(1972) 02 BOM CK 0013

In the Bombay High Court

Case No : Criminal Appeal No. 91 of 1966 (with Criminal Appeal No''s. 92 of 1986 to Criminal Appeal No''s. 96 of 1966 and Criminal Appeal No''s. 176 of 1966 to Criminal Appeal No''s. 178 of 1966)

Gopaldas Bulakbidas Mohta — APPELLANT

Vs

State of Maharashtra — RESPONDENT

Date of Decision : 14-02-1972

Acts Referred:

Constitution of India, 1950 — Article 166
Penal Code, 1860 (IPC) — Section 161, 403, 405, 409, 420
Prevention of Food Adulteration Act, 1954 — Section 5(2)

Citation : (1973) MhLj 937

Hon'ble Judges : V.D. Tulzapurkar, J;D.G. Gatne, J

Bench : Division Bench

Advocate : K.A. Chitale, for the Appellant; C.S. Dharmadhikari and M.B. Vara for State, for the Respondent

Judgement

V.D. Tulzapurkar, J.—In these appeals, apart from challenging the convictions on merits, counsel for some of the appellants raised four or five legal contentions and it will be convenient to deal with these legal contentions seriatim at the outset. In the first place, the sanction or consent of the State Government u/s 196-A of Criminal Procedure Code, to initiate proceedings and prosecute these accused granted by the State of Maharashtra on November 6, 1962 in this case was challenged as being invalid or bad in law. The sanction or consent of the State Government has been produced at exh. 2154; the validity thereof was challenged in the trial Court on some grounds which were negatived by the learned Additional Sessions Judge but the challenge made before us is on an altogether different ground which was not urged in the lower Court. It was pointed out that the present case was governed by sub-section (2) of section 196-A, inasmuch as, one of the objects of the criminal conspiracy, as suggested by the prosecution, was to commit a non-cognizable offence, namely, falsification of accounts u/s 477-A, Indian Penal Code and as such no Court could take cognizance of this case unless the State Government had by an order in writing consented to the initiation of proceedings against the accused and since such sanction or consent in writing was necessary in this case, the question assumed importance as to whether the sanction or consent in writing of the State Government produced at exh. 2154 was valid or not. It was further pointed out that the sanction or consent in writing produced at exh 2154 in this case, though issued ''by order and in the name of the Governor of Maharashtra'' was signed by Shri J. R. Cabral, Deputy Secretary to the Government of Maharashtra, Home Department, and according to counsel, this clearly suggested that it was the Home Department, that is, either the Home Minister or the Secretary of the Home Department, who had applied his mind to the facts and papers of the case submitted by the investigating machinery to Government and it was contended that under the Business Rules framed under Article 166 (2) and (3) of the Constitution, the subject of issuing sanction or consent in writing u/s 196-A, Criminal Procedure Code had been allocated at the material time i. e. in 1962 to the Law and Judiciary Department (vide items Nos. 23 and 24 enumerated in the List under Law and Judiciary Department), and therefore, in law it was permissible for the Law and Judiciary Department alone, that is either the Law Minister or the Law Secretary who could have considered the matter while applying mind to the facts of the case and, therefore, the sanction or consent in writing at exh. 2154 which had been granted by the Home Department was invalid or bad in law and as such the entire prosecution and along with it the convictions of the accused were vitiated. In support of this contention, counsel relied upon the decision of the Supreme Court in R.J. Singh Ahuluwalia Vs. The State of Delhi, He pointed out that in that case when the sanction to prosecute the accused for offences u/s 161, Indian Penal Code and section 5 (2) of the Prevention of Corruption Act had been signed by one Mr. K. Rajaram, Deputy Secretary to the Government of India as the authority competent to remove the accused from service, the Court held that the said sanction was invalid, inasmuch as it was the Home Department of Government of India which could sanction the prosecution. It was, therefore, urged that in this case there was nothing to show that it was the Law and Judiciary Department that had applied its mind to the question whether the sanction or consent in writing should be given u/s 196-A, Criminal Procedure Code for the initiation of proceedings against the accused or not and, therefore, the sanction or consent in writing as evidenced by exh. 2154 must be held to be invalid. In our view, this contention has to be rejected for two reasons. In the first place, the entire argument of counsel was founded upon the simple fact that one Shri J. R. Cabral, Deputy Secretary, Home Department, Government of Maharashtra, had signed the order of sanction (exh. 2154) and on that fact an edifice was built that it must be the Home Department which must have applied its mind to the facts of the case and not the Law and Judiciary Department as required by the Business Rules. Mr, Dharmadhikari for the State urged that since under the Business Rules it was the Law and Judiciary Department that had to apply its mind to this question it must have done so and decided to accord sanction or consent to the initiation of these proceedings and the order might have merely come to be signed by the Deputy Secretary, Home Department and he made a grievance that, had this aspect been raised in the trial Court the prosecution would have placed the relevant material before that Court. The position being not very clear and since this aspect of sanction was pressed for the first time before us, following the course adopted by the Supreme Court in the case relied upon by the defence counsel, we asked Mr. Dharmadhikari to obtain instructions on the point and find out whether the Law and Judiciary Department had sanctioned the initiation of proceedings and launching of prosecution and Mr. Dharmadhikari has now filed an affidavit dated October 25, 1971 of Mr. Deshpande, Under Secretary in the Law and Judiciary Department clarifying the position that it was the Law and Judiciary Department that had applied its mind and granted sanction. Exhibit 2154 must, therefore, be held as a valid sanction. Secondly, there is another strong reason why the contention must fail. The real question is whether the sanction or consent in writing of the State Government to initiate proceedings and prosecute the accused u/s 196-A, Criminal Procedure Code is necessary in this case and it was pointed out by Mr. Dharmadhikari that the position in law was clear that if the principal or main object of the criminal conspiracy was to commit cognizable offence and the object to commit non cognizable offence or offences was ancillary to the main object, then, the case was not governed by section 196-A, Criminal Procedure Code and for want of sanction the prosecution cannot fail and in this behalf he invited our attention to two decisions, one of the Supreme Court reported in Bhanwar Singh and Another Vs. State of Rajasthan, and the other of the Andhra Pradesh High Court reported in Vadlamudi Kutumba Rao Vs. State of Andhra Pradesh, In the former case, the main object of the criminal conspiracy suggested was to commit an offence of cheating u/s 420, Indian Penal Code but other non-cognizable offence like forgery of document (section 467, Indian Penal Code) and using as genuine a forged document with requisite knowledge (section 471, Indian Penal Code) were also committed as merely steps taken by one or the other of the accused for the purpose of effecting the main object of conspiracy and the Supreme Court held that a trial under such circumstances for the offences charged without obtaining sanction u/s 196-A (2) of the Criminal Procedure Code was neither illegal nor void and the Supreme Court observed as follows :

It is necessary to keep in mind the difference between the object of a conspiracy and the means adopted for realising that object. Even if the object of the conspiracy, viz., of cheating, is sought to be attained by resort to non-cognizable offences, sanction u/s 196-A of the Code is not necessary.

In the case before the Andhra Pradesh High Court the criminal conspiracy was entered into to commit cognizable offence u/s 409, Indian Penal Code and non-cognizable offences under sections 467 and 468, Indian penal Code were committed in pursuance of and for carrying out the conspiracy and the Court held that sanction u/s 196-A (2) for taking cognizance of the offence of conspiracy was not required. In the present case, there is no doubt that the main object of conspiracy or rather the sole object has been to commit criminal breach of trust and falsification of accounts has undoubtedly been indulged in to achieve that object ; in fact the latter offence was committed as and by way of a device adopted to accomplish the criminal breach of trust and to prevent the detection thereof. In this view of the matter, it seems to us clear that the sanction u/s 196-A (2), Criminal Procedure Code was really unnecessary in this case and the contention raised must be rejected.

2. The nest legal contention urged was in connection with the entrustment of the property in question to accused No. 1. Undisputably the property which is the subject-matter of the alleged criminal breach of trust in this case is a chose-in-action being the dues of Laxmi Bank recoverable from Rekhchand Gopaldas firm under the Banker''s account and on the question of the entrustment of this property to accused No. 1 a twofold contention was raised, namely that in law accused No. 1 was not a trustee of that property either in his capacity as the sole proprietor of the firm Rekhchand Gopaldas or in his capacity as the Managing Director of Laxmi Bank and as such there being no entrustment of the property to him; no offence of criminal breach of trust could be committed by him. We will presently deal with both the aspects of the contention.

3. On the first aspect it was pointed out that by the Board''s Resolution exh. 205 Rekhchand Gopaldas firm was appointed the banker of Laxmi Bank and as such so far as the dues under the Banker''s account were concerned, the relationship between Rekhchand Gopaldas on the one hand and Laxmi Bank on the other was clearly that of a banker and his customer, that is to say, the relationship was of a debtor and creditor and, therefore, it was urged that no criminal breach of trust could take place in respect of the said dues recoverable under the said Banker''s account, inasmuch as, in law there could be no entrustment of constituent''s monies with the banker. In support of this contention several decisions were cited at the Bar, to some of which only a reference need be made. The earliest English case which pronounces upon the correct relationship between a banker and his customer is Foley v. Hill (1848) 2 H L C 28. where the relevant observations run as follows:

The relation between a Banker and Customer, who pays money into the Bank, is the ordinary relation of debtor and creditor, with a superadded obligation arising out of the custom of bankers to honour the customer''s drafts;...

This exposition of the legal position pertaining to the relation between a banker and customer has been approved by later English as well as Indian decisions, in some of which it came to be considered in the context of the offence of embezzlement or breach of trust. In Attor.-Gen. of Canada v. Attor. Gen. of Qubec Province A I R 1947 P C 44. the Privy Council has made certain observations, the relevant portions whereof have been succinctly reproduced in Head Note (B) as follows:

. . The relation between banker and the customer who pays money into the bank is the ordinary relation of a debtor and creditor with a superadded obligation arising out of the custom of the bankers to honour the customer''s drafts Once the deposit is made there remains only a debt due from the banker to the customers.

Money deposited with a bank is also not trust money which the trustee must preserve and not use; on the contrary it is tent for a se and the bank is not a trustee but a debtor to the depositor. The difference between property and possession of deposits does not come in question; the only obligation adder which a bank lies is to repay a like sum in the like currency.

In Gopesh Chandra Pal and Another Vs. Nirmal Kumar Das Gupta, the Court has observed as follows:

Section 409 presupposes entrustment. When a person opens a current account in a bank, there is no question of entrustment. The relationship between the bank and the customer is one of creditor and debtor. Hence there can be no case against a bank or its officers for committing an offence u/s 409 in respect of the money deposited by a customer.

The bank is free to use the money deposited by the customer or constituent in any way it likes and is not bound to keep the money apart. No bank can ever function if it was obligatory on it not to touch the money of a person who makes a deposit in its current account. The bank is liable to pay the money to the customer when called upon but until called upon to pay it the bank is entitled to utilise the money in investment and in other ways for earning profit therefrom.

If a cheque is dishonoured, that does not connote misappropriation. The remedy for a cheque being wrongfully dishonoured lies in the civil Court. This is not a matter which is to be tried by a criminal Court.

Reference was also made to a decision of this Court reported in Deochand v Madanial 1968 Mh. L J 113= (1967) 70 Bom. L R 280. where following the above principle it was held by Deshtnukh J. that where a person had made a deposit of monies with a shop keeper without anything more, the relationship between the shop-keeper and the depositer was held to be that of debtor and creditor and there was no entrustment within the meaning of section 405, Indian Penal Code. Relying upon these decisions, it was urged before us that since M/s. Rekhchand Gopaldas the sole proprietory firm of accused No. 1 was a private banker of Laxmi Bank the amounts or dues covered by such Banker''s account could not be said to have been entrusted with the said firm of accused No. I within the meaning of section 403, Indian Penal Code, the relation between that firm and the Laxmi Bank being that of debtor and creditor and as such no offence of criminal breach of trust could at all take place at the hands of accused No. 1.

4. In our view, though there could be no quarrel with the legal position enunciated in the aforesaid decisions governing relationship between a banker and his customer, that legal position is thoroughly irrelevant to the present case

and the contention based thereon is utterly futile. In the present case, prosecution has nowhere suggested that the dues recoverable under the Bankers" account were entrusted to the firm of Rekhchand Gopaldas or to accused No. 1 as its sole proprietor nor is the prosecution seeking to hold accused No. 1 guilty for criminal breach of trust in respect of the said dues in his capacity as the sole proprietor of the said firm. Had that been the case, then the question of invoking the principle enunciated in these decisions would have arisen. There is, therefore, no substance in this contention.

5. On the other aspect, counsel''s contention was that the dues under the Banker''s account represented a debt payable by Rekhchand Gopaldas to Laxmi Bank and accused No. 1 as the Chairman or Managing Director of Laxmi Bank was in law never a trustee of that debt and he was under no duty or obligation to demand back the said dues from Rekhchand Gopaldas. On the other hand Mr. Dharmadhikari for the State contended that a director of a company has always been held to be a trustee of the company''s properties and assets and support he relied upon two English decisions, namely, Great Eastern Railway Co. v. Turner (1872) LB 8 Ch. A. 149. and In re Forest of Dean Coal Mining Company (1878) 10 ch. D. 450. In the former case Lord Selborne has observed as follows (p. 152; :

The directors are the mere true tees or agents of the company-trustees of the company''s money and property-agents in the transactions which they enter into on behalf of the company,...

In the latter case Sir George Jessel has observed (p. 453) :

directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control,...

Mr. Dharmadhikari also pointed out that the aforesaid observations in the two English cases were approved and relied upon by the Supreme Court in R.K. Dalmia Vs. Delhi Administration, Counsel for accused No. 1, however pointed out that the position of directors in a company had been described sometimes as Agents, sometimes as Trustees and sometimes as Managing partners, but when they are spoken of as such all that is intended to be done is to focus the attention upon one or the other particular aspect of their duties which they perform in a company. He invited our attention to the judgment of Bowen L.J. in Imperial Hydropathic Hotel Company, Blackpool v. Hampson (1882) 23 Ch. D. 1. where the relevant observations clarifying the directors''s position run as follows (p. 12):

I should wish... to begin by remarking this, that when persons who are directors of a company are from time to time spoken of by Judges as agents, trustees, or managing partners of the company, it is essential to recollect that such expressions are need not as exhaustive of the powers or responsibilities of those persons, but only as indicating useful points of view from which they may for the moment and for the particular purpose be considered-points of view at which they seem for the moment to be either cutting the circle or falling within the category of the suggested kind. It is not meant that they belong to the category, but that it is useful for the purpose of the moment to observe that they fall pro tanto within the principles which govern that particular class.

Counsel further pointed out that in Dalmla''s case the Supreme Court was concerned with embezzlement of moneys lying in a bank account which was under the control of the directors and as such it was a case concerning tangible movable property and not a case concerning a chose-in-action and, therefore, the Supreme Court merely quoted with approval only such portions of the observations which were relevant to its own purpose, particularly from the judgment of Sir George Jessel in In re Forest of Dean Coal Mining Company case; but in that very case Sir George Jessel has made it clear that though the directors were trustees of company''s money and property in their hands or under their control, they were not trustees of a debt due to the company-an aspect which was unnecessary for being gone into in Dalmia''s case. At pages 451, 452 and 453 of the Report in In re Forest of Dean Coal Mining Company, Sir George Jessel, M. R. has made the following observations:

Directors have sometimes been called trustees, or commercial trustees, and sometimes they have been called managing partners, it does not much matter what you call them so long as you understand what their true position is, which is that they are really commercial men managing a trading concern for the benefit of themselves and of all the other shareholders in it... Traders have a discretion as to whether they shall sue their customers, a discretion which is not vested in the trustees of a debt under a settlement. In fact the customers of a trading partnership are very often allowed time, because the partners may think that, if they do not allow time, they will drive the customer into bankruptcy and so suffer a greater loss than by giving them time; indeed they not only very often give them time, but they lend them money or sell them goods in the hope that better times may come and enable them to pay their debts.

At page 453 he observed as follows :

''''Again, directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company.. A director is the managing partner of the concern, and although a debt is due to the concern I do not think it is right to call him a trustee of that debt which remains unpaid, though his liability in respect of it may in certain cases and in some respects be analogous to the liability of a trustee?

Relying on these observations counsel for accused No. 1 contended before us that the subject-matter of the alleged offence in the instant case being the dues payable by Rekhchand Gopaldas firm to Laxmi Bank, that is to say, a debt owed by the firm to Laxmi Bank accused No. 1 as a director or managing director of Laxmi Bank cannot be held to be a trustee of that debt and he was under no obligation or duty to get in the said debt by making a demand and/or taking action against Rekhchand Gopaldas but in fact as a managing partner had discretion not to do so and grant time to make payment.

6. We are in agreement with counsel for accused No. 1 that in law, though a director or a managing director of a company is in the position of a trustee of the assets and properties of the company that come into his hands or under his control, he is not a trustee of a debt due and payable to the company and to that extent Mr. Dharmadhikari''s contention that accused No. 1 as the Managing Director had an obligation or a duty to call back the dues under the Banker''s account from Rekhchand Gopaldas cannot be accepted. But, in our view, this cannot affect the case of prosecution in so far as the alleged offence of criminal breach of trust in respect of the said dues u/s 409, Indian Penal Code is concerned. It is true that u/s 405 there must be entrustment of property to the accused but section 405 uses two expressions- '"'whoever being in any manner entrusted with property or with any dominion over property", that is to say, the accused must be entrusted with the property itself or he must be entrusted with dominion over the property before he can commit the offence of criminal breach of trust in respect thereof. It may be that accused No 1 as a Managing Director of Laxmi Bank may not be a trustee of the debt payable by Rekhchand Gopaldas to Laxmi Bank but all the same it cannot be gainsaid that in that capacity he was at the material time entrusted with full dominion over the said debt. It has been an admitted position that in April, May and June 1948 accused No. 1 was the Managing Director of Laxmi Bank and under Articles 109, 110 and 113 of the Articles of Association he had been clothed with all powers and authority to deal with the funds of Laxmi Bank including the right to recover the said dues from Rekhchand Gopaldas on behalf of the Laxmi Bank. The property being an actionable claim against Rekhchand Gopaldas, accused No. I as the Managing Director was entrusted with complete dominion over the right to recover the same under the said Articles and as such he was capable of committing dishonest misappropriation or conversion of that actionable claim. The finding of the learned trial Judge on the point of entrustment, therefore, has to be upheld and we confirm the same.

7. The next two questions that were debated at the Bar were whether a chose-in-action could at all be the subject-matter of embezzlement or breach of trust and if it could be, in what form or manner its conversion could take place. First, it was contended, though not seriously, that the subject-matter of the alleged breach of trust in this case being a chose-in-action, namely a right to recover the dues, no embezzlement or criminal breach of trust in respect thereof was at all possible and in support of the contention reliance was placed upon the decision of the Calcutta High Court in Indra Narayan Roy Vs. The State, In that case after accepting the legal position that Directors of a Company were trustees only in respect of funds and property of the Company which come to their hands or under their control, but not in respect of debts owed to the Company, the Calcutta High Court held that if Directors dealt with such debts by remitting or

writing off some of them wrongfully and thus causing loss to the Company, they could be guilty of some other offence, e. g. u/s 422, Indian Penal Code but not of criminal breach of trust. The relevant observations on which reliance was placed appear in para 16 of the judgment, which run as follows (p. 70):

There can be criminal breach of trust in respect of property entrusted with a person or the property the dominion over which is entrusted to a person. This property must be tangible property in the hands of the directors or under their control and, therefore, the debt due from the company to the bank could not be the subject-matter of criminal breach of trust.

In the first place, the case before the Calcutta High Court was one where the directors had wrongfully remitted certain debts due to the Company and the Court held that such conduct on their part would not amount to criminal breach of trust. On the facts the decision, with respect, is undoubtedly correct; for, it would be within the powers of the directors as managing partners of the Company to grant remission of a debt due to the company and however wrongful the granting of such remission may be the directors cannot be said to have committed criminal breach of trust in respect of debts so remitted This view taken by the Calcutta High Court, we may point out, is in accord with the view expressed by Lord Goddard C. J. in the case of Regina v. Devies (1954) 3 W L R 664. In that case the indictment alleged that the appellant, being a director of a company, which subsequently passed a resolution for voluntary winding up, did, with intent to defraud creditors of the company, attempt to transfer to himself the property of the said company to it, an indebtedness in the sum of ?30,000 then owing by himself to the company, it was held that the cancellation of the debt owed by the appellant to the company was not a transfer of property within the meaning of section 330 of the Companies Act, 1950 and the Count was therefore, demurrable as it disclosed no offence. The ratio of these decisions, it was conceded, did not apply to the present case for obviously accused No. 1 has never made any attempt to get his dues under the Banker''s account written off or cancelled or remitted to himself by the Bank. With respect, therefore, the point which arose for decision before the Calcutta High Court has been correctly decided. But, in our view, the observations made by the Court, which we have quoted above and on which reliance has been placed, appear to us rather widely worded and they were not necessary for the decision. The observations, we may respectfully point out, seem to proceed on an assumption that the property in respect of which directors of a company could commit criminal breach of trust must be tangible property in the hands of the directors or under their control, an assumption which cannot be said to be well founded in law. Secondly, the point must be taken to have been decided by the Supreme Court in Dalmia''s case where the Supreme Court has clearly laid down that the expression ''property'' occurring in section 405, Indian Penal Code could not be confined to tangible movable property but is wide enough to include a chose-in action like a debt and if once this position is clear that a chose-in-action like a debt is included within the expression ''property'' occurring in section 405, Indian Penal Code, which deals with the offence of criminal breach of trust, it would be difficult to accept the contention that though this kind of property is included in section 405, Indian Penal Code no criminal breach of trust in respect thereof could at all take place. As to how and in what manner the criminal breach of trust in respect of a chose-in action could take place is a different matter and has been the subject of the next question that was debated at the Bar. But in view of the Supreme Court decision in Dalmia''s case it seems to us very clear that a chose-in-action like the debt due to Laxmi Bank from Rekhchand Gopaldas firm would be the ''property'' in respect of which criminal breach of trust could be committed. In tact realising this position the contention was not seriously pressed before us.

8. On the further aspect as to how and in what manner embezzlement or criminal breach of trust in respect of a chose-in-action could take place, an interesting contention was raised before us by counsel for accused No. 1. He urged that the property which was the subject-matter of alleged embezzlement or breach of trust being a chose-in-action, namely a right to recover the dues, no misappropriation or conversion thereof could occur unless the right to recover the dues was repudiated or dented, which is the same as saying, unless the liability for the said dues was repudiated or denied or falsely extinguished and, according to him, what had happened in the present case was that the nature of initial liability was changed or transformed to another kind of liability, that is to say one kind of a chose-in-action was substituted by another which in law could not amount to conversion and assuming that such substitution amounted to conversion there was no dishonestly Involved; for example, the initial liability was for dues under the Banker''s account, which was altered to dues under Hundi dealings and this again was further altered to dues under the Property loan accounts that were opened in Bombay branches in 1953, but the liability for the dues continued and was kept alive on the shoulders of accused No. 1 and since the liability was never repudiated or denied, there was no misappropriation or conversion of the dues on the part of accused No. 1. The factual aspects as to what had happened in the instant case at the hands of accused No. 1 in respect of dues payable by him under the Banker''s account and whether what was done was done with dishonest intention or not are questions which we shall deal with later. But at this stage we are only concerned with the legal aspect of the contention put forward on behalf of accused No. 1. Put in another form the contention has been that in order that there should be misappropriation or conversion of a chose-in-action, there must be a repudiation or denial of Laxmi Bank''s right to recover the dues, which, in other words, means there must be a repudiation or denial of liability or false extinguishment thereof and substitution of one kind of a chose-in-action by another is no conversion in law. In support of this contention reference was made to the definition of ''Chose-in-action'' and to a couple of decisions on the point as to what form conversion of a chose in-action could take. In the dictionary of English Law by Earl Jowitt the expression ''Chose-in-action'' is defined thus (p. 367): "A chose-in-action, or chose-in-suspense, is a right of proceeding in a Court of law to pro-care the payment of a sum of money

(e.g., a bill of exchange, a policy of insurance, an annuity, or a debt), or to recover pecuniary damages for the infliction of a wrong or the non-performance of a contract." In Lancashire & Yorkshire Railway, & Co. v. MacNicoll (1818) L J 88 K B 601. Justice Atkin, as he then was, observed as follows (p. 605) :

. .It appears to me plain that dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner''s right or to assert a right which is inconsistent with the owner''s right." Even where the defendant had not obtained possession of the plaintiffs goods Scrutton L.J. in Oakley v. Lyster (1931) 1 K B 148, at p. 153 look the view that interference with the right of the plaintiff and denial of his ownership amounted to conversion.

9. Relying on these authorities counsel contended that unless there was a repudiation or denial of liability or a false plea of extinguishment of the liability for the dues payable under the Banker''s account there could be no conversion of the chose-in-action and since the liability for dues under the Barker''s account was merely altered or changed to liability under Hundi dealings there was merely a substitution of the initial chose-in action by another kind of chose-in-action but by that process of changing the form, the liability for the dues, far from being repudiated or denied, was kept alive and therefore, such substitution of one chose-in-action by another was not conversion in law. We are unable to accept both the aspects of the contention. We feel that a repudiation or denial of liability or a false plea of extinguishment thereof would be one of the modes in which a chose-in action could be misappropriated or converted to one''s use, but that could not be the only mode. It is true that counsel has also contended that substitution of one chose-in-action by another unless it was accompanied by a repudiation or denial of liability would not amount to conversion in law but we find it difficult to sustain even this proposition. It it quite conceivable that substitution of one chose-in-action by another might prejudicially affect the owner thereof in the matter of his remedies qua the two types of chose-in-action, for example, where by substitution the period of limitation to bring an action is reduced; in such a case even though substitution may not be accompanied by a total repudiation or denial of liability it is bound to affect prejudicially the owner of the prior chose-in-action and therefore, would amount to conversion in law. In our view, therefore, any tampering with a chose-in-action without the consent of the owner thereof which injudiciously or prejudicially affects his right of action would amount to conversion of it in law and if such injurious tampering is accompanied by means rea or dishonesty, such conversion would be criminal. In the present case, however, it has been suggested by the prosecution that it was by making false credit entries in the Banker''s account that the dues under the Banker''s account were sought to be extinguished or wiped out or satisfied without actually receiving any payment and thereby the chose in-action was dishonestly converted by accused No. 1 to his own use and the question that will have to be considered is whether

prosecution has established dishonest conversion of the dues in this manner. This disposes of the legal contentions raised by counsel for the accused before us in these appeals.

