

Jitendra Nath Bose Vs. the State

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Court : Kolkata

Decided On : Apr-26-1990

Reported in : 1991CriLJ922

Judge : Ajit Kumar Sengupta and ;Manabendra Nath Roy, JJ.

Acts : Prevention of Corruption Act - Sections 5(1) and 5(2); ;Criminal Law (Amendment) Act, 1949; ;Special Court Act; ;West Bengal Criminal Law (Amendment) Special Courts Act, 1949 - Section 4(2); ;Bengal Co-operative Societies Act; ;Evidence Act - Sections 24 to 28, 34, 113 and 114; ;Indian Penal Code (IPC) - Sections 21(22), 403, 405 and 409; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 233, 234, 235, 236, 239, 311, 342 and 540

Appeal No. : C.A. No. 5 of 1982

Appellant : Jitendra Nath Bose

Respondent : The State

Advocate for Def. : S. Roy, Adv.

Advocate for Pet/Ap. : Pradip Ghosh, Adv.

Disposition : Appeal allowed

Judgement :

Ajit Kumar Sengupta, J.

1. This appeal is directed against the order of conviction and sentence of the appellant under Section 409 of the Indian Penal Code. The appellant was sentenced to suffer imprisonment for a period of one year and to pay a fine of Rs. 1,000/- in default, further rigorous imprisonment for three months. Two specific charges were framed-- one under Section 409 of the Indian Penal Code for criminal breach of trust and the other under Section 5(1)(c) read with Section 5(2) of the Prevention of Corruption Act. The prosecution, however, did not press the second charge and, accordingly, it was expunged by the order of the learned Special Court dated 29th April, 1975. The case, therefore, proceeded under Section 409 of the Indian Penal Code.

2. Shortly, the case of the prosecution is that Jitendra Nath Bose, the accused was the Head Cashier of the Calcutta State Transport Corporation, Lake Depot, Calcutta. He is a public servant within the meaning of Section 21(22) of the Indian Penal Code. He was in charge of the C.S.T.C. cash and the case was of three sorts, namely, (1) Main or General Cash comprised by the daily collections hereafter referred to as the Corporation Cash, (2) Cooperative Cash, and (3) Canteen Cash. The accused had exclusive dominion over all the cash. The cash receipts under different categories enumerated above were shown in the relevant Cash Books.

On June 12, 1970, on a surprise check, the cash in custody of the accused showed the following shortfalls : (a) Main Cash rupees 9,701.19 p., (b) Cooperative Cash rupees 36,373.04 p. and (c) Canteen Cash rupees 7,541.63 p. Another sum of Rs. 650.00 interest accrued on the Security furnished by an employee (in Postal Savings Certificate) should have been in the custody of the accused. It was not there. So the total amount found short was Rs. 54,265.86 p.

On the basis of the aforesaid finding, charges were framed. The learned Judge has held that prosecution has failed to prove the embezzlement of Cooperative and Canteen Cash. The entrustment of Rs. 650/- was also not proved. He was, however, found guilty on the charge of shortage of C.S.T.C. Cash of Rs. 9,701.19 p. Accordingly, he was convicted under Section 409 of the Indian Penal Code, as

aforesaid.

3. At the hearing, it has been contended that the Special Court has no jurisdiction to entertain and try the charges framed in respect of the properties which are admittedly Government properties. It is therefore contended that the charges are liable to be set aside. To appreciate this contention it is necessary to set out the particulars of the amount involved in the said charge.

The amount involved in the said charge is Rs. 54,265.86 p., the details of which, as stated hereinbefore, are as follows :

a). Calcutta State Transport Corporation Cash Rs. 9,701.19 p.b). Cooperative Cash Rs. 36,373.04 p.c). Canteen Cash Rs. 7,541.63 p.d). Interest in Postal Cash Certificate Rs. 650.00 p.Rs. 54,265.86 p.

4. Out of the aforesaid four items which have been lumped up in the charge the amount shown in (b), (c) and (d) are not Government Properties. The cash of the Cooperative Society belongs to the shareholders and the Government has nothing to do with the same. Similarly, the Staff Canteen Cash is also the properties of the Staff and is not the property of the Government. Item No. (d) the amount of the interest is the property of Amal Kumar Chakraborty, P.W.9.

5. Therefore, ,under the Criminal Law Amendment Act, 1949 (Special Court Act), the Special Court had no jurisdiction to try the accused for alleged criminal breach of trust or misappropriation of the amounts stated in (b), (c) and (d) above.

6. From Section 4(2) of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949 read with the Schedule it will be seen that the Special Court is competent to try only certain specified, offences. In order to attract the, jurisdiction, pf the Special Court, to try an offence under Section 409 of the Indian Penal Code it must be shown that the property which was entrusted and misappropriated was the property of the Government and the person responsible is a public servant.

7. The Court below sought to overrule this objection as to jurisdiction by referring to the proviso to Sub-section (i) of Section 4 of the said Act reading as follows:

'Provided that when trying any case, a Special Court may also try any offence other than an offence specified in the Schedule, with which the accused may under the Code of Criminal Procedure, 1898, be charged at the same trial.'

But this view is erroneous. The proviso is applicable if two conditions are fulfilled :

- a). There is a distinct offence which is not a scheduled offence.
- b). Such distinct offence is capable of being tried at the same trial along with the scheduled offence under the Code of Criminal Procedure.

It is clear from the above that the proviso to Section 4(i) permits the trial of two distinct offences -- one scheduled another non-scheduled. But it does not permit the lumping up of the two, as one offence, even though part of it relates to Government money another part does not.

Secondly, joinder of charge is governed by Sections 234, 235, 236 and 239 of the Criminal Procedure Code (old) which sections are exception to the general rule as contained in Section 233 of the Criminal Procedure Code (old), that every distinct offence will be the subject-matter of a separate charge to be tried separately. All the said three sections contemplate distinct offences for which different charges are to be framed and they are to be tried together. None of these sections contemplate the lumping up of all distinct offences as the subject-matter of one single charge as has been done in the instant case.

8. In the instant case the property described in (b), (c) and (d) not being property of the Government, the accused cannot be tried by the Special Court for alleged misappropriation of the said properties.

9. The lumping up of Government and non-Government properties in the charge has seriously prejudiced the accused in his defence.

10. The lumping up of the alleged shortage in C.S.T.C. Cash and the alleged shortages in Co-operative Cash and Canteen Cash has other implications as well. It is the prosecution case that C.S.T.C. Cash had been last verified on 31-5-70 when the cash tallied with the book balance. But insofar as the cash of the Co-

operative and Canteen are concerned, there was no such verification. No one has said as to when if at all, the cash was last verified. Now the defalcation as alleged in the charge relates to a definite period viz. 1-6-70 to 13-6-70. With regard to C.S.T.C. Cash 31-5-70 being the date of last verification, it is possible to allege that the shortage found on 13-6-70 as alleged must have been caused during the period 1-6-70 to 13-6-70 but the same cannot be said with regard to Canteen Cash and Co-operative, as according to the prosecution's own case, there was no verification of such cash prior to the period of the charge. The alleged shortage might have taken place at any time prior to 1-6-70. At least there is nothing to rule out that possibility.

The other implications of the said lumping up would be considered while discussing the case on merits.

11. The learned Counsel for the State has not seriously disputed this contention that the framing of the charge was not proper which has vitiated the trial. He, however, submits that the charges having not been framed properly and the Special Court having no jurisdiction in respect of some of the items, we should send back the case for framing of the charges afresh and for a de novo trial. We have not been able to persuade ourselves to accept this contention. The occurrence took place in June, 1970. The trial was concluded in December, 1981 and the appeal is being heard by us after 8 years. At this stage if on the ground of the jurisdiction of the Special Court, the case has to be remanded back for a fresh trial, it will amount to miscarriage of justice. We are, therefore, of the view that we should decide the case on merits that is to say, whether on the evidence adduced, the prosecution has been able to prove beyond reasonable doubt the charge under Section 409 of the Indian Penal Code.

Let us now turn to the merits of the case.

12. To constitute an offence of criminal breach of trust as defined in Section 405 of the Indian Penal Code it is essential that the prosecution must first prove that the accused was entrusted with property or with any dominion or power over the property. Secondly, it has to be established that in respect of the property so entrusted there was a dishonest misappropriation or dishonest conversion or

dishonest use or disposal in violation of a direction of law or legal contract.

13. The term 'entrusted' governs not only the words 'with property' immediately following it but also the words 'with dominion over the property' occurring thereafter (see the case of *State of Gujarat v. Jaswantlal Nathu-lal*, reported in : 1968 CriLJ803 . In the case of *Velji Raghavji Patel v. State of Maharashtra*, reported in : 1965 CriLJ431 , the Supreme Court observed as follows :

'In order to establish entrustment of dominion over property to an accused person, the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment.'

'Entrustment' is therefore the crucial word in the section. In order to constitute entrustment, it has to be proved that property belonging to one person was handed over to another person to hold the same in a fiduciary capacity and that while the property was so held by the other person was in possession thereof to exclusion of others including the lawful owner. For the purpose of an offence under Section 405 of the Indian Penal Code the entrustment must meet the following conditions :

- a). The complainant must be the owner of the property;
- b). There must be a transfer of possession of the property;
- c). Such transfer must be actual transfer and not a fictional or notional one.
- d). The transfer must be made to somebody who becomes the custodian of the property to the exclusion of all others;
- e). The transferee is required to hold the property according to the direction or stipulation of the transferor or any provision of law in that behalf.

14. In *Velji Raghavji Patel v. State of Maharashtra*, 1965 (2) Cri LJ 431 (supra), the Supreme Court approved the view taken in the Division Bench of this Court in *Bhuban Mohan Rana v. Surendra Mohan Das*, reported in : AIR1951 Cal69 . There Haris, C.J. pointed out that before criminal breach of trust is established it must be shown that the person charged has been entrusted with property or with

dominion over property. The Supreme Court observed that the aforesaid view is correct view and held as follows :

'Upon the plain reading of Section 405, I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed in violation of any direction of law etc.'

15. In this case in order to prove the charge under Section 409, of the Indian Penal Code, the prosecution must first establish that the accused was entrusted with the money which was the subject-matter of the charge.

16. There is no direct evidence of en-trustment in this case. No witness has come forward to say that so much amount was entrusted to the accused on a particular day, nor is there any documentary evidence to prove entrustment. No office order or any internal Rule has been produced to show that the Head Depot Cashier was entrusted with the entire cash of the Depot. The mere fact that the accused used to put his signature in the Cash Book proves nothing. Admittedly, the Cash Book used to be prepared and signed on the following day in respect of the entries of a particular day. It is also in evidence that several others including P.W. 1 used to sign the Cash Book along with the accused. As held by the Supreme Court in 1974 SCC (Vol. 3) page 30 : 1974 Cri LJ 447, a mere entry in the books of account cannot be sufficient evidence to prove entrustment. Thus direct evidence of entrustment is wholly lacking. Let us now see whether there is sufficient circumstantial evidence of entrustment.

17. The evidence discloses that major portion of the cash used to be kept in Double Lock Iron Safes within a strong room. Both the strong room and the safe could be operated by dual keys -- one key remained with the accused, while the other remained with the A.P.C. being P.W. 1. Both the keys must be operated to open the strong room and the safes. Thus it was not possible for the accused to have exclusive access either to the strong room or to the safes kept within it. A duplicate set of keys used to be kept in the Head Office. Therefore, from the mere fact that the accused had one key with him, no inference can be drawn that he

was entrusted with any money that might have been kept in the Double Lock Safe. The accused could not have been the sole custodian of the money kept in the said safe or safes. At best it was in the joint custody of the accused and the A.P.O. (P.W. 1). As regards the money kept in the single lock, it has been alleged that it had only one key and could be operated by the accused alone, to the exclusion of anyone else. But, the evidence of P.W. 11 shows that on 12-6-70 when the surprise check was held in the absence of the accused, the Assistant Head Cashier produced the key of the said single lock safe and by opening the safe with the said key, cash verification could be made by P.W. 11, without waiting for the return of the accused. Therefore, the accused was not in exclusive possession of the said single lock safe. The Assistant Head Cashier also had access to it and could open the safe.

18. As to how much cash was kept in the iron safes, there is no positive evidence. The prosecution has only produced the Cash Books, and on the basis of the Cash Books, as per the cash balance shown, the prosecution wants to infer that the amount of the said cash balance must have been kept in the iron safes. But no witness has said that this amount was actually there in the iron safes. At the most an inference can be drawn that if the Cash Book had been properly and correctly written, the cash balance as shown on a particular day, should have been kept in the iron safe. But no one actually verified the physical cash as kept in the iron safe with the Book balance so as to prove that on a particular day so much amount was actually kept in the iron safe. There is no evidence that either the accused or the A.P.O. or both of them together had actually taken charge of the physical cash, comparing the same with the Book balance. Nor is there any evidence as to what exact amount of physical cash had been delivered to the accused by the various Assistant Head Cashiers and Cashiers who actually handled cash. As is well known, Book balance connotes the notional cash, unless the physical cash is tallied with the Book balance, no inference can be drawn that the amount shown in the books were actually in existence at a given point of time. From the evidence it appears that there were several loose ends and no proper system of checking and verification of the day to day handling of cash and one is only left to guess as to exactly what amount had actually been kept in the Iron safes. It is in evidence that it was not physically possible for the Depot Head Cashier to count the cash and it

is further established that except for the monthly verification held by the Depot Manager once in a month there was no practice of day to day verification of the cash.

19. The relevant extracts from the evidence which have a bearing on the question of 'entrustment' is set out below :

a). The A.P.O. is the supreme head with regard to cash. He verified the cash balance with reference to the Cash Stock and other registers. The bulk of the cash remain in double lock, one of the keys of which remain with the A.P.O. the other key with the Head Cashier. (P.W. 5).

b). The overall supervision of cash remains with the A.P.O. Below him, the Head Cashier supervises the cash. (P.W. 5).

c). The cash were stored in the strong room and also in the Iron safe in the chamber of the Head Cashier. The keys of the strong room remain with the A.P.O. and the Head Cashier and each having a key which could be jointly operated. The keys of the other safe remain in the custody of the Head Depot Cashier only, except money kept in the strong room, the money kept in the other safe were handled and operated by the accused alone. (P.W. 17, P.W. 6 contra -- P.W. 1).

d). A.P.O. was the Drawing and Disbursing Officer. His duty was also to verify the cash every day. (P.W. 17).

e). There are altogether 4 iron safes, two in the new strong room one in the old strong room and another outside. From the copy of the charge report it appears that there were seven iron safes I do not remember how many iron safes were sealed by us on that date. (P.W. 17).

f). It was the duty of the A.P.O. to check the Cash Book (P.W. 10).

g). Strong room was, however, operated both by the A.P.O. and the Head Cashier jointly with their separate set of keys. (P.W. 17).

h). Head Cashier goes to the Bank every morning to bring cash against cheques which are maintained in the double lock (P.W. 6).

i). Besides the double lock there is a single lock safe which is under exclusive control of the Head Cashier. The cash in the single lock is kept for maintaining office expenses and smaller in volume than heavy cash which are kept in the double lock. So far, as the cash in the single lock is concerned, the A.P.O. has little scope to deal with it. It is the Head Cashier who remains in exclusive control of such cash (P.W. 5).

j). Heavy amounts were kept in double lock. Only small amounts which were required to meet the day to day expenses were kept in the single lock. The cash consisted of main cash of C.S.T.C. the Canteen Cash and Co-operative Cash. In a single lock which I was able to verify did not contain Canteen or Co-operative Cash (P.W. 11).

k). The Assistant Head Cashier produced the key of the single lock on 12th June, 1970 before the Checking Officer, when the accused was on leave and absent. (P.W. 11).

l). Each page of the cash book is countersigned by Amar Mukherjee, Administrative and Personnel Officer. Besides the pages were checked by B. Mukherjee, U.D. and S.S. Nag, Accountant (P.W. 4).

m). The main Cash Book used to be written by P.W. 4. His duty hours were from 10 a.m. to 6 p.m. He used to make entry in the main cash book in respect of the transactions occurring after 6 p.m. on the next day, after the completion of cash book he got it signed by the accused. I did not see any Assistant Head Cashier giving cash money to the accused for deposit (P.W. 6).

n). I never made physical check of the cash balance while signing the main cash book. I made cursory casual check. I depended on the Clerk-in-Charge about the genuineness of the entry. I endorsed my signature on looking into the signature of the Clerk-in-Charge. As an Accountant I was the in-Charge of accounts (P.W. 10).

o). I used to check cash book on one particular date on the next date I used to verify the Cash Book with reference to vouchers which were initialled by me (P.W. 13).

p). Daily collections were made over by the Conductors to the Cashier who instantly handed them over to the Shift-in-Charge who would send it to the Bank on the next day..... daily sale proceeds would (not) have reached the hands of the accused. He only referred the challans for depositing the cash to the Bank. Entries in the final Cash Book were made on the basis of the Bank Challans (P.W. 1).

q). The Depot Head Cashier and A.P.O. are responsible for Depot Cash, part of the cash was kept under double lock the rest was kept in the single lock in the custody of Head Cashier (P.W. 11).

r). When the Assistant Head Cashier writes the cash book he does not sign it but places it before the Head Cashier who puts his signature in the Cash Book. The Head Cashier does not ordinarily physically verify the cash balance on such occasions. The Head Cashier signs the book balance of the Cash Book after satisfying himself about cash balance on a scrutiny of the cash statement. The Head Cashier signs the cash book after the close of day's transaction (P.W. 5).

s). Because of the volume of work it is not possible for the Head Cashier to count the cash personally. He accepts the statement of the Assistant Head Cashier on such matters. With regard to one-rupee notes the counter cashier bundles them in the hundred. The Assistant Head Cashier or the Cashier do not count one rupee notes in bundles, but counts bundles which are deposited with the Bank on the following day. It is not possible for the Head Cashier to count notes one by one in the bundles and physically verify the cash with the Book Balance (P.W. 5).

t). The Depot Manager made cash verification once a month at the end. A.P.O. remain present in the monthly verification of the cash Cash verification made at the end of the previous month to the month of 991 Cri. L. J./59 IV occurrence was satisfactory and did not reveal any discrepancy (P.W. 1).

u). The duty of the Assistant Head Depot Cashier was mainly to maintain Cash Book with reference to vouchers and other papers (P.W. 4).

v). In Lake Depot 25 to 30 Cashiers were detained for duty at a time in one shift. One Cashier was allotted with only one duty, either to receive or pay cash (P.W.

6).

w). There might have been more than 3 Assistant Head Cashiers at Lake Depot in June, 1970. They had shift duty (P.W. 5).

20. In view of the above state of the evidence it must be held that the prosecution has failed to prove 'entrustment' of the cash of C.S.T.C. to the accused for the purpose of attracting the provisions of Section 409 of the Indian Penal Code.

21. What has been stated above with regard to the main cash of C.S.T.C, will equally apply to the cash of the Co-operative and the cash of the Canteen. Even if the objection as to the lumping up of the charge and the question of jurisdiction of the Special Court as discussed in the earlier part of this judgment are ignored, there is no sufficient evidence to establish that either the Cooperative cash or the Canteen cash was ever entrusted with the accused to the exclusion of others, so as to form the basis of a charge under Section 409, I.P.C. Further, it has to be noted that in view of the admitted position that the said cash did not belong to the C.S.T.C. there has to be evidence from the side of the Co-operative and the Canteen that their respective cash was kept with the accused. There is no such evidence. No one has been examined from the Co-operative. The Canteen Secretary was examined as P.W. 16. He said 'The Canteen cash remained with us We maintained a Canteen Cash Book We had no concern with the Head Depot Cashier over the encashment of the bills the Canteen is a separate body'. He says nothing about 'entrustment' or defalcation. As such the prosecution case as regards entrustment of Canteen Cash and Co-operative cash is even weaker than it is as regards C.S.T.C. cash.

22. Let us now examine the evidence as regards Canteen cash and Co-operative cash.

23. (a). Canteen Cash Book is maintained by employees who operate the canteen. Another Cash Book relating to Canteen is maintained by C.S.T.C. for payment of 2/ 3rd share of Canteen Bill (P.W. 1) S.C. Lahiri, Cashier maintains the Lake Depot Canteen Cash Book (P.W. 1). S.C. Lahiri (P.W. 8) was posted as Cahier in Lake Depot and was entrusted with the job of selling canteen coupon and passing

canteen bills and had other duties apart from the above duty (P.W. 8). He was charge-sheeted for irregularity of canteen coupon sales, the period involved was 1968-69 to 1971 to 72 (P.W. 1).

(b). The canteen coupon cash book was not maintained day to day but several transactions were written at a time, that was a practice (P.W. 8).

(c). There was no system of checking of Canteen cash book and the Co-operative cash book during my tenure as-Senior Accountant at Lake Depot (P.W. 10).

(d). Canteen Cash Book and Co-operative Cash Book were not up-to-date. The incomplete Co-operative and Canteen Cash Books were not placed before me for checking after the same were completed (P.W. 11).

(e). P.W. 15 is the Canteen Secretary. The C.S.T.C. authority sold canteen coupon to us at 2/ 3rd rates of the face value. The authority paid 2/3rd rates as subsidy (P.W. 15). Canteen Cash remained with us (P.W. 15). We received amount from the bill after A.P.O. passed the order for payment. Thereafter I received payment from the Cashier. We had no concern with the Head Depot Cashier over the encashment of the Bills. We maintained a Canteen Cash Book (P.W. 15). The Canteen is a separate body. Its only connections with C.S.T.C. cash is over the 2/3rd subsidy payment. C.S.T.C. has no responsibility in the management of the Canteen. It is run by the staff elected to the Canteen Committee (P.W. 15).

(f). This is Canteen Cash Book maintained by S.C. Lahiri, Depot Cashier. There are entries up to 10-6-70. In this cash book the closing balance of cash as on date was rupees 7,891.63. It bears signature of the accused. Previous to this date there is no signature of the accused on the transactions of each date (P.W. 4).

(g). There is no entry in the Canteen cash book, viz. in Ext. 9 from 10-6-70. The cash balance from 9-6-70 stood at Rs. 7,891.63 at the close of the transactions on 9-6-70 (P.W. 8).

(h). The filial figures of each day in the four subsidiary cash books in respect of Cooperative, Canteen, Security and Staff Welfare fund were not reflected in the

main cash book before 15-6-70 (P.W. 13). The separate sets of accounts are maintained for cash of the Canteen and Co-operative by the Head Cashier under the control of A.P.O. who is also a Drawing and Disbursing Officer in respect of those cash. I do not know where the cash of the Canteen and Co-operative were kept.

24. As regards Co-operative cash, the Cooperative of the State Transport is incorporated under the Bengal Co-operative Societies Act.

(a). The cash of the Co-operative is not the cash of the Corporation (P.W. 20).

(b). The Co-operative cash book dated 3-6-70 to 8-6-70 were written by me in the night of the day of the incident when the audit was held. I did not write the total column of the cash books of those days inasmuch as the other connected Registers were not verified by me. The accused signed the cash book on all the dates. I do not know when he put his signature. I do not exactly remember under whose directions made those entries. I only wrote the cash book on the basis of the vouchers and sent the same to the accused (P.W. 4). The entries dated 11-6-70 in the Cooperative Cash Register are in the handwriting of Chittaranjan Das. The closing balance of the cash of that date was rupees 36,373.04. It bears the signature of the accused. The entries from 3-6-70 to 8-6-70 are in my hand writing. So far the postings were concerned, the totalling and closing, however, were not in my hand writing. There were arrears in the postings which I was asked to write (P.W. 4).

(c) There was no system of checking of the canteen cash book and the co-operative cash book during my tenure as Senior Accountant (P.W. 10).

(d) The co-operative cash book contained the accounts up to 2-6-70 when P.W. 11 saw it on 12-6-70 (P.W. 11).

25. Even assuming that there were entries in the books of accounts, i.e. to say in the Cash Books which may show receipt of cash, but that will not by itself prove entrustment. In *Dadarao v. The State of Maharashtra* reported in : 1974 CriLJ447 , the Supreme Court held that mere entries in the books of accounts without any

oral evidence as to the nature of business and the mode of keeping accounts would not be sufficient to prove entrustment. Supreme Court held at page 389 (para 5):

'The High Court has rightly observed that there is no direct evidence of entrustment to the appellant. We have gone through the record in order to find whether there is any indirect evidence of entrustment but we see none. All that the prosecution did was to produce the books of accounts of Chikhli Head Office and of the Buldana Branch. There is a debit entry in the books of the Buldana Branch showing that a sum of Rs. 7,000/- was given to the appellant on November 10, 1965 for being taken to the Head Office but the mere entry, unsupported by any oral evidence cannot prove entrustment. Section 34 of the Evidence Act says that entries in books of account; regularly kept in the course of business are relevant but such statements shall not alone be sufficient evidence to charge any person with liability. The prosecution did not examine any one even to show that the books of account were regularly kept in the course of business nor indeed was any attempt made to lead evidence apart from the production of books of account to prove the entrustment of the amount to the appellant. at page 390 (para 7).

In the vague state of the record it seems to us impossible to dismiss the explanation of the appellant as unreasonable. There is no evidence of entrustment, no evidence in regard to the mode and manner of keeping the accounts and not even a suggestion that the cash in hand was any time tallied or checked either at Chikhli or at Buldana. The High Court observes in its judgment that 'the prosecution has conducted this case without placing before the court the detailed information as to how the working of the Head Office and the branch office goes on. No effort is made to ask questions, if not to an employee in service, at least to the auditor about the nature of business conducted and the method of maintaining accounts. That would have facilitated the understanding as to why certain credits and debits are made.' Absence of evidence on a material and important aspect renders it unsafe to hold that the charge of breach of trust is brought home to the appellant.'

26. In this state of evidence we are of the view that the prosecution has failed to prove the exclusive entrustment of the cash upon the accused. But when a question arises even if the prosecution has failed to prove the entrustment, the charge under Section 409 of the Indian Penal Code will fail but it will be still necessary to consider the question of misappropriation under Section 403 of the Indian Penal Code which is a minor offence in relation to under Section 409 of the Indian Penal Code. In other words, even if on the evidence it appears that the prosecution has proved beyond reasonable doubt the misappropriation by the accused without any entrustment, in that event also the accused cannot escape the liability under Section 403 of the Indian Penal Code. We are, however, to examine the evidence in this regard.

27. Here again there is no direct evidence of misappropriation. The prosecution which had proceeded on the basis of the theory of 'entrustment' sought to establish misappropriation by a simple logic. If the accused had been entrusted with the entire amount of the cash balance, then whatever shortage could be detected on physical verification, must have been misappropriated by the accused. The snag of this logic is that as soon as the entrustment is disbelieved, the conclusion sought to be drawn from the factum of shortage will no longer follow. Even if there was any shortage, in the absence of entrustment, no inference can be drawn that the accused was responsible for the same, as the accused was not the only person who had access to the cash. The cash might have disappeared at any stage even prior to the stage of reaching the iron safe; even after it reached the iron safe, there is no certainty as to who might have been responsible for such shortage. It is not the prosecution case that the accused could not, acting on his own, remove the cash from the strong room which could only be operated jointly by the accused and P.W. 1.

28. The prosecution case is open to serious doubt as to the actual amount of the shortage, the manner of its detection, as also the manner of verification of cash. The prosecution has also failed to eliminate the various alternative possibilities which may account for the alleged shortage and yet be consistent with the presumption of innocence of the accused. The most important omission on the part of the prosecution in this regard is their failure to produce the Audit Report.

C.S.T.C. being a statutory Corporation, its accounts are subjected to statutory audit by the Accountant General of West Bengal. The Co-operative cash is also subjected to audit under the relevant law. The omission to produce the audit reports is a serious lacuna in the prosecution case which makes it vulnerable on the basis of Section 114 of the Evidence Act as also the cardinal principle of criminal law that the prosecution must prove its case beyond reasonable doubt. We may now analyse the prosecution case with regard to the alleged misappropriation with specific reference to evidence.

29. According to P.W. 1 the closing balance of cash on 11-6-70 was as follows:

Main Cash Book : Rs. 94,178.62
Co-operative Cash Book : Rs. 33,373.04
Canteen Cash Book : Rs. 7,891.83
and again the following shortage was detected :
on 13-6-70 : Main Cash Book : Rs. 9,709.69
Co-operative Cash Book : Rs. 36,373.04
Canteen Cash Book : Rs. 7,514.63
Rs. 53,624.36

30. Admittedly, the accused did not attend the office on 12 June, 1970 as he was on leave. It is in evidence that the Main Cash Book was actually written in the first hour of the following day. Therefore, the Cash Book relating to 11-6-70 was written on 12-6-70. Necessarily, if the signature of the accused appears at the closing balance of the Cash Book as on 11-6-70 the same must have been obtained on 13-6-70 when the accused came to the office.

31. Neither Canteen Cash Book nor the Co-operative Cash Book had been written up to 11-6-70 and they were admittedly written subsequently. So the signature of the accused was also obtained later on 13-6-70. P.W. 11 Niraj Kumar Chatterjee who verified the cash kept outside the strong room found on physical verification the following cash:

Cash collection of 11-6-70 Rs. 37,441.60
Bag Money Rs. 5,058.00
Kept in the safe Rs. 15,100.00
Disbursement as per slip Rs. 1,529.33
Received by encashment of Rs. 30,342.21
cheque Stamp, Canteen Coupon and Rs. 1,417.88
bad coins Rs. 90,888.48
As against alleged closing balance of Rs. 94,178.62 as on 11-6-70 the alleged short-age was as follows :
Closing Balance as on 11-6-70 : Rs. 94,178.62
Less Cash found on verification outside strong room : Rs. 90,888.48

on 12-6-70 Rs. 3,290.14.

32. On the above basis, in respect of the main cash book the shortage as on 11th June, 1970 could have been only to the tune of, Rs. 3,299.14 and the double lock safes in the strong room allegedly sealed were yet to be taken into account as on 12th June 1970 when the initial verification was made by P.W. 11. Therefore, by no means, the shortage of cash could have been of the order of Rs. 9,701.19 as alleged by the prosecution. This really shows that the lack of proper accounting and verification and in the absence of any audit report the actual quantum of the shortage remain unsubstantiated.

33. Significantly enough in spite of the absence of the accused the bulk of office cash as per the Main Cash Book were available for physical verification and P.W. 11 has deposed that the key of the single lock safe was produced before him by the Assistant Head Cashier.

34. The prosecution case is that on 12th June, 1970 because of the absence of the accused the strong room with double locker iron safe within it was not opened and was ultimately sealed. But it is an admitted position that it would have been possible to open the strong room and the double locker iron safe kept in the strong room with duplicate set of keys brought from the Head Office and in fact the arrangements were made for such opening as would be evident from the evidence of P.W. 11 and P.W. 20, but it is alleged that ultimately that idea was given up. Surprisingly enough, it is found from Ext. I that the sealing of the strong room was made at 4 P.M. on 12th June, 1970 although the accused was absent from the office right from the morning. There is no explanation as to why the sealing was deferred till 4 p.m. and there is nothing to obviate the possibility of the strong room and the double locker and the iron safes being opened prior to their sealing. P.W. 20 was present with double set of keys, with which it was possible to open the same.

35. Curiously enough P.W. 20 admits in his evidence at page 78 that on 12th June, 1970 he returned from Lake Depot at about 5-30/6 p.m. and went straight to his home with duplicate set of keys to the Head Office. There is no system of maintaining any record of the removal of duplicate set of keys and re-deposit

thereof. Therefore, there is absolutely no check on surreptitious or unscrupulous use of the duplicate set of keys. The prosecution has singularly failed to remove the genuine doubt as to the possibility of opening of the strong room and of the double lock safe on 12th June, 1970 in the absence of the accused. If P.Ws. 1, 10 and 20 joined hands they could easily open the said strong room with the duplicate set of keys, whereby they would have obviously gained and the accused would be held responsible for the shortage.

36. As to who sealed the strong room and in whose presence and exactly when the evidence of the prosecution appears to be conflicting. P.W. 1 says 'when arrangements for opening the safe with duplicate keys were made Mr. Mukherjee, Depot Manager telephoned to Mr. B.B. Dev Roy, CAD informing him in appropriateness in his view of opening the safes in the absence of the accused and postponing the verification till the following date i.e. 13-6-70 on 12-6-70, however, the iron gate of the strong room as well as the iron safe in the Chamber of the Head Depot Cashier were sealed by Mr. Mukherjee, Depot Manager, Mr. Chatterjee, the Audit Officer and Mr. Das, Accounts Officer and me.' P.W. 11 says 'On 12-6-70 when I carried on the check, J.N. Bose, Accused was absent, as the Head Depot Cashier did not turn up till 12-30 p.m. I telephoned to the Chief Accounts Officer who asked me to wait for some time and also told me that he will be deputing Mr. A.K. Das, Accounts Officer to help me. After the money on encashment of the cheques were received and as the accused did not come with the money after the encashment of the cheques the Chief Accounts Officer advised me over phone to seal the double lock. The Depot Manager Mr. S. Mukherjee, Accounts Officer Mr. Das, the A.P.O. Mr. A.K. Mukherjee and myself signed the seal'. He further says 'Actually the double lock was sealed by the Depot Manager and we contributed our signatures'.

37. P.W. 17 (Depot Manager) says 'In the early morning of 12-6-70, then says, I am not sure of the date, I received a telephone message either from B.B. Dev Roy, C.A.D. or Mr. Chatterjee, Audit Officer, informing me to be present in the office with a view to enable them to seal the cash safes as they stated to have had some information about some irregularities of the cash. I at once came to the Lake Depot. At Lake Depot Cash Office I came across Mr. Chatterjee the Audit Officer, I

sent for A.N. Mukherjee, the A.P.O., who arrived shortly. Mr. Chatterjee first sealed the Cash Book and related accounts books and papers. At about 10 a.m. Mr. B.B. Dev Roy, the C.A.O. arrived and took over charge of the investigation into the matter. They conducted certain checks. I did not take any part in that checking. The accused did not come to the office but he did not attend on that date. The strong room and the Iron Safe of the Head Cashier were sealed by Mr. Chatterjee, the Audit Officer. As far as I remember I was a party to the sealing. One Mr. Kabasi, Assistant Head Depot Cashier managed the Cash Section on that date in the absence of the accused. The A.P.O. and I made over the Main Cash Book, the Canteen Cash Book and the Co-operative Cash Book to the Police Officer who seized the same. The A.P.O. was the witness to the seizure.'

38. P. W. 20 A.K. Das says 'At about mid day (on 12-6-70) the C.A.D. deputed me to Lake Depot to assist Mr. N.C. Chatterjee in physical verification of the cash. There I did not come across the Head Depot Cashier. I talked to Mr. Chatterjee. I then met A.N. Mukherjee, A.P.O. and asked him about the cash in joint lock. Mr. N.C. Chatterjee and I, however, verified the cash outside the joint lock. On that date we failed to contact the accused. We advised the depot Manager and A.P.O. to search for the Head Cashier at his residence or favourite haunts..... Before leaving the Lake Depot on 12-6-70 I Sunil Mukherjee, Depot Manager, A.N. Mukherji A.P.O. and N.C. Chatterjee, Audit Officer sealed the double lock.' He further says 'On 12-6-70 as I returned from Lake Depot at about 5-30/6 p.m. I sent straight home. I brought a sealed packed said to contain duplicate sets of keys. On the next date Mr. Dev Roy Chief Accounts Office took the said packet from me.' P.W. 22 (C.A.D.) says 'He (accused), however, did not run up for duty at Lake Depot on that date (12-6-70). As a result no verification of cash could be held on that date. When I was informed about this position by the Depot Manager and the Audit Officer over the phone I advised them to seal the double lock. These two officers later in the day informed me about the sealing of the double lock A.K. Das and I know him. I deputed A.K. Das, Accounts Office to help Mr. N.K. Chatterjee, Audit Officer.' He further says 'I do not remember if at any time during my tenure in C.S.T.C. the duplicate sets of keys were sent to the Lake Depot for any other verification.'

39. The following conclusions emerge from the above conflicting evidence of the prosecution witnesses:

(a) As to the removal of the duplicate set of keys from the Head Office there was neither any official requisition nor any authorisation nor any record kept. The said duplicate set of key were brought to the Lake Depot by P.W. 20 entirely on his own and was kept with him overnight, and it is not at all clear as to whether the said duplicate set of keys had been used or not, there is no corroboration from P.W. 22 that the duplicate set of keys had been returned on the next day by the P.W. 20 as claimed by him.

(b) Who actually sealed the double lock, it is not clear. Who were the signatories are also not clear. It is, however, clear that all the signatories were not present on the next day to see whether the seals had remained intact or not. P.W. 11 who claims to be signatory was not present on the next day. P.W. 17 says it was P.W. 11 who had actually sealed. P.W. 11 says it was P.W. 17 who actually sealed. All of them say that P.W. 1 was a signatory. But P.W. 1 says nothing as to sealing.

(c) P.W. 17 says at about 10 a.m. that Mr. B.B. Dey Roy arrived and took charge of investigation, but Mr. B.B. Dey Roy himself being P.W. 22 does not say that he at all had been to the Lake Depot on that day.

(d) Who was responsible for the idea of sealing is also not clear. P.W. 1 says it was P.W. 17. P.W. 17 says nothing about it. Except that the sealing was made. P.W. 11 says that it was P.W. 22 who advised him to seal the double lock.

(e) What was actually sealed? This is also not clear. P.W. 1 says that the iron gates of the strong room and the iron safe in the Chamber of the Head Depot Cashier were sealed. P.W. 11 says that the double locker was sealed. P.W. 17 says that the strong room and the iron safe of the Head Cashier were sealed. P.W. 20 says that the double lock was sealed. P.W. 22 says that the double lock were sealed. The significance of these different versions would be evident when the same are considered in the context of the evidence of P.W. 17, the Depot Manager reading as follows: 'In the old and discarded strong room there was no double lock in the iron safe which was in the custody of the accused. There is

double lock of the iron safe in the new strong room. There are altogether 4 iron safes, two in the new strong room and one in the old strong room and another outside.'

40. As to the cash verification made on 13th June, 1970 the prosecution evidence is as follows:

On 13th June 1979 the accused attended office and cash was verified in his presence (P.W. 1)..... Under orders of CAD Mr. A.K. Das was conducting the verification of cash. I was present there. The accused produced money in his possession (P.W. 1). He noted down all the figures and all sums of money which the accused produced to him after actual accounting.

P.W. 20 A.K. Das said that on 13-10-70 the double lock was opened by the accused in our presence. Both the keys were in his possession. Thereafter we conducted the physical verification of cash and cheques etc. in the double lock and noted down cash found by us in a report'... No cash was found in the double lock after it was opened on 13-6-70 by the accused.

We may add that contrary to the evidence of other witnesses including the Depot Manager that one key of the double lock used to remain with the A.P.O. and one key with the accused P.W. 20 says that both the keys were with the accused. Furthermore, if no money was found in the double locker, it is not known how could the accused hand over the money in his possession.

P.W. 22 says that cash verification was completed by N.K. Chatterjee on 13-6-70. This is, however, contrary to the evidence of N.K. Chatterjee himself that on 13-6-70 the cash was not verified by him as he was not asked by P.W. 22 to do so.

P.W. 20 the Depot Manager says nothing as to cash verification but merely harps on the so-called confession of the accused.

41. In view of the conflicting, vague and ambiguous nature of prosecution evidence as to the proceedings held on 13-6-70 it is extremely doubtful as to how the cash verification was being made and as to what was the shortage found, if at all.

42. The most significant omission on the part of the prosecution is to bring on record the Audit Report relating to the alleged shortage. It is an admitted position that the accounts of C.S.T.C. are subject to statutory audit and such audit is to be made by the Accountant General, West Bengal. The non-production of the Audit Report relating to the relevant period makes the prosecution vulnerable and an adverse presumption under Section 113(g)/14(g) of the Evidence Act should be drawn against the prosecution for non-production of Audit Report. The anomalous situation created by the conflicting and ambiguous nature of the prosecution evidence with regard to cash verification made on 12-6-70 and 13-6-70 would be evident from the following:

According to the prosecution the cash balance of 11-6-70 was Rs. 94,178.62 and that was the opening balance of 12-6-70. It is found from the Cash Book that on 12-6-70 the total receipt on that day was Rs. 41,562.61p. But the expenses of that day was Rupees 52,494.07. Thus there was an excess expenditure of Rs. 10,931.46. If the cash balance of 11-6-70 being the opening balance of 12-6-70 had been sealed and remained totally untouched, how could the excess expenditure of Rs. 10,931.46 be made on 12-6-70. The prosecution has not offered any explanation in this regard. There being no evidence that an additional amount of Rs. 10,931.46 had been brought from outside. The inference has to be drawn that the said sum of Rs. 10,931.46 was spent taking that amount from out of the cash balance of the previous day. This would be inconsistent with the prosecution evidence that the cash verification being suspended on 12-6-70, everything was kept sealed and untouched. If the cash balance of 11-6-70 being the opening balance of 12-6-70, had been made available for the business of 12-6-70 and was allowed to be mixed up with the cash flow of 12-6-70, the prosecution evidence as to the responsibility of the accused for the alleged shortage found on 13-6-70 on the basis of the alleged theory of entrustment and the inference of misappropriation on the part of the accused becomes baseless. If the accused took any part in the transaction of 12-6-70 he cannot be called upon to explain the alleged shortage found on 13-6-70.

43. On the above evidence we are of the view that the prosecution has failed to prove the case of any misappropriation by the accused. We may in this connection

usefully refer to the Division Bench decision of this court in Major Robart Stuart Wanchope v. Emperor reported in : AIR1933 Cal800 . There the appellant was convicted of criminal breach of trust under Section 409 of the Indian Penal Code in respect of two sums of Rs. 1,500/- each. In that case it was found that a cash chest was kept with two keys. The appellant had one and the jamadar the other. When on tour, appellant's key was held by Chetty, who used to make all necessary disbursements, often amounting to many thousand of rupees. Appellant and Chetty each kept a cash account book, but it is obvious from inspection and admitted by the complainant that appellant's book was generally mere copy of Chetty's. There the Division Bench after narrating further facts held:

'From these facts, the prosecution submitted and the Magistrate agreed, that the only possible inference to be drawn was that the appellant had been trying to cover up his traces, and to create an atmosphere of confusion in order to put off the evil day, when he would have to admit that he had received this money. His forgetfulness of the facts and incident, and his attempts to recover the money were a mere pretence. In fact the Magistrate went so far as to say that once the prosecution had proved that the appellant had received money, and the appellant was unable to show from his accounts that, and how, he had used each for public works, the conclusion that he had misappropriated it was inevitable.

It was inevitable only upon the assumption that an accused person must be presumed to be guilty, unless and until he proved himself to be innocent. I have already referred to this fallacy. But Mr. Battacharjee on appeal has again attempted to argue that in such circumstances the onus of proof is shifted to the accused. He has referred to one or two cases in which this unusual and erroneous contention has been accepted and approved.

*** ** *** ****

In criminal cases the onus of proving the general issue never shifts, and it lies upon the prosecution to prove beyond reasonable doubt the guilt of the accused. In this case the prosecution had to prove dishonest misappropriation by the appellant, and unless and until they could point to a state of facts which led inevitably to the conclusion that the appellant was guilty, they failed to discharge

the onus which lay upon them. If there is one maxim of criminal jurisprudence which is better established and more fundamental than any others, it is that an accused person must always be presumed to be innocent until he is proved to be guilty. It is true that the burden of establishing any special issue raised by the accused rests upon him, but there is always the burden of the general issue as to the guilt of the accused person which always rests upon the prosecution.

It is true that the prosecution need not prove the actual mode of misappropriation, but they must prove dishonest misappropriation. The onus, as I have said, is always upon the Crown. It never shifts to the prisoner.

44. The principles laid down in the above decision will equally apply to the facts of this case. On the evidence adduced in this case, which we have already analysed, we are of the view that the prosecution has failed to prove the case of any misappropriation by the accused. The learned counsel for the prosecution has, however, relied on alleged confessional statement of the accused. We shall now proceed to examine the said confessional statement and the circumstance under which it was brought in evidence for the purpose of determining the evidenciary value to be attached to such confessional statement.

45. After the completion of the cross-examination of all the witnesses when the case was fixed for examination of the accused, the prosecution made a prayer for recall of P.W. 17 Sunil Mukherjee to be examined under Section 540 of the Criminal Procedure Code (Old).

46. Section 540 of the old Criminal Procedure Code which corresponds to Section 311 of the new Criminal Procedure Code in the provision for examination of the Court witnesses i.e. a witness whose examination is considered by the Court to be essential to the just decision of the case. But this provision should not be invoked by the court to fill up the lacuna in the prosecution case. If the prosecution being obliged to prove the case beyond the reasonable doubt has failed to bring on record anything which might help the prosecution and go against the accused. It is not the duty of the Court to make good omission of the prosecution. Unless the Court is satisfied that in the interest of justice it is necessary to invoke the said extra ordinary power.

47. In the instant case, the court should not have exercised the said power. If any confessional statement had been made by the accused, in the first place it was expected that the same should have been handed over to the Investigating Officer and should not have been kept in the pocket of any officer of C.S.T.C. The prosecution has failed to give any explanation as to why the said statement had not been seized by the police, and as to why the said statement had all along been kept concealed as a secret and confidential document. The prosecution did not tender the said document at any stage while the witnesses were being examined. The prosecution has not given any explanation for deliberate suppression of the said document at the earlier stage. Finally when the prosecution case was closed the prosecution sprang a surprise of producing the said document for the first time via Section 540 of the Code of Criminal Procedure (Old). This has caused serious prejudice to the defence as the defence was unable to cross-examine the other witnesses with reference to the alleged statement.

48. The matter should be looked at not only from the angle of prejudice but also from the angle of credibility. If there had been a genuine confessional statement made by the accused, surely the prosecution should have made use of such statement as their key evidence. The very fact that the statement was suppressed even from the Investigating Agency makes it suspect document. The inference may be drawn that the said document was obtained by the influential officers of C.S.T.C. in order to have their own skins and was kept in their private possession to be used as their own shield of defence. It can be easily appreciated that presuming the carrot and the stick policy, a superior officer can always extract a self-incriminating confessional statement by merely putting the threat of prosecution and dismissal and any employee who is confronted with such a disastrous possibility will easily succumb to the pressure of making a confession in the hope that thereby he would be able to by-pass and avoid the hazards of prosecution and/or disciplinary action.

49. In any event a retracted confession is of no value in a criminal case and the same cannot be the basis of an order of conviction.

50. If a confession does not violate any of the conditions operative under Sections 24 to 28 of the Evidence Act it will be admissible in evidence. The Supreme Court in *Dagdu v. State of Maharashtra* reported in : 1977 CriLJ1206 , held that if the facts and circumstances surrounding the making of a confession appear to cast a doubt on veracity or voluntariness of the confession the court may refuse to act upon the confession even if it is admissible in evidence.

51. In *Brijbasi Lal Shrivastava v. State of Madhya Pradesh* reported in : 1979 CriLJ913 , the Supreme Court considered the probative value of the confessional statement. In that case charge under Section 409 of the Indian Penal Code was sought to be proved on the basis of the confession made to superior officer. There the Supreme Court held that where a confession is made by a delinquent officer to his superior officer after administration of oath to him by superior officer though not so empowered and the delinquent pleads in his examination under Section 342 of the Code of Criminal Procedure (Old) that it was not voluntary but was taken under duress, such a confession is clearly inadmissible under Section 24 of the Evidence Act.

52. In *Thimma And Thimma Raju v. State of Mysore* reported in : 1971 CriLJ1314 Supreme Court held as follows (at page 1319):

'An unambiguous confession, if admissible in evidence and free from suspicion suggesting its falsity, is a valuable piece of the evidence which possesses a high probative force because it emanates directly from the person committing the offence. But the process of proof of an alleged confession the court has to be satisfied that, it is voluntary, it does not appear to be the result of inducement, threat or promise as contemplated by Section 24, Evidence Act and the surrounding circumstances do not indicate that it is inspired by some improper or collateral consideration suggesting that it may not be true. For this purpose, the court must scrutinise all the relevant factors, as such, the person to whom the confession is made, the time and place of making it, the circumstances in which it is made and finally the actual words used. In the case in hand it is quite clear that P. W. 4 is not a person in authority. There can thus be no question of any inducement, threat or promise rendering the confession irrelevant.'

53. In *Nand Kumar v. State of Rajasthan* reported in, 1963 (2) Cri LJ 702, Supreme Court observed (at page 704 (Para 12):

'We are satisfied that the confessions of all these three accused were voluntary and rightly admitted into evidence. Each of the accused however retracted the confession made by him. Courts ordinarily consider it unsafe to convict any accused person on the basis of his retracted confession except where the truth of such confession is established by corroboration in material particulars by independent evidence. What is sufficient corroboration for this purpose has to be decided in each case on its own facts and circumstances. It may, however, be generally stated that where the prosecution by the production of reliable evidence which is independent of the confession and which is also not tainted evidence, like the evidence of an accomplice or the evidence of a co-accused, established, establishes the truth of certain parts of the account given in the confession and these parts are so integrally connected with other parts of the accused's confession that a prudent judge of facts would think it reasonable to believe, in view of the established truth of these parts, that what the accused has stated in the confession as regards his own participation in the crime is also true, that is sufficient corroboration. More than this is not needed; less than this is ordinarily insufficient.'

54. These decisions have clearly laid down that a confession if inspired by improper or collateral consideration cannot be taken into consideration. It will also be unsafe to convict an accused person on the basis of a retracted confession, unless it is established by independent corroboration.

55. In the instant case the confession was made to a superior officer. It was in consideration of saving his job. Such a confession cannot be relied upon. Further it would be evident from the facts and circumstances narrated hereinbefore, the alleged confession produced by the prosecution almost at the concluding stage of the trial cannot be relied upon after it was retracted by the accused in his statement under Section 342 of the old Code of Criminal Procedure.

56. For the reasons aforesaid we are of the view that the prosecution cannot rely on the confessional statement for the purpose of holding the appellant guilty of the

charge framed against him.

57. Before we part with this case it is necessary for us to place on record that the facts of this case demonstrate that the officers who were responsible for the shortage, if any, had not been proceeded against. The accused was made only a scapegoat. The authorities ought to have proceeded against those other officers who were in fact responsible in handling the cash and were in charge of the cash. It is also not clear how the Co-operative Cash belonging to statutory body can be accounted for in the cash book of C.S.T.C. The Canteen Cash is not also a part of the cash of C.S.T.C. The authorities ought to have made a thorough investigation in the manner in which things proceeded in this case.

58. Finally we must observe that it is hard to believe that senior Officer of a long years standing at the fag-end of his career should have done anything so desparate and foolish as to misappropriate a trifling sum of Rs. 9,000/- when his whole pension and reputation as an officer would be jeopardised.

In the result, this appeal is allowed.

The order of conviction and sentence is set aside. The appellant is discharged from the bail bond.

Manabendra Nath Roy, J.

59. I agree.

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