. Other subsidiary concerns were Indian Investment Corporation Ltd., Chemical Industries of India Ltd., Farmers' Corporation of Bengal Ltd., United India Investment Co. Ltd., Aryan Engineering Works Ltd., Fire and General Insurance Co., Ltd., New Bengal Provident Insurance Co., Ltd., Indian Economic Insurance Co. Ltd., Hindusthan Cotton Mills Ltd., and Iron and Steel Industries or India Ltd. These subsidiary companies were

generally started in 1942 and 1943 and S. M. Bhattacharjee was one of the directors of all these companies. The appellant Indra Narayan Roy was also one of the directors of ten of these companies, that is, all the subsidiary companies except the New Bengal Provident Insurance Co. Ltd., but he was a shareholder in that company also. T. C. Chatterjee was a director of the five of the companies and was a shareholder in some of the other subsidiary companies. The subsidiary companies were formed to advance industries which might be financed by the Calcutta National Bank Ltd. and it is clear that S. M. Bhattacharjee, I. N. Roy and T. C. Chatterjee were associated together in most of the subsidiary companies.

3. According to the evidence, however, the appellant I. N. Roy was at first mainly interested in the Hindusthan Cotton Mills Ltd. There is the evidence that he was a Textile Engineer and he devoted his energies in making the Hindusthan Cotton Mills a success and, in fact, it appears that the Cotton Mills were working successfully, and at the time when the Calcutta National Bank Ltd., closed down, the Hindusthan Cotton Mills Ltd., had a credit balance of over Rs. 3 lakhs at the bank.

4. Trouble between S. M. Bhattacharjee and the Reserve Bank arose in 1950 and, the Reserve Bank stopped making advances to the Calcutta National Bank Ltd. when S. M. Bhattacharjee was reelected as a director of the Calcutta National Bank Ltd. with effect from the 1st June, 1950. On 29-12-50 the Reserve Bank under Section 35 of the Banking Companies Act issued a directive authorising one of its officers to inspect the business of the Calcutta National Bank Ltd. K. D. Rao was the officer who was authorised. He deposed as a witness, being P. W. 13 at the Sessions trial. He completed his inspection of the business of the Calcutta National Bank Ltd. by February, 1951 and submitted a report to the Reserve Bank. The Reserve Bank, thereafter, on 1-3-51 demanded repayment of advances amounting to about Rs. 24 lakhs which had been made to the Calcutta National Bank Ltd. as in the opinion of the Reserve Bank the working of the Calcutta National Bank Ltd. was not satisfactory. On 5-3-51 the directors of the Calcutta National Bank Ltd. adopted a resolution refusing the demand for repayment of the outstanding advances of the Reserve Bank. The Calcutta National Bank Ltd. also failed to maintain the minimum deposit required to be kept with the Reserve Bank

by all scheduled banks and on that account the Reserve Bank on 11-5-51 served a notice under Section 42 of the Reserve Bank of India Act directing the Calcutta National Bank Ltd. to stop accepting de-posits at the main office and at all its branches. This order was received by the Calcutta National Bank Ltd. on 12-5-51, and from 14-5-51 (Monday) the Calcutta National Bank Ltd. stopped payment to depositors and creditors and obtained a moratorium from the High Court. Thereafter, applications were made to the High Court for a scheme of arrangement being adopted and there was an order for compulsory winding up of the Calcutta National Bank Ltd. made by the High Court on the 2nd December, 1952. K. D. Rao on behalf of the Reserve Bank filed a petition of complaint before the Chief Presidency Magistrate against S. M. Bhattacharjee, I. N. Roy and T. C. Chatterjee on 3-10-53 for conspiracy to commit criminal breach of trust as agents and directors of the Bank. Ext. 142 is the petition of complaint which was filed. In the petition of complaint, some details were given as to the mode by which criminal breach of trust had been committed and wrongful loss had been caused to the Calcutta National Bank Ltd. It was mentioned there that from 1946 the company started buying shares and debentures of the subsidiary companies at the face value or at a premium, and that after sometime, on occasion even on the next day the bank sold these shares or debentures at half price or less to some other subsidiary companies, and by these transactions between 1946 and 1951 the directors caused wrongful loss to the bank to the tune of Rs. 12,09,653/8/-. An illustration may be given of the way in which these transactions in shares took place. (After elaborating the illustration, the judgment proceeded.)

In short, according to the prosecution case, over 30 lakhs of money were thus lost to the bank on account of wrongful action of the directors, of whom the main figure was S. M. Bhattacharjee who was at first the Managing Director of the bank and then the Chairman of the Board of Directors and, accordingly, in the complaint filed by K. D. Rao, he was the main accused; but I. N. Roy and T. C. Chatterjee were also concerned in the conspiracy to cause wrongful loss to the bank according to the prosecution case.

5-6. The first commitment of the three accused made by the Presidency Magistrate's Court was quashed for technical reasons, but all the accused were

again committed to the High Court Session on the 19th July, 1955. After commitment T. C. Chatterjee, one of the accused died, and S. M. Bhattacharjee was seriously ill at the time when the trial was taken up and he also subsequently died. I. N. Roy alone was put on trial at the High Court Session and there were two charges against him, namely, a general charge of consipracy to commit criminal breach of trust under Sections 120B/409 of the Indian Penal Code, that I. N. Roy along with S. M. Bhattacharjee, Tara Charan Chatterjee and other person or persons unknown between March, 1946 and May, 1951 was a party to criminal conspiracy to commit or cause to be committed the offence of criminal breach of trust by S. M. Bhattacharjee as agent in respect of the funds and assets of the Calcutta National Bank Ltd. The second charge related to the sum of Rs. 16,29,524/10/3 which represented the debt of the India Construction Company Ltd. to the Calcutta National Bank Ltd. which was written off from 11-11-46. There was a specific charge against S. M. Bhattacharjee under Section 409 of the Indian Penal Code for committing criminal breach of trust in respect of that sum. There was a charge under Sections 409/109 of the Indian Penal Code against I. N. Roy, namely, that pursuant to the conspiracy. S. M. Bhattacharjee being the Chairman of the Board of Directors of the Calcutta National Bank Ltd. and in such capacity entrusted with or having dominion over the assets of the bank, committed criminal breach of trust as agent in respect of Rs. 16,29,524/10/3 by dishonestly writing off the said sum, and I. N. Roy as Manager of the India Construction Company Ltd. abetted S. M. Bhattacharjee in the commission of the offence.

7. The accused took the defence that although he was appointed director of most of the subsidiary companies, he did not really take interest in the working of any company other than the Hindusthan Cotton Mills Ltd. that as a Textile Engineer himself he took great interest in making the Cotton Mills a success and actually managed to make it a success; and that in view of his succeeding in making the Hindusthan Cotton Mills Ltd. a flourising concern he was requested by S. M. Bhattaeharjee and othera to take over the management of the affairs of the India Construction Company Ltd. which was in a bad way, and about the month of June, 1946, he agreed to do so; and then having found that on account of difficulty in collecting the bills for the building work done, mostly in East Bengal, the debts of the India Construction Company Ltd. had become irrecoverable, and that unless

the whole debt was remitted, the India Construction Company Ltd. would have to go into liquidation. He in consultation with S. M. Bhattacharjee who was the Chairman of the Board of Directors of the India Construction Company Ltd. also, applied to the Calcutta National Bank Ltd. for remission of the entire debt, this application was made in good faith for the benefit of both India Construction Company Ltd. as well as of the Calcutta National Bank Ltd. itself, because if one of the subsidiary companies which was indebted to the bank to the extent of Rs. 18 lakhs or more went into liquidation at that stage in June, 1946, there might be a run on the Calcutta National Bank Ltd. itself, endangering its security. According to the accused, therefore, he committed no offence, but acted throughout in good faith, in respect of the transaction in shares which caused considerable loss to the Calcutta National Bank Ltd., the appellant I. N. Roy disclaimed responsibility for the same, and pointed out that he was not a director of the Calcutta National Bank Ltd. at all for a large part of the period covered by the general charge of conspiracy, because he became a director of the Calcutta National Bank Ltd. only in December, 1948 whereas the period mentioned in the charge started from March, 1946.

8. In respect of the general charge of conspiracy the jury returned a majority verdict of not guilty by six to three, and in respect of the specific charge under Sections 409/109 of the Indian Penal Code relating to the writing off the debts of the India Construction Company Ltd. the jury by a majority of six to three returned a verdict of guilty. The learned Judge accepting both the verdicts acquitted the appellant in respect of the general charge of criminal conspiracy, convicted him in respect of the other charge under Sections 109/409 of the Indian Penal Code and sentenced to rigorous imprisonment for five years.

9. This appeal was admitted both under Sections 411A(1)(a) and 411A(1)(b), that is, both on questions of law and questions of fact. Mr. Ajit Kumar Dutt appearing for the appellant has urged that in view of the acquittal in respect of the general charge of conspiracy, the conviction of the appellant in respect of the second charge cannot be sustained, because the wording of the second charge is that pursuant to the conspiracy mentioned in charge No. 1, S. M. Bhattacharjee committed criminal breach of trust as an agent in respect of the sum of Rs.

16,29.524/10/3 and I. N. Roy abetted that conspiracy. As regards this argument, I may observe that when there is a general charge of conspiracy and the prosecution case is that the specific offences were committed by one or other accused in pursuance of the conspiracy, it is usual to mention in the subsidiary charges that the specific offence was committed in pursuance of the conspiracy; but when the main charge of general conspiracy fails, the conviction of one or more of the accused in respect of one or more of the specific charges is still quite legal. In this connection reference may be made to Kadiri Kunhahammad v. State of Madras : 1960 CriLJ1013 . In that case the principal charge framed was one of conspiracy under Section 120B read with Section 409 of the Indian Penal Code. The other charges were based on several illegal acts committed by one or more of the accused in furtherance of the conspiracy. The principal charge failed, but there was conviction in respect of a specific charge under Section 409 of the Indian Penal Code. This was challenged before the Supreme Court on the ground among others for misjoinder in view of the finding of the trial court that no general conspiracy was proved to exist. It was, however, held that the trial and the conviction in respect of one specific charge was in order; and in this connection the Supreme Court relied on the decision of the Judicial Committee in Babulal Chokhani v. Emperor .

10. Mr. Dutt has urged that apart from the general argument of the second offence charged being committed in pursuance of the general conspiracy, there is an additional ground in this case, namely, that the abetment of criminal breach of trust in respect of the sum of Rs. 16 lakhs and odd by S. M. Bhattacharjee, which is the subject-matter of the second charge, was alleged to be abetment by conspiracy; no other mode of abetment being referred to in the charge of the learned Judge to the jury. At page 65 of the charge the learned Judge told the jury that the jury had to be satisfied that I. N. Roy had also the requisite criminal intention; and if they thought that even though I. N. Roy's action helped in the commission of the criminal breach of trust by S. M. Bhattacharjee, yet so far as I. N. Roy himself was concerned, he was an innocent agent and acted in a bona fide manner, he would not be guilty; but the learned Judge went on to tell the jury that the prosecution case definitely was that there was a criminal conspiracy in pursuance of which the criminal breach of trust was committed by S. M. Bhattacharjee and I. N. Roy was

not merely an idle spectator but he was, on the contrary, an active participant in it, that is, in the criminal conspiracy. In view of this direction by the learned Judge, Mr. Dutt has urged that the necessary element of the charge of abetment as framed against the appellant, was criminal conspiracy and if the charge of criminal conspiracy failed, in view of majority verdict of the jury which was accepted by the learned Judge, the charge of abetment by conspiracy in respect of the amount of the debt of India Construction Company Ltd. must also fail. I would hold, however, that apart from the general conspiracy which was the subject-matter of the first charge, there could be a limited conspiracy for the purpose of criminal breach of trust in respect of the sum of Rs. 16 lakhs and odd representing the amount of the debt of the India Construction Company Ltd. to the Calcutta National Bank Ltd. and if the evidence supports the existence of this limited conspiracy between I. N. Roy and S. M. Bhattacharjee, that would be sufficient to maintain the conviction in respect of the charge under Sections 109/409 of the Indian Penal Code. On this technical ground alone, therefore, I do not think that the appellant can get an acquittal.

11. The next point urged by Mr. Dutt is that S. M. Bhattacharjee was not in the position of a trustee at all, because at the relevant time he was no longer the Managing Director having sole control over the funds, subject to the supervision of the Board of Directors, but he had become the Chairman of the Board of Directors with effect from the 1st July, 1946, and it was not he but the Board of Directors as such who had control over the funds of the bank, and the Chairman had only a supervisory power, but no power to deal directly with the property of the bank; and that in the circumstances S. M. Bhattacharjee could not be guilty of criminal breach of trust as an agent; and that even if he intermeddled in the affairs of the bank and directed disposal of a portion of the funds of the bank in a way which was not legal, he could not be guilty of criminal breach of trust but might be guilty of some other offence. In support of this contention Mr. Dutt has referred to the provisions of the Memorandum of the Articles of Association before amendment and after amendment, and to a decision of a Full Bench of Calcutta High Court, namely, Susen Behary Roy v. Emperor, AIR 1931 Cal 184. Ext. 79 is a copy of the Memorandum of the Articles of Association of the Calcutta National Bank Ltd. in force until the 30th June, 1946. Under that Memorandum of the Articles of

Association, S. M. Bhattacharjee was the Managing Director and he was to be the Managing Director until he voluntarily resigned; and under Article 86 he was to have full power to do all acts, matters and things deemed necessary, proper or expedient for carrying on the business and the concerns of the bank including power to make investments by loans or otherwise of the Company's funds and he was to exercise the powers, authorities and discretions, of the Company except only such powers as was required by the Indian Companies Act to be exercised by the Board of Directors or by the Share-holders at a general meeting; and all the monies belonging to the bank might be retained by the Managing Director or paid to the bankers as the Managing Director thought fit. In other words, under this Article the Managing Director had sole control over the funds and the affairs of the bank, and the Board of Directors was only to supervise the work of the Managing Director generally. In plain words the Board was supposed to endorse whatever the Managing Director had done. There was amendment of the Articles of Association, however, with effect from the 1st July. 1946, and a copy of the amended Articles of Association is Ext. 79/1. Under Article 106 of the amended Articles of Association the business of the Company was to be managed by the directors. Under Article 107 the Chairman of the Board of Directors was to exercise general supervision over the administration and management of the business of the company on behalf of the Board of Directors. Mr. Dutt has urged that since the amended Articles of Association came into force, the directors as a Board were in the position of trustees and were in charge of the funds, and not the Chairman of the Board of Directors individually; and that in the altered circumstances if the Chairman, that is, S. M. Bhattacharjee, without reference to the Board of Directors made an order for disposal of the funds of the banking company, the Chairman would be acting without authority, and the bank acting through the directors might file a suit against S. M. Bhattacharjee for such unlawful intermeddling with the affairs of the company and thus causing loss to the company, but S. M. Bhattacharjee could not, in the circumstances, be guilty of the charge of criminal breach of trust. The decision on which Mr. Dutt has relied is AIR 1931 Cal 184, (FB). In that case their Lordships of the Full Bench were dealing with the position of an executor de son tort. That was a case of dispute between Susen Behary Roy and his sister Sarojbala The claim of the sister was that the

father had left a will by which she was entitled to one-third share of the assets left by the father, whereas the brother Susen Behary claimed that no will had been left and he was the sole and natural heir. It was found, however, that there was a will in existence by which Sarojabala was entitled to one-third share of the assets, although no probate of the will had been taken at the time when the criminal prosecution was started against the brother Susen Behary Roy as a person who had intermeddled with the estate of the deceased without legal authority to do so. It was held by their Lordships that such a person who intermeddled with the estate of the deceased was liable to account for every penny that may have come into his hands, but this was not on the basis of entrustment but on the basis that not being entrusted he had no business to intermeddle. The conclusion was that such person could not be held guilty of the offence of Criminal breach of trust. It is to be observed, however, that the position of the person intermeddling with the estate of a deceased or an executor de son tort is not quite the same as the position of a director or Managing Director or a Chairman of the Board of Directors of a Bank or a Company. In the case of re, Lands Allotment Co., (1894) 1 Ch D 616, it was held that the directors of a company were trustees as to the monies of the company which had come to their hands or were under their control and could, therefore, be proceeded against for misapplication of the funds of the company. At page 638 of the decision the following observation occurs.

'Case after case has decided that directors of trading companies are not for all purposes trustees, or quasi trustees, or to be treated as trustees in every sense; but if they deal with the funds of a company, although those funds are not absolutely vested in them, but funds which are under their control, and deal with those funds in a manner which is beyond their powers, then as to that dealing they are treated as having committed a breach of trust.'

Thus if the funds are under the control of a particular director and he deals with the funds in a manner which is beyond his power, he would be guilty of the offence of criminal breach of trust. In the present case, under Article 107 of the amended Articles of Association, the Chairman was to exercise general supervision over the administration and management of the business of the Banking company on behalf of the Board of Directors. In other words the Chairman would and could

generally manage the day-to-day, administration of the business of the bank. How this was done has been explained by some of the witnesses, and reference may be made to the evidence of P. W. 7 Srish Chandra Bhattacharjee who was the Chief Accountant of the Bank. (After discussing the evidence of Srish Chandra Bhattacharjee, His Lordship proceeded:) It is, therefore, clear that under the general power of supervision granted to him by Article 107 of the amended Articles of Association (Ext. 79/1) S. M. Bhattacharjee, the Chairman of the Board of Directors, had, in fact, effective control over the business and the funds of the bank and, therefore, it must be held, as was also held by the learned Judge who tried the case, that S. M. Bhattacharjee, was in the position of a trustee and therefore, he could be guilty of the offence of criminal breach of trust as an agent of the bank it he dishonestly misapplied the funds of the bank and caused loss to the bank.

12. The next point urged by Mr. Dutt is that no criminal breach of trust could be committed by dealing with the debts of a bank or a trading corporation, and that by merely writing off debt due to the India Construction Company Ltd. no offence of criminal breach of trust was committed. In this connection Mr. Dutt has urged that criminal breach of trust can only be committed in respect of tho funds or tangible assets in the hands of the directors or under their control and not in respect of the debts due to the company. In this connection he has referred to two English decisions. The first case is in re, Forest of Dean Coal Mining Co., (1878) 10 Ch D 450. In that case it was observed as follows:

'Directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company.'

The other case is (1894) 1 Ch D 616. At page 631 the following observations were made:

'Although directors are not properly speaking trustees, yet they have always been considered and treated as trustees of money which comes to their hands or which is actually under their control; and ever since joint stock companies were invented directors have been held liable to make good moneys which they have misapplied

upon the same footing as if they were trustees'.

At page 638 another learned Judge of the same Bench approved of the decision in the earlier case cited, namely, (1878) 10 Ch D 450 and he observed as follows:

'I do not believe that there has ever been any deviation from the language of the late Sir George Jessel in the case of (1878-79) 10 Ch D 450 at p. 453). Sir George Jessel said this: 'Directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company''.

13. It would, therefore, appear that in respect of the debts of a company the directors could not be deemed to be in the position of trustees, and it they dealt with such debts by writing off some debts wrongfully, and thus caused loss to the company, they might be guilty of some other offence but not of criminal breach of trust. Section 422 of the Indian Penal Code may possibly apply to such cases but Sections 406 and 409 must be held to be inapplicable. As against these English decisions Mr. A. K. Basu appearing for the State has referred to two decisions of the Punjab High Court and he has referred to the statement of law as in Halsbury, 3rd Edition Vol. 6 Article 604. The recital of law in the latter is merely that the directors are trustees or in the position of trustees of property of the company in their hands or under their control. The statement of law contains nothing expressly about the debts due to the company, and there is no reason to think that the statement of law in Halsbury is in any way different from the law as laid down in the two English cases cited by Mr. Dutt. The two Punjab decisions are both decisions of single Judges of that High Court, The first of these cases is Ram Chandra v. Emperor, AIR 1926 Lah 385. It was observed in that case that in order to establish a charge of dishonest misappropriation or criminal breach of trust, it was not necessary that the accused should have actually taken tangible property such as cash from the possession of another, viz., the bank, and transferred the same to his own possession; and the transfer of a certain amount from the account of another to one's own account was sufficient to constitute the offence. The accused in that case was the manager of the Ambala Branch of the Amritsar National Bank. His own account on the 15th May, 1923, showed a debit balance.

On the 15th May, 1923, he credited to his account a total sum of Rs. 1,287/-/6 and debited the Sundries Account of the bank by the same amount; he was entitled to operate the Sundries Account to defray any miscellaneous expenses incurred by him on behalf of the bank, that is, on the business of the bank. By writing out debit voucher and credit voucher and posting them in the accounts, the balance of his own account was converted into a credit balance. It was held by the learned Judge of the Punjab High Court that from the moment of such book transfer he was entitled to deal with the amount at his credit as he liked and had full disposing power over that amount thus transferred to his own account. Virtually, therefore, there had been transfer of funds and, therefore, the accused was guilty.

14. The other case of the Punjab High Court is Mangal Sen v. Emperor, 30 Cri. LJ 954: (AIR 1930 Lah 57), where it was observed that conversion did not cease to be conversion merely because no cash had passed. By conversion criminal breath of trust was meant. Mangal Sen was the Managing Director of the Punjab Industrial Bank and as such Managing Director he caused certain entries to be made in respect of a loan of Rs. 3 lacs by the bank in favour of himself and others, Directors of an allied concern, viz., Hindusthan Assurance and Mutual Benefit Society, of which also he was the Managing Director. The entries were made on the 20th September 1922. A resolution of the Board of Directors sanctioning the loan or advance was adopted on the 21st September, 1922, but it was proved that the resolution was bad for want of quorum. The Director Mangal Sen was prosecuted for criminal breath of trust. The argument was advanced that only paper entries had been made in the bank's ledgers and vouchers in support of the entries had been made, and no cash had passed, and therefore no offence was committed. It appeared however that there was intention to transfee funds and actually part of the amount of the loan was placed in fixed deposit in the name of Sm. Lajwanti Debi, wife of Mangal Sen, and a loan of Rs. 50,000/- was taker) on the security of the fixed deposit in the name of Sm. Lajwanti Debi.

15. In both the above cases therefore there was an intention to transfer funds even though no cash money had been handled at the stage at which the offence was alleged to have been committed. Without expressing any opinion on the correctness or otherwise of the above two decisions, I would merely point out that

the present case can easily be distinguished, as in this case there was no transfer of funds intended to be drawn out but mere remission of the debt of India Construction Co. Ltd. to the bank. (After discussing the evidence on the point in the rest of this para and para 16, His Lordship proceeded :) Thus, as I have already mentioned, even if the decisions of the Punjab High Court cited above arc correct, the present case can clearly be distinguished, because there was really no transfer of funds in the present case, as there was in the two Punjab cases. Moreover, the law as laid down in the two English decisions relied upon by Mr. Dutt must, in my opinion, be accepted as good law in India also, in view of the definition of the criminal breach of trust in Section 405 of the Indian Penal Code. There can be criminal breach of trust in respect of property entrusted with a person or the property the dominion over which is entrusted to a person. This property must be tangible property in the hands of the directors or under their control and, therefore, the debt due from the company to the Bank could not be the subject-matter of criminal breach of trust.

17. In the circumstances, I must hold that even though S. M. Bhattacharjce may have committed the offence under Section 422 of the Indian Penal Code or any other offence on account of causing loss to the Calcutta National Bank Ltd. by remitting the entire debt due by the India Construction Co. Ltd. to the Bank, he did not commit the offence of criminal breach of trust. In view of this, it is clear that the appellant I. N. Roy could not also be guilty of abetment of such criminal breach of trust, even though there might have been an understating between the appellant, I. N. Roy, and the Chairman. S. M. Bhattacharjee in respect of the writing off of the entire debt due by the India Construction Co. Ltd. in the aforesaid manner, and even though such writing off might have caused wrongful loss to the Calcutta National Bank Ltd., that is the constituents and share-holders of the Bank.

18. Mr. Dutt has urged another point, namely, that apart from the point whether there could be criminal breach of trust in respect of a debt due to a banking company, the charge of criminal breach of trust and abetment of criminal breach of trust must fail because there was no element of dishonesty, but both S. M. Bhattacharjee and I. N. Roy acted in good faith in so far as the remission of the debts due by the India Construction Co. Ltd. was concerned. (After discussing the

evidence, His Lordship proceeded:)

19. The evidence pointed out by Mr. Dutt no doubt tends to support the contention that S. M. Bhattacharjee and I. N. Roy acted in good faith; but on the other hand, Mr. Basu has pointed out certain evidence which tends to give support to the opposite conclusion. (After discussing the evidence the judgment proceeded:)

20. In the circumstances, some doubt must remain as to the point whether S. M. Bhattacharjee or I. N. Roy was acting bona fide when the remission of the entire debt of the India Construction Co. Ltd. was asked for and granted. But the fact remains that, in any case, not much loss was caused to the Calcutta National Bank Ltd. because, if there had been remission of the debt, very little could have been realised out of the assets of the India Construction Co. Ltd. Moreover, there is the point of law, namely, there was no dealing with the funds in an unlawful manner and no transference of funds along with the book transfers made, but there was only a remission of the debt, and this dealing with the debt due to the Banking Co. even if improper and unlawful, could not amount to criminal breach of trust in view of the decisions already discussed.

21. In that view, we must hold that the conviction of the appellant I. N. Roy under Section 109/409 of the Indian Penal Code cannot be sustained.

22. This appeal is, therefore, allowed and the conviction of the appellant I. N. Roy alias Indra Narayan Roy under Section 109/409 of the Indian Penal Code and the sentence passed thereunder are set aside, and the appellant is discharged from his bail bond.

K.C. Sen, J.

23. I agree.