

(2004) 10 CAL CK 0026
In the Calcutta High Court
Case No : C.R.A. No"s. 46 and 59 of 1992

Achintya Ranjan Das and Another and Ramendra Prasad
Mukherjee

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 01-10-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(5), 167(6), 468, 468(2)
Penal Code, 1860 (IPC) — Section 109, 409, 420

Citation : (2005) 1 CALLT 221

Hon'ble Judges : Provendu Narayan Sinha, J

Bench : Single Bench

Advocate : Himanshu De, Supratim Dhar and Suman De, for the Appellant;
Krishna Ghosh and Joy Sengupta, for the Respondent

Judgement

Provendu Narayan Sinha, J.—Both the appeals are directed against the judgment and order of conviction dated 15.12.1992 passed by the learned Special Judge, 1st Special Court, Midnapore in Sessions Trial No. 2/96 thereby sentencing the accused appellants Ramendra Prasad Mukherjee (appellant of CRA No. 59/92) to suffer Rigorous Imprisonment of 7 years for offence u/s 409 of the Indian Penal Code (in short IPC) and to pay a fine of Rs. 3,000/- in default to suffer Rigorous Imprisonment for one year. The said appellant was also sentenced to suffer Rigorous Imprisonment for three years and to pay a fine of Rs. 1,000/- in default to suffer Rigorous Imprisonment for six months for offence u/s 420 IPC. The accused appellant Achintya Ranjan Das (appellant of CRA No. 46/92) was sentenced to suffer Rigorous Imprisonment for seven years and to pay fine of Rs. 3,000/- i.d. to suffer Rigorous Imprisonment for one year for offence under Sections 409, 420, 109 of IPC He was further sentenced to suffer Rigorous Imprisonment for three years and to pay fine of Rs. 1,000/- in default to suffer Rigorous Imprisonment for six months for offence u/s 420 of IPC Being aggrieved by and dissatisfied with the judgment and order of conviction and sentence the accused appellants preferred two separate appeals. A Division Bench of this

Court by order dated 1.4.92 passed in Criminal Appeal No. 59/92 directed that this appeal shall be heard along with Criminal Appeal No. 46/92 and there was direction for preparation of a common paper book for both the appeals.

2. Mr. Himanshu De, learned senior advocate appearing for the appellant Achintya Ranjan Das in CRA No. 46/92 submitted that the other appellant Ramendra Prasad Mukherjee, who preferred Criminal Appeal No. 59/92 is dead. Though Mr. Dey was not the learned advocate for Ramendra Prasad Mukherjee who preferred CRA No. 59/92, he produced a certificate of death issued by the Midnapore Municipality to show that the appellant of CRA No. 59/92 Ramendra Prasad Mukherjee expired on 26.8.96 at his residence during pendency of the appeal. Accordingly, criminal appeal being CRA No. 59/92 is abated due to death of the appellant during pendency of the appeal.

3. The prosecution case, in short, is that between 20.7.78 to 7.1.78 accused Ramendra Prasad Mukherjee, an advocate (since deceased), practicing in Midnapore Court by making false personification in collusion with the appellant Achintya Ranjan Das, KGO of L.A. Office (Haldia) at Tamluk committed criminal breach of trust and cheating in respect of compensation amount payable to the awardees on the basis of forged power i.e. "Vakalatnama". The modus operandi of the accused persons appeared that the advocate accused filed petitions for withdrawal of compensation money against awards in favour of appropriate awardees by filing fictitious and forged vakalatnamas. Thereafter the said cases were enquired into by the KGO another accused Achintya Ranjan Das and in each case the said KGO submitted report that he contacted the party and recommended payment. Accordingly, payment voucher in each case was handed over to the said advocate Ramendra Prasad Mukherjee at Midnapore office but, subsequently the appropriate awardees complained to the Additional SDO, Haldia that they did not execute any power or vakalatnama in favour of the said advocate accused and they did not receive any payment. The breach of trust, cheating and forgery was committed by the advocate accused Ramendra Prasad Mukherjee in collusion with the accused Achintya Ranjan Das, KGO.

4. During enquiry, it transpired that in claim No. 28 of 1978-79 the said advocate accused filed petition for withdrawal of Rs. 809.60 being compensation amount against award/SL No. 231 in L.A. Case No. 11/ 1974-75 in favour of Gurupada Sen and submitted power on 15.6.78 and after enquiry the other accused, the KGO reported on same day that he contacted the parties and recommended payment and accordingly voucher for Rs. 809.60 was handed over to Ramendra Mukherjee, the advocate, on 20.7.78. During enquiry Smt. Saila Bala Sen one of the awardees stated that they did not receive any amount and they authorised Santosh Kumar Adhikari an advocate of Tamluk for the purpose. Similarly in Claim Case No. 29 of 1978-79 in same process Ramendra Prasad Mukherjee received voucher for Rs. 190.97 on the recommendation of KGO for payment to Jyotish Manna, the awardee and during enquiry by the SDO, Haldia it was found that the said awardee did not receive any payment and he did not execute any

power in favour of the said advocate accused.

5. By the same method in Claim Case No. 30 of 1978-79 Ramendra Prasad Mukherjee, advocate accused received voucher for Rs. 190.97 for payment to awardee Jagadish Manna. On enquiry by the SDO, Haldia it was found that the said awardee did not execute any power in favour of the said advocate and he did not receive any money. In Claim Case No. 31 of 1978-79 by same modus operandi the said advocate accused received Rs. 381.84 for payment to awardee Nirodamoyee Dei and in the said matter the KGO accused submitted report that Nirodamoyee is alive. During enquiry by the SDO, Haldia it was found that Nirodamoyee Dei died two years back. In Claim Case Nos. 34 and 35 in 1978-79 the said advocate accused received payment voucher of Rs. 1778354 and Rs. 557.81 for payment to the awardee Manibhusan Jana and on enquiry it was found that Manibhusan Jana did not receive any amount of compensation and he did not execute any power in favour of the said advocate. In Claim Case Nos. 36 and 37 of the 198-79 advocate accused received payment voucher of Rs. 1639.54 and Rs. 766.67 for paying compensation amount to awardee Himangshu Jana. On enquiry by the SDO it was detected that Himangshu Jana did not receive compensation amount and he did not authorise the said accused advocate for the said purpose.

6. In Claim Case No. 38 of 1978-79 the advocate accused received payment voucher of Rs. 1825.59 for payment to awardee Birendranath Jana. During enquiry it was revealed that Birendranath Jana did not receive compensation amount and he did not authorise the said advocate accused for withdrawing compensation for him. In Claim Case No. 39 of 1978-79 the said advocate accused obtained payment voucher for Rs. 580.81 for payment of compensation amount to Dhirendra Jana. On enquiry it was detected that there was no such person in the name of Dhirendra Jana, son of Paban Jana. In Claim Case No. 40 of 1978-79 the said advocate accused received payment voucher of Rs. 10007.26 for payment of compensation amount to Manibhusan Jana, Himangshu Jana in serial No. 346 of I.A. Case No. 103 of 63-64. During enquiry by the SDO, Haldia it was found that the advocate accused Ramendra Prasad Mukherjee filed fictitious power and received the amount and the awardees did not receive the amount of compensation.

7. Accordingly, Jayanta Kumar Das, the Special Land Acquisition Officer, Haldia Project lodged complaint/FIR to the Officer-in-Charge, Kotowali P.S., Midnapore alleging that the said advocate accused received the compensation amount in collusion with the Achintya Ranjan Das. KGO by filing false and fictitious powers i.e. vakalatnamas and received the amount and misappropriated the same and did not make payment to the awardees. On the basis of the said FIR Midnapore Sadar Kotowali P.S. Case No. 38 dated 26.3.80 under Sections 468, 471, 419, 420 of IPC was started against the accused Ramendra Prasad Mukherjee and Achintya Ranjan Das. After completing investigation the police submitted charge-sheet against the accused persons under Sections 409 of IPC However, the

learned Special Judge framed charges under Sections 409, 420, 109 of IPC against the accused persons. The trial that followed thereafter ended in conviction of both the appellants as stated above.

8. It appears that in the trial on behalf of prosecution 15 witnesses were examined in all and out of which PW1 Jayanta Kumar Das is the informant and he was the Special I.A. Officer, Haldia at the relevant time. PW2 Haripada Dolui was then head clerk attached to the office of Additional District Magistrate, Tamluk at the relevant time. PW3. Nirmal Kanti Chakarborty was then appointed as accountant of Special I.A. Office, Haldia. PW4 Guru Prasad Sen is one of the awardees who did not receive the compensation amount. PW5 Rajani Kanti Das is handwriting expert attached to CID, West Bengal who examined four vakalatnamas and one petition for compensation and examination with the signatures of the original authors and after examination he submitted a report. PW6 Mani Bhusan Jana, PW7 Birendra Nath Jana, PW8 Bhanu Bala Maity, PW9 Suniti Bala Das, PW10 Jagadish Chandra Manna are the awardees who did not receive the compensation amount and all of them stated that they did not execute any power in favour of accused Ramendra Prasad Mukherjee. PW11 Harendra Nath Das was the D.E.O., Midnapore Sadar at the relevant time and he made part investigation in this case. PW12 Gourhari Karmakar was another Sub-Inspector of Police and he also made part investigation into the case. PW13 Kamal Chandra Haider was the Inspector of Police attached to Questioned Document Examination Bureau, CID, West Bengal and as handwriting expert he examined four sheets of specimen signature of Ramendra Prasad Mukherjee with questioned document marked as ext. 2. PW14 Samarcndra Nath Sen was one of the awardees who also did not receive compensation amount and stated that he did not authorize Ramendra Prasad Mukherjee to withdraw compensation amount on his behalf and on behalf of his co-sharers. PW15 Jitendra Nath Manna is also another awardee who also did not receive compensation amount and stated that he did not authorise Ramendra Prasad Mukherjee to withdraw compensation amount for him.

9. Mr. Himangshu De, learned senior advocate appearing for the appellant Achintya Ranjan Das argued that along with FIR one separate sheet was annexed showing the amount involved and against this appellant charge under Sections 109, 409, 420 of IPC was framed and the second charge was for the offence u/s 420 IPC The principal accused Ramendra Prasad Mukherjee is dead. Evidence of PW1 Jayanta Kumar Das reveal that he has no personal knowledge about the complaints and he relied upon the report submitted by the Additional SDO, Haldia who made the enquiry and submitted the report but the said SDO was not examined in this case as a witness. Cross-examination of PW1 reveal that when payments is made identification of the awardee is made by the Panchayat Pradhan. The Panchayat Pradhan was not examined as a witness. There was no evidence of entrustment of the money with this appellant. Notional obligation or to some extent negligence was there on the part of this appellant, but the notional obligation and negligence are not sufficient to draw punitive measure

against the appellant or punishment upon the appellant. As this appellant had no dominion at all over the property or the money there was no element of Section 409 and 420 of IPC as well as element of Section 109 of IPC against this appellant. There was no mens rea of this accused and being so the appellant is entitled to be acquitted.

10. Mr. Joy Sengupta, learned advocate appearing for the State contended that in this case regarding compensation amount of claim cases as mentioned in FIR were not paid on spot. Cross-examination of PW1 reveals that when payment is made on the spot, identification of the awardee is made by the Panchayat Pradhan. In defaulting cases of the awardees payments are made to the advocate or advocates who file vakalatnama for the awardees. According to FIR prosecution story all the claim cases were deferred payments and the accused Ramendra Prasad Mukherjee by filing false and fictitious powers withdrew the amount of compensation. As there was no payment at spot in these cases identification of awardees by the Panchayat Pradhan did not take place. This appellant as an abettor in all the cases of payment made endorsement to the effect that payments can be made and on such endorsement payments were made to the advocate accused. The appellant as accused in the Court below during trial did not cross examine the handwriting expert. From the evidence of the witnesses particularly the claimants sufficient evidence against the appellant has been transpired. Dominion over the property, i.e. money was there as notional obligation is also dominion over property. In order to attract elements of Section 409 of IPC physical dominion over the money or property is not always necessary. Therefore, against the appellant there were sufficient evidence and the learned trial Judge rightly convicted the appellant. In a case u/s 409 of IPC benefit of Probation of Offenders Act cannot be extended.

11. I have carefully perused the evidence and materials on record and duly considered the submissions made by the learned advocates of the parties. The submission of the learned advocate for the appellant that if the Panchayat Pradhan gave certificate of identification there was no question of obligation, is not acceptable. Evidence of PW1 reveals that when payments are made on the spot, Panchayat Pradhan identifies the awardees. In the instant case no payment was made on the spot and all were deferred payments or defaulting cases of payment of awardees. In this case on the basis of power or vakalatnama executed by the awardees the advocate in whose favour the power was given was entitled to receive the payments for the awardees. In all such cases on the basis of power and application filed by the principal accused on enquiry was held by this appellant and he recommended payment, and accordingly, the payments were made to the advocate. From evidence it is clear that this appellant did not make proper enquiry and submitted false report and even recommended payment to an awardee namely Nirodamoyee Dei who died two years back in Claim Case No. 31 of 1978-79 in connection with Serial No. 437 of L.A. Case No. 24 of 1963-64.

12. In this case besides the evidence of PW1 the complainant, the evidence of PW4 Guru Prasad Sen, PW 6 Mani Bhusan Jana, PW7 Birendra Nath Jana, PW8 Bhanu Bala Maity, PW9 Suniti Bala Das, PW10 Jagadish Chandra Manna, PW14 Samarendra Nath Sen and PW15 Jyotindra Nath Manna are important and relevant. The evidence of these witnesses reveal that they were the awardees in whose favour compensation awards were passed in the claim case and L.A. Cases as mentioned in FIR. Their evidence clearly establish that they did not execute any povernama, i.e. vakalatnama in favour of the advocate accused Ramendra Prasad Mukherjee and they stated that signatures appearing on the vakalatnama alleging as their signatures are not their signatures. It is clear, therefore, that signatures of the awardees over the vakalatnamas were forged and the principal accused Ramendra Prasad Mukherjee now deceased, filed false vakalatnamas before the Special L.A. Officer in order to withdraw compensation amount payable to the awardees. Evidence of these witnesses also reveal that they did not receive any compensation amount. It proves that compensation which was payable to these awardees though withdrawn by the principal accused were misappropriated and not paid to the awardees. Elements of Section 409 of IPC as well as elements of cheating thus clearly revealed against the appellants.

13. This appellant being abettor cannot plead innocence and no mens rea in this matter. He cannot be absolved of the liabilities as on the basis of the vakalatnamas filed by principal accused this appellant Achintya Ranjan Das made recommendation for payment. It is clear that in the case of one awardee namely Nirodamoyee Dei who already expired two years back, this appellant made recommendation for payment in favour of the advocate accused for a dead person. This accused had, therefore, notional obligation in the matter as he was fully aware that all the recommendations made by him for payment were false and without making proper enquiry and without ascertaining the genuineness of the awardees he made recommendation for payment which amounted to abetment of the offence committed by the principal accused and this accused was also jointly liable with the principal accused.

14. It appears from the evidence and materials on record that 11 vakalatnamas were presented in the office of PW 1 and the recommendation of this appellant over the vakalatnamas are exhibits 2 to 12 in different L.A. Cases. Exhibits 2/2 to 6/2, 8/2 and 10/2 to 12/ 2 are also report of Kanungo, i.e. this appellant on the order sheet recommending payment. There was no cross-examination of handwriting expert PW 5 on behalf of this accused appellant in the trial Court. There was no cross-examination also by this accused appellant in respect of another handwriting expert PW 13. Signature of the advocate accused on the vakalatnamas were marked as ext. 13 to 23 and signatures of the advocate accused on the petitions filed for withdrawal of compensation amount were marked ext. 24 to 33.

15. Evidence of PW 4, PW 6, PW 7, PW 8, PW 9, PW 10, PW 14 and PW 15 reveal that all of them stated clearly in Court that the signatures appearing on the

petitions and vakalatnamas are not their signatures and all of them stated that they did not execute any vakalatnama in favour of advocate Ramendra Prasad Mukherjee. Evidence of PW 4, PW 6, PW 7 and PW 10 reveal that they put specimen signature on sheet of papers in presence of the Investigating Officer and their Specimen signatures were sent to handwriting expert for comparison with the signatures appearing on the vakalatnamas and petitions filed in the office of the Special L.A. Officer. Their specimen signatures were marked exts. 34, 35, 36 and 37 respectively. There was no proper cross-examination of these witnesses as well as the handwriting expert on behalf of this accused appellant in the trial Court. Evidence of PW 1, PW 2 and PW 3 reveal that this appellant made the recommendations for payment and PW 1, PW 2 and PW 3 identified the handwriting of this appellant in respect of the recommendations which are exhibits 2 to 12. PW 1 is the complainant who was the special L.A. Officer at the relevant time. PW 2 was the head clerk and PW 3 was the accountant attached to Special L.A. Office at the relevant time and they were well conversant with the signature of this appellant. It is evident from the materials on record that on the basis of such recommendation of this appellant PW 1 made recommendations for payment of compensation amount which was ultimately withdrawn by the deceased appellant Ramendra Prasad Mukherjee.

16. After scrutiny of the evidence and materials on record it has, therefore, been established that this appellant abetted the accused Ramendra Prasad Mukherjee in the commission of cheating and criminal breach of trust. Being a public servant this appellant was under an obligation to submit a true report, but instead of that he made false recommendations over fictitious vakalatnamas and petitions filed by the principal accused and in this way facilitated the principal accused to commit criminal breach of trust and cheating in respect of Government fund or public money. It has been established that this appellant indirectly cheated the government authority and induced the Special Land Acquisition Officer, Haldia to deliver compensation amount to advocate accused as agent of defaulting awardees and unless such recommendations were made by this appellant the authorities would not have made the payment of compensation amount payable to the awardees to principal accused Ramendra Prasad Mukherjee on the basis of false, fictitious and forged vakalatnamas and petitions. Therefore, elements of Sections 409, 420, 109 of IPC were established against this appellant beyond all reasonable doubt and the learned Special Court rightly held the appellant guilty under Sections 409, 420, 109 of IPC and also u/s 420 of IPC.

17. Mr. De for the appellant further argued that in the instant case provisions of Section 167(5) of Cr.PC were violated and investigation was not completed within the statutory period and taking of cognizance was bad in law. He further contended that the case was started in 1980 and the appellant is suffering for the last 24 years. He was placed under suspension in 1979 and has retired in the meantime. Appellant is now approximately 77 years in age and suffering from various types of illness. Accordingly, the appellant may be acquitted in this case

due to the long pendency of the case and due to the violations of provisions of Section 167(5) of Cr.PC.

18. Learned advocate for the State contended that question of violation of provisions of Section 167(5) Cr.PC does not arise in view of the decision of the Supreme Court in Nirmal Kanti Roy v. State of West Bengal reported in 1998 C Cr LR (SC) 216. He further contended that the argument that the appellant has suffered for the last 24 years and is ill and is aged now 77 years are not at all grounds for acquitting him in this case or reducing the sentence to the period already served. He further contended that in case of such nature u/s 409 of IPC no question of releasing the appellant under the provisions of Probation of Offenders Act arises.

19. After hearing the submissions of the learned advocates of the parties I find that Midnapore Sadar (North) Kotowali P.S. Case No. 38 dated 26.3.80 was started on the basis of F.I.R. lodged by PW 1 and the charge sheet was received by the learned Special Judge on 12.12.86 when the learned Judge took cognizance of offence. It appears that punishment u/s 409 of IPC is imprisonment for life, or imprisonment for 10 years and fine and punishment u/s 420 of IPC is imprisonment for seven years and fine. Section 468 lays down bar of taking cognizance after the lapse of the period of limitation. Sub-Section (2c) of Section 468 lays down that the period of limitation shall be-3 years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. When the offence u/s 409 of IPC prescribes punishment upto imprisonment for life or at least imprisonment for 10 years and Section 420 of IPC prescribes punishment of imprisonment upto seven years question of limitation as laid down in Section 468 of Cr.PC does not arise. Moreover, Section 167(5) was amended in West Bengal by West Bengal Act 24 of 1988 which came into force w.e.f. 2nd May, 1989. There is nothing to indicate that the amendment gave any retrospective effect and accordingly the amendment, if any, which became effective from 2nd May, 1989 are applicable to cases which were instituted on and from the date and not to cases in which investigation was submitted before the Amendment Act came into force. When the charge-sheet was submitted on 12.12.86 there was no introduction of Sub-sections (5) and (6) of Section 167 of Cr.PC as amended in West Bengal giving effect from 2.5.89. Besides that the Supreme Court in Ninnal Kanti Roy's case (supra) made the position clear by observing that:

"7. The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the sub-section. The succeeding words in the sub-section confer power of the Court to refrain from stopping such investigation if the Investigating Officer satisfies the Magistrate of the fusion of two premises (1) that in the interest of justice it is necessary to proceed with the investigation beyond the period shown in the sub-section and (2) that there are special reasons to do so.

8. A reading of Sub-section (6) further shows that even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word on it because the sub-section opens another avenue for moving the Sessions Judge. If the Sessions Judge is satisfied that "further investigation into the offence ought to be made" he has the power to allow the investigation to proceed. Hence we take the view that the time schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the Magistrate shall consider whether, on the facts of the case, further investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the process of investigation thus far registered. If substantial part of investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused."

20. The above decision of the Supreme Court make it clear that order of stopping further investigation are not intended to be automatic sequel to the failure to complete investigation within the period fixed in Sub-section (5) of Section 167. By ordering stoppage of investigation the Magistrate shall consider whether on the facts of the case further investigation would be necessary to foster interest of criminal justice. The Magistrate must look into the record of investigation to ascertain progress of investigation, and if substantial part of investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive in the interest of justice to stop further investigation and discharge of the accused. In my opinion, all these discussions are not relevant at all in this case as charge-sheet was submitted long before the West Bengal Amendment Act giving effect of Section 167(5) from 2.5.89 came into force. Accordingly the argument that taking of cognizance was bad in law and appellant was entitled to be discharged are not acceptable.

21. The above discussion make it clear that there is no ground to interfere with the judgment and order of conviction passed by the learned trial Court. The learned trial Court has rightly found this appellant guilty under Sections 409/420/109 of IPC and also u/s 420 of IPC. It is evident that the learned Special Court sentenced the accused to suffer Rigorous Imprisonment for seven years and to pay a fine of Rs. 3,000/- i.d. to suffer one year imprisonment for the offence under Sections 409/420/109 of IPC. He also sentenced this appellant to suffer Rigorous Imprisonment for three years and to pay fine of Rs. 1,000/- in default to suffer Rigorous Imprisonment for six months for the offence u/s 420 of IPC. Now the question is whether considering the pendency of the case of 24 years and age of the appellant as 77 years at present and considering his illness whether this Court should interfere into the matter of reducing sentence passed by the learned trial Court.

22. It has been contended by the learned advocate for the appellant that he is not the principal accused and at best he can be regarded as abettor. The appellant has retired in the mean time and is now aged approximately 77 years and he is suffering from various types of illness. It is true that the case was started in 1980 but the trial was concluded in February, 1992. Thereafter, against the order of conviction and sentence the appellant preferred the appeal and it dragged the matter for further 12 years due to pendency of the appeal in this Court. The appellant is now aged about 77 years and he may be ill also. That will not absolve him from the criminal liability and there cannot be acquittal on these grounds. Discussion of the evidence made above makes it clear that payments were made to the principal accused on the basis of his recommendation and it transpires that the recommendations were not genuine. His liability into the matter was there and even notional obligation regarding dominion over the property would also make him responsible for the offence. In a case of such nature the appellant cannot be enlarged on probation bond.

23. Considering his age, illness and sufferings for the last 24 years I think it fit for the ends of justice that sentence imposed upon him should be reduced. The appeal is partly allowed. The order of the learned trial Court regarding conviction of appellant is maintained but the order regarding sentence is modified and reduced. The sentence of the appellant Achintya Ranjan Das for the offence under Sections 409/420/109 of IPC is reduced to Rigorous Imprisonment for one year six months and to pay fine of Rs. 1000/- in default to suffer Rigorous Imprisonment for two months and in respect of offence u/s 420 of IPC the sentence imposed upon him is reduced to Rigorous Imprisonment for six months only without any order for payment of fine. Both the sentences shall run concurrently. The substantive sentence of imprisonment imposed upon the appellant is subject to adjustment, if any, in view of provisions of Section 428 of Cr.PC. The appellant is directed to surrender before the learned Judge, 1st Special Court, Midnapore within two months from date to serve out the sentence.

24. The appeal being CRA No. 59 of 1992 stands abated due to death of the appellant Ramendra Prasad Mukherjee.

25. This judgment and order will govern both the appeals being CRA No. 46 of 1992 and CRA No. 59 of 1992.

26. Send down the lower Court record along with a copy of this judgment and order to the learned Judge, 1st Special Court, Midnapore for information and necessary action and for issuing notice upon the appellant and his sureties for production of the accused appellant before the said Court to serve out the sentence.

Urgent xerox certified copy be given to the parties, if applied for, expeditiously.