

(1970) 06 CAL CK 0018
In the Calcutta High Court
Case No : Criminal Revision No. 671 of 1969

Nathmull Poddar

APPELLANT

Vs

Salil Kumar Chakraborty

RESPONDENT

Date of Decision : 10-06-1970

Acts Referred:

Employees State Insurance Act, 1948 — Section 40, 85, 86
General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 403, 405, 406

Citation : AIR 1971 Cal 93 : (1971) CriLJ 361 : 74 CWN 792

Hon'ble Judges : N.C. Talukdar, J

Bench : Single Bench

Advocate : Ajit Kumar Dutta and Amiya Kumar Chakraborty, for the Appellant;
Debesh Chandra Mukherjee, for the Respondent

Judgement

N.C. Talukdar, J.—This Rule is at the instance of the accused-petitioner Nathmull Poddar, for quashing proceedings under Sections 406/403, I.P.C., being Case No. C-1583 of 1969, pending in the court of the learned Chief Presidency Magistrate, Calcutta.

2. The facts leading on to the Rule are short and simple. The accused-petitioner, Nathmull Poddar, is the Manager of M/s. Naskarpara Jute Mills Company Limited having its office at 220/2, Shib Gopal Banerjee Lane, Ghosuri, Howrah while the co-accused, K. L. Jalan, is a Director thereof. The opposite party, Salil Kumar Chakraborty, is an Insurance Inspector attached to the Regional Office of the Employees' State Insurance Corporation at 5/1, Grant Lane, Calcutta. A petition of complaint was filed on the 5th June, 1969 by the abovementioned Insurance Inspector in the court of the learned Chief Presidency Magistrate, Calcutta under Sections 406/403, I.P.C. averring inter alia that the accused being the principal employers of the aforesaid factory deducted contributions from the wages of the employees for the period between March 1967 and October 1968 and also for certain earlier periods but failed to deposit the same with the Employees' State Insurance Corporation as required u/s 40 of the Employees' State Insurance Act,

1948 read with Regulation 26, wrongly stated as Regulation 23 in the petition of complaint, of the Employees' State Insurance (General) Regulations, 1950 thereby committing offences of criminal breach of trust and misappropriation in respect of Rs. 1,00,898.94 p. The learned Chief Presidency Magistrate by his order of the same date took cognizance and issued summons against the accused persons under Sections 406/403, I.P.C. A search-warrant was also issued, as prayed for. In pursuance of the summons the accused No. 1, Nathmull Poddar, appeared before the learned Chief Presidency Magistrate, Calcutta through his lawyer on 2-7-69 and filed two applications, viz., one u/s 205, Cr. P. C. for exemption of both the accused persons from personal attendance and another for dropping the proceedings under Sections 406/403. I.P.C. as not maintainable in law. The applications were heard in part on that date and further heard on 7-7-69. Ultimately by his order dated the 19th July, 1969, Shri K. J. Sen Gupta, Chief Presidency Magistrate, Calcutta rejected the prayer for dropping the proceedings at that stage and directed that the same shall continue and the search-warrant issued shall not be recalled. This order has been impugned by the accused No. 1, Nathmull Poddar, and the present Rule was issued on the 28th July, 1969.

3. Mr. Ajit Kumar Dutta, Advocate (with Mr. Amiya Kumar Chakraborty, Advocate) appearing in support of the Rule on behalf of the accused-petitioner, Nathmull Poddar, has made a three-fold submission. Mr. Dutta contended in the first instance that a contravention of Section 40 of the Employees' State Insurance Act, 1948 read with Regulation 26 of the Employees' State Insurance (General) Regulation, 1950 being punishable under Sub-sections (a) and (g) of Section 85 of the said Special Act, the present proceedings under Sections 406/403 of the Indian Penal Code, which is a General Act, are not maintainable in law. A reference was made to an un-reported decision dated the 2nd June, 1969 by Bagchi, J. in Criminal Revn. Case No. 1193 of 1968 (Cal). Mr. Dutta in this context further submitted that the proceedings under the General Act have been started in order to circumvent the mandatory provisions relating to sanction and limitation, as enjoined under Sub-sections (1) and (3) of Section 86 of Act XXXIV of 1948. The second contention of Mr. Dutta is that even if the proceedings be otherwise maintainable under the Indian Penal Code, the essential ingredients of "entrustment". within the bounds of Section 405 of the Indian Penal Code, are non est inasmuch as, amongst others, there is only a fictional transfer and not an actual physical transfer by the owner of the property concerned vitiating thereby the present proceedings under Sections 406/403. I.P.C. Several cases were cited by the learned Advocate for the accused-petitioner in support of his contention. The third and the last submission of Mr. Dutta is that the present proceedings are bad and improper inasmuch as there cannot be any prosecution in law of the accused persons under Sections 406/403, I.P.C. in their fictional capacity of "principal employer" as defined in Section 2(17) of Act XXXIV of 1948. Mr. Debesh Chandra Mukherjee, Advocate appearing on behalf of the opposite party, Salil Kumar Chakraborty, an Insurance Inspector attached to the E.S.I.

Corporation, submitted that the first contention made on behalf of the accused-petitioner is not maintainable in law in view of the material provisions of Section 26 of the General Clauses Act and he referred in that context to an unreported decision dated the 11th September, 1961 by S. K. Sen and N. K. Sen. JJ. in Criminal Revn. Case No. 1569 of 1960 (Cal.). In reply to the second submission of Mr. Dutta that the essential ingredients of "entrustment" not being satisfied the present proceedings under Sections 406/403. I.P.C. are not maintainable, Mr. Mukherjee contended that the proceedings under Sections 406/403, I.P.C. are the proper proceedings relating to the contravention of Section 40 of the Employees' State Insurance Act, 1948, in view of the provisions of Sub-section (4) thereof, enjoining that any sum deducted by the principal employer from wages under the said Act "shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted". Mr. Mukherjee further submitted that Section 85 does not provide the penalty for all cases of failure to pay contribution u/s 40 of Act XXXIV of 1948 and that Section 85(a) merely lays down the punishment for a contravention of Section 40(1) of the Employees' State Insurance Act, 1948, constituting a pre-deduction offence or an offence committed by a failure to pay contribution before the employees' share is deducted from his wages u/s 40(2) and that with respect to cases of post-deduction offences or offences committed after deductions have been made by the principal employer from the wages of the employees, such deductions being deemed to have been entrusted to such employer, the proper proceedings are under Sections 406/403. I.P.C. In this context Mr. Mukherjee further contended that the essential ingredients of "entrustment" within the bounds of Section 405, I.P.C. include a notional or a fictional transfer and not merely an actual physical transfer by the owner of the property concerned and that the submissions made in this behalf by Mr. Dutta, if accepted, would unnecessarily circumscribe the meaning of the expression "entrustment" and defeat the intention of the legislature. Several cases were cited by Mr. Mukherjee, in support of his submissions and the same would be considered in the proper context. Mr. Mukherjee lastly contended that the third submission of Mr. Dutta is more technical than real and that when the business of the company is being carried on or conducted by some persons, any one in charge thereof or responsible for the conduct of the same, at the time when the offence is committed including the "principal employer" as defined in Section 2(17) of Act XXXIV of 1948, can be saddled with the responsibility for the same.

4. Having heard the learned Advocates appearing on behalf of the respective parties and on going through the materials on record, I will now proceed to determine the points raised by the learned Advocates for the respective parties. As to the first contention raised by Mr. Dutta and not pressed ultimately. I must hold that the same is not maintainable and I agree with the contentions made in this behalf by Mr. Mukherjee. Mr. Dutta contended that the present proceedings have been instituted under the General Act, to circumvent the bar imposed on such prosecutions by the Special Act and as such the present proceedings are

bad and without jurisdiction. Mr. Dutta relied on the unreported decision dated the 2nd June, 1969, in Criminal Revn. Case No. 1193 of 1968 (Cal.) (Satya Narain Choudhury v. K. P. Bhatta) by Mr. Justice S. N. Bagchi, wherein it was held that

"It is the settled law that a Special Act enjoins special procedure for initiation of proceedings for violation of any penal provision of such special Act, the prosecution must be initiated according to the provisions of the Special Act. Any attempt to circumvent the bar of prosecution enjoined by the Special Act would be discountenanced by a court of law."

The learned Judge further proceeded to hold that

"There is a public policy behind the provisions of Section 86 of the Employees' State Insurance Act when the employer is said to have contravened the provisions of the Act thereby making himself liable to be punished u/s 85, Clause (g) of the Act."

It was ultimately held that in view of the provisions in Section 85(g) read with Sections 40 and 86 of the Employees' State Insurance Act, the learned Magistrate could not assume jurisdiction under Sections 406/403 of the Indian Penal Code. The view taken in the aforesaid single Bench decision however is in conflict with an earlier Division Bench decision, which appears not to have been cited before Bagchi, J. It is pertinent therefore to refer to the same. In Criminal Revn. Case No. 1569 of 1960 (Cal.), (Nagendra Chandra Ghosh v. The State) decided on 11-9-1961 by S. K. Sen and N. K. Sen, JJ. it was held by their Lordships that

"the prosecution u/s 420 of the Indian Penal Code would not be bad even if the offence with which the petitioner was charged had come within the scope of Section 84 of the Employees' State Insurance Act."

The decision of the Division Bench must prevail and I hold, as observed by their Lordships of the Division Bench, that a prosecution, if otherwise maintainable, would lie both under the Special Act and the General Act subject to the overriding consideration that the accused shall not be liable to be punished twice for the same offence. The contentions of Mr. Dutta is also de hors the provisions of Section 26 of the General Clauses Act. Section 26 of the General Clauses Act, 1897 runs as follows :

"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

In this context it will be pertinent also to refer to two Supreme Court decisions on the point. In the case of Basir-ul-huq and Others Vs. The State of West Bengal, . Mahajan, J. (as his Lordship then was) held that

"Section 195 cannot however be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195, Criminal Procedure Code."

In a latter decision however, viz., in the case of Chandrika Sao (In Cr. A. No. 35 of 61) and; (2) Hazari Lal (In Cr. A. No. 36 of 61) Appellants v. State of Bihar (In both the Appeals) Respondents, reported in AIR 1967 SC 170, Mudholkar, J. observed that in choosing to prosecute the accused for a graver offence under the General Law the prosecution could not be regarded as having acted colourably and that if the prosecution were to be so restricted, graver offence would go unpunished. I respectfully agree with the said observations and I hold that in view of the provisions of Section 26 of the General Clauses Act and in view of the principles laid down by their Lordships of the Supreme" Court in Chandrika Sao's case. AIR 1967 SC 170 and by this court in the unreported decision in Nagendra Chandra Ghosh's case. Cri. Revn. Case No. 1569 of 1960, D/- 11-9-1961 (Cal.) there is no bar in limine on the prosecution to proceed under the General Act on an offence which otherwise lies, merely because the same facts also constitute an offence under the Special Act, subject only to the overriding consideration of double jeopardy. The first contention raised by Mr. Dutta accordingly fails.

5. The second contention put forward by Mr. Dutta is however of some importance and requires consideration in all its facets. Mr. Dutta submitted that even if a prosecution under the General Act is permissible u/s 26 of the General Clauses Act, the present proceedings under Sections 406/403, I.P.C. are not however maintainable because there is no "entrustment" constituted by the facts alleged within the bounds of Section 405. I.P.C. Mr. Dutta urged that the essential ingredients of "entrustment" are five-fold and the absence of any one of these material ingredients would fail to constitute "entrustment" forming the corner-stone of a prosecution under Sections 406/403. I.P.C. The steps of Mr. Dutta's reasoning in this context are that in order to constitute entrustment the complainant must be the owner of the property; that there must be a transfer of possession; that such transfer must be an actual transfer and not a fictional or notional one; that the transfer must be made to somebody who has no right, excepting that of a custodian; and that such entrustment must be made to a person "and not to a company or a firm. These five ingredients, according to Mr. Dutta, when satisfied, will constitute "entrustment" within the ambit of Section 405 I.P.C. leading on to a valid prosecution, if otherwise entertainable on merits, under Sections 406/403, I.P.C. Mr. Dutta submitted that one looks in vain to the facts incorporated in the petition of complaint in this case for the presence of any one of these elements and that it appears on the other hand that the sheet-anchor of the prosecution case is the deeming clause in Sub-section (4) of

Section 40 of Act XXXIV of 1948 which certainly cannot do duty for an actual transfer of the property forming the subject-matter of the present proceedings, implicating the accused in their fictional capacity of a principal employer. Mr. Mukherjee joined issue and submitted that the interpretation put by Mr. Dutta on the concept of "entrustment" would unnecessarily circumscribe the meaning thereof and frustrate the intention of the legislature. It is relevant in this context to consider the various cases cited by the learned Advocates appearing on behalf of the respective parties in support of their contentions as to what constitutes in law "entrustment" within the ambit of Section 405, I.P.C. forming the basis of a prosecution under Sections 406/403. I.P.C. In the case of Bhuban Mohan Das Vs. Surendra Mohan Das, , Harries, C. J. observed at page 70 that

"Before criminal breach of trust is established it must be shown that the person charged has been entrusted with property or with dominion over property and that he has been guilty of "breach of trust" using that latter phrase loosely. There must be entrustment and therefore the person accused must be shown to have held the property in a fiduciary capacity."

The learned Chief Justice proceeded to consider several English cases in this context including the case of *Piddocke v. Burt*, reported in (1894) 1 Ch 343, wherein it was held that one partner receiving assets of the partnership on account of himself and his co-partners is not liable to imprisonment u/s 4(3) of the Debtors Act, 1869 as a person acting in a fiduciary capacity. A reference was also made to the observations of Chitty J. at page 346 in the abovementioned decision that

"The case of a partner is quite different from these cases because he receives money belonging to the firm on behalf of himself and his co-partner and it appears to me that I should be straining the law if I were to hold that a partner receiving "money on account of the partnership--that is, on behalf of himself and his co-partners--received it in a fiduciary capacity towards the other partners".

A reference was also made to the case of *Jaswantrao Manilal Akhaney Vs. The State of Bombay*, wherein B. P. Sinha, J. (as his Lordship then was) delivering the judgment of the Court observed at page 582 that

"Entrustment contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event. The person who transfers possession of the property to the second party still remains the legal owner of the property and the person in whose favour possession is so transferred has only the custody of the property to be kept or disposed of by him for the benefit of the other party, the person so put in possession only obtaining a special interest by way of a claim or money advanced or spent upon the safe keeping of the thing or such other incidental expenses as may have been incurred by him."

Mr. Dutta has further referred in this connection to the case of *Velji Raghavji*

Patel Vs. State of Maharashtra, , wherein Mudholkar, J. delivering the judgment of the court observed at page 1435 that

"Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirement of Section 405. In order to establish "entrustment of dominion" over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment."

Mr. Mukherjee referred to several cases in this context to establish his proposition that there need not be any physical transfer of the articles in question and that even a notional transfer will do and that each case must depend on its own facts. Mr. Mukherjee referred to several decisions in this context. He referred in the first instance to the case of Narayandas Shreeram Somani Vs. The Sangli Bank Ltd., and relied upon the observations of Bachawat, J. delivering the judgment of the court at page 174 that

"To support the plea of payment, it is not necessary to show that cash passed. Illustration (a) to Section 50 of the Indian Contract Act, 1872 shows that payment may be made by means of transfer entries in books of account".

I respectfully agree with the observations made there but I must hold that the said observations are made in quite a different context against the backdrop of Section 50 of the Indian Contract Act, namely, that it is not necessary that cash must pass to establish a plea of payment. The question here is one of entrustment and the point for consideration is whether there can be any entrustment without being accompanied by an actual transfer. Mr. Mukherjee next referred to the case of Indrajit Singh Kohli Vs. The State, wherein Mr. Justice A. K. Das delivering the judgment of the court, held in the facts of the said case, that,

"after seizure, the lorry was entrusted with the petitioner with a direction to produce it in court. Due notice for production was served and he has failed to produce it. The ingredients for an offence u/s 406 viz., entrustment followed by misappropriation and conversion in violation of the direction of law are present and prima facie an offence of criminal breach of trust has been committed for trial u/s 406, Indian Penal Code."

It is difficult to understand how the principles laid down in the abovementioned case would apply to the point at issue in the present proceedings. Nobody can dispute the factum of entrustment in that case of the property when the same was made over to the accused therein with a direction to produce it in court. The point here is entirely different viz., as to whether there has been a fictional entrustment or actual entrustment. Mr. Mukherjee lastly cited the case of The State of Gujarat Vs. Jaswantlal Nathalal, . Mr. Justice Hegde delivering the judgment of the court held at page 701 that

"The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner A mere transaction of sale cannot amount to an entrustment."

The facts of the case under consideration by their Lordships of the Supreme Court are again quite different and the observations made by Mr. Justice Hegde, delivering the judgment of the court, really do not support the present contention of Mr. Mukherjee. One of the elements of entrustment as pointed out therein, is that the property must be handed over by the aggrieved person, who continues to be the owner thereof. In the facts and circumstances of the present case, it is difficult to agree with Mr. Mukherjee's submission that there has been in fact an actual transfer of property by the real owner to a party who has no right excepting that of a mere custodian and I hold accordingly that the essential elements of entrustment within the meaning of Section 405 of the Indian Penal Code are non est, vitiating thereby the present proceedings under Sections 406/403, I.P.C. and as such a continuance thereof is unwarranted and untenable. It is pertinent now to consider the fifth element referred to by Mr. Dutta viz., such entrustment must be made to a person and not to a company. In the case of *S. C. Guha v. Emperor*, reported in 32 Cri LJ 149 : (AIR 1930 Rang 332). Mr. Justice Baguley observed at page 152 that

"It seems to me to follow that the goods were entrusted to the firm and not to Guha, and, if there was no personal entrustment to Guha, he cannot be regarded as criminally liable for breach of trust."

A further reference may be made to the case of AIR 1952 255 (Nagpur) wherein Mr. Justice Mudholkar delivering the judgment of the court observed at page 256 that

"The cheque was drawn in the name of Ladharam Khota and it is said to have been handed over to the applicant for being credited to his account with the firm Ladharam Kheta. It follows therefore that the property in the cheque passed from the complainant to the firm Ladharam Kheta as soon as the cheque was handed over to the applicant. Since that is so, there is no entrustment of any money by the complainant to the applicant."

I respectfully agree with the said observations and I hold that in the facts of the present proceedings there is no actual entrustment of the amount in question with the accused persons, but they are merely deemed to be entrusted therewith u/s 40(4) of Act XXXIV of 1948. This runs off at a tangent from the concept of entrustment as defined from time to time by the different High Courts as also the Supreme Court, forming the basis of a proceeding u/s 406 or Section 403, I.P.C. The second contention of Mr. Dutta accordingly succeeds.

6. The third submission of Mr. Dutta also stands on a firm footing. It is abundantly clear from the facts of the present case that the accused are being prosecuted under Sections 406/403, I.P.C. not in their personal capacity for

having committed the offence of criminal breach of trust or of misappropriation of any article actually made over to them but on the footing of their fictional capacity as the "principal employer" of M/s. Naskarpara Jute Mills, for not making over the contributions which under Act XXXIV of 1948 are liable to be paid to the authority concerned. A prosecution of the accused for a failure on their part to pay the contributions enjoined u/s 40 of Act XXXIV of 1948 in their fictional capacity as principal employers, may be good enough for a prosecution u/s 85 read with Section 86 of the Employees' State Insurance Act, 1948 inasmuch as for the purpose of the said Act XXXIV of 1948 any sum deducted by the principal employer from the wages under this Act can be deemed to have been entrusted to the said accused, but the concept of such entrustment cannot transgress the bounds of the said special Act to form a necessary ingredient of entrustment within the ambit of Section 405, I.P.C., which alone can form the basis of a valid prosecution under Sections 406/403, I.P.C. Anything short of that would be long off the mark and do here the intention of the legislature. I find on ultimate analysis that the entrustment alleged in this case is merely on the footing of the deeming provision incorporated in Sub-clause (4) to Section 40 and in the fictional capacity of the accused as principal employers. The ingredients constituting a valid entrustment within the ambit of Section 405, I.P.C. are covered by the principles referred to above, receiving the imprimatur of judicial decisions and I accordingly uphold the third and last submission of Mr. Dutta.

7. In order to appreciate and understand the essential ingredients of Section 40 of Act XXXIV of 1948, it would be relevant to refer to the case of Indrapuri Studio Private Limited and Another Vs. Employees' State Insurance Corporation, . Mr. Justice P. N. Mookerjee delivering the judgment of the Court observed at page 382 that

"In Section 40 the statute gives a clear mandate and categorically imposes an obligation on the employer to pay both the contributions in the first instance, subject to a right of re-imbursement from the employee or employees concerned in regard to his or their portion or portions of the same thus making it clear beyond dispute in the proceeding or aforesaid context that, vis-a-vis the Corporation, the liability for both the above types of contributions is of the employer,--at least, in the first instance".

I respectfully agree with the said observations and I hold that the same leads on clearly, in the facts and circumstances of the present case, to a proceeding u/s 85 read with Section 86 of Act XXXIV of 1948.

8. Two ancillary points raised by the learned Advocates appearing on behalf of the respective parties now abide my consideration. The first one was raised by "Mr. Dutta on behalf of the accused-petitioner that the present proceedings have been launched by the prosecution in order to circumvent the mandatory provisions relating to sanction and limitation enjoined under Sub-sections (1) and (3) to Section 86 of Act XXXIV of 1948. As no sanction was obtained and as the period of six months provided for under the Employees' State Insurance Act,

1948 had expired, the authorities concerned had no other option but to institute the present proceedings under the General Act. No materials are there to lend assurance to Mr. Dutta's contention and I hold that the institution of the present proceedings is not in any way motivated but has been done on principle and on an interpretation of the relevant statute, which may or may not be upheld ultimately by the court of law. This contention of Mr. Dutta is accordingly overruled. Mr. Mukherjee also made an ancillary submission. He contended that the Employees' State Insurance Act is a Special Act enacted "to provide for certain benefits to employees in certain cases" as referred to in the object of the Act and therefore the intention of the legislature as contained therein should not be frustrated by a hypertechnical construction of the provisions thereof. Mr. Mukherjee has also referred to the question of prejudice because several cases of a similar nature have been instituted under the Indian Penal Code. The other cases referred to by Mr. Mukherjee as pending, are not before me for consideration and I will only observe that the point at issue is one of principle and one of law, irrespective of any consideration of expediency or of convenience. The requirements of legislation based on socio-economic needs of the society cannot be over emphasised. As was observed by Mr. Justice Mccardie in the case of Ronald True reported in Notable British Trials, Volume on Ronald True at page 246 that "All laws must progress or it must perish in the esteem of man". But the line must be drawn somewhere as otherwise the judge deciding a case would enter into the realm of legislation. In a recent decision by the House of Lords in the case of Shaw v. Director of Public Prosecution, reported in 1962 AC 220 (popularly known as the Ladies Directory Case), there has been a sharp conflict of opinion between the Law Lords. The dissentient judgment came from Lord Reid, whose difference of opinion with the majority was sharp and fundamental. Lord Simonds delivered the "policy statement" on behalf of the majority and Lord Tucker delivered the judgment "in depth." Lord Simonds relied on the observations of Chief Justice Mansfield that "the court is the custos morum of the people and has the superintendence of offences contra bonos mores" and asserted the power of the courts to superintend offences which are prejudicial to public welfare and not hitherto covered by statute and proceeded to pose the following question rhetorically: "Must we wait until Parliament finds time to deal with such conduct". Lord Reid in his dissenting judgment answered emphatically and explicitly "yes". I have given my anxious consideration to the Contentions made by Mr. Mukherjee in this behalf but I am unable to transgress the bounds of law and hold in favour of Mr. Mukherjee on the ground of expediency or on the ground of socio-economic needs. I agree with the observations of Francis Bacon in this context that judges should dispose of cases "jus dicere" -- In accordance with law as it is -- and not "jus dare" -- in accordance with law as it should be.

9. Before I part with the case I must place on record my appreciation of the able assistance I received from the learned Advocates appearing on behalf of the respective parties. They left no stone unturned in placing the pros and cons and

in assisting the court to come to a proper decision.

10. In the result, I make the Rule absolute; and quash the proceedings under Sections 406/403. I.P.C., being Case No. C 1583 of 1969, pending in the court of the learned Chief Presidency Magistrate, Calcutta.

11. The affidavit-in-opposition filed on behalf of the complainant-opposite party be kept on the record.