(2022) 08 CAL CK 0064

In the Calcutta High Court

Case No : GA No. 24 Of 1984

State Of West Bengal — APPELLANT

Vs

Bhabani Birbanshi & Anr. — RESPONDENT

Date of Decision : 25-08-2022

Acts Referred:
Indian Penal Code, 1860 — Section 109, 409, 465, 468, 471
Code Of Criminal Procedure, 1973 — Section 164, 378(3), 468

Citation : (2022) 08 CAL CK 0064

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Pravash Bhattacharya, Diptendu Banerjee, Santanu Talukdar

Final Decision : Dismissed

Judgement

Shampa Dutt (Paul), J

The appeal is against the judgment and order of acquittal dated 31.07.1984 passed by the Ld. Judge, Additional Special Court, Birbhum in Special Court case no. 2 of 1982 acquitting the opposite party no. 1 Bhabani Birbanshi of the charge punishable under Section 409 read with Section 109 of the Indian Penal Code and the accused/opposite party no. 2 Hriday Ranjan Banerjee of the charge punishable under Section 468, 465, 471 and 409 of the Indian Penal Code. Leave to appeal under Section 378 (3) read with sub Section 1 of the Code of the Criminal Procedure 1973 was prayed for and granted by this court on 20.12.1985.

The opposite party/complaint's (State of West Bengal) case against the accused/ opposite parties in short is as follows:

Office of the Administrator, Sainthia Anchalik Parishad is situated within the office of B.D.O. Sainthia with its office at Ahamedpur. The B.D.O., Sainthia works as the Administrator of the said Anchalik Parishad in addition to his own duties as B.D.O.

In 1976 accused Hriday Ranjan Banerjee was the only clerk-cum-typist of that office. There was also one peon in the office. Prabhat Kumar Singha joined as B.D.O., Sainthia in May, 1975 and also worked as Administrator of the Parishad upto 1976.

Hriday Ranjan Banerjee as the only clerk of that Anchalik Parishad was the custodian of all the papers, registers and cheque books of the Anchalik Parishad and those papers and cheque books were kept in a steel Almirah within the office.

On 22.05.1976 in the morning (during morning sessions of office) it was detected at Suri Treasury that one cancelled cheque of Sainthia Anchalik Parishad was encashed forging the signature of the Administrator. That cheque was passed in the name of one Prasanta Banerjee for a sum of Rs. 31,954.35 paisa.

At the relevant time accused Bhabani Birbanshi was the accountant of Suri Treasury. He was consulted over the matter. The matter was brought to the notice of the then Treasury Officer, Sri N.K.Bhattacharjee who had joined that office in March, 1976. As the cheque was encashed by practising fraud, Sri Bhattacharjee lodged a written complaint with the officer-in-charge of Suri police station.

On completion of investigation police submitted chargesheet against the accused persons. Charge was framed accordingly against each of the accused persons under the above mentioned Sections of the Indian Penal Code to which they pleaded not guilty and claimed for trial.

Appellant/Prosecution (State) case

Mr. Pravash Bhattacharya, Ld. Additional Public Prosecutor submits that during investigation it was revealed that the disputed cheque issued was a cancelled cheque of 1971. It further revealed that accused Hriday Ranjan Banerjee was the custodian of the cheque and some days before the encashment of the disputed cheque he placed an order with Saraswati Art Press at Ahamedpur for a rubber stamp on behalf of the Bolpur-Sriniketan Anchalik Parishad. Accordingly police seized the ‘Chit’ on which accused Hriday Ranjan Banerjee himself wrote the description of the rubber stamp and also the cash memo book showing the carbon copy of the cash memo for the order placed by the accused Hriday Ranjan Banerjee. During investigation the forged cheque bearing no. 003727 of book no. 000075 and the above mentioned ‘Chit’ and the specimen writings and signatures and standard writings and signatures in English in the hand of the accused Hriday Ranjan Banerjee were sent to the Examiner of questioned documents attached to C.I.D. West Bengal, for his comparison and opinion.

It is further submitted that inspite of the materials and evidence on record the Trial Judge erroneously acquitted the accused/opposite parties. That there is substantial evidence on record which could have warranted a conviction and acquitting the accused persons has caused gross miscarriage of justice. That the judgment under appeal suffers from material irregularities and the evidence on record has not been properly considered by the Ld. Trial Judge inspite of the prosecution/state having proved their case beyond all reasonable doubt. That the Trial Judge did not consider the evidence of majority of the witnesses causing failure of justice and wrongly held that if Treasury Rules West Bengal and the Subsidiary Rules are always followed then such offence could not be committed. The appellant/state further submits that the chain of circumstantial evidence is complete and as such the guilt of the accused/opposite parties has been clearly proved. That the evidence of PW 13 Prabhat Kumar Singha, B.D.O. was not considered by the Trial Judge which conclusively proved the charge against the accused persons beyond all reasonable doubt. It is further submitted by the state that the Trial Judge approached the whole case from a wrong angle resulting in gross miscarriage of justice. And thus the appeal should be allowed and the accused/opposite parties accordingly convicted.

Accuseds/opposite parties case

Mr. Santanu Talukdar, Ld. Amicus Curie submits before the court that the Ld. Trial Judge rightly interpreted the Treasury Rules of West Bengal and the Subsidiary Rules of 1967. Each of the charge and action of the accused/opposite parties was dealt with specifically and categorically by the Ld. Trial Judge. It is submitted that none of the Treasury Rules as required were followed. The Trial Judge rightly came to the findings that the signature on Exhibit 4 inspite of examination of the handwriting expert could not prove that accused Hriday Ranjan Banerjee had forged the signature. The Trial Judge also rightly held that the handwriting expert did not say that any writing in the cheque book marked Exhibit II was erased at any point of time. From the evidence of the handwriting expert the Trial Court rightly held that case of forgery against accused Hriday Ranjan Banerjee could not be proved. The Trial Court rightly held that accused Hriday Ranjan Banerjee did not present the alleged cheque before the Treasury authority or the State Bank of India and as such there was no evidence to prove that accused Hriday Ranjan Banerjee had reason to believe that it was a forged document and the Trial Court also rightly held that though the case of the prosecution is that the cheque was cancelled in the year 1971 and was in the custody accused of the Hriday Ranjan Banerjee along with other papers of the Anchalik Parishad (violating the rules), it has come before the court that in the absence of Hriday Ranjan Banerjee some other persons worked as clerk of the Parishad and had access over the said cheque book and other documents and came to the right finding that the accused was never entrusted with the cancelled cheque. Though the prosecution tried to make out a case of misappropriation, they could not prove that the said amount was actually withdrawn. Other than oral evidence there is no documentary evidence that the said cheque was encashed or that the disputed amount was withdrawn. The Trial Court rightly held that the Investigating Officer also admitted that he did not examine any person of the State Bank and nor did he seize any documents. It was also further rightly held by the Trial Court that the handwriting expert could not give any definite opinion on the said document and without such confirmed opinion the said document cannot be relied upon.

It is further submitted by the Ld. Amicus Curie that the case of the prosecution based on circumstantial evidence has not been proved as the prosecution failed to complete the chain of circumstances to substantiate the charge and the Trial Court rightly acquitted both the accused persons/opposite parties of all charge giving them the benefit of doubt. It is further submitted by the Ld. Amicus Curie that the Trial Court also considered the charge against accused Bhabani Birbanshi that he abetted accused Hriday Ranjan Banerjee in commission of the offence of misappropriation and rightly held that as the prosecution failed to prove the charge against accused Hriday Ranjan Banerjee, the case of abetment in respect of accused Bhabani Birbanshi also fails.

It is further submitted that the Trial Court rightly held that the witnesses more specifically PW 17 did not support the case of the other witnesses regarding the conduct of accused Bhabani Birbanshi and as such rightly held that the prosecution failed to prove the charge against accused Bhabani Birbanshi beyond reasonable doubt and rightly acquitted both the accused/opposite parties and as such the appeal should be dismissed.

Evidence on record

The prosecution examined 22 witnesses in all.

Prosecution witness no. 1, Sri N.K.Bhattacharjee is the Treasury Officer and the complainant (Exhibit 1). He has reiterated his case as stated in the written complaint. On being cross examined this witness could not recollect the total incident.

Prosecution witness no. 2, Shiba Prasad Ghosh was the then B.D.O. of Bolpur Sriniketan Block Ex-Officio Administrator of Bolpur Sriniketan Anchalik Parishad and he is a seizure witness of the rubber stamp (Exhibit 2/3).

Prosecution witness no. 3, Sahadeb Chowdhury was a clerk in the Anchalik Parishad at the relevant time. He is also a witness to the seizure of the rubber stamp (Exhibit 2/4).

Prosecution witness no. 4, Ranjit Kumar Mukherjee is the Recording Officer and also seized several documents connected with the case.

Prosecution witness no. 5, Nani Gopal Chakraborty was one of the Investigating Officer who sent the specimen signatures and handwriting for handwriting expert opinion.

Prosecution witness no. 6, Ramtaran Roy is S.I. of police who was directed to seize the rubber stamp by O.C. Suri.

Prosecution witness no. 7, Sudhindra Krishna Das another S.I. of police. He further investigated the case.

Prosecution witness no. 8, Lakshman Chandra Banerjee member of the West Bengal Higher Judicial Service, has stated that is not possible to say anything without reference to any document.

Prosecution witness no. 9, Tulsidas Lai further I.O.

Prosecution witness no. 10, Debdas Roy L.D.Assistant of Suri Treasury.

Prosecution witness no. 11, Radhashyam Das receipt clerk at Suri Treasury.

Prosecution witness no. 12, Rajani Kanta Das is the examiner of questioned documents C.I.D., West Bengal. He deposed that he examined one cheque being no. 003727 of Book No. 000075 in the name of Prasanta Banerjee, containing writings and signatures in English on the cheque. But he was unable to give any opinion regarding the authorship of the questioned writings and the signatures on the said cheque.

Prosecution witness no. 13, Prabhat Kumar Singha B.D.O. He took charge as B.D.O. on 10th may, 1975.

Prosecution witness no. 14, Kshirode Chowdhury was the Munsif-cum-Judicial Magistrate, 1st Class. He recorded the statement of witnesses under Section 164 Cr.P.C. (marked Exhibit 8 and 9).

Prosecution witness no. 15, Chittaranjan Das further I.O.

Prosecution witness no. 16, Bibhuti Bhusan Guha further I.O.

Prosecution witness no. 17, Ashit Kumar Bagchi L.D.Assistant at Birbhum Treasury. He received the disputed cheque (Exhibit 4). He suspected the genuineness of the cheque and handed over the same to the Treasury Officer which was later seized by the police under a seizure list.

Prosecution witness no. 18, Ashit Kumar Sil L.D.Assistant under B.D.O. Sainthia.

Prosecution witness no. 19, Sukharanjan Burman Panchayet clerk in the office of the B.D.O. Sainthia.

Prosecution witness no. 20, Ashit Baran Aich one of the owners of Saraswati Art Press of Ahamedpur, has stated that accused Hriday Ranjan Banerjee had placed an order for a rubber stamp (Exhibit 10).

Prosecution witness no. 21, Ashoke Kumar Sen and Prosecution witness no. 22, Habib Sheikh are seizure witness.

The following documents were proved by the prosecution/state before the Trial Court and marked as Exhibit.

Serial no. of

Exhibits

Description of the Exhibits

Exhibit 1

Written complaint of PW 1 Sri

N.K.Bhattacharjee.

Exhibit 2

Signature of PW 1 N.K. Bhattacharjee in

a seizure list on 24/5/76.

Exhibit 2/1

Signature of PW 1 N.K. Bhattacharjee in

a seizure list on 24/5/76.

Exhibit 2/2

Signature of PW 1 N.K. Bhattacharjee in

a seizure list on 22/5/76.

Exhibit 2/3

Signature of PW 2 Sri S.P.Ghosh in a

seizure list.

Exhibit 2/4

Signature of PW 3 Sahadeb Chowdhury

in a seizure list.

Exhibit 1/1

Formal FIR.

Exhibit 1/2

Endorsement made by PW 4 in the

written complaint.

Exhibit 3

Seizure list of 22/05/76.

Exhibit 3/1

Seizure list of 23/05/76

Exhibit 3/2

Seizure list of 24/05/76

Exhibit 3/3

Seizure list of 24/05/76.

Exhibit 3/4

Seizure list of 25/05/76.

Exhibit 3/5

Another seizure list of 25/05/76.

Exhibit 3/6

Seizure list of 27/05/83.

Exhibit 3/7

Seizure list of 03/05/78.

Exhibit 3/8

Seizure list of 25/05/76 regarding

rubber stamp.

Exhibit 4

Cheque

Exhibit 2/5

Signature of PW 13 Prabhat Kumar

Singha in a seizure list.

Exhibit 5

Entry on page no. 91 in the cash book.

Exhibit 2/6

Signature of PW 13 Prabhat Kumar

Singha in a seizure list.

Exhibit 2/7

Signature of PW 13 Prabhat Kumar

Singha in a seizure list.

Exhibit 6

Entries in the cheque register dated

01.03.71.

Exhibit 7

Writings in four sheets in the

handwriting of accused Hriday Ranjan Banerjee (marked collectively).

Exhibit 2/8

Signature of PW 13 Prabhat Kumar

Singha in a seizure list.

Exhibit 7/1 to

7/4

Certificate of PW 13 appended in four

sheets of paper (Exhibit 7).

Exhibit 8

Statement of witness Sankar Lal Bose.

Exhibit 8/1

Certificate appended to the statement of

witness Sankar Lal Bose by the PW 14 Kshirode Chowdhury.

Exhibit 9

Statement of witness Ashit Baran Aich.

Exhibit 9/1

Certificate appended to the statement of witness Ashit Baran Aich by the PW 14 Kshirode Chowdhury.

Exhibit 10

Brown slip written by the accused

Hriday Ranjan Banerjee.

Exhibit 11

Carbon copy of cash memo.

Exhibit 2/9

Signature of PW 20 Ashit Baran Aich in

a seizure list.

Exhibit 2/10

Signature of PW 20 Ashit Baran Aich in

a seizure list.

Exhibit 2/11

Signature of PW 21 Ashoke Kumar Sen

in a seizure list.

Exhibit 2/12

Signature of PW 22 Habib Sheikh in a

seizure list.

Analysis of evidence.

Charge against the accused/opposite party was framed as follows:-

“(1) That you, accused Hriday Ranjan Banerjee on or about the 20th day of May 1976 at Suri Treasury and State Bank of India, Suri Branch within P.S. Suri forged a cancelled cheque bearing no. 003727 of Book no. 000075 in favour of one Prasanta Banerjee intending that it shall be used for the purpose of cheating and thereby committed an offence punishable under Section 468 of the Indian Penal Code, and within the cognizance of this court.

(2) That you, on or about the same day of at the same place as stated about, fraudulently and dishonestly used as genuine a certain document to wit, a forged rubber stamp and forged cancelled cheque bearing no. 003727 of Book No. 000075 in favour of the Prasanta Banerjee which you knew, or had reason to believe, at the time you used it, to be a forged document and thereby committed an offence punishable under Section 465 and 471 of the Indian Penal Code, and within my cognizance of this court.

(3) That you, on or about the same day of same place as stated above, being a clerk in the office of the Administrator Sainthia Anchalik Parishad – a public servant and you in capacity, have been entrusted with a cancelled cheque bearing no. 003727 of Book No. 000075 in favour of the Prasanta Banerjee to the tune of Rs. 31,954.35 paisa and you misappropriated the said amount by drawing the said cheque on 20.05.1976 from the State Bank of India, Suri Branch and you committed criminal breach of trust with respect to the said property and thereby committed an offence punishable under Section 409 of the Indian Penal Code, and within my cognizance of this court.”

Whether the ingredients required to constitute the charge as framed under Section 468 of the Indian Penal Code has been proved by the prosecution against the accused/opposite party.

Section 468 of the Indian Penal Code lays down as follows:-

468. Forgery for purpose of cheating.— Whoever commits forgery, intending that the *[document or electronic record forged] shall be used for the purpose of cheating, shall be punished with imprisonment of either de-scription for a term which may extend to seven years, and shall also be liable to fine.

Ingredients of offence. – The essential ingredients of the offence under Sec. 468 are as follows:-

(1) There should be a forgery in respect of the document or electronic record in question.

(2) The intention of the forgery should be that the forged document or electronic record is to be used for the purpose of cheating.

(3) There should be forgery with particular intent – Ram Narayan v CBI (2003)3 SCC 641.

PW 1 the then the Treasury Officer has deposed that the disputed cheque being no. 003727 of Book No. 000075 in favour of Prasanta Banerjee for a sum of Rs. 31,954.35 paisa was passed from the Suri Treasury on 20.05.1976. On the belief that the said cheque was issued by the Administrator Bolpur Sriniketan Anchalik Parishad. This witness has stated that they were intimated as the cheque came back from the State Bank of India, Suri Branch after encashment. At that time the Dealing Assistant being PW 17 informed him that it was a cancelled cheque and it was encashed by practising fraud after making forgery. This witness filed the written complaint. On being cross examined he has admitted that as per Treasury Rule he passed the said cheque observing the legal formalities to be observed by a Treasury Officer. He has also not stated in his written complaint that he was informed by PW 17 that the cheque was a cancelled cheque and was forged and this witness has further admitted that he worked as the B.D.O. for 14 years and also acted as Administrator of Anchalik Parishad and issued cheques. To prove that the opposite party committed forgery the prosecution has made out a case that a rubber stamp of the Administrator of the Anchalik Parishad was prepared by the accused/opposite party Hriday Ranjan Banerjee to commit the forgery.

PW 2 the B.D.O. and Ex-Officio Administrator of Bolpur Sriniketan Anchalik Parishad in May, 1976 is a seizure witness in respect of the said rubber stamp. In his deposition, this witness has categorically stated that he could not detect any wrong with the office papers, the cheque books or the accounts.

PW 3 is a clerk of the said office and has stated in his evidence in chief that he and the Administrator handled those seals and none else handled the same. The key of the Almirah where all documents and seals were kept was with the Administrator. He is a seizure witness to the rubber stamp seized by the police on 25.05.1976.

PW 4 was the Recording Officer and also one of the Investigating Officers. He examined witnesses and seized documents. He has stated that he did not seize the voucher of the State Bank sent to Suri Treasury showing payment of disputed amount. Nor did he seize any paper from State Bank.

PW 6 is also another Investigating Officer who seized the rubber stamp as produced by PW 3. PW 3 in his evidence has categorically admitted that no one other than him and the Administrator handled those seals.

PW 7 has admitted during trial that the said seized rubber stamp could not be traced out.

PW 12 is the most important witness in this case being the handwriting expert. His definite opinion regarding authorship of the questioned writings and signature was stated to be not possible from the materials in hand.

PW 13, W.B.C.S. Officer and B.D.O. has clearly deposed that from the entries in the cash book he found that the cancelled cheque no. 003727 of Book No. 000075 was never encashed and never entered in the cash book. This witness has further stated that it was the duty of the Administrator to keep the cheque book in their custody. But they kept the same in the custody of the clerk on good faith.

On being cross examined principal witness no. 17 who allegedly brought to the notice of PW 1 the complainant, the said cancelled cheque being forged has categorically stated in his cross examination that he did not report to the Treasury Officer (PW 1) about use of any cancelled cheque. He has further stated that he had no duty about the transaction over any cheque. This witnesses further categorically stated that it is dealt with by several clerks and that he was not called by the Treasury Officer at any point of time for any cheque of any big amount.

PW 19 has proved Exhibit 10 to be in the handwriting and the signature of the opposite party/accused Hriday Ranjan Banerjee. The said document could not be proved by the handwriting expert as he could not identify the same. It is also seen on careful perusal of Exhibit 10 that the same is not at all legible to form any opinion.

As such on analysis of evidence it is seen that:

PW 1 admits that he passed the cheque observing legal formalities as Treasury Officer.

PW 2 could not detect any wrong with the office papers, cheque books and accounts.

PW 3 stated that only he and the Administrator handled the seals and no one else handled the same.

PW 4 did not seize the most important document being the voucher by which allegedly the opposite party committed forgery and misappropriated the amount withdrawn by him on the basis of the forged cheque.

PW 7 has deposed before the court that the seized rubber stamp could not be traced out.

PW 12 the handwriting expert clearly deposed that it was not possible for him to give any definite opinion regarding authorship of the question documents.

The Statement of PW 1 the complainant has not been supported or corroborated by PW 17. PW 1 had stated that he had been informed by PW 17 that PW 17 suspected that the disputed cancelled cheque was forged, whereas in his evidence as PW 17, the said Ashit Kumar Bagchi has clearly stated that he did not report to the Treasury Officer about the use of any cancelled cheque and that he had no duty about the transaction over any cheque.

It has also been admitted on cross examination of the Investigating Officer Tulsidas Lai, (PW 9) in this case that "I did not examine any employee of the State Bank. I did not seize any paper from the State Bank showing payment of the disputed amount".

Herein is clearly seen in view of the facts and circumstances of the case that the disputed cheque in the present case could not be proved to be forged as neither the handwriting expert could give any definite opinion nor was any bank official examined to that effect. The intention of the opposite party in respect of the alleged forgery also could not be proved as the relevant documents relating to alleged encashment were not produced nor proved before the Trial Court (PW 9). As such the ingredients required to prove the charge under Section 468 could not be proved against opposite party no. 2 by the prosecution beyond reasonable doubt.

The next charge is for offence punishable under Section 465 and 471 of the Indian Penal Code.

In view of the discussions above and the analysis of evidence as discussed this court finds that the prosecution also could not be prove the ingredients required to prove the charge under Section 465 and 471 IPC.

The next and final charge is under Section 409 of the Indian Penal Code.

409. Criminal breach of trust by public servant, or by banker, merchant or agent. —Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence.– The essential ingredients of the offence under Sec. 409 are as follows:-

(1) Accused was a public servant, or a banker or merchant or agent or factor or broker or an attorney;

(2) In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own;

(3) Accused committed criminal breach of trust with respect to such property.

From the evidence on record admittedly the opposite party no. 2 was a public servant. In the present case the dispute is regarding a cancelled cheque being encashed by practicing forgery and misappropriation.

Admittedly the accused/opposite party no. 2 was a clerk in the office of the Administrator of Sainthia Anchalik Parishad. PW 3 Sahadeb Chowdhury a clerk of the said Parishad has clearly stated that only he and the Administrator handled the seals and no one else handled the same.

PW 2 the B.D.O. of the Parishad could not detect anything wrong with the office papers, cheque books and the accounts.

PW 13 the then B.D.O. and also in charge of Administrator of Sainthia Anchalik Parishad has deposed that the opposite party no. 2 was the then clerk of the said office and that he was the custodian of the cheque book and all other papers and registers of the Parishad.

This witness on being cross examined has clearly admitted that according to rules it was his duty to keep the cheque book in his custody but in good faith, it was kept in the custody of clerk of Anchalik Parishad. From evidence of PW 13 it is apparent that though the Administrator is the custodian of all documents, register, cheque books, it is a practice to keep the same in the custody of the clerk of the office. Keeping in the custody of a clerk against the rules in, good faith is not entrustment as these documents in such cases are not officially entrusted to a public servant in his official capacity as a public servant.

In the present case such being the situation the custody herein does not come within the meaning of entrustment as the opposite party no. 2 herein was not entrusted with the cheque in his official capacity, and as such it was not "entrustment" as required to constitute an offence under Section 409 of the Indian Penal Code.

In the present case as such the evidence which has come before this court shows that there was no entrustment in favour of the opposite party no. 2 Hriday Ranjan Banerjee in his capacity as a public servant. It was also not proved that the said disputed cheque was forged by the opposite party no. 2. The handwriting expert also could not give any definite opinion regarding the writing on the cheque.

Finally there is no evidence before the Trial Court brought before the court by the prosecution to prove that the cheque was presented for encashment or that the cheque had been encashed as no such document was seized as admitted by PW 9 from the State Bank showing payment of the disputed amount. In view of the said materials on record this court finds that the ingredients required to prove the charge under Section 409 has also not been proved by the prosecution beyond all reasonable doubt.

The Ld. Trial Court rightly held that a cancelled cheque bears the endorsement "cancelled" and such cancelled cheque cannot be encashed. The allegation of encashing a cancelled cheque includes the allegation that the said endorsement 'cancelled' was erased. But in the present case there is no such specific allegation, neither in the evidence nor in the charge. The handwriting expert has also not deposed anything in that respect and as such the Trial Court rightly came to the finding that it could not be proved by the prosecution that the disputed cheque was forged. It was rightly further held by the Trial Court that the prosecution could not produce any evidence on record to show that the opposite party no. 2 Hriday Ranjan Banerjee at any point of time presented the cheque before the Treasury Authority or at the State Bank for encashment of the same and as such rightly held that the prosecution failed to substantiate the charge under Section 465 and 471 of the IPC against the opposite party.

The Trial Court also rightly held that the cheque book and other papers of the Parishad used to be kept in the custody of the clerk violating the rules and rightly held that the said charge was not proved against the accuseds/opposite parties by the prosecution. There is also absolutely no documentary evidence on record to show that the said disputed cheque was presented or encashed or that the disputed amount was withdrawn from the Bank by the opposite party no. 2 and as such prosecution could not prove that the cheque was drawn by the opposite parties/accuseds. The handwriting expert also could not prove the handwriting on Exhibit 10 which is supposed to be a 'Chit' relating to making of the rubber stamp and finally this court finds that Trial Court rightly gave the benefit of doubt in respect of all the grounds of charge leveled against the accuseds/opposite parties and rightly acquitted the opposite parties/accuseds.

The second opposite party is Bhabani Birbanshi. Charge was framed against the said accused/opposite party to the effect that.

"You accused Bhabani Birbanshi on or about 28th day May, 1976 at Suri Treasury and State Bank of India, Suri Branch within Suri P.S. abetted accused Hriday Ranjan Banerjee in the commission of the said offence of misappropriation of Rs. 31,954.35 paisa by Shri Hriday Ranjan Banerjee a public servant which was committed in consequence of your abetment, and that you have thereby committed an offence punishable u/s. 109 and 409 of the Indian Penal Code and within the cognizance of this court."

The appeal is also against the acquittal of opposite party no. 2 Bhabani Birbanshi. The single charge against this accused/opposite party is under Section 409/109 of IPC. As the Trial Court and also this court has come to the finding that the prosecution has failed to prove the charge against accused/opposite party Hriday Ranjan Bannerjee, the charge of abetment under Section 109 of the IPC against the present accused/opposite party also fails. There is absolutely no evidence on record to show that accused/opposite party Bhabani Birbanshi was in any way connected with the incident in this case. The only evidence against accused Bhabani Birbanshi has been given by PW 17 Ashit Kumar Bagchi who at the time of suspecting the genuineness of the cheque stated that he did not consult Bhabani Birbanshi over the cheque. But after a long pause this witness has stated that he also consulted accused Bhabani Birbanshi and Bhabani Babu instructed him to stop further payment and asked him to inform the

Administrator about the matter. As such it is found that no ‘mens rea’ or any ingredients required to constitute the offence as charged in respect of Bhabani Birbanshi could be proved before the Trial Court and the Trial Court also rightly acquitted accused Bhabani Birbanshi of all charge.

The appeal thus stands dismissed.

Let a copy of this judgment along with the lower court records be sent down to the trial court immediately.

Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance with all requisite formalities.

