(1972) 05 RAJ CK 0003

In the Rajasthan High Court

Case No : Criminal Appeal No. 82 of 1971

Ghanshyam Lal Choudhary — APPELLANT

Vs

The State of Rajasthan — RESPONDENT

Date of Decision : 05-05-1972

Acts Referred:

Evidence Act, 1872 — Section 114, 133
Penal Code, 1860 (IPC) — Section 168, 420, 468

Citation : (1972) RLW 384 : (1972) WLN 375

Hon'ble Judges : L.S. Mehta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

L.S. Mehta, J.—This is an appeal taken by Ghanshyam Lal choudhary against judgment, dated March 10, 1971, or Mr. T.C. Bhagat, Additional Special Judge, Rajasthan, Jaipur convicting the appellant u/s 168, I.P.C. as also u/s 5(2), read with Section 6(1)(d) Prevention of Corrupt-Act, 1947, and sentencing him to simple imprisonment for a period of one year on each count and to pay a fine of Rs. 1000/-, in default of payment of which to further undergo four months simple imprisonment on the record count. Both the substantive sentences of imprisonment were made, concurrent.

2. The brief facts of this case, as alleged by the prosecution, are that the Anti Corruption Department, Government of Rajasthan, Jaipur, changed accused Ghanshyam Lal, Accounts Officer, Water, Works Department, for offences under Sections 420, 468 and 168, I.P.C. as also u/s 5(2) of the Prevention of Corruption Act, 1947. The allegations against the accused were that during the period between 1960 and 1663 Ghanshyam Lal, while functioning as Accounts Officer in the Water Works Department, Jaipur and being a public servant, obtained illegal pecuniary advantage by cheating. He a shop and did business in the name of M/s. Mahavir Jain Sewing Machine Co., Jaipur, with the assistance of his wife Mst. Snehlata. The Anti-Corruption Department further alleged that

Gopal Lal was shown as owner of the Company and it was the accused who in fact had obtained illegal pecuniary advantage, amounting to Rs. 17,662.40 P. and he also forged signatures of his son Bipanjaya Prasad on receipts for Rs. 272/-, Rs. 280/-, and Rs. 140/-. These receipts were given in lien of the amounts obtained from the branches of the Social Welfare Department, Udaipur and Note, to which certain goods had been supplied. It was further alleged that a sum of Rs. Rs 1650/-, had been obtained from the Executive Engineer, Jaipur, as the cost of certain commodities provided. In this manner the accused had obtained Rs. 2042/-, in trade. The accused, being a public servant, was legally bound not to have engaged in trade or business and he should not have run the firm, known as, M/s. Mahavir Jain Sewing Machine Co., Jaipur. Further charge against Ghanshyam Lal was that while employed in the Water Works Department'' as Accounts Officer, he got illegal pecuniary advantage amounting to Rs. 105 64 P. on account of T.A. bills for the journey performed in the months of July and August, 1961. The tour in fact had been undertaken in connection with the business of the firm M/s. Mahavir Jain Sewing Machine Co., Jaipur. It was also asserted that the appellant was found in possession of the assets, amounting to Rs. 42,075/-, which were disproportionate to his known source of income On submission of the challan after investigation by the Anti-Corruption Department, the accused was charged u/s 168, I.P.C., as also u/s 5(2), read with Section 5(1)(d) and Section 5(1)(d), Prevention of Corruption Act, 1947. The accused denied the indictment and claimed trial In support of its case the prosecution examined 28 witnesses and produced 131 documents. In his statement recorded u/s 342, Cr. P.C., the accused denied the prosecution allegations. His main plea was that he was not concerned with M/s. Mahavir Jain Sewing Machine Company. It was Gopal Lal who had taken his shop on lent and who was the proprietor of the firm. Raghunandan, P.W. 26 was the Manager of the firm. He further entreated that the alleged journey to Udaipur related to his official duty. In his defense he examined 7 witnesses and produced 79 documents. The trial court by its judgment, dated March 10, 1971, acquitted the accused of the two charges, one concerned the T.A. bill amounting to Rs. 105.84 P. and the other appertained to the assets disproportionate to the known sources of his income. The court however, gave a positive finding that the accused being a public servant did engage in trade in the name of M/s. Mahavir Jain Sewing Machine Company, Jaipur. The business of the concern was carried on by him and in his premises The accused had signed letters on behalf of the firm and had engaged in trade and obtained illegal pecuniary advantage to the extent of Rs. 692/-. The trial court, however, gave categorical finding that pecuniary advantage to the extent of Rs. 17,662 40 P. has not been proved. The appellant was accordingly convicted and sentenced, as stated above.

3. Dissatisfied by the above verdict, Ghanshyam Lal has taken this appeal. The contention of learned Counsel for the appellant is that the trial court has not properly appreciated the evidence on the record. Learned Counsel submits that there is no iota of evidence from which it could be inferred that the accused was

engaged in trade contrary to the provisions of Section 168, I.P.C. He was taken me though the statements of the relevant witnesses as also through the plethora of the documentary evidence. Learned Deputy Government Advocate supports the judgment of the court below.

4. Section 168, I.P.C. is in the terms following:

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

The section requires 3 elements to constitute the offence:

1. that the offender is a public servant;

2. that as such he is legally bound not to engage in trade &

3. that he engaged in trade.

5. There is no controversy as regards the ingredient No. 1. There is also no discussion in respect of component No. 2. The entire discord in this case hinges around element No. 3, and it is as to whether or not the appellant had engaged in trade during the period between 1960 and 1963. The word "trade'' and the term ''engages in trade'' have not been defined in the Indian Penal Code. Section 168, I.P.C., has been made the radix for a number of special enactments in order to control the conduct of public servants. Public servants are not allowed to trade so that they may not neglect their duties and being in official position may not obtain unfair advantages. The expression ''trade'', as used in Section 168, Penal Code and Rule 14 of the Rajasthan Government Servants'' and Pensioners'' Conduct Rules, 1949 formed part of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950 in the form of Appendix A and saved by Rule 35 of the Rajasthan Civil Services, (Classification, Control and Appeal) Rules, 1958, cannot be construed in its technical sense. It should not be confined to mercantile or commercial operations, but it should be given a wider meaning bearing in mind the context in which it is used. In its wider sense the word is used to cover every kind of trade, business, profession or occupation. Trade in its primary meaning is the exchanging of goods for goods or goods for money & in a secondary meaning it is any business carried on with a view to profit, whether manual or mercantile as distinguished from liberal arts or learned professions and from agriculture: see Halasburys Laws of England, Vol. 38, 3rd Edition, Page 8. So construed, it would include any business carried on with a view to profit: vide Mulshankar Maganlal Vyas and Another Vs. Government of Bombay, Per Ganjendra gadkar, J. Besides, the word ''trade'' implies that the trade or business must be habitually or systematically exercised. It does not apply to isolated transactions: vide Rolls v. Miller 1865 (27) Ch. D. 71.

6. It may also be stated here that if a Government servant carries on trade benami in the name of another person, he must be regarded as himself carrying on the trade. In this connection a reference is made to King v. Maung Sew Uan

AIR 1930 Ran 69.

7. With the above background, it is to be seen whether the prosecution has succeeded in bringing home the fact that accused Ghanshyam Lal engaged himself in trade. The most important evidence on which the trial court placed reliance, is that of Gulraj Bahadur, PW 13. He says in his evidence-in-chief that the accused was working in the Water Works Department as Accounts Officer and he was working in the said Department as an Accountant. The accused told him that he wanted to start business of sewing machines and would take agency of C.B. Auluck & Co., Ludhiana. He accordingly started business under the name and style of M/s Mahavir Jain Sewing Machine Company, Kabir Marg, Jaipur. The business was carried on in the name of his son Bipunjaya Prasad, who was a student and was about 13 to 14 years of age. The business continued from 1960 to 1963. The witness then said that he obtained a draft from the Punjab National Bank in the sum of Rs. 500/-, to Rs. 600/-, and had filled in a slip for the said purpose. The witness also said that he deposited Rs. 500/-, to Rs. 600/, in the Punjab National Bank to be transferred to C.B. Auluck & Co., Ludhiana, but he does not remember in whose account he deposited the amount. Then the witness testifies that he had been to the Sales-Tax Department, Government of Rajasthan, Jaipur, for registration of Mahavir Jain Sewing Machine Co, Jaipur, at the instance of the accused. The witness again says that he had been to Bharatpur in connection with his official duty. But he was called from Bharatpur to Jaipur and was sent to Delhi for expediting the despatch of musical instruments for Social Welfare Department Kota from the firm Ratti Ram, and Sons of Delhi. The witness then proves certain documents. He also told the court that he worked for the accused under compulsion.

8. I may first take up the question of the alleged visit of Gulraj Bahadur, PW 13, to Delhi on or about March 28, 1962. Ex. D. 50/1 is the invoice sent by Ratti Ram and Sons. It is dated March 23, 1962. This has been proved by Raghunandan, PW 26. According to this invoice musical instruments were dispatched from Delhi on March 23, 1962, for Kota, and the invoice was received by Raghunandan on March 25, 1962. When the invoice in respect of goods had already been received, there was no occasion for sending Gulraj Bahadur to Delhi to remind Ratti Ram and Sons to expended the dispatch of the articles to the Social Welfare Department. Gulraj Bahadur has stated:

It was informed by Ratilal and Sons that musical instruments had already been sent to Kota.

Besided, the invoice shows that the goods dispatched to the Social Welfare Department, Kota, were valued at about Rs. 400/-. It is not easy to believe that for the transaction of such a trivial amount the firm would incur the expenditure of sending a personal messenger to Delhi. One could have talked to Delhi for it through telephone. Thus, this aspect of the evidence of Gulraj Bahadur is dismissed with disbelief.

9. T. A. Bill Ex. 37 submitted by Gulraj Bahadur shows that he left Jaipur for Bharatpur on March 27, 1962. He reached Bharatpur the same day He stayed at Bharatpur upto 8.30 a.m. on March 29, 1962. He reached Jaipur the same day at 1.45 p m. Again, he left Jaipur on March 30, 1962, at 7 a. m. and reached Bharatpur at 12 noon the same day. He left Bharatpur on March 31, 1962 at 5 p. m. and reached Jaipur that day at 1.05 a.m. This T A. bill stands proved by the evidence of Gulraj Bahadur himself. The T.A. bill shows that during the relevant period Gulraj Bahadur was either at Bharatpur or at Jaipur. Besides, Ex D 10/1, dated March 29, 1962, shows that O.P. Singh, DW 2, (Accounts Clerk in the Office of the Executive Engineer, Water Works Department wrote to his Officer:

The Accountant (Gulraj Bahadur) came and clarified the amount to be adjusted today (29.3).

The letter shows that on March 29, 1962, Gulraj Bahadur was in Jaipur. DW 2 O.P. Singh says in his statement:

On 28th March, 1962 Gulraj Bahadur came in the evening, and he called me and also asked me as to why a complaint was made against him.... Gulraj Bahadur remained in the office throughout on 29th March, 1962.

From the above evidence the inescapable conclusion is that Gulraj Bahadur had not gone to Delhi on or about March 28/29, 1962.

10. Gulraj Bahadur says in his statement that he had been told by Ghanshyam Lal that he wanted to start his business and in that connection he would like to obtain the agency of the supply of sewing machines from C.B. Auluck & Co., Ludhiana. This talk according to the witness, transpired prior to the start of the business and that too after November 1, 1960, when Gulraj Bahadur joined the service at Jaipur. The record speaks that prior to this talk the agency had already been taken.

11. Ex P. 40, dated August 18, 1960, written by Gopal Lal on behalf of Bipunjaya Prasad, Kabir Marg, Beni Park, Jaipur to M/s Bharat Sewing Machine Co., Station Road, Bikaner, shows that some agreement had already been arrived at between Bharat Sewing Machine Company, Bikaner, (sole distributor of C.B. Auluck & Co., in Rajasthan) and Mahavir Sewing Machine Company, Jaipur. In that letter Gopal Lal on behalf of Bipunjaya Prasad wanted to confirm certain points agreed upon by both the parties. In that very letter the rate of commission fixed was 20% if a lot of 4 machines was purchased at a time and 17?% if two machines were purchased at a time PW 20 Heman Ram, proprietor of the Bharat Sewing Machine Co. Bikaner, has stated in the cross-examination:

...In 1960 Gopal Lal had come to me on behalf of Mahavir Jain Sewing Machine Company, Jaipur and one boy was with him.... Gopal Lal had talked to me about agency.... After Gopal Lal had a talk with me I received letter Ex. P. 40 The accused never met me in connection with Mahavir Jain Sewing Co Jaipur.

From the letter Ex. P. 40, coupled with the above oral evidence, it appears that the terms of business had already been settled between Mahavir jain Sewing Machine Company, represented by Gopal Lal and Bharat Sewing Machine Company, Bikaner (the sole agent of C.B. Auluck & Co., Ludhiana), in the month of August, 1960. In this context there was hardly any occasion for Ghanshyam Lal to have a talk with Gulraj Bahadur on the subject after November 1, 1960. Learned Deputy Government Advocate has drawn the attention of this Co(SIC)r to the agency agreement, dated January 12, 1961, and argued that the agreement had been arrived at between the parties on or after January 12, 1961. The agreement Ex P. 86 is proved by Heman Ram PW 20. He says:

I have received agreement Ex P, 86 through post.... Ex, P. 86 dots not bear my signature as (SIC) had not accepted it.

When Ex P. 86 had nut been received with consenting mind by Bharat Sewing Machine Company, no reliance can be placed on it.

12. In the light of the foregoing colloquy, it is difficult to reach the conclusion that accused Ghanshyam Lal had a talk with Gulraj Bahadur about the agency of C.B. Auluck & Company, Ludhiana through Bharat Sewing Machine Company, Bikaner, after or on November 1, 1960, when the witness joined the Water Works Department, Jaipur.

13. Another significant statement made by Gulraj Bahadur, PW 13, in his statement before the trial court is that he deposited Rs. 500/- to Rs. 600/-, in the Punjab National Bank. This statement does not appear to be accurate as the witness at a subsequent stage unequivocally says:

I do not remember in whose account I deposited.

The witness then deposes that he had taken a draft of about Rs. 500/- or Rs. 600/-, from the Punjab National Bank He had filled in the slip for obtaining a draft. The accused had handed over forwarding letter to be delivered by him to the Bank. The witness then says that he had been to the Rajasthan Bank, Jaipur, for making payment of money on behalf of the accused. No forwarding letter alleged to have been delivered by the accused to the witness has been produced. Suppression of this important document raises inference unfavourable to the prosecution by virtue of illustration (g) to Section 114, Evidence Act. The observations of their Lordships of the Privy Council in Murugenam Pillai v. Gnanamambandha AIR 1917 PC. 6 apply here. This is what their Lordships observed:

It is an inversion of sound practice for those desiring to rely upon a certain state of facts to withold from the court the written evidence in their possession which would throw light upon the proposition.

Ex. P. 66, dated February 16, 1961, shows that a demand draft for Rs. 847.96 P, was obtained in favour of C.B. Auluck & Co. The signature on this slip is that of Gulraj Bahadur at portion marked A to B. According to PW 26 Raghunandan all the other entries in Ex. P. 66, except A to B, were in his handwriting. It is in the evidence of Raghunandan that it was his first occasion to obtain and send demand draft. Gulraj Bahadur, who was known to him before, met him on the way and then they both went to the Bank. He deposited the amount in the Bank and Gulraj Bahadur signed Ex. P. 66 at portion marked A to B. This suggestion was put forward to Gulraj Bahadur to which his answer was:

I am not definite if Raghunaudan met me in the way on 16-2-61 when I went to Punjab National Bank. I do not remember that Raghunandan sought my help on 16-2-61 in the matter relating to Ex. P. 66 and that I helped him.

Gulraj Bahadur did not venture to contradict the suggestion made by Raghunandan. His answer was only evasive-a skilful dodge to avoid confrontation. If the accused gave money to Gulraj Bahadur, the relevant contents of Ex. P 66 should have, in the normal course of business, been in the handwriting of the accused or, at any rate, in the handwriting of the witness himself. The contents of the document having been written by Raghunandan show that the explanation furnished by the witness connotes correct position. P.W. 26 Raghunandan says:

I had to send money to Auluck & Sons, Ludhiana as five Machines were to be supplied to the Social Welfare Officer, Kota. All the writing excepting A to B on Ex. P. 66 were in my hand.... I deposited the amount in the Bank....

The inevitable conclusion from this evidence is that Raghunandan, who was working as Manager of Mahavir Jain Sewing Machine Company, Beni Park, Jaipur, in fact deposited the amount and it was at his instance that the draft was obtained from the Punjab National Bank. At any rate, this evidence does not display that accused Ghanshyam Lal had his hand in that transaction.

14. Gulraj Bahadur has deposed in the clearest terms:

No tender on behalf of Mahavir Jain Sewing Machine Company was submitted by me anywhere in Rajasthan, nor did I secure any order.

The witness further told the trial court:

I know that Raghunandan used to come to the Water Works office for securing business but I cannot give out details in regard to the dealings and also about securing business.

The witness again speaks:

I was never curious to know about the personal affairs of the accused. I do not know what capital and from that source was invested in Mahavir Jain Sewing Machine Co.... I know that Gopal Lal resident of Bundi had concern with M/s. Mahavir Jain Sewing Machine Co.

15. From this version it is plain that the witness was not well aware in respect of the business of Mahavir Jain Sewing Machine Company. He on the other hand, says that it was Gopal Lal, resident of Bundi, who had business relation with

Mahavir Jain Sewing Machine Company. In other words, the witness probabilises the plea taken by the accused that it was Gopal Lal, who had the business of M/s. Mahavir Jain Sewing Machine Co., Jaipur, as its proprietor. Gulraj Bahadur, PW 13, says in his statement:

The accused used to threaten me "you work for me otherwise your C.R. will be spoiled and you will be got transferred and so 1 used to work for him under compulsion.

This statement appears to me to be outraging natural characteristic. If a man wants to utilise the services of another person or his subordinates, in connection with his commercial enterprise, he would never behave in the manner in which the witness says he did. That apart, Ex. D. 61, dated February 26, 1962, and Ex. D 62, dated June 21, 1961, which stand proved by DW 4 Ramji Lal show that Gulraj Bahadur was admonished by the accused on account of certain laches in his duties. These two documents give an impression that the relations between Gulraj Bahadur and the accused were not affable or amicable as the latter would repose implicit confidence in him and would take his personal work from him; which, if exposed, would annihilate him. Had the accused taken private work from Gulraj Bahadur, he would not have written to him letters Exs. D. 61 and D. 62 in the acrimonious language in which he did.

16. Apart from what has been stated above, admittedly Gulraj Bahadur was in the service of the Government. Gulraj Bahadur also admits that he participated in some business at the behest of the accused on behalf of the firm M/s Mahavir Jain Sewing Machine Company, Jaipur. If the statement of his is correct, the witness is equally guilty and he becomes a co-accused. Illustration (b) to Section 114, Evidence Act, provides that the court may presume that an accomplice is unworthy of credit unless he is corroborated in material particulars. The combined effect of Sections 133 and 114(b), Evidence Act, is that though a conviction based upon an accomplice''s evidence is legal, the court will not accept such evidence unless it is corroborated in material particulars. As has been observed by their Lordships of the Supreme Court in Mohd. Hussain Umar Kochra v. Dalip Singhji AIR 1970 S.C. 149, corroboration must connect the accused with the crime and it must be from an independent source. One accomplice cannot corroborate another. Hoscoe in his Criminal Evidence, 15th Ed., P. 152, writes:

The accomplice must be corroborated by independent evidence.

In Wigmore Law of Evidence, it was mentioned in Article 2056, Volume VII, that:

There comes with acceptance a general practice to discourage a conviction founded solely upon the testimony of an accomplice uncorroborated.

Wills on Circumstantial Evidence, 17th Edn. says at p. 431:

An evidence of an accomplice requires corroboration.

17. In the light of the foregoing discussion, the evidence of Gulraj Bahadur, PW

13, does not appear to me to be worthy of credence, and conviction cannot be founded upon his testimony uncorroborated in material particulars.

18. It has been observed by the trial court that on August 1, 1961, a sum of Rs. 1250/- was withdrawn from the accused saving bank account, kept with the Bank of Rajasthan, Jaipur: vide Ex. P. 84. The same amount was deposited in the current account of M/s. Mahavir Jain Sewing Machine Company the same day, i.e. on August 1, 1961: vide Ex P. 85. The debit and credit entries in Ex. P. 84 and Ex. P. 85 respectively are not disputed. According to the accused an amount of Rs. 1260/-, had to be paid to a stone dealer. A withdrawal form duly filled in was given to the dealer by him. The stone trader insisted for cash payment. Raghunandan PW 26 then gave cash amount of Rs. 1260/-, to him from the balance of M/s. Mahavir Jain Sewing Machine Company and he took the withdrawal form from the accused in exchange. PW 26 Raghunandan corroborates this fact. It is further strengthened by entry in this cash-book Ex. D. 50. This entry has been proved by Raghunandan, PW 26. He says in his statement:

All the entries in the cash-book Ex. D. 50 are in my hand. Gopal Lal used to check and sign Ex. D. 50. I deposited Rs. 1260/-, in the Bank on 1-8-61.

In this manner the statement of Raghunandan is supported by documentary evidence. On the basis of such evidence it cannot be deduced with unerring certainty that the accused used to have monetary transactions with the Bank for or on behalf of M/s. Mahavir Jain Sewing Machine Company, Jaipur.

19. Another reasoning assigned by the trial court to implicate the accused is that PW 26 Raghunandan was appointed in the Water Works Department and yet be was working in the firm M/s. Mahavir Jain Sewing Machine Company. The conclusion is based on no substantial material. The business of the firm was closed in August, 1962 as is evident from the testimony of Raghunandan. He joined service in the Water Works Department as a Work Charge in September, 1962. This is manifest from the letter, dated December 20, 1962, written by Mr. Fateh Raj Vyas, Executive Engineer, Survey and Drainage Division, PWD (Health), Jaipur. Mr. Vyas writes in this letter:

Shri Raghunandan Joshi worked in this Division from 20-9-62 to 28-11-62.

From this evidence it is abundantly apparent that PW 26 Raghunandan joined the service after the business of the firm M/s Mahavir Jain Sewing Machine Company, Jaipur, had been brought to a close. In so far as the appointment of Raghunandan in the Water Works Department is concerned, it has no where come in the evidence that he was appointed on the recommendation or advice of the accused. Mr. Fateh Raj. Vyas, P.W. 17, says with crystalline clarity:

The accused did not recommend appointment of Raghunandan.

From what has been discussed above, the only irresistible conclusion that can be drawn is that the accused had no business connection with Raghunandan.

20. The trial court also observed in its judgment that Raghunandan used to go to the Sales-Tax Department in connection with the assessment of the firm M/s. Mahavir Jain Sewing Machine Company''s transaction even after his appointment in the Water Works Department.

21. The business of M/s Jain Mahavir Sewing Company according to Raghunandan, PW 26, was closed on August 20, 1962, but the assessment in respect of sales-tax was not finalised and was pending in the Department concerned. It was, therefore, necessary for the witness to go to the Sales-tax Department and to get the assessment completed, as he was the Manager of the firm in the past. This fact does not lead us anywhere, nor to the conclusion that the accused was connected with the business of the firm M/s Mahavir Jain Sewing Machine Co.

23. The trial court relied upon another circumstance, namely that the accused was at Udaipur from March 8, 1961 to March 13, 1961, During that period a tender was invited for supplying fans to Social Welfare Department: vide Ex. D. 46, dated March 9, 1961. The last date for submitting the tender was March 13, 1361. The trial court held that it was improbable that quotations could have been sent from Jaipur during such a short time. PW 26 Raghunandan, Manager of the firm M/s. Mahavir Jain Sewing Machine Company says that he received Ex. D, 46 and in pursuance thereof he sent a letter Ex. P. 63 under his signatures. Then Ex. D. 47 was received and the same was replied: vide Ex. P. 64 dated March 16, 1961. Mr. Narain Lal PW 14, says that Jaipur was connected by air service with Udaipur in 1961. The mere presence of the accused at Udaipur during the relevant period would not connect him with trade.

24. The trial court emphasized another circumstance to connect the accused with the crime and it is that:

The accused has not examined Gopal Lal (proprietor of the firm) with whom he had family relations. There is no suggestion that he is dead or not available.

In all criminal trials, where the accused pleads not guilty, the general principle is that the prosecution must prove the guilt of the prisoner beyond all reasonable doubt. See Woolmington v. Director of Public Prosecution 1936 A.C. 462, M.L at page 481. An accused who pleads not guilty throws on the prosecution the burden of proving that, the facts alleged in the indictment are true, but if he pleads a special plea and the prosecution traverses it, the burden is on the accused of proving that the facts alleged in his plea are true. If the prosecution does not give sufficient proof of the alleged facts to establish a prima facie case, a verdict of not guilty has to be directed: see R. v. Stoddart 1969 (25) TLR 612. In this case Gopal Lal was the most important witness. It was for the prosecution to produce him in support of its case. No adverse inference can be drawn against the accused by his non-production. Gopal Lal (proprietor) would also have been a material witness to prove the tact whether Mahavir Jain Sewing Machine Company took the shop from the accused on rent as has thus been stated on oath by PW 26 Raghunandan:

One of these shops had been taken on rent for the said company.

24. The last point, which has been dealt with by the trial court and which has been canvassed by learned Deputy Government Advocate is that Exs. P. 44 to P. 47, Exs. P. 50 to P. 54 and Exs. P. 56 to P. 60 bear the signatures of Bipunjaya Prasad. But they in fact were made by the accused. Exs. p. 31, P. 45, P. 46 are receipts for Rs. 272/-, Rs. 280/-. and Rs. 140/-, respectively. They were given on behalf of M/s Mahavir Jain Sewing Machine Co. in token of having received the amounts for goods supplied to the Social Welfare Department. In this manner the accused committed forgery in connection with the business of the firm. In so far as Exs P. 44 and P. 45 are concerned the prosecution examined PW 22 Shri Brij Bhushan Kashyap, handwriting expert. He says that those two signatures on these two documents show free-hand forgery and most probably they are in the handwriting of the accused. PW 13 Gulraj Bahadur says that the signature in Ex. P, 44 appears to be in handwriting of the accused himself, signature in Ex P. 45 is in the writing of Bipunjaya Prasad. This evidence does not prove to the hi(SIC)t that the signatures on the two documents are in the handwriting of the accused. PW 15 Fateh Raj Vyas, Deputy Chief Engineer of the Water Works Department, in which the accused worked, says that these signatures are not in the handwriting of the accused. In Ex P. 46 it is alleged that the signatures of the Bipunjaya Prasad is in the handwriting of the accused. Handwriting expert Mr. Kashyap''s evidence is that it is a free hand forgery and is most probably in the handwriting of the accused. PW 13 Gulraj Bahadur says that it is in the handwriting of the Bipunjaya Prasad. Mr. Fateh Raj Vyas deposes that this handwriting is not in the hand of the accused. It is, therefore, risky to place reliance solely upon the evidence of Mr. Kashyap in so far as Ex. P. 46 is concerned, particularly when Gulraj Bahadur himself says that the signature is in the handwriting of Bipunjaya Prasad.

25. The next document is Ex, P. 47. This is a letter written by M/s. Mahavir Jain Sewing Machine Company, Jaipur to M/s. Bharat Sewing Machine Company, Bikaner. In this document the following additions were made:

A B. We have secured an order for 5 machines. C A copy of the letter addressed to M/s G.B. Auluck & Sons is enclosed for ready reference. D

The portion marked E and F in the above letter is the signature of "Bipunjaya Prasad". They are alleged to be in the handwriting expert Mr. Brij Bhushan Kashyap, PW 22, and Gulraj Bahadur, PW 13, state that they are in the handwriting of the accused Contrary to this Mr. Fateh Raj Vyas says that they are not in the handwriting of the accused. Similarly is the case with the corrections made in Ex. P. 48 and Ex. P. 49. As regards Ex. P. 50 suffice it to say that it is a letter written by Mahavir Jain Sewing Machine Company, Jaipur, to M/s C. Perimal J. Lunia & Co. It is dated April 9, 1962. It bears the signatures of Bipunjaya Prasad. According to the expert it is a free-hand forgery and most probably is in the handwriting of the accused. PW 13 Gulraj Bahadur says that the signature of Bipunjaya Prasad in this letter appears to be in the handwriting of the accused. PW 15 Fateh Raj''s evidence is that it is not in the handwriting of the accused. Similar is the case with respect to Ex. P. 51. As for Ex. P. 52 Gulraj Bahadur says that writings, at portion marked A to B, appears to be in the handwriting of the accused. According to the expert as far as the signature on the document is concerned, it is a free-hand forgery and most probably is written by G.L. Chaudhary, PW 13 Gulraj Bahadur says that the signature in Ex. P. 54 appears to be in the handwriting of the accused. PW 15 Mr. Fateh Raj gives contrary evidence. Handwriting expert Mr. Kashyap says that it is a free hand forgery and is most probably written by the accused. The same is the case with respect to Exs P. 56 and P. 57. Ex. P. 56 has not been referred to the expert and Gulraj Bahadur, PW 13, says that the signature on Ex. P. 56 appeals to be in the handwriting of the accused & the signature on Ex. P. 57 is in the hand of the accused.

26. Now the question remains whether the evidence of Gulraj Bahadur is worthy of credence. Gulraj Bahadur says in his cross-examination that the signatures on Exs P. 5, 6, 7, 8 and 9 are not the signatures of Bipunjaya Prasad. But according to the statement of Mr. J.B. Karnawat, PW 3, Additional Munsiff Magistrate Jaipur City (East), all these signatures were the specimen signatures obtained from Bipunjaya Prasad in his presence. This evidence creates a grave doubt about the capability of PW 13 Gulraj Bahadur to identify the handwriting or the signature of the accused. In so far as the evidence of the handwriting expert is concerned I may refer to a decision of their Lordships of the Supreme Court reported in Shashi Kumar v. Subodh Kumar AIR 1964 SC 500. In that case it has been observed by his Lordship Wanchoo, J.

The expert''s evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.

The topic has been discussed in Wills on Circumstantial Evidence, 17th Edn. p. 250. The learned author''s conclusion is:

Experience shows that expert opinion of all kinds is so far apt to be biased as to require a great deal of watching.

In this case the direct evidence is that of Gulraj Bahadur, PW 13, and his testimony is not free from doubt. There is also direct evidence given by PW 15 Mr. Fateh Raj Vyas. He says that the sundry documents referred to him are neither in the handwriting of the accused, nor they bear his signatures. It would, therefore, be risky in the extreme to place full reliance on the evidence of the handwriting expert, particularly when his evidence is contradicted by another handwriting expert, DW 7, Mr. A.C. Kapoor, who has been working as handwriting expert for the last 25 years and who had received special training for this work in

Chicago. Mr. Fateh Lal Vyas, Deputy Chief Engineer, was a responsible officer of the Government. The accused worked under him. He, therefore, knew his handwriting. There is no reason why doubt should be cast on the evidence of Mr. Vyas,

27. In the light of the foregoing discussion the court below had wrongly held that the accused being a public servant had engaged himself in trade on behalf of M/s Mahavir Jain Sewing Machine Co., Jaipur & obtained illegal pecuniary advantage to the tune of Rs. 692.00. Therefore, the judgment of the court below is incorrect.

28. I accordingly allow this appeal and acquit the accused of the charges leveled against him. He is on bail and bonds stand cancelled. Learned Deputy Government Advocate prays for leave to appeal to the Supreme Court. The case has been decided on facts. The leave is refused.

