1962

April 6.

R. K. DALMIA

v.

DELHI ADMINISTRATION

(S .K. DAS, K. SUBBA RAO and RAGHUBAR DAYAL. JJ.)

Criminal Trial—Transactions to divert money of Insurance Company to losses incurred by Chairman in share speculation—Chairman and Agent, if guilty of criminal breach of trust—Charge, if legal—Confession before Investigator, if voluntary—'Agent'—"In the way of his business"—Meaning—Falsification of account—Conspiracy—Accomplice—Corroboration—Indian Penal Code 1860 (XLV of 1860), ss. 120B, 409, 405, 477A—Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 233—Insurance Act, 1938 (4 of 1938), s. 33.

Appellant Dalmia was the Chairman of the Board of Directors and Principal Officer of the Bharat Insurance company and appellant Chokhani its agent in Bombay. Appellant Vishnu Prasad, nephew of Chokhani, was the nominal owner of Bhagwati Trading Company but its business was entirely conducted by Chokhani. Gurha, the other appellant, was a Director of Bharat Union Agencies, a company dealing in forward transactions of speculation in shares, and owned for all practical purposes by Dalmia. This Company suffered heavy losses in its business during the period August, 1954, to September, 1955. The prosecution case against the appellants in substance was that in order to provide funds for the payment of those losses in due time, they entered into a conspiracy, along with five others, to divert the funds of the Insurance company to the Union Agencies through the Bhagwati Trading Company and to cover up such unauthorised transfer of funds, the various steps for such transfer and the falsification of accounts of the Insurance Company and the Union Agencies and its allied concern and committed offences under s. 120B read with s. 409 of the Indian Penal Code. Dalmia made a confession before Mr. Annadhanam, a Chartered Accountant, who was appointed Investigator under s.33(1) of the Insurance Act, 1938, which was as follows:—

"I have misappropriated securities of the order of Rs. 2,20,00,000 of the Bharat Insurance Company Ltd. I have lost this money in speculation."

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"At any cost, I want to pay full amount by requesting by relatives or myself in the interest of the policy holders".

The prosecution primarily depended upon the evidence of Raghunath Rai, the Secretary-cum-Accountant of the Insurance Company, and it was contended on behalf of the appellants that he was an accomplice.

The Sessions Judge convicted all the appellants under s. 120B read with s. 409 of the Indian Penal Code, and further convicted Dalmia and Chokhani for substantive offences under s. 409, Chokhani under s. 477A read with s. 110 and Gurha under s. 477A of the Indian Penal Code. He however acquitted the others.

The High Court in substance agreed with the findings of the Sessions Judge, except that it did not rely on the confession of Dalmia.

Held, that the Delhi Court had jurisdiction to try Chokhani for the offence under s. 409 of the Indian Penal Code, committed beyond its jurisdiction in pursuance of the alleged conspiracy with which he and the other co-accused were charged.

Purushottam Das Dalmia v. *State of West Bengal*, [*1962*] 2 S. C. R. 101, followed.

The charge against Dalmia under s. 409 of the Indian Penal Code was not hit by s. 233 of the Code of Criminal Procedure. The charge framed was not for four distinct offences. It was really with respect to one offence though the mode of committing it was not precisely stated. Any objection as to the vagueness of the charge on the score could not invalidate the trial since no prejudice had been caused to the accused nor any contention raised to that effect.

The word 'property' used in s. 405 of the Indian Penal Code could not be confined to movable property since the section itself did not so qualify it. The word 'property' was much wider than the expression 'movable property' defined in s. 22 of the Code. The question whether a particular offence could be committed in respect of any property depended not on the meaning of the word 'property' but on whether that property could be subjected to that offence. 'Property' in a particular section could, therefore, mean only such kind of property with respect to which that offence could be committed. The funds of the Bharat Insurance Company referred to in the charge amounted to property within the meaning of s. 405 of the Indian Penal Code.

Reg. Girdhar Dharamdas (1869) 6 Bom. High Ct. Rep. (Crown Cases) 33, and *Jugdown Sinha* v. *Queen Empress* (1895) I. L. R. 23 Cal. 372, disapproved.

Emperor v. *Bishan Prasad*, (1914) I L.R. 37 All. 128, *Ram Chand Gurvala* v. *King Emperor* A. I. R. 1926 Lah. 385, *Manchersha Ardeshir* v. *Ismail Ibrahim*, (1935) I.L.R. 60 Bom. 706, *Daud Khan* v. *Emperor* A. I. R. 1925 All. 672 and *The Delhi Cloth and General Mills Co. Ltd.* v. *Harnam Singh*, [1955] 2 S. C. R. 402, referred to.

The relevant articles and bye-laws of the Insurance Company and the resolutions passed by its Board of Directors established that both Dalmia and Chokhani were entrusted with dominion over the funds of the company in the Banks within the meaning of s. 409 of the Indian Penal Code.

Peoples Bank v. *Harkishan Lal*, A. I. R. 1936 Lah. 408, *G. E, Ry. Co.* v. *Turner*, L. R. (1872) 8 Ch. App. 149 and *Re. Forest of Dean Etc. Co.*, L. R. (1878) 10 Ch. D. 450 referred to.

The offence of Criminal breach of trust could be committed by Chokhani even though he alone could not operate the Bank account and could do so jointly with another.

Bindeshwari v. *King Emperor* (1947) I.L.R. 26 Pat. 703, held inapplicable.

Nrigendro Lall Chatterjee v. *Okhoy Coomar Shaw*, (1874) (Cr. Rulings) 59 and *Emperor* v. *Jagannath Ragunathdas*, (1931) 33 Bom. L. R. 1518, referred to.

The expression 'in the way of business as agent' occurring in s. 409 of the Indian Penal Code meant that the propety must have been entrusted to such agent 'in the ordinary course of his duty or habitual occupation or profession or trade.' He should get the entrustment or dominion in his capacity as agent and the requirements of the section would be satisfied if the person was an agent of another and that person entrusted him with the property or with dominion over the property in the course of his duties as an agent. A person might be an agent of another for some purpose and if he was entrusted with property not in connection with that purpose but for another purpose, that would not be entrustment within the meaning of s. 409 of the Code.

Mahumarakalage Edward Andrew Cooray v. *Queen.* [1953] A. C. 407 and *Reg.* v. *Portugal*, [1885] 16 Q. B. D, 487, considered.

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Both Dalmia and Chokhani were agents of the Bharat Insurance Company within the meaning of s. 409 of the Code.

Gulab Singh v. *Punjab Zamindara Bank*, A. I. R. 1942 Lah. 47, referred to.

Raghunath Rai was not an accomplice as he did not participate in the commission of the actual crime charged against the accused. An accomplice must be a *particeps criminis*, except where he was a receiver of stolen property or an accomplice in a previous similar offence committed by the accused when evidence of the accused having committed crimes of identical type on other occasions was admissible to prove the system and intent of the accused committing the offence charged.

Davies v. *Director of Public Prosecutions*, [1954] A.C. 378 referred to.

Chokhani was a servant of the Insurance Company within the meaning of s. 477A of the Indian Penal Code. He was a paid Agent of the company and as such was its servant even though he was a full-time servant of the Bharat Union Agencies.

Each transaction to meet the losses of the United Agencies, was not an independent conspiracy by itself. There was identity of method in all the transactions and they must be held to originate from the one and same conspiracy.

Since the confession made by Dalmia had not been shown to have been made under any threat or inducement or promise from a person in authority, it could not be anything but voluntary even though it might have been made for the purpose of screening the scheme of the conspiracy and the High Court was in error in holding that it was otherwise.

A person appointed an Investigator under s. 33(1) of the Insurance Act did not *ipso facto* become a public servant within the meaning of s. 21, Ninth, of the Indian Penal Code and s. 176 of the Indian Penal Code could have no application to an examination held under s. 33(3) of the Act.

The confession of Dalmia was not hit by Art. 20(3) of the Constitution since it was not made by him at a time when he was accused of an offence.

State of Bombay v. *Kathi Kalu Oghad*, R. [1962] 3 S.C.R. 10, referred to.

The expression 'with intent to defraud' in s. 477A of the Indian Penal Code did not mean intention to defraud someone in the future and could relate to an attempt to cover up what had already happened.

Emperor v. *Ragho Ram*, I. L. R. (1933) 55 All. 783, approved.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 7 to 9 of 1961.

Appeals by special leave from the judgment and order dated January 2, 1961, of the Punjab High Court (Circuit Bench) at Delhi in Criminal Appeals Nos. 464-C, 465-C and 463-D of 1959.

Dingle Foot, D. R. Prem, S. M. Sikri, G. H. Jauhari and *A. N. Goyal*, for the appellant (in Cr. A. No. 7 of 61).

R. L. Kohli and *A. N. Goyal*, for the appellant (in Cr. A. No. 8 of 1961).

Prem Nath Chadha, Madan Gopal Gupta and *K. R. Choudhri*, for appellant No. 2 (in Cr. A. No. 9 of 1961).

C. K. Daphtary, Solicitor General of India, R. L. Mehta and *R. H. Dhebar*, for the respondents.

1962. April 5. The Judgment of the Court was delivered by

RAGHUBAR DAYAL, J.—These three appeals are by special leave. Appeal No. 7 of 1961 is by R. K. Dalmia. Appeal No. 8 of 1961 is by R.P.Gurha. Appeal No. 9 of 1961 is by G.L.Chokhani and Vishnu Prasad. All the appellants were convicted of the offence under s. 120-B read with s.409 I.P.C., and all of them, except Vishnu Prasad, were also convicted of certain offences arising out of the overt acts committed by them. Dalmia and Chokhani were convicted under s. 409 I.P.C. Chokhani was also convicted under s. 477A read with s. 110, I. P. C. Gurha was convicted under s. 477A I. P. C. *Raghubar Dayal J.*

To appreciate the case against the appellants, we may first state generally the facts leading to the case. Bharat Insurance Company was incorporated

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in 1896. In 1936 Dalmia purchased certain shares of the company and became a Director and Chairman of the company. He resigned from these offices in 1942 and was succeeded by his brother J. Dalmia. The head office of the Bharat Insurance Company was shifted from Lahore to 10, Daryaganj, Delhi. in 1947. Dalmia was co-opted a Director on March 10, 1949 and was again elected Chairman of the company on March 19, 1949 when his brother J. Dalmia resigned.

R. L. Chordia, a relation of Dalmia and principal Officer of the Insurance Company, was appointed Managing Director on February 27, 1950. Dalmia was appointed Principal Officer of the company with effect from August 20, 1954. He remained the Chairman and Principal Officer of the Company till September 22, 1955. The period of criminal conspiracy charged against the appellant is from August 1954 to September 1955. Dalmia was therefore, during the relevant period, both Chairman and Principal Officer of the Insurance Company.

During this relevant period, this company had its current account in the Chartered Bank of India, Australia and China Ltd. (hereinafter called the Chartered Bank) at Bombay. The Company also had an account with this bank for the safe custody of its securities the company also had a separate current account with the Punjab National Bank, Bombay.

At Delhi, where the head office was, the company had an account for the safe custody of securities with the Imperial Bank of India, New Delhi.

Exhibit P-785 consists of the Memorandum of Association and the Articles of Association of the Bharat Insurance Company. Articles 116 and 117 deal with the powers of the Directors.

Exhibit P-786 is said to be the original Bye-laws passed by the Directors on September 8, 1951.

The pages are signed by K.L. Gupta, who was the General Manager of the company during the relevant period, and not by Dalmia the Chairman, as should have been the case in view of the resolution dated May 8, 1951. The genuineness of this document is not, however, admitted.

Exhibits P-15 and P-897 are said to be copies of these Bye-laws which were sent to Shri K. Annadhanam (Chartered Accountant, appointed by the Government of India on September 19, 1955, to investigate into the affairs of the Bharat Insurance Company under s. 33(1) of the Insurance Act) and to the Imperial Bank of India, New Delhi, respectively, and the evidence about their genuineness is questioned.

Bye-law 12 deals with the powers of the Chairman. Clause (b) thereof empowers the Chairman to grant loans to persons with or without security, but from August 30, 1954, the power was restricted to grant of loans on mortgages. Clause (e) empowers the Chairman to negotiate transfer buy and sell Government Securities and to pledge, indorse, withdraw or otherwise deal with them.

On January 31, 1951, the Board of Directors of the Insurance Company passed resolutions to the following effect: (1) To open an account in the Chartered Bank at Bombay. (2) To authorise Chokhani to operate on the account of the Insurance Company. (3) To arrange for the keeping of the Government securities held by the company, in safe custody, with the Chartered Bank. (4) To instruct the Bank to accept instructions with regard to withdrawal from Chokhani and Chordia.

On the same day, Dalmia and Chordia made an application for the opening of the account at Bombay with the result that Current Account No. 1120 was opened. On the same day Chokhani was appointed Agent of the company at Bombay.

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He was its agent during the relevant period. From 1951 to 1953, Chokhani alone operated on that account. On October 1, 1953, the Board of Directors directed that the current account of the company with the Chartered Bank, Bombay, be operated jointly by Chokhani and Raghunath Rai, P.W. 4.

Raghunath Rai, joined the company in 1921 as a Clerk, became Chief Accountant in 1940 and Secretary-cum-Chief Accountant of the company from August 17, 1954.

The *modus operandi* of the joint operation of the bank account by Chokhani and Raghunath Rai amounted, in practice to Chokhani's operating that account alone. Chokhani used to get a number of blank cheques signed by Raghunath Rai, who worked at Delhi. Chokhani signed those cheques when actually issued. In order to have signed cheques in possession whenever needed, two cheque books were used. When the signed cheques were nearing depletion in one cheque book, Chokhani would send the other cheque book to Raghunath Rai for signing again a number of cheques. Thus Raghunath Rai did not actually know when and to whom and for what amount the cheques would be actually issued and therefore, so far as the company was concerned, the real operation of its banking account was done by Chokhani alone. This system led to the use of the company's funds for unauthorized purposes.

Chokhani used to purchase and sell securities on behalf of the company at Bombay. Most of the securities were sent to Delhi and kept with the Imperial Bank of India there. The other securities remained at Bombay and were kept with the Chartered Bank. Sometimes securities were kept with the Reserve Bank of India and inscribed stock was obtained instead. The presence of the inscribed stock was a guarantee that the securities were in the Bank.

Chokhani was not empowered by any resolution of the Board of Directors to purchase and sell securities. According to the prosecution, he purchased and sold securities under the instructions of Dalmia. Dalmia and Chokhani state that Dalmia had authorised Chokhani in general to purchase and sell securities and that it was in pursuance of such authorisation that Chokhani on his own purchased and sold securities without any further reference to Dalmia or further instructions from Dalmia.

The transactions which have given rise to the present proceedings against the appellants consisted of purchase of securities for this company and sale of the securities which the company held. The transactions were conducted through recognised brokers and ostensibly were normal transactions. The misappropriation of funds of the company arose in this way. Chokhani entered into a transaction of purchase of securities with a broker. The broker entered into a transaction of purchase of the same securities from a company named Bhagwati Trading Company which was owned by Vishnu Prasad, appellant, nephew of Chokhani and aged about 19 years in 1954. The entire business for Bhagwati Trading Company was really conducted by Chokhani. The securities purchased were not delivered by the brokers to Chokhani. It is said that Chokhani instructed the brokers that he would have the securities from Bhagwati Trading Company. The fact, however, Chokhani however was that Bhagwati Trading Company did not deliver the securities. Chokhani however issued cheques in payment of the purchase price of the securities to Bhagwati Trading Company. Thus, the amount of the cheques was paid out of the company's funds without any gain to it.

The sale transactions consisted in the sale of the securities held or supposed to be held by the company to a broker and the price obtained from

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the sale was unutilised in purchasing formally further securities which were not received. The purchase transaction followed the same pattern, viz., Chokhani purchased for the company from a broker, the broker purchased the same securities from Bhagwati Trading Company and the delivery of the securities was agreed to be given by Bhagwati Trading Company to Chokhani. Bhagwati Trading Company did not deliver the securities but received the price from the Insurance Company. In a few cases, securities so purchased and not received were received later when fresh genuine purchase of similar securities took place from the funds of the Bharat Union Agencies or Bhagwati Trading Company. These securities were got endorsed in favour of the Insurance Company.

The funds of the company, ostensibly spent on the purchase of securities, ultimately reached another company the Bharat Union Agencies.

Bharat Union Agencies (hereinafter referred to as the Union Agencies) was a company which dealt in speculation in shares and, according to the prosecution was practically owned by Dalmia who held its shares either in his own names or in the names of persons or firms connected with him. The Union Agencies suffered losses in the relevant period from August 1954 to September, 1955. The prosecution case is that to provide funds for the payment of these losses at the due time, the accused persons entered into the conspiracy for the diversion of the funds of the Insurance Company to the Union Agencies. To cover up this unauthorised transfer of funds, the various steps for the transfer of funds from one company to the other and the falsification of accounts of the Insurance Company and the Union Agencies took place and this conduct of the accused gave rise to the various offences they were charged with and convicted of.

The real nature of the sale and purchase transactions of the securities did not come to the notice of the head office of the Insurance Company at Delhi as Chokhani communicated to the head office the contracts of sale and purchase with the brokers' statements of accounts, with a covering letter stating the purchase of securities from the brokers, without mentioning that the securities had not been actually received or that the cheques in payment of the purchase price were issued to Bhagwati Trading Company and not to the brokers.

Raghunath Rai, the Secretary-cum-Accountant of the Insurance Company, on getting the advice about the purchase of securities used to inquire from Dalmia about the transaction and used to get the reply that Chokhani had purchased them under Dalmia's instructions. Thereafter, the usual procedure in making the entries with respect to the purchase of securities was followed in the office and ultimately the purchase of securities used to be confirmed at the meeting of the Board of Directors. It is said that the matter was put up in the meeting with an office note which recorded that the purchase was under the instructions of the Chairman. Dalmia however, denies that Raghunath Rai ever approached him for the confirmation or approval of the purchase transaction and that he told him that the purchase transaction was entered into under his instructions.

The firm of Khanna and Annadhanam, Chartered Accountants, was appointed by the Bharat Insurance Company, its auditors for the year 1954. Shri Khanna carried out the audit and was not satisfied with respect to certain matters and that made him ask for the counterfoils of the cheques and for the production of securities and for a satisfactory explanation of the securities not with the company at Delhi.

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The matter, however, came to a head not on account of the auditors' report, but on account of Shri Kaul, Deputy Secretary, Ministry of Finance, Government of India, hearing at Bombay in September 1955 a rumour about the unsatisfactory position of the securities of the Insurance Company. He contacted Dalmia and learnt on September 16, 1955 from Dalmia's relatives that there was a short-fall securities. He pursued the matter Departmentally and, eventually, the Government of India appointed Shri Annadhanam under s. 33 (1) of the Insurance Act, to investigate into the affairs of the company. This was done on September 19, 1955. Dalmia is said to have made a confessional statement to Annadhanam on September 20. Attempt was made to reimburse the Insurance Company with respect to the short-fall in securities. The matter was, however, made over to the Police and the appellants and a few other persons, acquitted by the Sessions Judge, were proceeded against as a result of the investigation.

Dalmia's defence, in brief, is that he had nothing to do with the details of the working of the company, that he had authorised Chokhani, in 1953, to purchase and sell securities and that thereafter Chokhani on his own purchased and sold securities. He had no knowledge of the actual *modus operandi* of Chokhani which led to the diversion of the funds of the company to the Union Agencies. He admits knowledge of the losses incurred by the Union Agencies and being told by Chokhani that he would arrange funds to meet them. He denies that he was a party to what Chokhani did.

Chokhani admits that he carried out the transactions in the form alleged in order to meet the losses of the Union Agencies of which he was an employee. He states that he did so as he expected that the Union Agencies would, in due course,

make up the losses and the money would be returned to the Insurance Company. According to him, he was under the impression that what he did amounted to giving of a loan by the Insurance Company to the Union Agencies and that there was nothing wrong in it. He asserts emphatically that if he had known that he was doing was wrongful, he would have never done it and would have utilised other means to raise the money to meet the losses of the Union Agencies as he had large credit in the business circle at Bombay and as the Union Agencies possessed shares which would be sold to meet the losses.

Vishnu Prasad expresses his absolute ignorance about the transactions which were entered into on behalf of Bhagwati Trading Company and states that what he did himself was under the instructions of Chokhani, but in ignorance of the real nature of the transactions.

Gurha denies that he was a party to the fabrication of false accounts and vouchers in the furtherance of the interests of the conspiracy.

The learned Sessions Judge found the offences charged against the appellants proved on the basis of the circumstances established in the case and, accordingly, convicted them as stated above. The High Court substantially agreed with the findings of the Sessions Judge except that it did not rely on the confession of Dalmia.

Mr. Dingle Foot, counsel for Dalmia, has raised a number of contentions, both of law and of facts. We propose to deal with the points of law first.

In order to appreciate the points of law raised by Mr. Dingle Foot, we may now state the charges which were framed against the various appellants.

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The charge under s. 120-B read with s. 409, I.P.C., was against the appellants and five other persons and read :

"I, Din Dayal Sharma, Magistrate I Class, Delhi, do hereby charge you,

R. Dalmia (Ram Krishna Dalmia) s/o etc.

2. G. L. Chokhani s/o etc.

3. Bajranglal Chokhani s/o etc.

4. Vishnu Pershad Bajranglal s/o etc.

5. R. P. Gurha (Raghubir Pershad Gurha) s/o etc.

6. J. S. Mittal (Jyoti Swarup Mittal) s/o etc.

7. S. N. Dudani (Shri Niwas Dudani) s/o etc.

8. G. S. Lakhotia (Gauri Shanker Lakhotia) s/o etc.

9. V. G. Kannan Vellore Govindaraj Kannan s/o etc. accused as under :—

That you, R. Dalmia, G. L. Chokhani, Bajrang Lal Chokhani, Vishnu Pershad Bajranglal, R. P. Gurha, J. S. Mittal, S. N. Dudani, G. S. Lakhotia and V. G. Kannan,

during the period between August 1954 and September 1955 at Delhi, Bombay and other places in India.

were parties to a criminal conspiracy to do and cause to be done illegal acts ; viz., criminal breach of trust of the funds of the Bharat Insurance Company Ltd.,

by agreeing amongst yourselves and with others that criminal breach of trust be committed by you R. Dalmia and G. L. Chokhani

in respect of the funds of the said Insurance Company in current account No. 1120 of the said Insurance Company with the Chartered Bank of India, Australia and China, Ltd., Bombay,

the dominion over which funds was entrusted to you R. Dalmia in your capacity as Chairman and the Principal Officer of the said Insurance Company, and

to you G. L. Chokhani, in your capacity as Agent of the said Insurance Company,

for the purpose of meeting losses suffered by you R. Dalmia in forward transaction (of speculation) in shares; which transactions were carried on in the name of the Bharat Union Agencies Ltd., under the directions and over all control of R. Dalmia, by you, G. L. Chokhani, at Bomboy, and by you, R. P. Gurha, J. S. Mittal and S. N. Dudani at Calcutta; and for other purposes not connected with the affairs of the said Insurance Company,

by further agreeing that current account No. R1763 be opened with the Bank of India, Ltd., Bombay and current account No. 1646 with the United Bank of India Ltd., Bombay, in the name of M/s. Bhagwati Trading Company, by you Vishnu Pershad accused with the assistance of you G. L. Chokhani, and Bajranglal Chokhani accused for the illegal purpose of diverting the funds of the said Insurance Company to the said Bharat Union Agencies, Ltd.,

by further agreeing that false entries showing that the defalcated funds were invested in Government Securities by the said Insurance Company be got made in the books of

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accounts of the said Insurance Company at Delhi, and

by further agreeing to the making of false and fraudulent entries by you R. P. Gurha, J. S. Mittal, G. S. Lakhotia, V. G. Kannan, and others, relating to the diversion of funds of the Bharat Insurance Company to the Bharat Union Agencies Ltd., through M/s. Bhagwati Trading Company, in the books of account of the said Bharat Union Agencies, Ltd., and its allied concern known as Asia Udyog Ltd., and

that the same acts were committed in pursuance of the said agreement and

thereby you committed an offence punishable under section 120-B read with section 409 I.P.C., and within the cognizance of the Court of Sessions."

Dalmia was further charged on two counts for an offence under s. 409 I. P. C. These charges were as follows :

"I, Din Dayal Sharma, Magistrate I Class, Delhi charge you, R. Dalmia accused as under :—

FIRSTLY, that yon R. Dalmia, in pursuance of the said conspiracy between the 9th day of August 1954 and the 8th day of August 1955, at Delhi.

Being the Agent, in your capacity as Chairman of the Board of Directors and the Principal Officer of the Bharat Insurance Company Ltd., and as such being entrusted with dominion over the funds of the said Bharat Insurance Company,

committed criminal breach of trust of the

funds of the Bharat Insurance Company Ltd., amounting to Rs. 2,37,483-9-0,

by wilfully suffering your co-accused G. L. Chokhani to dishonestly misappropriate the said funds and dishonestly use or dispose of the said funds in violation of the directions of law and the implied contract existing between you and the said Bharat Insurance Company, prescribing the mode in which such trust was to be discharged,

by withdrawing the said funds from current account No. 1120 of the said Bharat Insurance Company with the Chartered Bank of India, Australia & China, Ltd., Bombay, by means of cheque Nos. B-540329 etc., issued in favour of M/s. Bhagwati Trading Company, Bombay, and cheque No. B-540360 in favour of F. C. Podder, and

by dishonestly utilising the said funds for meeting losses suffered by you in forward transactions in shares carried on in the name of Bharat Union Agencies, Ltd., and for other purposes not connected with the affairs of the said Bharat Insurance Company ; and

thereby committed an offence punishable under section 409, I. P. C., and within the cognizance of the Court of Sessions;

SECONDLY, that you R. Dalmia, in pursuance of the said conspiracy between the 9th day of August 1955 and the 30th day of September 1955, at Delhi,

Being the Agent in your capacity as Chairman of the Board of Directors and the Principal Officer of the Bharat Insurance Company, Ltd., and as such being entrusted with dominion over the funds of the said Bharat Insurance Company,

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committed criminal breach of trust of the funds of the Bharat Insurance Company Ltd., amounting to Rs. 55,43,220-12-0,

by wilfully suffering your co-accused G.L. Chokhani to dishonestly misappropriate the said funds and dishonestly use or dispose of the said funds in violation of the directions of law and the implied contract existing between you and the said Bharat Insurance Company prescribing the mode in which such trust was to be discharged,

by withdrawing the said funds from current account No. 1120 of the said Bharat Insurance Company with the Chartered Bank of India, Australia & China, Ltd., Bombay by means of Cheque Nos. B-564835.....issued in favour of M/s. Bhagwati Trading Company Bombay, and,

by dishonestly utilising the said funds for meeting losses suffered by you in forward transactions in shares carried on in the name of the Bharat Union Agencies Ltd., and for other purposes not connected with the affairs of the said Bharat Insurance Company, and

thereby committed an offence punishable under section 409 I. P. C., and within the cognizance of the Court of Sessions."

Mr. Dingle Foot has raised the following contentions:

(1) The Delhi Court had no territorial jurisdiction to try offences of criminal breach of trust committed by Chokhani at Bombay.

(2) Therefore, there had been misjoinder of charges.

(3) The defect of misjoinder of charges was

fatal to the validity of the trial and was not curable under s. 531 s. 537 of the Code.

(4) The substantive charge of the offence under s. 409, I. P. C., against Dalmia offended against the provisions of s. 233 of the Code; therefore the whole trial was bad.

(5) The funds of the Bharat Insurance Company in the Chartered Bank, Bombay, which were alleged to have been misappropriated were not 'property' within the meaning of ss. 405 and 409, I. P. C.

(6) If they were, Dalmia did not have dominion over them.

(7) Dalmia was not an 'agent' within the meaning of s. 409 I. P. C., as only that person could be such agent who professionally carried on the business of agency.

(8) If Dalmia's conviction for an offence under s. 409 I. P. C., fails, the conviction for conspiracy must also fail as conspiracy must be proved as laid.

(9) The confessional statement Exhibit P-10 made by Dalmia on September 20, 1955, was not admissible in evidence.

(10) If the confessional statement was not inadmissible in evidence in view of s. 24 of the Indian Evidence Act, it was inadmissible in view of the provisions of cl. (3) of Art. 20 of the Constitution.

(11) The prosecution has failed to establish that Dalmia was synonymous with Bharat Union Agencies Ltd.

(12) Both the Sessions Judge and the High Court failed to consider the question of onus of proof i.e., failed to consider whether the evidence on record really proved or established the conclusion arrived at by the Courts.

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(13) Both the Courts below erred in their approach to the evidence of Raghunath Rai.

(14) Both the Courts below were wrong in holding that there was adequate corroboration of the evidence of Regunath Rai who was an accomplice or at least such a witness whose testimony required corroboration.

(15) It is not established with the certainty required by law that Dalmia had knowledge of the impugned transactions at the time they were entered into.

We have heared the learned counsel for the parties on facts, even though there are concurrent findings of fact, as Mr. Dingle Foot has referred us to a large number of inaccuracies, most of them not of much importance, in the narration of facts in the judgment of the High Court and has also complained of the omission from discussion of certain matters which were admittedly urged before the High Court and also of misapprehension of certain arguments presented by him.

We need not, however, specifically consider points No. 12 to 15 as questions urged in that form. In discussing the evidence of Raghunath Rai, we would discuss the relevant contentions of Mr. Dingle Foot, having a bearing on Raghunath Rai's reliability. Our view of the facts will naturally dispose of the last point raised by him.

Mr. Dingle Foot's first four contentions relating to the illegalities in procedure may now be deal with. The two charges under s. 409, I.P.C., against Chokhani mentioned that he committed criminal breach of trust in pursuance of the said conspiracy. One of the charges related to the period from August 9, 1954 to August 8, 1955 and the other related to the period from August 9, 1955 to September 30, 1955.

This Court held in *Purushottam Das Dalmia* v. *State of West Bengal* (1) that the Court having jurisdiction to try the offence of conspiracy has also jurisdiction to try an offence constituted by the overt acts which are committed, in pursuance of the conspiracy, beyond its jurisdiction. M. Dingle Foot submitted that this decision required reconsideration and we heard him and the learned Solicitor General on the point and, having considered their submissions, came to the conclusion that no case for reconsideration was made out and accordingly expressed our view during the hearing of these appeals. We need not, therefore, discuss the first contention of Mr. Dingle Foot and following the decision in *Purushottam Das Dalmia's case*(1) hold that the Delhi Court had jurisdiction to try Chokhani of the offence under s. 409 I.P.C. as the offence was alleged to have been committed in pursuance of the criminal conspiracy with which he and the other co-accused were charged.

In view of this opinion, the second and third contentions do not arise for consideration.

The fourth contention is developed by Mr. Dingle Foot thus. The relevant portion of the charge under s. 409 I. P. C., against Dalmia reads:

> "Firstly, that you Dalmia, in pursuance of the said conspiracy between...being the Agent, in your capacity as Chairman of the Board of Directors and as Principal Officer of the Bharat Insurance Company Ltd., and as such being entrusted with dominion over the funds of the said Bharat Insurance Company, committed criminal breach of trust of the funds...by wilfully suffering your co-accused G. L. Chokhani to dishonestly misappropriate the said funds and dishonestly use or dispose of the said funds in violations of the directions of law and the implied contract existing between you and the said Bharat Insurance

(1) [1962] 2 S. C. R. 101.

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Company prescribing the mode in which such trust was to be discharged..."

This charge can be split up into four charges, each of the charges being restricted to one particular mode of committing the offence of criminal breach of trust. These four offences of criminal breach of trust were charged in one count, each of these four amounting to the offence of criminal breach of trust 'by wilfully suffering Chokhani (i) to dishonestly misappropriate the said funds; (ii) to dishonestly use the said funds in violation of the directions of law; (iii) to dishonestly dispose of the said funds in violation of the directions of law; (iv) to dishonestly use the said funds in violation of the implied contract existing between Dalmia and the Bharat Insurance Company'.

Section 233 of the Code or Criminal Procedure permits one charge for every distinct offence and directs that every charge shall be tried separately except in the cases mentioned in ss. 234, 235, 236 and 239. Section 234 allows the trial, together, of offences up to three in number, when they be of the same kind and be committed within the space of twelve months. The contention, in this case is that the four offences into which the charge under s. 409 I.P.C. against Dalmia can be split up were distinct offences and therefore could not be tried together. We do not agree with this contention. The charge is with respect to one offence, though the mode of committing it is not stated precisely. If it be complained that the charge framed under s.409 I. P. C. is vague because it does not specifically state one particular mode in which the offence was committed, the vagueness of the charge will not make the trial illegal, especially when no prejudice is caused to the accused and no contention has been raised that Dalmia was prejudiced by the form of the charge.

We may now pass on to the other points raised by Mr. Dingle Foot.

Section 405 I.P.C. defines what amounts to criminal breach of trust. It reads :

> "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that propertly, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'."

Section 406 provides for punishment for criminal breach of trust. Section 407 provides for punishment for criminal breach of trust committed by a carrier, wharfinger or warehouse-keeper, with respect to property entrusted to them as such and makes their offence more severe than the offence under s. 406. Similarly, s. 408 makes the criminal breach of trust committed by a clerk or servant entrusted in any manner, in such capacity, with property or with any dominion over property, more severely punishable than the offence of criminal breach of trust under s. 406. Offences under ss.407 and 408 are similarly punishable. The last section in the series is s. 409 which provides for a still heavier punishment when criminal breach of trust is committed by persons mentioned in that section. The section reads :

> "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,

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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 extended to ten years, and shall also be liable to fine."

Both Dalmia and Chokhani have been convicted of the offence under s. 409 I.P.C.

Mr. Dingle Foot contends that no offence of criminal breach of trust has been committed as the funds of the Bharat Insurance Company in the Bank do not come with the expression 'property' in s. 405 I.P.C. It is urged that the word 'property' is used in the Indian Penal Code in different senses, according to the context, and that in s. 405 it refers to movable property and not to immovable property or to a chose in action.

It is then contended that the funds which a customer has in a bank represent choses in action, as the relationship between the customer and the banker is that of a creditor and a debtor, as held in *Attorney General for Canada* v. *Attorney General for Province of Quebec & Attorneys General for Saskatchewan, Alberta & Manitoba* (1) and in *Foley* v. *Hill* (2).

Reliance is also placed for the suggested restricted meaning of 'property' in s. 405 I.P.C. on the cases *Reg.* v. *Girdhar Dharamdas* (3); *Jugdown Sinha* v. *Queen Empress* (4) and *Ram Chand Gurvala* v. *King Emperor* (5) and also on the scheme of the Indian Penal Code with respect to the use of the expressions 'property' and 'movable property' in its various provisions.

The learned Solicitor General has, on the other hand, urged that the word 'property' should

(1) [1947] A.C. 33. (2) [1848] 2 H.L.C. 28 9 E. R. 1002.
(3) [1869] 6 Bom. High Ct. Rep. (Crown Cases) 33.
(4) (1895) I.L.R. 23 Cal. 372. (5) A.I.R. 1926 Lah 385.

be given its widest meaning and that the provisions of the various sections can apply to property other than movable property. It is not to be restricted to movable property only but includes chose in action and the funds of a company in Bank.

We are of opinion that there is no good reason to restrict the meaning of the word 'property' to movable property only when it is used without any qualification in s. 405 or in other sections of the Indian Penal Code. Whether the offence defined in a particular section of the Indian Penal Code can be committed in respect of any particular kind of property will depend not on the interpretation of the word 'property' but on the fact whether that particular kind of property can be subject to the acts covered by that section. It is in this sense that it may be said that the word 'property' in a particular section covers only that type of property with respect to which the offence contemplated in that section can be committed.

Section 22 I.P.C. defines 'movable property'. The definition is not exhaustive. According to the section the words 'movable property' are intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. The definition is of the expression 'movable property' and not of 'property' and can apply to all corporeal property except property excluded from the definition. It is thus clear that the word 'property' is used in the Code in a much wider sense than the expression 'movable property'. It is not therefore necessary to consider in detail what type of property will be included in the various sections of the Indian Penal Code.

In *Reg.* v. *Girdhar Dharamdas* (1) it was held that reading ss. 403 and 404 I.P.C. together, s. 404

(1) (1869) 6 Bom. High Ct. Rep. (Crown Cases) 33.

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applied only to movable property. No reasons are given in the judgment.

It is to be noticed that though s. 403 I.P.C. speaks of dishonestly mis-appropriating or converting to one's own use any movable property, s. 404 speaks of only dishonestly misappropriating or converting to one's own use property. If the Legislature had intended to restrict the operation of s. 404 to movable property only, there was no reason why the general word was used without the qualifying word 'movable'. We therefore do not see any reason to restrict the word 'property' to 'movable property' only. We need not express any opinion whether immovable property could be the subject of the offence under s. 404 I.P.C.

Similarly, we do not see any reason to restrict the word 'property' in s. 405 to 'movable property' as held in *Jugdown Sinha* v. *Queen Empress* (1). In that case also the learned Judges gave no reason for their view and just referred to the Bombay Case (2). Further, the learned Judges observed at page 374 :

> "In this case the appellant was not at most entrusted with the supervision or management of the factory lands, and the fact that he mismanaged the land does not in our opinion amount to a criminal offence under section 408."

A different view has been expressed with respect to the content of the word 'property' in certain sections of the Indian Penal Code, including s. 405.

In *Emperor* v. *Bishan Prasad* (3) the right to sell drugs was held to come within the definition of the word 'property ' in s. 185, I.P.C. which makes certain conduct at any sale of property an offence.

(1) (1895) I.L.R. 23 Cal. 372.
(2) (1869) 6 Bom. High Ct. Rep. (Crown Cases) 33.
(3) [1914] I.L.R. 37 All. 128.

In *Ram Chand Gurwala* v. *King Emperor* (1) the contention that mere transfer of amount from the bank account to his own account by the accused did not amount to misappropriation was repelled, it being held that in order to establish a charge of dishonest misappropriation or criminal breach of trust, it was not necessary that the accused should have actually taken tangible property such as cash from the possession of the bank and transferred it to his own possession, as on the transfer of the amount from the account of the Bank to his own account, the accused removed it from the control of the bank and placed it at his own disposal. The conviction of the accused for criminal breach of trust was confirmed.

In *Manchersha Ardeshir* v. *Ismail Ibrahim* (2) it was held that the word 'property' in s. 421 is wide enough to include a chose in action.

In *Daud Khan* v. *Emperor* (3) it was said at page 674 :

> "Like s. 378, s. 403 refers to movable property. Section 404 and some of the other sections following it refer to property without any such qualifying description; and in each case the context must determine whether the property there referred to is intended to be property movable or immoveable."

The case law, therefore, is more in favour of the wider meaning being given to the word 'property' in sections where the word is not qualified by any other expression like 'movable'.

In *The Delhi Cloth and General Mills Co. Ltd.* v. *Harnam Singh* (4) this court said

> "That a debt is property is, we think, clear. It is a chose in action and is heritable

(1) A.I.R. 1926 Lah. 385. (2) (1935) I.L.R. 60 Bom. 706.
(3) A.I.R. 1925 All. 673. (4) [1955] 2. S.C.R. 402, 417.

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and assignable and it is treated as property in India under the Transfer of Property Act which calls it an 'actionable claim'."

In *Allchin* v. *Coulthard* (1) the meaning of the expression 'fund' has been discussed it is said:

> "Much of the obscurity which surrounds this matter is due to a failure to distinguish the two senses in which the phrase 'payment out of a fund' may be used. The word 'fund' may mean actual cash resources of a particular kind (e. g., money in a drawer or a bank), or it may be a mere accountancy expression used to describe a particular category which a person uses in making up his accounts. The words 'payment out of' when used in connection with the word 'fund' in its first meaning connote actual payment, e. g., by taking the money out of the drawer or drawing a cheque on the bank. When used in connection with the word 'fund' in its second meaning they connote that, for the purposes of the account in which the fund finds a place, the payment is debited to that fund, an operation which, of course, has no relation to the actual method of payment or the particular cash resources out of which the payment is made. Thus, if a company makes a payment out of its reserved fund—an example of the second meaning of the word 'fund'—the actual payment is made by cheque drawn on the company's banking account, the money in which may have been derived from a number of sources".

The expression 'funds' in the charge is used in the first sense meaning thereby that Dalmia and Chokhani had dominion over the amount credited to the Bharat Insurance Company in the accounts

(1) [1942] 2 K.B. 228, 234,

of the Bank, inasmuch as they could draw cheques on that account.

We are therefore of opinion that the funds referred to in the charge did amount to 'property' within the meaning of that term in s. 405 I.P.C.

It is further contended for Dalmia that he had not been entrusted with dominion over the funds in the Banks at Bombay and had no control over them as the Banks had not been informed that Dalmia was empowered to operate on the company's accounts in the Banks and no specimen signatures of his had been supplied to the Bank. The omission to inform the Banks that Dalmia was entitled to operate on the account may disable Dalmia to actually issue the cheques on the company's accounts, but that position does not mean that he did not have any dominion over those accounts. As Chairman and Principal Officer of the Bharat Insurance Company, he had the power, on behalf of the company, to operate on those accounts. If no further steps are taken on the execution of the plan, that does not mean that the power which the company had entrusted to him is nullified. One may have dominion over property but may not exercise any power which he could exercise with respect to it. Non-exercise of the power will not make the dominion entrusted to him, nugatory.

Article 116 of the Articles of Association of the Bharat Insurance Company provides that the business of the company shall be managed by the Directors, who may exercise all such powers of the company as are not, under any particular law or regulation, not to be exercised by them. Article 117 declares certain powers of the Directors. Clause (7) of this Article authorises them to draw, make, give, accept, endorse, transfer, discount and negotiate such bill of exchange, promissory notes and other similar obligations as may be desirable for carrying on the business of the

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company. Clause (10) authorizes them to let, mortgage, sell, or otherwise dispose of any property of the company either absolutely. Clause (12) authorises them to invest such parts of the fund of the company as shall not be required to satisfy or provide for immediate demands, upon such securities or investments as they may think advisable. It also provides that the funds of the company shall not be applied in making any loan or guaranteeing any loan made to a Director of the company or to a firm of which such Director is a partner or to a private company of which such Director is a Director. Clause (23) empowers the Director to deal with and invest any moneys of the company not immediately required for the purposes thereof, in Government Promissory Notes, Treasury Bills, Bank Deposits, etc.

The bye-laws of the company entrusting the Chairman with dominion over its property, were revised in 1951. The Board of Directors, at their meeting held on September 8, 1951, resolved:

> "The bye-laws as per draft signed by the Chairman for identification be and are hereby approved, in substitution and to the exclusion of the existing bye-laws of the company."

No such draft as signed by the Chairman has been produced in this case. Instead, K. L. Gupta, P. W. 112, who was the Manager of the Bharat Insurance Company in 1951 and its General Manager from 1952 to August, 1956, has proved the bye-laws, Exhibit P. 786, to be the draft revised bye-laws approved by the Board of Directors at that meeting. He states that he was present at that meeting and had put up these draft bye-laws before the Board of Directors and that the Directors, while passing these bye-laws, issued a directive that they should come into force on January 1, 1952, and that, accordingly, he added in ink in the opening words of

the bye-laws that they would be effective from January 1, 1952. When cross-examined by Dalmia himself, he stated that he did not attend any other meeting of the Board of Directors and his presence was not noted in the minutes of the meeting. He further stated emphatically:

> "I am definite that I put up the bye-laws P-786 in the meeting of the Board of Directors. I did not see any bye-laws signed by the Chairman."

There is no reason why Gupta should depose falsely. His statement finds corroboration from other facts. It may be that, as noted in the resolution, it was contemplated that the revised bye-laws be signed by the Chairman for the purposes of their identity in future, but by over-sight such signatures were not obtained. There is no evidence that the bye-laws approved by the Board of Directors were actually signed by the Chairman Dalmia. Dalmia has stated so. It is not necessary for the proof of the bye-laws of the company that the original copy of the bye-laws bearing any mark of approval of the Committee be produced. The bye-laws of the company can be proved from other evidence. K. L. Gupta was present at the meeting when the bye-laws were passed. It seems that it was not his duty to attend meetings of the Board of Directors. He probably attended that meeting because he had prepared the draft of the revised bye-laws. His presence was necessary or at least desirable for explaining the necessary changes in the pre-existing bye-laws. He must have got his own copy of the revised bye-laws put up before the meeting and it is expected that he would make necessary corrections in his copy in accordance with the form of the bye-laws as finally approved at the meeting. The absence of the copy signed by the Chairman, if ever one existed, does not therefore make the other evidence about the bye-laws of the

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company in admissible. The fact that Gupta signed each page of Exhibit P. 786 supports his statement. There was no reason to sign every page of the copy if it was merely a draft office-copy that was with him. He must have signed each page on account of the importance attached to that copy and that could only be if that copy was to be the basis of the future bye-laws of the company.

Copies of the bye-laws were supplied to the Imperial Bank, New Delhi, and to the auditor. They are Exhibits P. 897 and P. 15. Raghunath Rai deposed about sending the bye-laws Exhibits P. 897 to the Imperial Bank, New Delhi, with a covering letter signed by Dalmia on September 4, 1954. Mehra, P. W. 15, Sub-Accountant of the State Bank of India (which took over the under taking of the Imperial Bank of India on July 1, 1955) at the time of his deposition, stated that the State Bank of India was the successor of the Imperial Bank of India. Notice was issued by the Court to the State Bank of India to produce latter dated September 4, 1954, addressed by Dalmia to the Agent, Imperial Bank of India, and other documents. Mehra deposed that in spite of the best search made by the Bank officials that letter could not be found and that Exhibit P. 897 was the copy of the bye-laws of the Bharat Insurance Company which he was producing in pursuance of the notice issued by the Court. It appears from his statement in cross-examination that the words 'received 15th September 1954' meant that that copy of the bye-laws was received by the Bank on that date. Mehra could not personally speak about it. Only such bye-laws would have been supplied to the Bank as would have been the corrected bye-laws. These bye-law Exhibit P. 897 tally with the bye-laws Exhibit P. 786. Raghunath Rai proves the letter Exhibit P. 896 to be a copy of the letter sent along with these bye-laws to the Bank and states that

both the original and P. 896 were signed by Dalmia. He deposed :

> "Ex. p. 786 are the bye-laws of the Bharat Insurance Company which came into operation on 1-1-52.....I supplied copy of Ex. p. 786 as the copy of the bye-laws of the Bharat Insurance Company to the State Bank of India, New Delhi.....Shri Dalmia thereupon certified as true copies of the resolutions which were sent along with the copy of the bye-laws. He also signed the covering letter which was sent to the State Bank of India along with the copy of the bye-laws Ex. p.786 and the copies of the resolutions.
>
> .....
>
> I produce the carbon copy of the letter dated 4-9-54 which was sent as a covering letter with the bye-laws of the Bharat Insurance Company to the Imperial Bank of India, New Delhi. It is Ex. p. 896. The carbon copy bears the signatures of R. Dalmia accused, which signatures I identify.....The aforesaid Bank (Imperial Bank) put a stamp over Ex. p. 896 with regard to the receipt of its original. The certified copy of the bye-laws of the Bharat Insurance Company which was sent for registration to the Imperial Bank along with the original letter of which Ex. p. 896 is a carbon copy is Ex.p. 897 (heretofore marked C). The copy of the bye-laws has been certified to be true by me under my signatures."

Dalmia states in answer to question No. 15 (put to him under s. 342, Cr. P. C.) that the signatures on Ex. p. 896 appear to be his.

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Letter Exhibit P. 896 may be usefully quoted here :

"SEC

The Agent, 4-9-54
Imperial Bank of India,
New Delhi.

Dear Sir,

Re : Safe Custody of Govt. Securities.

We are sending herewith true copies of Resolution No. 4 dated 10th March, 1949, Resolution No. 3 dated 19th March, 1949, and Resolution No. 8 dated 8th September, 1951, along with a certified copy of the Bye-laws of the Company for registration at your end.

By virtue of Art. 12 clause (e) of the Bye-laws of the Company I am empowered to deal in Government Securities etc. The specimen signatures Card of the undersigned is also sent herewith.

Yours faithfully,
Encls. 5 Sd/- R. Dalmia
Chairman."

By Resolution No. 4 dated March 10, 1949, Dalmia was co-opted Director of the Company. By Resolution No. 3 dated March 19, 1949, Dalmia was elected Chairman of the Board of Directors. Resolution No. 8 dated September 8, 1951 was :

"Considered the draft bye-laws of the Company and Resolved that the Bye-laws as per draft signed by the Chairman for identification be and are hereby approved in substitution and to the exclusion of the existing bye-laws of the Company."

The letter Exhibit P. 896 not only supports the statement of Raghunath Rai about the copy of the bye-laws supplied to the Bank to be a certified copy but also the admission of Dalmia that he was empowered to deal in Government Securities etc., by virtue of article 12, clause (e), of the bye-laws of the company. There therefore remains no room for doubt that bye-laws Exhibit P. 897 are the certified copies of the bye-laws of the company passed on September 8, 1951 and in force on September 4, 1954.

We are therefore of opinion that either due to oversight the draft bye laws said to be signed by the Chairman Dalmia were not signed by him or that such signed copy is no more available and that bye-laws Exhibits P. 786 and P. 897 are the correct bye-laws of the company.

Article 12 of the company's bye-laws provides that the Chairman shall exercise the powers enumerated in that article in addition to all the powers delegated to the Managing Director. Clause (e) of this article authorises him to negotiate, tranfser, buy and sell Government Securities etc., and to pledge, endorse, withdraw or otherwise deal with them. Article 13 of the bye-laws mentions the powers of the Managing Director. Clause (12) of this article empowers the Managing Director to make, draw, sign or endorse, purchase, sell, discount or accept cheques, drafts, hundies, bills of exchange and other negotiable instruments in the name and on behalf of the company.

Article 14 of the bye-laws originally mentioned the powers of the Manager. The Board of Directors, by resolution No. 4 dated October 6, 1952 resolved that these powers be exercised by. K. L. Gupta as General Manager and the necessary corrections be made.

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By resolution No. 4 dated August 30, 1954, of the Board of Directors, the General Manager was empowered to make, draw, sign or endorse, purchase, sell, discount or accept cheques, drafts, hundies, bills of exchange and other negotiable instruments in the name and on behalf of the company and to exercise all such powers from time to time incidental to the post of the General Manager of the Company and not otherwise excepted. By the same resolution, the words 'Managing Director' in Article 12 of the Bye-laws stating the powers of the Chairman, were substituted by the words 'General Manager.' Thereafter, the Chairman could exercise the powers of the General Manager conferred under the bye-laws or other resolutions of the Board.

It is clear therefore from these provisions of the articles and bye-laws of the company and the resolutions of the Board of Directors, that the Chairman and the General Manager had the power to draw on the funds of the company.

Chokhani had authority to operate on the account of the Bharat Insurance Company at Bombay under the resolution of the Board of Directors dated January 31, 1951.

Both Dalmia and Chokhani therefore had dominion over the funds of the Insurance Company.

In *Peoples Bank* v. *Harkishen Lal* (1) it was stated

> "Lala Harkishen Lal as Chairman is a trustee of all the moneys of the Bank."

In Palmer's Company Law, 20th Edition, is stated at page 517 :

> "Directors are not only agents but they are in some sense and to some extent trustees or in the position of trustees."

(1) A.I.R. 1936 Lah. 408, 409.

In *G. E. Ry. Co.* v. *Turner* (1) Lord Selborne said :

"The directors are the mere trustees 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 *Re. Forest of Dean etc., Co.* (2) Sir George Jessel said :

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

We are therefore of opinion that Dalmia and Chokhani were entrusted with the dominion over the funds of the Bharat Insurance Company in the Banks.

It has been urged for Chokhani that he could not have committed the offence of criminal breach of trust when he alone had not the dominion over the funds of the Insurance Company, the accounts of which he could not operate alone. Both Raghunath Rai and he could operate on the accounts jointly. In support of this contention, reliance is placed on the case reported as *Bindeshwari* v. *King Emperor* (3). We do not agree with the contention.

Bindeshwari's Case (3) does not support the contention. In that case, a joint family firm was appointed Government stockist of food grain. The partners of the firm were Bindeshwari and his younger brother. On check, shortage in food grain was found. Bindeshwari was prosecuted and convicted by the trial Court of an offence under s. 409 I. P. C. On appeal, the High Court set aside the conviction of Bindeshwari of the offence under

(1) L. R. (1872) 8 Ch. App. 149, 152 (2) L. R. (1878) 10 Ch. D. 450, 453
(3) (1947) I.L.R. 26 Pat. 703, 715.

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s. 409 I. P. C. and held him not guilty of the offence under that section as the entrustment of the grain was made to the firm and not to him personally. The High Court convicted him, instead, of the offence under s. 403 I. P. C. This is clear from the observation :

> "In my opinion, the Government rice was entrusted to the firm of which the petitioner and his younger brother were the proprietors. Technically speaking, there was no entrustment to the petitioner personally."

This case clearly did not deal directly with the question whether a person who, jointly with another, has dominion over certain property, can commit criminal breach of trust with respect to that property or not.

On the other hand, a Full Bench of the Calcutta High Court took a different view in *Nrigendro Lall Chatterjee* v. *Okhoy Coomar Shaw* (1). The Court said :

> "We think the words of Section 405 of the Penal Code are large enough to include the case of a partner, if it be proved that he was in fact entrusted with the partnership property, or with a dominion over it, and has dishonestly misappropriated it, or converted it to his own use."

Similar view was expressed in *Emperor* v. *Jagannath Raghunathdas.* (2) Beaumont C. J., said at.

> But, in my opinion, the words of the section (s. 405) are quite wide enough to cover the case of a partner. Where one partner is given authority by the other partners to collect moneys or property of the firm I think that he is entrusted with dominion over

(1) (1874) 21 W. R. (Criminal Rulings) 59 61.
(2) (1931) 33 Bom. L. R. 1518, 1521.

that property, and if he dishonestly misappropriates it, then I think he comes within the section."

Barlee J., agreed with this opinion.

The effect of Raghunath Rai's delivering the blank cheques signed by him to Chokhani may amount to putting Chokhani in sole control over the funds of the Insurance Company in the Bank and there would not remain any question of Chokhani's having joint dominion over those funds and this contention, therefore, will not be available to him.

It was also urged for Chokhani that he had obtained control over the funds of the Insurance Company by cheating Raghunath Rai inasmuch as he got blank cheques signed by the latter on the representation that they would be used for the legitimate purpose of the company but latter used them for purposes not connected with the company and that, therefore, he could not commit the offence of criminal breach of trust. This may be so, but Chokhani did not get dominion over the funds on account of Raghunath Rai's signing blank cheques. The signing of the blank cheques merely facilitated Chokhani's committing breach of trust. He got control and dominion over the funds under the powers conferred on him by the Board of Directors, by its resolution authorising him and Raghunath Rai to operate on the accounts of the Insurance Company with the Chartered Bank, Bombay.

The next contention is that Dalmia and Chokhani were not agents as contemplated by s. 409 I. P. C. The contention is that the word 'agent' in this section refers to a 'professional agent' i. e., a person who carried on the profession of agency and that as Dalmia and Chokhani did not carry on such profession, they could not be covered by the expression 'agent' in his section

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Reliance is placed on the case reported as *Mahumarakalage Edward Andrew Cooray* v. *The Queen* (1). This case approved of what was said in *Reg.* v. *Portugal* (2) and it would better to discuss that case first.

That case related to an offence being committed by the accused under s. 75 of the Larceny Act, 1861 (24 & 25 Vict. c. 96). The relevant portion of the section reads.

> "Whosoever, having been intrusted, either solely or jointly with any other person, as a banker, merchant, broker, attorney or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund.....or in any stock or fund of any body corporate, &c., for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith and contrary to the object or purpose for which such chattel &c., was intrusted to him sell, negotiate, pledge, &c., or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted.....shall be guilty of a misdemeanor.

The accused in that case was employed by a firm of Railway contractors for commission, to use his influence to obtain for them a contract for the construction of a railway and docks in France. In the course of his employment, he was entrusted with a cheque for £500/- for the purpose of opening a credit in their name in one of the two specified banks in Paris. He was alleged to have misappropriated the cheque to his own use fraudulently. He was also alleged to have fraudulently dealt with another bill for £250/- and other securities which had

(1) (1953) A.C. 407, 419. (2) (1885) 16 Q.B.D. 487.

been entrusted to him for a special purpose. He was committed for trial for the offence under s. 75. He, on arrest under an extradition warrant, was committed to prison with a view to his extradition in respect of an offence committed in France. It was contended on his behalf:

> "To justify the committal under the Extradition Act, it was incumbent on the prosecutors to offer *prima facie* evidence that the money and securities which the prisoner was charged with having misappropriated were intrusted to him in the capacity of 'agent', that is, a person who carries on the business or occupation of an agent, and intrusted with them in that capacity, and without any authority to sell, pledge, or negotiate, and not one who upon one solitary occasion acts in a fiduciary character."

It was held, in view of the section referring to 'banker, merchant, broker, attorney or other agent', that s. 75 was limited to a class, and did not apply to everyone who might happen to be intrusted as prescribed by the section, but only to the class of persons therein mentioned. It was further said:

> "In our judgment, the 'other agent' mentioned in this section means one whose business or profession it is to receive money, securities or chattels for safe custody or other special purpose; and that the term does not include a person who carries on no such business or profession, or the like. The section is aimed at those classes who carry on the occupations or similar occupations to those mentioned in the section, and not at those who carry on no such occupation, but who may happen from time to time to undertake some fiduciary position, whether for money or otherwise".

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This case therefore is authority to this effect only that the term 'agent' in that section does not include a person who just acts as an agent for another for a particular purpose with respect to some property that is entrusted to him, i. e., does not include a person who becomes an agent as a consequence of what he has been charged to do, and who has been asked to do a certain thing with respect the property entrusted to him, but includes such person who, before such entrustment and before being asked to do something, already carried on such business or profession or the like as necessitates, in the course of such business etc., his receiving money, securities or chattles for safe custody or other special purpose. That is to say, he is already an agent for the purpose of doing such acts and is subsequently entrusted with property with direction to deal with it in a certain manner. It is not held that a person to be an agent within that section must carry on the profession of an agent or must have an agency. The accused, in that case, was therefore not held to be an agent.

It may also be noticed that he was so employed for a specific purpose which was to use his influence to obtain for his employers a contract for the construction of a railway and docks in france. This assignment did not amount to making him an agent of the employers for receiving money etc. In *Mahumarakalage Edward Andrew Cooray's Case* (1) the Privy Council was dealing with the appeal of a person who had been convicted under s. 392 of the Penal Code of Ceylon. Sections 388 to 391 of the Ceylon Penal Code correspond to ss. 405 to 408 of the Indian Penal Code. Section 392 corresponds to s. 409 I. P. C. It was contended before the Privy Council that the offence under s. 392 was limited to the case of one who carried on an agency business and did not comprehend a person who was casually entrusted with money either on one individual

(1) (1953) A.C. 407 419.

occasion or a number of occasions, provided that the evidence did not establish that he carried on an agency business. Their Lordships were of opinion that the reasoning in *Reg.* v. *Portugal* (1) for the view that s. 75 of the Larceny Act was limited to the class of persons mentioned in it, was directly applicable to the case they were considering, subject to some immaterial variations, and finally said :

> "In enunciating the construction which they have placed on section 392 they would point out that they are in no way impugning the decisions is certain cases that one act of entrustment may constitute a man a factor for another provided he is entrusted in his business as a mercantile agent, nor are they deciding what activity is required to establish that an individual is carrying on the business of an agent".

These observations mean that the view that s. 75 was limited to the class of persons mentioned therein did not affect the correctness of the view that a certain act of entrustment may constitute a person a factor for another provided he was entrusted in his business as a mercantile agent. It follows that a certain entrustment, provided it be in the course of business as a mercantile agent, would make the person entrusted with a factor, i. e., would make him belong to the class of factors. The criterion to hold a person a factor, therefore, is that his business be that of a mercantile agent and not necessarily that he be a professional mercantile agent.

Further, their Lordships left it open as to what kind of activity on the part of a person alleged to be an agent would establish that he was carrying on the business of an agent. This again makes it clear that the emphasis is not on the person's carrying on the profession of an agent, but on his carrying on the business of an agent.

(1) (1885) 16 Q.B.D. 487.

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These cases, therefore, do not support the contention for Dalmia and Chokhani that the term 'agent' in s. 409 I. P. C., which corresponds to s. 392 of the Ceylon Penal Code, is restricted only to those persons who carry on the profession of agents. These cases are authority for the view that the word 'agent' would include a person who belongs to the class of agents, i.e., who carries on the business of an agent

Further, the accused in the Privy Council Case (1) was not held to be an agent. In so holding, their Lordships said :

> "In the present case the appellant clearly was not doing so, and was in no sense entitled to receive the money entrusted to him in any capacity, nor indeed, had Mr. Ranatunga authority to make him agent to hand it over to the bank."

To appreciate these reasons, we may mention here the facts of that case. The accused was the President of the Salpiti Koral Union. The Union supplied goods to its member societies through three depots. The accused was also President of the Committee which controlled one of these depots. He was also Vice-President of the Co-operative Central Bank which advanced moneys to business societies to enable them to buy their stocks. The societies repaid the advance weekly through cheques and/or money orders, except when the advance be of small sums. The Central Bank, in its turn, paid in the money orders, cheques and cash to its account with the Bank of Ceylon. The accused appointed one Ranatunga to be the Manager of the depot which was managed by the Committee of which he was the President. The payments to the Central Bank used to be made through him. The accused instructed this Manager to follow a course other than the prescribed routine. It was that he was to collect

(1) [1953] A.C. 407, 419.

the amounts from the stores in cash and hand them over to him for transmission to the Bank. The accused thus got the cash from the Manager and sent his own cheques in substitution for the amounts to the Central Bank. He also arranged as the Vice-President of that Bank that in certain cases those cheques be not sent forward for collection and the result was that he could thus misappropriate a large sum of money. The Privy Council said that the accused was not entitled to receive the money entrusted to him in any capacity, that is to say as the Vice-President of the Cooperative Central Bank or the President of the Union controlling the depots or as the President of the Committee.

It follows from this that he could not have received the money in the course of his duties as, any of these office-bearers. Further, the Manager of the depot had no authority to make the accused an agent for purposes of transmitting the money to the Bank. The reason why the accused was not held to be an agent was not that he was not a professional agent. The reason mainly was that the amount was not entrusted to him in the course of the duties he had to discharge as the office-bearers of the various institutions.

Learned counsel also made reference to the case reported as *Rangamannar Chatti* v. *Emperor* (1). It is not of much help. The accused there is said to have denied all knowledge of the jewels which had been given to him by the complainant for pledging and had been pledged and redeemed. It was said that it was not a case under s. 409 I. P. C. The reason given was:

> "There is no allegation that the jewels were entrusted to the accused 'in the way of his business as an agent'. No doubt he is said to

(1) (1935) M.W.M. 649.

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have acted as the complainant's agent, but he is not professionally the complainants agent nor was this affair a business transaction."

The reasons emphasize both those aspects we have referred to in considering the judgment of the Privy Council in *Mahumarakalag Edward Andrew Cooray's Case* (1), and we need not say anything more about it.

What s. 409 I.P.C. requires is that the person alleged to have committed criminal breach of trust with respect to any property be entrusted with that property or with dominion over that property in the way of his business as an agent. The expression 'in the way of his business' means that the property is entrusted to him 'in the ordinary course of his duty or habitual occupation or profession or trade'. He should get the entrustment or dominion in his capacity as agent. In other words, the requirements of this section would be satisfied if the person be an agent of another and that other person entrusts him with property or with any dominion over that property in the course of his duties as an agent. A person may be an agent of another for some purpose and if he is entrusted with property not in connection with that purpose but for another purpose, that entrustment will not be entrustment for the purposes of s. 409 I.P.C. if any breach of trust is committed by that person. This interpretation in no way goes against what has been held in *Reg.* v. *Portugal* (2) or in *Mahumarakalage Edward Andrew Cooray's Case* (1), and finds support from the fact that the section also deals with entrustment of property or with any dominion over property to a person in his capacity of a public servant. A different expression 'in the way of his business' is used in place of the expression 'in his capacity,' to make it clear that entrustment of property in the capacity of agent will not, by itself, be sufficient to make

(1) (1953) A.C. 407, 419. (2) (1885) 16 Q.B.D. 487.

the criminal breach of trust by the agent a graver offence than any of the offences mentioned is ss. 406 to 408 I.P.C. The criminal breach of trust by an agent would be a graver offence only when he is entrusted with property not only in his capacity as an agent but also in connection with his duties as an agent. We need not speculate about the reasons which induced the Legislature to make the breach of trust by an agent more severely punishable than the breach of trust committed by any servant. The agent acts mostly as a representative of the principal and has more powers in dealing with the property of the principal and, consequently, there are greater chances of his misappropriating the property if he be so minded and less chances of his detection. However, the interpretation we have put on the expression 'in the way of his business' is also borne out from the Dictionary meanings of that expression and the meanings of the words 'business' and 'way', and we give these below for convenience.

'In the way of' -of the nature of, belonging to the class of, in the course of or routine of (Shorter Oxford English Dictionary)

—in the matter of, as regards, by way of (Webster's New International Dictionary, II Edition, Unabridged)

'Business' —occupation, work (Shorter Oxford English Dictionary)

—mercantile transactions, buying and selling, duty, special imposed or under-

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taken service, regular occupation

(Webster's New International Dictionary, II Editional, Unabridged)

—duty, province, habitual occupation, profession, trade

(Oxford Concise Dictionary)

'Way' —scope, sphere, range, line of occupation

Oxford Concise Dictionary)

Chokhani was appointed agent of the Bharat Insurance Company on January 31, 1951. He admits this in his statement under s. 342, Cr. P.C. He signed various cheques as agent of this company and he had been referred to in certain documents as the agent of the company.

Dalmia, as a Director and Chairman of the company, is an agent of the company.

In Palmer's Company Law, 20th Edition, is stated, at page 513 :

"A company can only act by agents, and usually the persons by whom it acts and by whom the business of the company is carried on or superintended are termed directors....."

Again, at page 515 is noted :

> "Directors are, in the eye of the law, agents of the company for which they act, and the general principles of the law of principal and agent regulate in most respects the relationship of the company and its directors."

It was held in *Gulab Singh* v. *Punjab Zamindara Bank* (1) and in *Jaswant Singh* v. *V.V. Puri* (2) that a director is an agent of the company.

Both Dalmia and Chokhani being agents of the company the control, if any, they had over the securities and the funds of the company, would be in their capacity as agents of the company and would be in the course of Dalmia's duty as the Chairman and Director or in the course of Chokhani's duty as a duly appointed agent of the company. If they committed any criminal breach of trust with respect to the securities and funds of the company, they would be committing an offence under ss.409 I.P.C.

In view of our opinion with respect to Dalmia and Chokhani being agents within the meaning of s. 409 I.P.C. and being entrusted with dominion over the funds of the Bharat Insurance Company in the Banks which comes within the meaning of the words 'property' in s. 409, these appellant would commit the offence of criminal breach of trust under s. 409 in case they have dealt with this 'property' in any manner mentioned in s. 405 I.P.C.

We may now proceed to discuss the detailed nature of the transactions said to have taken place in pursuance of the alleged conspiracy. It is, however, not necessary to give details of all the impugned transaction. The details of the first few transactions will illustrate how the whole scheme of diverting the funds of the Insurance Company to the Union Agencies was worked.

The Union Agencies suffered losses in its shares-speculation business in the beginning of August, 1954. The share brokers sent statements of accounts dated August 6, 1954, to Chokhani and

(1) A.I.R. 1942 Lah. 47. (2) A.I.R. 1951 Pun. 99.

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made demand of Rs. 22,25,687·13·0 in respect of the losses. The total cash assets of the Union Agencies in all its banks and offices at Bombay, Calcutta and Delhi amounted to Rs. 2,67,857-11-7 only. The Union Agencies therefore needed a large sum of money to meet this demand and to meet expected future demands in connection with the losses.

At this crucial time, telephonic communications did take place between presumably Dalmia and Chokhani. The calls were made from Telephone No. 45031, which is Dalmia's number at 3, Sikandara Road, New Delhi, to Bombay No. 33726, of Chokhani. Two calls were made on August 7, 1954, three on August 8, two on August 11 and one each on August 13 and August 14, respectively. Of course, there is no evidence about the conversation which took place at these talks. The significance of these calls lies in their taking place during the period when the scheme about the diversion of funds was coming into operation for the first time, but in the absence of evidence as to what conversation took place, they furnish merely a circumstance which is not conclusive by itself.

On August 7 and 9, 1954, the Punjab National Bank, Bombay, received Rs. 2,00,000 and Rs. 3,00,000 respectively in the account of the Union Agencies, telegraphically from Delhi.

On the same day, Vishnu Prasad, appellant, opened an account with the Bank of India, Bombay, in the name of Bhagwati Trading Company. He gave himself out as the sole proprietor and mentioned the business of the company in the form for opening account as 'merchants and commission agents'. He made a deposit of Rs. 1,100 said to have been supplied to him by Chokhani.

On August 11, 1954, Vishnu Prasad made another deposit of Rs. 1,100, again said to have

been supplied by Chokhani, as the first deposit in the account he opened with the United Bank of India, Bombay, in the name of Bhagwati Trading Company. The business of the company was described in the form for opening account as 'merchants, piece-goods dealers.'

There is no dispute now that Bhagwati Trading Company did not carry on any business either as merchants and commission agents or as merchants and piece-goods dealers. Vishnu Prasad states that he acted just at Chokhani told him and did not know the nature of the transactions which were carried on in the name of this company. It is however clear from the accounts and dealings of this company that its main purpose was simply to act in such a way as to let the funds of the Insurance Company pass on to the Union Agencies, to avoid easy detection of such transfer of funds.

Chokhani states that he did this business as the Union Agencies needed money at that time. He thought that the Union Agencies would make profit after some time and thereafter pay it back to Bhagwati Trading Company for purchasing securities and therefore he postponed the dates of delivery of the securities to the Insurance Company. He added that in case of necessity he could raise money by selling or mortgaging the shares of the Union Agencies in the exercise of his power of attorney on its behalf.

We may now revert to the actual transaction gone through to meet the demands in connection with the losses of the Union Agencies.

On August 9, 1954, Chokhani purchased 3% 1963-65 securities of the face value of Rs. 22,00,000 on behalf of the Insurance Company from Naraindas and Sons, Security Brokers. Chokhani entered into a cross-contract with the same firm of brokers

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for the sale of similar securities of the same face value on behalf of Bhagwati Trading Company. He informed the brokers that the payment of purchase price would be made by the Insurance Company to Bhagwati Trading Company from whom it would get the securities. Thus the actual brokers practically got out of the transaction except for their claim of brokerage.

On August 11, 1954, a similar transaction of purchase on behalf of the Insurance Company from the brokers and sale by Bhagwati Trading Company to those brokers, of 3% 1963-65 securities of the face value of Rs. 5,00,000, was entered into by Chokhani.

It may be mentioned, to avoid repetition, that Chokhani always acted in such transaction—which may be referred to as usual purchase transactions—both on behalf of the Insurance Company and on behalf of Bhagwati Trading Company, and that the same arrangement was made with respect to the payment of the purchase price and the delivery of securities.

The securities were not delivered to the Insurance Company by Bhagwati Trading Company and yet Chokhani made payment of the purchase price from out of the funds of the Insurance Company.

On August 11, 1954, Chokhani got the statement of accounts from the brokers relating to the purchase of securities Worth Rs. 22,00,000. The total cost of those securities worked out at Rs. 20,64,058-6-9. Chokhani made the payment by issuing two cheques in favour of Bhagwati Trading Company, one for Rs. 10,00,000 and the other for the balance, i.e., Rs. 10,64,058-6-9. Needless to say that he utilised the cheques which had already been signed by Raghunath Rai, in pursuance of the arrangement to facilitate transactions on behalf of the Insurance Company.

On August 12, 1954, the statement of account with respect to the purchase of securities worth Rs. 5,00,000 was received. The cost worked out to Rs. 4,69,134-15-9. Chokhani made the payment by issuing a cheque for the amount in favour of Bhagwati Trading Company. All these cheques were drawn on the Chartered Bank, Bombay.

On August 12, 1954, Vishnu Prasad drew cheques for Rs. 9,00,000 in the account of Bhagwati Trading Company in the United Bank of India. The amount was collected by his father Bajranglal. He drew another cheque for Rs. 9,60,000 in the account of the Bhagwati Trading Company with the Bank of India, Bombay, and collected the amount personally. The total amount withdrawn by these two cheques viz., Rs. 18,60,000 was passed on to the Union Agencies through Chokhani that day. Thereafter Chokhani deposited Rs. 7,00,000 in the account of the Union Agencies with the Bank of India, Rs. 7,00,000, in the account of the Union Agencies with the United Bank of India and Rs. 4,40,000 in the account of the Union Agencies with the Punjab National Bank Ltd. The Punjab National Bank Ltd., Bombay, as already mentioned, had received deposits of Rs. 2,00,000 and Rs. 3,00,000 on August 7 and August 9, 1954, respectively, in the account of the Union Agencies from Delhi.

Between August 9 and August 19, 1954, Chokhani made payment to the brokers on account of the losses suffered by the Union Agencies. He issued cheques for Rs. 9,37,473-5-9 between August 9 and August 13, 1954, on the account with the Punjab National Bank. On August 13, he issued cheques on the account of the Union Agency with the United Bank of India in favour of the Bombay brokers on account of the losses of the Union Agencies, for Rs. 7,40,088-5-9. He also issued, between August 13 and August 19, 1954, cheque for Rs. 6,84,833-14-0 on the Bank of India, in favour

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of the share brokers at Bombay on account of the losses suffered by the Union Agencies.

Chokhani informed the head office at Delhi about these purchase transaction of securities worth Rs. 27,00,000, through letter dated August 16, 1954, and along with that letter sent the contract note and statements of accounts received from the brokers. No mentioned was made in the letter about the payment being made to Bhagwati Trading Company through cheques or about the arrangement about getting the securities from Bhagwati Trading Company or about the postponement of the delivery of the securities by that company. On receipt of the letter, Raghunath Rai contacted Dalmia and, on being told that the securities were purchased under the latter's instructions, made over the letter to the office where the usual entries where made and records were prepared, as had to be done in pursuance of the office routine. Ultimately, the formal confirmation of the purchases was obtained on August 30, 1954, from the Board of Directors at its meeting for which the office note stating that the securities were purchase under the instruction of the Chairman (Dalmia) was prepared. The office note, Exhibit P. 793, with respect to the purchase of these securities worth Rs. 27,00,000 was signed by Chordia, who was then the Managing Director of the Bharat Insurance Company.

On August 16, 1954, Vishnu Prasad withdrew Rs. 2,200 from the account of the Bhagwati Trading Company with the Bank of India, according to his statement, gave this money to Chokhani in return for the amount Chokhani had advanced earlier for opening accounts for Bhagwati Trading Company with the Bank of India and the United Bank of India. Thereafter, whatever money was in the account of Bhagwati Trading Company with these Banks was the money obtained through the dealings entered into on behalf of Bhagwati Trading Company, the funds

for most of which came from the Bharat Insurance Company.

On August 18,1954, Vishnu Prasad drew a sum of Rs. 50,000 from Bhagwati Trading Company's account with the Bank of India and passed on the amount to the Union Agencies through Chokhani. On August 23, 1954, he withdrew Rs. 90,000 from Bhagwati Trading Company's account with the United Bank of India and Rs. 5,10,000 from its account with the Bank of India and passed on these amounts also to the Union Agencies through Chokhani. Chokhani then issued cheques totalling Rs. 5,88,380-13-0 from August 23 to August 26,1954, on the account of the Union Agencies with the Chartered Bank, Bombay, in favour of the brokers on account of the losses sufferred by that company. Thus, out of the total amount of Rs. 25,33,193-6-6 withdrawn by Chokhani from the account of the Bharat Insurance Company and paid over to Bhagwati Trading Company, Rs. 25,10,000 went to the Union Agencies, which mostly utilised the amount in payment of the losses suffered by it.

The Union Agencies suffered further losses amounting to about Rs. 23,00,000. Demands for payment by the brokers were received on September 3, 1954, and subsequent days.

The Bharat Insurance Company had no sufficient liquid funds in the Banks at Bombay. There was therefore necessity to deposit funds in the Bank before they could be drawn ostensibly to pay the price of securities to be purchased. This time the transactions of sale of securities held by the Insurance Company and the usual purchase transactions relating to certain other securities were gone through. The details of these transactions are given below,

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On September 4, 1954, securities of the face value of Rs. 17,50,000 held by the Insurance Company were withdrawn from its safe-custody account with the Imperial Bank of India, New Delhi, by letter Exhibit P. 1351 under the signature of Dalmia. Securities worth Rs. 10,00,000 were 2-1/4% 1954 securities and the balance were 2-1/2% 1955 securities. These securities were then sent to Bombay and sold there. On September 9, 1954, Rs. 6,25,000 were transferred from Delhi to the account of the Insurance Company with the Chartered Bank, Bombay, by telegraphic transfer. Thus the balance of the funds of the Insurance Company with the Chartered Bank rose to an amount out of which the losses of about Rs. 23,00,000 suffered by the Union Agencies could be met. The 1954 securities sold were to mature on November 15, 1954. The 1955 securities would have matured much later. No ostensible reason for their premature sale has been given.

On September 6, 1954, Chokhani purchased 3% 1959-61 securities of the face value of Rs. 25,00,000 on behalf of the Insurance Company from M/s. Naraindas & Sons, Brokers. A cross-contract of sale of similar securities by Bhagwati Trading Company to the brokers was also entered into. Steps which were taken in connection with the purchase of securities worth Rs. 27,00,000 in August 1954 were repeated. On September 9, 1954, Chokhani issued two cheques, one for Rs. 15,00,000 and the other for Rs. 9,20,875 on the account of the Insurance Company with the Chartered Bank, in favour of Bhagwati Trading Company which deposited the amount of the cheques into its account with the Bank of India, Bombay. Vishnu Prasad passed on Rs. 24,00,000 to the Union Agencies through Chokhani. This amount was utilised in meeting the losses suffered by the Union Agencies to the extent of Rs. 22,81,738-2-0. A sum of Rs. 75,000 was paid

to Bennett Coleman Co. Ltd., of which Dalmia was a director and a sum of Rs. 15,000 was deposited in the Punjab National Bank.

It is again significant to note that telephonic communication took place between Dalmia's residence at New Delhi at Chokhani's at Bombay, between September 4 and September 10, 1954. There was two communications on September 4, one on September 5, three on September 6 and one on September 10, 1954.

The Union Agencies suffered further losses amounting to about Rs. 10,00,000 in the month of September. Again, the accounts of the Union Agencies or of the Insurance Company, at Bombay, did not have sufficient balance to meet the losses and, consequently, sale of certain securities held by the Insurance Company and purchase of other securities again took place. This time, 3% 1957 securities of the face value of Rs. 10,00,000 held by the Insurance Company in its safe-custody deposit with the Chartered Bank, Bombay, were sold on September 21, 1954, and Rs. 9,84,854-5-6, the net proceeds, were deposited in the Bank. On the same day, Chokhani purchased 3% 1959-61 securities of the face value of Rs. 10,00,000 on behalf of the Insurance Company following the procedure adopted in the earlier usual purchase transactions.

No telephonic communication appears to have taken place between Delhi and Bombay, on receipt of the demand from the brokers on September 17, 1954, for the payment of the losses, presumably because necessary steps to be taken both in connection with the fictitious purchase of securities, in order to pay money to Bhagwati Trading Company for being made over to the Union Agencies when funds were needed and also or providing funds in the Insurance Company's account with the Chartered Bank, Bombay, in case the

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balance was not sufficient to meet the losses, had already been adopted in the previous transactions, presumably, after consultations between Dalmia and Chokhani. This lends weight to the significance of the telephonic communications between Delhi and Bombay in the critical period of August and early September, 1954.

To complete the entire picture, we may now mention the steps taken to cover up the non-receipt of securities purchased, at the proper time.

By November, 19, 1954, securities of the face-value of about Rs. 80,00,000 had been purchased by Chokhani on behalf of the Insurance Company and such securities had not been sent to the head office at Delhi. Raghunath Rai referred the matter to Dalmia and, on his approval, sent a letter on November 19, 1954, to Chokhani, asking him to send the distinctive numbers of those securities. The copy of the letter is Exhibit P. 805. The securities referred to were 3% Loan of 1959-61 of the face value of Rs. 35,00,000, 3% Loan of 1963-65 of the face value of Rs. 27,00,000 and 2-3/4% Loan of 1960 of face value of Rs. 18,00,000.

It was subsequent to this that stock certificates with respect to 3% 1963-65 securities of the face value of Rs. 27,00,000 and with respect to 2-3/4% 1960. Loan securities of the face value of Rs. 18,00,000 were received in Delhi.

We may now refer to the transactions which led to the obtaining of these stock certificates. The due dates of interest of 3% 1963-65 securities purchased in August 1954 were June 1 and December 1. It was therefore necessary to procure these securities or to enter into a paper transaction of their sale prior to December 1, as, otherwise, the non-obtaining of the income-tax deduction certificate from the Reserve Bank would have clearly indicated that the Insurance Company did not hold these

securities, Chokhani, therefore, entered into a genuine contract of purchase of 3% 1963-65 securities of the face value of Rs. 27,00,000 on behalf of Bhagwati Trading Company with Devkaran Nanjee, Brokers, Bombay, on November 3, 1954. He instructed the brokers to endorse the securities in favour of the Insurance Company, even though the securities were being sold to Bhagwati Trading Company. These securities so endorsed were received on November 24, 1954, and were converted into inscribed stock (Stock Certificate Exhibit P. 920) from the Reserve Bank of India on December 7,1954. The stock certificate does not mention the date on which the securities were purchased and therefore it existence could prevent the detection of the fact that these securities were not purchased in August 1954 when, according to the books of the Insurance Company, they were shown to have been purchased.

The Insurance Company did not ostensibly pay for the purchase of these shares but partially paid for it through another share-purchase transaction. In order to enable Bhagwati Trading Company to pay the purchase price, Chokhani paid Rs. 16,00,000 to it from the account of the Bharat Union Agencies with the Banks at Bombay, and Rs. 10,08,515-15-0 from the account of the Insurance Company with the Chartered Bank by a fictitious purchase of 2-1/2% 1961 securities of the face value of Rs. 11,00,000 on behalf of the Insurance Company. These 2-1/2% 1961 securities of the face value of Rs. 11,00,000 were purchased by Chokhani on November 16, 1954, by taking a step similar to those taken for the purchase of securities in August and September, 1954, already referred to.

Interest on the 2-3/4% Loan of 1960 of the face value of Rs. 18,00,000 was to fall due on January 15, 1955. Both on account of the necessity for obtaining the interest certificate and also on

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account of the expected check of securities by the auditors appointed for auditing the accounts of the Insurance Company for the year 1954, it became necessary to procure these securities or to sell them off. Chokhani purchased, on December 9, 1954, 2-3/4% 1960 securities of the face value of Rs. 18,00,000 on behalf of Bhagwati Trading Company. The purchase price was paid out of the funds of the Union Agencies and Bhagwati Trading Company. The securities were, however, got endorsed in the name of the Insurance Company. Chokhani got the securities sometimes about December 21, 1954, and, therefore, got them converted into stock certificates which were then sent to the head office at Delhi.

There still remained 3% 1959-61 securities of face value of Rs. 35,00,000 to be accounted for. They were purchased in September, 1954, as already mentioned, but had not been received up to the end of December. On December 27, 1954, Chokhani purchased 2-3/4% 1962 securities of the face value of Rs. 46,00,000, in two lots of Rs. 11,00,000 and Rs. 35,00,000 respectively, on behalf of the Insurance Company. He also entered into the usual cross-contract with the brokers for the sale of those securities on behalf of the Union Agencies. This was a fictitious transaction, as usual, and these securities were not received from the Union Agencies. On the same day, Chokhani entered into a contract for the sale of 3% 1959-61 securities of the face value of Rs. 35,00,000 on behalf of the Insurance Company and also entered into a cross-contract on behalf of the Union Agencies for the purchase of these securities from the same brokers. As these securities did not exist with the Insurance Company, these transactions were also paper transactions.

We need not give details of the passing of money from one concern to the other in connection with these transactions. For purposes of audit the 3% 1959-61 securities of the face value of

Rs.35,00,000 had been sold. New securities viz., 2-3/4% 1962 securities of the face value of Rs. 46,00,000 had been ostensibly purchased. The auditors could demand inspection of these newly purchased securities. Chokhani therefore entered into another purchase transaction. This time a genuine transaction for the purchase of 2-3/4% 1962 securities of the face value of Rs 46,00,000 was entered into on January 11, 1955. The purchase price was paid by the sale of 3% 1957 securities of the face value of Rs. 46,00,000 which the Insurance Company possessed. For this purpose, Chokhani withdrew these securities of the face value of Rs. 8,25,000 from the Chartered Bank, Bombay, and Rs. 37,75,000 worth of securities were sent to Bombay from Delhi. These securities were then converted into inscribed stock.

The Insurance Company was now supposed to have purchased 2-3/4% 1962 securities of the face value of Rs. 92,00,000 having purchased Rs. 46,00,000 worth of securities in December 1954 and Rs. 46,00,000 worth of securities in January 1955. It possessed securities worth Rs. 46,00,000 only and inscribed stock certificate with respect to that could serve the purpose of verifying the existence of the other set of Rs. 46,00,000 worth of securities. These transactions are sufficient to indicate the scheme followed by Chokhani in the purchase and sale of securities on behalf of the Insurance Company. It is clear that the transactions were not in the interests of the Insurance Company but were in the interests of the Union Agencies inasmuch as the funds were provided to it for meeting its losses. It is also clear that the system adopted of withdrawing the funds of the Insurance Company ostensibly for paying the purchase price of securities after the due date of payment of interest and selling the securities off, if not actually recouped from the funds of the Union Agencies or

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Bhagwati Trading Company prior to the next date of payment of interest, was not in the interests of the Insurance Company. When, however, the sale price could not be paid out of the funds of the Union Agencies or Bhagwati Trading Company, Chokhani, on behalf of the Insurance Company, entered into a fresh transaction of purchase of securities which were not actually received and thus showed repayment of the earlier funds, though out of the funds withdrawn from the same company (viz., the Insurance Company) ostensibly for paying the purchase price of newly purchased securities.

Turning to the evidence on record, the main statement on the basis of which, together with other circumstances, the Courts below have found that Dalmia had the necessary criminal intent as what Chokhani did was known to him and was under his instructions, is that of Raghunath Rai, Secretary-cum-Account of the Bharat Insurance Company. Mr Dingle Foot has contended firstly that Raghunath Rai was an accomplice of the alleged conspirators and, if not, he was a witness whose testimony should not, in the circumstances be believed without sufficient corroboration which does not exist. He has also contended that the Courts below fell into error in accepting the statements made by him which favoured the prosecution case without critically examining them, that they ignored his statements in favour of the accused for the reason that he was under obligation to Dalmia and ignored his statements inconsistent with his previous statement as he was not confronted with them in cross-examination.

An accomplice is a person who participates in the commission of the actual crime charged against an accused. He is to be a *particeps criminis*. There are two cases, however, in which a person has been held to be an accomplice even if he is not a *particeps criminis*. Receivers of stolen property

are taken to be accomplices of the thieves from whom they receive goods, on a trial for theft. Accomplices in previous similar offences committed by the accused on trial are deemed to be accomplices in the offence for which the accused is on trial, when evidence of the accused having committed crimes of identical type on other occasions be admissible to prove the system and intent of the accused in committing the offence charged : *Davies* v. *Director of Public Prosecutions* (1).

The contention that Raghunath Rai was an accomplice is mainly based on the facts that (i) Raghunath Rai did not produce the counterfoils of the cheques for the inspection of the auditors, though asked for by them, in spite of the fact that the counterfoils must have come to Delhi during the period of audit; (ii) the alleged scheme of the conspirators could not have been carried out without his help in signing blank cheques which were issued by Chokhani subsequently. The mere signing of the blank cheques is hardly an index of complicity when the bank account had to be operated both by Chokhani and Raghunath Rai, jointly. Raghunath Rai had to sign blank cheques in order to avoid delay in payments and possible occasional falling through of the transactions. No sinister intention can be imputed to Raghunath Rai on account of his signing blank cheques in the expectation that those cheques would be properly used by Chokhani. The counterfoils have not been produced and there is no evidence that they showed the real state of affairs, i. e., that the cheques were issued to Bhagwati Trading Company and not to the brokers from whom the securities were purchased.

It is not expected that the name of Bhagwati Trading Company would have been written on the counterfoils of the cheques when its existence and

(1) L. R. 1954 A. C. 378.

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the part it took in the transactions were to be kept secret from the head office. When counterfoils were sent for in August, 1955, they were not received from Bombay. Chokhani states that he did not get that letter.

Moreover, counterfoils reach the head office after a long time and there is no particular reason why Raghunath Rai should notice the counterfoils then. He does not state in his evidence that he used to look over the counterfoils when the cheque books came to him for further signatures.

We do not therefore agree that Raghunath Rai was an accomplice.

Even if it be considered that Raghunath Rai's evidence required corroboration as to the part played by Dalmia, the circumstances to which we would refer later in this judgment, afforded enough corroboration in that respect.

Raghunath Rai made a statement, Exhibit P. 9, before Annadhanam on September 20, 1955. He made certain statements in Court which were at variance with the statement made on that occasion. This variation was not taken into consideration in assessing the veracity of Raghunath Rai as he had not been cross-examined about it. The argument of Mr. Dingle Foot is that such variation, if taken into consideration, considerably weakens the evidence of Raghunath Rai. He has urged that no cross examination of Raghunath Rai was directed to the inconsistencies on any particular point in view of the general attack on his veracity through cross-examination with respect to certain matters. He has contended that in view of s. 155 of the Indian Evidence Act, any previous statement of a witness inconsistent with his statement in Court, if otherwise proved, could be used to impeach his credit and that therefore the Courts below were not right

in ignoring the inconsistencies in the statement of Raghunath Rai merely on the ground that they were not put to him in cross-examination. On the other hand, the learned Solicitor General contends that s. 155 of the Indian Evidence Act is controlled by s. 145 and that previous inconsistent statements not put to the witness could not be used for impeaching his credit. We do not consider it necessary to decide this point as we are of opinion that the inconsistent statements referred to are not of any significance in impeaching the credit of Raghunath Rai.

The specific inconsistent statements are : (i) 'I never of my own accord send securities to Bombay nor am I authorised to do so': In Court Raghunath Rai said that certain securities were sent by him to Bombay on his own accord because those securities were redeemable at Bombay and the maturity date was approaching. (ii) Before the Administrator, Raghunath Rai had stated: 'I cannot interfere in the matter as, under Board Resolution, Chokhani is authorised to deal with the securities. Chokhani always works under instructions from the Chairman.' In Court, however, he stated that there was no resolution of the Board of Directors authorising Chokhani to sell and purchase securities. The mis-statement by Raghunath Rai, in his statement P. 9 to the Investigator made on September 20, 1955, about Chokhani's being authorised by a Board resolution to deal with the securities, is not considered by Dalmia to be a false statement as he himself stated, in answer to question No. 21, that such a statement could possibly be made by Raghunath Rai in view of the Board of Directors considering at the meeting the question whether Chokhani be authorised to purchase and sell securities on behalf of the company in order to make profits. (iii) 'Roughly 1-3/4 crores of securities were sent to Bombay from here during the period from

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April 1955 to June 1955'. The period was wrong and was really from July to August 1955. Raghunath Rai admitted the error and said that he had stated to Annadhanam without reference to books. (iv) 'Securities are sent to Chokhani at Bombay through a representative of Dalmia'. The statement is not quite correct as securities were sent to Bombay by post also.

Raghunath Rai stated that on the receipt of the advice from Chokhani about the purchase or sale of securities, he used to go to Dalmia on the day following the receipt of the advice for confirmation of the contract of purchase or sale of securities and that after Dalmia's approval the vouchers about the purchase of those securities and the crediting of the amount of the sale price of those securities to the account of the Insurance Company with the Chartered Bank, as the case may be, used to be prepared.

Kashmiri Lal and Ram Das, who prepared the vouchers, describe the procedure followed by them on receipt of the advice but do not state anything about Raghunath Rai's seeking confirmation of the purchase transactions from Dalmia and therefore do not, as suggested for the appellants, in any way, contradict Raghunath Rai.

It is urged by Mr. Dingle Foot that it was somewhat unusual to put off the entries with respect to advices received by a day, that the entries must have been made on the day the advices were received and that in this manner the entries made by these clerks contradict Raghunath Rai. A witness cannot be contradicted by first supposing that a certain thing must have taken place in a manner not deposed to by any witness and then to find that that was not consistent with the statement made by that witness. Further, we are of opinion that there could be no object in making consequential entries

on receipt of the advice about the purchase of securities if the purchase transaction itself is not approved of and is consequently cancelled. The consequent entries were to be with respect to the investments of the Insurance Company and not with respect to infructuous transactions entered into by its agents.

It has also been urged that if Dalmia's confirmation was necessary, it was extraordinary that no written record of his confirming the purchase of securities was kept in the office. We see no point in this objection. If confirmation was necessary, the fact that various entries were made consequent on the receipt of advice is sufficient evidence of the transaction being confirmed by Dalmia, as, in the absence of confirmation, the transaction could not have been taken to be complete. Further, office notes stating that securities had been purchased or sold 'under instructions of the Chairman' used to be prepared for the meeting of the Board of Directors when the matter of confirming sale and purchase of securities went before it. The fact that office notes mentioned that the securities had been purchased under the instructions of the Chairman is the record of the alleged confirmation.

The proceedings of the meeting of the Board of Directors with respect to the confirmation of the purchase and sale of securities do not mention that that action was taken on the basis of the office notes. Minutes with respect to other matters do refer to the office notes. This does not, however, mean that office notes were not prepared. Confirmation of the purchase and sale of the shares was a formal matter for the Board.

All the office notes, except one, were signed by Raghunath Rai. The one not signed by him is Exhibit P. 793. It is signed by Chordia and is dated August 18,1954. This also mentions 'under instructions of the Chairman certain shares have been

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purchased'. Chordia was a relation of Dalmia and had no reason to write the expression 'Under instructions of the Chairman' falsely. Such a note cannot be taken to be a routine note when the power to purchase and sell securities vested in Chordia as Managing Director of the company. Clause (4) of article 13 of the Bye-laws empowered the Managing Director to transfer, buy and sell Government securities. When Chordia, the Managing Director, wrote in this office note that securities were purchased under the instructions of the Chairman, it can be taken to be a true statement of fact. It is true that he has not been examined as a witness to depose directly about his getting it from Dalmia that the purchase of securities referred to in that note was under his instructions. This does not matter as we have referred to this office note in connection with Raghunath Rai's statement that office notes used to be prepared after Dalmia's statement that the particular purchase of shares was under his instructions.

The statements made by Raghunath Rai which are said to go in favour of the accused may now be dealt with. Raghunath Rai was cross-examined with respect to certain letters he had sent to Chokhani. He stated, in his deposition on July 29, 1958, that Dalmia accepted his suggestion for writing to Chokhani to send him the distinctive numbers of the securities which had been purchased, but not received at the head office, and that when he reported non-compliance of Chokhani in communicating the distinctive numbers and suggested to Dalmia to ring up Chokhani to send the securities to the head office, Dalmia agreed. This took place in November and December 1954. Dalmia's approval of the suggestion does not go in his favour. He could not have refused the suggestion.

Raghunath Rai also stated that in Septembm or October 1954 there was a talk between hier,

K. L. Gupta and Dalmia about the low yield of interest on the investments of the Insurance Company and it was suggested that the money be invested in securities, shares and debentures. Dalmia then said that he had no faith in private shares and debentures but had faith in Government securities and added that he would ask Chokhani to invest the funds of the Insurance Company in the purchase and sale of Government securities. He, however, denied that Dalmia had said that the investment of funds would be in the discretion of Chokhani, and added that Chokhani was not authorised to purchase or sell securities on behalf of the Insurance Company unless he was authorised by the Chairman. The statement does not support Dalmia's authorising Chokhani to purchase and sell securities in his discretion.

Another statement of Raghunath Rai favourable to Dalmia is said to be that according to him he told the auditors on September 9, 1955, that the securities not then available were with Chokhani at Bombay from whom advices about their purchase had been received. Annadhanam stated that Raghunath Rai had told him that Dalmia would give the explanation of the securities not produced before the auditors. There is no reason to prefer Raghunath Rai's statement to that of Annadhanam. Annadhanam's statement in the letter Exhibit P. 2 about their being informed that in March, 1954, after the purchase, the securities were kept in Bombay in the custody of Chokhani refer to what they were told in the first week of January, 1955, and not to what Raghunath Rai told him on September 9, 1954.

Raghunath Rai stated that on one or two occasions he, instead of going to Dalmia, talked with him on telephone regarding the purchase and sale of securities by Chokhani and that Dalmia told him on telephone that he had instructed for the purchase

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and sale of securities and that he was confirming the purchases or sales. This does not really favour Dalmia as Raghunath Rai maintains that Dalmia did confirm the purchase or sale reported to him. It is immaterial whether that was done on telephone or on Raghunath Rai actually meeting him.

Questions put to the Administrator, Mr. Rao, in cross-examination, implied that Raghunath Rai was a reliable person and efforts to win him over failed. It was suggested to the Administrator that the reasons for the appointment of Sundara Rajan as the Administrator's Secretary was that he wanted to conceal certain matters from Raghunath Rai. His reply indicated different reasons for the appointment. Another suggestion put to him was that Raghunath Rai offered to retire, but he kept his offer pending because of this case. This suggestion too was denied.

It was brought out in the cross-examination of Raghunath Rai that he was in a position in which he could be influenced by the Administrator. Raghunath Rai was using the office car. Its use was stopped by the Administrator in January, 1956. He was not paid any conveyance allowance. In April, 1958, he made a representation to the Administrator for the payment of that allowance to him. The Administrator passed the necessary order in May, 1958, with retrospective effect from January 1956. The amount of conveyance allowance was Rs. 75 per mensem. Raghunath Rai could not give any satisfactory explanation as to why he remained silent with regard to his claim for conveyance allowance for a period of over two years, but denied that he was given the allowance with retrospective effect in order to win him over to the prosecution.

Raghunath Rai applied for extension of service in the end of 1956 or in the beginning of

1957 and, in accordance with the resolution passed on August 17, 1954, by the Board of Directors, his service was extended up to 1961. The Administrator forwarded the application to the higher authorities. This matter had not been decided by July 29, 1958.

The amount of his gratuity and provident fund in the custody of the Insurance Company amounted to Rs. 35,000.

We do not think that the Administrator had any reason to influence Raghunath Rai's statement and acted improperly in sanctioning car allowance to him retrospectively and would have so acted with respect to Raghunath Rai's gratuity if Raghunath Rai had not made statement's supporting the prosecution case.

Raghunath Rai stated on July 29, 1958, that in July, 1955, when he informed Dalmia that the bulk of the securities were at Bombay and the rest were at Delhi, Dalmia asked him to write to Chokhani to deposit all the securities in Bombay in the Chartered Bank. At this he told Dalmia that if the sale and purchase of securities was to be carried on as hithertofore, there was no use depositing them in the Bank and thus pay frequent heavy withdrawal charges, and suggested that the securities could be deposited in the Bank if the sale and purchase of them had to be stopped altogether and that Dalmia then said that the securities should be sent for to Delhi in the middle of December, 1955 for inspection by the auditors.

Raghunath Rai was re-examined on July 30 and stated that the aforesaid conversation took place on July 14, 1955, and added that he had, in the same context, a further talk with Dalmia in August, 1955. The Public Prosecutor, with the permission of the Court, then questioned him

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about the circumstances in which he had to go a second time to Dalmia and talk about the matter. His reply was that he had the second talk as the securities purchased in May, 1955, and those purchased in July and August, 1955, had not been received at the head office. He asked Dalmia to direct Chokhani to deposit all the securities in the Chartered Bank or to send them to Head Office. Dalmia then said that the sale and purchase of securities had to be carried on for some time and therefore the question of depositing those securities in the Bank or sending them to the head office did not arise for the time being and that the securities should be sent for to the head office in December, 1955.

Raghunath Rai thus made a significant change in his statement. On July, 29, 1958, he opposed the direction of Dalmia for writing to Chokhani to deposit the securities in the Bank as that would entail heavy withdrawal charges in case the sale and purchase of securities were not to be stopped while, according to his statement the next day, he himself suggested to Dalmia in August, 1955, that Chokhani be asked to deposit all the securities in the Bank or to send them to the head office. He denied the suggestion that he made this change in his statement under pressure of the Police.

The cross-examination was really directed to show that he had been approached by the police between the close of his examination on July 29 and his further examination on July 30, 1958. Raghunath Rai admitted in court that after giving evidence he went to the room allotted in the Court building to the Special Police Establishment and that the Investigating Officer and the Secretary to the Administrator of the Insurance Company were there. He went there in order to take certain papers which he had kept there. He, however, had not brought any papers on July 30 as, accord-

ing to him, his main cross-examination had been over. He however denied that he had been dictated notes by the police in order to answer questions in cross-examination or that he remained with the police till 9 p. m. or that the Secretary to the Administrator held out a threat about the forfeiture of his gratuity in case he did not make a statement favourable to the prosecution.

We see no reason for the police to bring pressure on Raghunath Rai to introduce falsely the conversation in August. Between July 14, 1955, and middle of August, 1955, the head office learnt of the purchase of securities of the face value of Rs. 74,00,000 and again, on or about August 26, of the purchase of securities of the face value of Rs. 40,00,000. A further conversation in August is therefore most likely as deposed to. The main fact remains that Dalmia said that the securities be sent for in December, 1955, which implies his knowledge of the transactions in question.

We are of opinion that the discrepancies or contradictions pointed out in Raghunath Rai's statement are not such as to discredit him and make him an unreliable witness and that he is not shown to be under the influence of the prosecution. Further, his various statements connecting Dalmia with the crime, find corroboration from other evidence.

Letter Exhibit P. 1351 dated September 4, 1954, was sent to the Imperial Bank of India, Delhi Branch, under the signature of Dalmia as Chairman. The letter directed the bank to deliver certain securities to the bearer. Dalmia admits his signatures on this document and also on the letter Exhibit P. 1352 acknowledging the receipt of the securities sent for, thus corroborating Raghunath Rai's statement that the securities were withdrawn under his instructions

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Letters Exhibit D. 3, dated March 16, 1955, and P. 892 dated August 5, 1955, from Raghunath Rai to Chokhani, mentioned that the stock certificates were being sent under the instructions of the Chairman. They corroborate Raghunath Rai's statements in Court of the despatch of these stock certificates under Dalmia's instructions. He had no reason to use this expression if he was sending them on his own.

It is true that the date on which the Chairman gave the instruction is not proved, but it stands to reason that the stock certificates must have been despatched soon after the receipt of the instruction from the Chairman. It cannot be presumed that in such transactions there could be such delay as would make statement in these letters not corroborative evidence under s. 157, of the Evidence Act which provides that previous statements made at or about the time a fact took place can be used for corroborating the statement in Court.

Chokhani's statement that he did not mention the name of Bhagwati Trading Company in his letters to the head office as he did not want Dalmia to know about the dealings with Bhagwati Trading Company, implies that in the ordinary course of business the information conveyed in those letters would be communicated to Dalmia and thus tends to support Raghunath Rai's statement that he used to visit Dalmia on receipt of the statement of account and inform him about the purchase or sale of the securities.

Chokhani had been inconsistent about Raghunath Rai's later knowledge of the existence of Bhagwati Trading Company. In answer to question No. 66, on November 13, 1958, he stated :

> "I did not contradict the statement made in Ex. P. 813 that cheque No. B564809

dated 17-11-54 had been issued in favour of Narain Das and Sons although that cheque had in fact been issued in favour of Bhagwati Trading Company and not in favour of Narain Das and Sons because those at the Head Office did not know anything about Bhagwati Trading Company".

In answer to question No. 149, on November 14, 1958, he stated:

> "I did not mention the name of Bhagwati Trading Company in my letters addressed to the Head Office of the Bharat Insurance Company as the party with whom there were cross contracts because Raghunath Rai would not have known as to what was Bhagwati Trading Company. I also did not mention the name of Bhagwati Trading Company in my letters to the Head Office of the Bharat Insurance Company because I did not want Shri Dalmia to know that I was having dealings with Bhagwati Trading Company. I also want to add that Raghunath Rai must have known that the cross-contracts were with Bhagwati Trading Company because the name of Bhagwati Trading Company was mentioned as the payee on the counterfoils of the cheques issued in favour of Bhagwati Trading Company."

Chokhani seems to have attempted to undo the effect of his statement on November 13, but being of divided mind, made inconsistent statements even on November 14, 1958. He was in difficult position. He attempted to show that Dalmia did not know about Bhagwati Trading Company and also to show that Raghunath Rai had reasons to know about it and was therefore in the position of an accomplice, a stand which is also taken by Dalmia.

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We may now deal first with the case of Chokhani, appellant. Chokhani has admitted his entering into the various transactions of purchase and sale and to have set up Bhagwati Trading Company for convenience to carry out the scheme of diverting the funds of the Insurance Company to the Union Agencies by way of temporary loan. His main plea is that he had no attention to cause loss to the Insurance Company and did not know that the way he arranged funds for the Union Agencies from the Insurance Company was against law. He contends that he had no dishonest intentions and therefore did not commit any of the offences he had been charged with, and convicted of.

Learned counsel for Chokhani has urged two points in addition to some of the points of law urged by learned counsel for Dalmia. He urged that the transactions entered into by Chokhani were ordinary genuine commercial transactions and that there was no evidence of Chokhani's acting dishonestly in entering into those transactions. It is further said that the High Court recorded no finding on the latter point though it was necessary to record such a finding, even though this point was not seriously urged.

In support of the contention that the purchase and sale transactions were genuine commercial transactions, it is urged that to meet the losses of the Union Agencies Chokhani was in a position to sell the shares held by it or could have raised the money on its credit. He did not sell the shares as they were valuable and as their sale would have affected the credit of the Union Agencies. Chokhani had been instructed in September, 1954, that the yield from the investment of the Insurance Company was not good and that the funds of the Insurance Company be invested in securities. Such instructions are said to have been given when he was authorised by Dalmia to purchase and sell securities

on behalf of the Insurance Company. It is suggested that these instructions were given in 1953, and not in 1954 when Dalmia was going abroad. In view of this authority, Chokhani decided on a course of action by which he could invest the insurance money in securities and also help the Union Agencies. It is submitted that it was not necessary to mention Bhagwati Trading Company to the head office as the Insurance Company was going to suffer no loss and was simply concerned in knowing of the sale and purchase transactions. Chokhani's payment of the purchase price in anticipation of the delivery of the securities, was *bona fide*.

We have already expressed the opinion that the transaction in connection with the investment of the funds of the Insurance Company were not *bonafide* purchase and sale transactions. They were transactions with a purpose. They were motivated in the interests of the Union Agencies and not in the interests of the Insurance Company.

The mere fact that on account of the non-delivery of securities within a reasonable time of the payment of the purchase money made the brokers or Bhagwati Trading Company or both of them liable to an action, does not change the nature of the transactions. That liability can co-exist with the criminal liability of Chokhani if the transactions were such which could amount to his committing breach of trust. In fact, the offence of breach of trust is not with respect to his entering into the sale and purchase transactions. It is really on the basis of his paying the money out of the Insurance Company's funds to the Union Agencies through Bhagwati Trading Company, in contravention of the manner in which he was to deal with that money. These purchase and sale transactions were just a device for drawing on those funds.

We do not believe that Chokhani really intended to purchase the securities though he did purchase

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some, in certain circumstances, and that the non-delivery of the securities was not a case of just his slightly postponing the delivery of the securities. No reason is given why such a concession should have been made to the seller of the securities and the period during which such purchased securities remained undelivered is much longer than what can be said to be a reasonable period during which purchased securities for ready delivery should be delivered. The fact, if true, that the Insurance Company suffered no monetary loss on account of the purchase and sale transactions and the passing of its money to the Union Agencies, does not suffice to make the transaction an honest one. The gain which the Union Agencies made out of the money it got from the Insurance Company was wrongful gain. It was not entitled to profit by that money. One is said to act dishonestly when he does any thing with the intention of causing wrongful gain to one person or wrongful loss to another. Wrongful gain means gain by unlawful means of property to which the person gaining is not legally entitled and wrongful loss is loss by unlawful means of property to which the person using it is legally entitled.

It is urged that Chokhani's keeping Bhagwati Trading Company secret from Delhi was not the result of a guilty conscience, but could be due to his nervousness or fear. We do not agree with this suggestion. He had nothing to fear when he was acting honestly and, according to him, when he was doing nothing wrong.

It is further submitted that what Chokhani did amounted simply to the mixing of the funds of the Insurance Company and the Union Agencies. We do not think that this would be the correct interpretation of what Chokhani did. It was not a case of mixing of funds but was a case of making

over the funds of the Insurance Company to the Union Agencies.

The fact that the Administrator did not cancel any contract entered into on behalf of the Insurance Company under the powers given to him by s. 52(c) of the Insurance Act, does not mean that every such contract was in the interest of the Insurance Company. The Administrator has stated that he did not know the legal position as to whether those contracts stood or not.

Of the points of law urged for Chokhani, we have already dealt with those relating to the jurisdiction of the Delhi Court to try the various offences, to the content of the words 'property', 'dominion' and 'agency' in s. 409, I. P. C. The only other points raised are that the offence under s. 477 A could not be said to be committed in pursuance of the conspiracy and that it was not a case of one conspiracy but of several conspiracies.

The charge under s. 477 A, I. P. C. is based on the letters written by Chokhani from Bombay to Delhi intimating his entering into the contracts of purchase of securities and indicating that cheques had been issued in payment to the brokers. It is true that these letters did not specifically state that the cheques had been issued to the brokers, but that is the implication when the latters refer to the contracts and the statements sent along with them and which relate simply to the transactions between the Insurance Company and the brokers and in no way indicate the cross-contracts between the brokers and Bhagwati Trading Company. It is further said that the payment to Bhagwati Trading Company was as an agent of the brokers. There is no evidence that the brokers appointed Bhagwati Trading Company as their agent for the purpose. The evidence is that on Chokhani's representation that the Insurance Company would

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pay to Bhagwati Trading Company andget the securities from Bhagwati Trading Company that the brokers neither got the price nor delivered the securities.

It is also contended that Chokhani was not a 'servant' of the Insurance Company and therefore does not come within s. 477 A. I. P. C. which makes certain conduct of a clerk, officer or servent an offence Chokhani was a servant of the Insurance Company as he was its Agent and received payment for doing work as an agent. His being a full-time servant of the Union Agencies does not mean that he could not be a servant of any other company, or other employer.

We do not agree with the contention that it was a case of several conspiracies, each transaction to meet the losses, as they occurred, giving rise to an independent conspiracy. The conspiracy was entered into in the beginning of August, 1954, when such circumstance arose that funds had to provided to the Union Agencies to meet its losses. The conspiracy must have been to continue up to such time when it be possible to anticipate that such a situation would no more arise. Similar steps to meet the losses were taken whenever the occasion arose. The identity of purpose and method is to be found in all the transactions and they must be held to have taken place in pursuance of the original conspiracy.

We next come to the case of Vishnu Prasad, appellant. He was the sole proprietor of Bhagwati Trading Company. His main defence is that he was ignorant of the various transactions entered into by Chokhani on behalf of Bhagwati Trading Company and that it was Chokhani who kept the books of accounts and entered into those transactions. The courts below have found that he knew of transactions and the nature of the conspiracy.

We agree with this opinion. There is sufficient material on record to establish his knowledge and part in the conspiracy.

Bhagwati Trading Company came into existence just when the Union Agencies suffered losses and was not in a position to pay them and, consequently, there arose the necessity for Dalmia and Chokhani to devise means to raise funds for meeting those losses. Vishnu Prasad opened the banking accounts in two banks at Bombay on August 9 and August 11, 1954, depositing the two sums of Rs. 1,100 each in each of the two banks. He states that he got this money from Chokhani. The money was, however withdrawn after a short time and paid back to Chokhani and no further contribution to the funds of the Bhagwati Trading Company was made on his behalf. The Company functioned mainly on the amounts received from the Insurance Company. Vishnu Prasad, therefore, cannot be said to be quite innocent of the starting of the company and the nature of its business.

He started, in answer to question No. 24:

> "I started business in the name of Bhagwati Trading Company in 1953, or beginning of 1954. I however did no business in the name of that company. G. L. Chokhani stated that I should do business for the purchase or sale of securities."

and in answer to question No. 26 he stated that he had no knowledge about Chokhani's entering into contracts on behalf of the Bharat Insurance Company for the purchase of securities and his entering into crose-contracts with the same firm of brokers for the sale of those securities on behalf of Bhagwati Trading Company but admitted that he knew that Chokhani was doing-business for the purchase and sale of securities on behalf of Bhagwati Trading Company. He expressed ignorance

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about similar future contracts for purchase of securities on behalf of the Insurance Company and cross-contracts for the sale of those securities on behalf of Bhagwati Trading Company.

Vishnu Prasad, however, made a statement at the close of the day when he had made the above statement, and said:

> "In answer to question No. 24 I want to state that I did not start business of Bhagwati Trading Company in 1953 or the beginning of 1954 but only intended to start that business."

The latter statement deserves no acceptance and is a clear indication that the implications of his earlier statement worked on his mind and he attempted to indicate that he was not even responsible in any way for the starting of the business of Bhagwati Trading Company. Bhagwati Trading Company did come into existence and ostensibly did business. The latter statement therefore cannot be true.

Vishnu Prasad further knew, as his answer to question No. 157 indicates, that Chokhani did shares speculation business at Bombay. He, however, stated that he did not know on behalf of which company he did that business.

What Vishnu Prasad actually did in connection with the various transactions which helped in the diversion of the funds of the Insurance Company to the Union Agencies has to be looked at in this background. He cashed a number of cheques issued on behalf of the Insurance Company and made over that money to Chokhani, who passed it on the Union Agencies. He issued cheques on behalf of Bhagwati Trading Company in favour of Bharat Union Agencies after the amounts of the cheques of the Insurance Company in favour of Bhagwati Trading Company had been deposited in the Bank. Some of

these cheques issued in favour of Union Agencies were filled in by Vishnu Prasad himself and therefore he must have known that he was passing on the money to the Union Agencies. In fact, some of the cheques issued on behalf of Bhagwati Trading Company in favour of the Union Agencies were deposited in the bank by Vishnu Prasad himself.

It is therefore not possible to believe that Vishnu Prasad did not know that the amounts which his company viz., Bhagwati Trading Company, received from the Insurance Company must have purported to be on account of securities sold to the Insurance Company, as that was the business which Bhagwati Trading Company professed to do and, according to him, he knew to be its business. He knew that most of this amount was passed on to the Union Agencies. Both these facts must have put him on enquiry even if he did not initially know of the nature of the business which brought in the money to, and took out the money from, Bhagwati Trading Company. He is expected to knew that the Insurance Company was not likely to purchase securities so frequently. If he had made enquiries, he would have learnt about the nature of receipts and payments and in fact we are inclined to the view that he must have known of their nature and that it is not reasonable that he would be completely in the dark.

The business of Bhagwati Trading Company is said to have been started as Vishnu Prasad was not taking interest in the other business. This should indicate that he must have evinced interest in the activities of Bhagwati Trading Company which continued for over a year and which made him receive and dispose of lakhs of Rupees. Surely, it is not expected that he would have made no effort to know what is required to be know by one carring on business for the purchase and sale of securities, and any attempt to have known this would have

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necessarily led him to know that securities were being purchased on behalf of the Insurance Company and were not delivered to it and that Bhagwati Trading Company purchased no securities from the Union Agencies and that any payment by it to the latter was for something which Bhagwati Trading Company was not liable to pay. It follows that he must have known that money was being received from the Insurance Company for nothing which was due to Bhagwati Trading Company from that company and that most of that money was being paid to the Union Agencies for payment of which Bhagwati Trading Company had no liability and that the net result of the transactions of receipt of money from the Insurance Company and payment of it to the Union Agencies was that Bhagwati Trading Company was acting to help the diversion of funds from the Insurance Company to the Union Agencies.

We therefore hold that Vishnu Prasad has been rightly found to be in the conspiracy.

We may now deal with the case of Dalmia, appellant. The fact that the funds of the Bharat Insurance Company were diverted to Union Agencies by the transactions proved by the prosecution, is not challenged by Dalmia. His main contention is that he did not know what Chokhani had been doing in connection with the raising of funds for meeting the losses of the Union Agencies. There is, however, ample evidence to indicate that Dalmia knew of the scheme of the transactions and was a party to the scheme inasmuch as the transactions were carried through under his instructions and approval:

The facts which have a bearing on this matter are:

(1) Dalmia had the clearest motive to devise means for meeting the losses of the Union Agencies.

(2) Dalmia actually looked after the share business of the Union Agencies at Calcutta and Delhi. He had knowledge of the losses of the Union Agencies.

(3) The frequency of telephonic calls between him and Chokhani during the period when the losses took place and steps were taken to meet them, especially during the early stages in August and September, 1954, when the scheme was being put into operation, and in July and August, 1955, when there had been heavy and recurring losses.

(4) Dalmia's informing the Imperial Bank, Delhi, on September 4, 1954, about his powers to deal with securities and actually withdrawing securities that day, which were shortly after sold at Bombay and whose proceeds were utilised for meeting the losses.

(5) The gradually increasing retention of securities in the office of the Insurance Company and consequently the gradually reduced deposit of securities in the Banks.

(6) The transfer of securities held by the Insurance Company from Delhi to Bombay when funds were low there to meet the losses.

(7) The purchase and sale of securities in the relevant period in order to meet the losses were under his instructions.

(8) A larger use of converting securities into inscribed stock certificates which was used for concealing the disclosure of the interval between the date of purchase of the securities which were then not received, and the date when those securities were recouped later.

(9) Dalmia's annoyance and resentment on September 9, 1955, when the auditors made a surprise inspection of the office of the insurance company and wanted to see the securities.

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(10) His conduct on September 15, 1955.

(11) His not going to meet Mr. Kaul on September 16, 1955, and instead, sending his relatives to state what was not the full and correct statement of facts which, according to his own statements, were known to him by then.

(12) His confession P. 10 together with the statement Exhibit p. 11 and the statement made to Annadhanam that he carried on his speculative business in shares in the name of the Union Agencies.

One of the main factors urged in support of the contention that Dalmia was in the conspiracy is that the entire scheme of conspiracy was entered into for the sole benefit of Dalmia. It is not reasonably probable that such a conspiracy would come into existence without the knowledge or consent of Dalmia. The conspiracy charge framed against Dalmia mentioned the object of the conspiracy as 'meeting losses, suffered by you, R. Dalmia, in forward transactions, of speculation in shares, which transactions were carried on in the name of the Bharat Union Agencies Limited...' and the charge under s. 409 I. P. C. referred to the dishonest utilisation of the funds of the Insurance Company.

This matter has been considered from several aspects. The first is that Dalmia is said to have owned the entire shares issued by the Union Agencies, or at least to have owned a substantial part of them and was in a position to control the other shareholders. To appreciate this aspect, it is necessary to give an account of the share-holding in this company. The Union Agencies was incorporated at Bombay on April 1, 1948, as a private limited company, with its registered office at Bombay. It also had an office at 10, Daryaganj, Delhi, where the head office of the Bharat Insurance Company was. Its authorised capital was Rs. 5,00,000. The total number of shares issued in 1949 was 2,000. Out of these

Dalmia held 1,200 shares, Dalmia Cement & Paper Marketing Company Ltd. (hereinafter called the Marketing Company) 600 shares, Shriyans Prasad Jain, brother of S. P. Jain, 100 shares and Jagat Prasad Jain, the balance of 100 shares. The same position of share-holding continued in 1950. In 1951, Dalmia continued to hold 1,200 shares, but the other 800 shares were held by Govan Brothers. The position continued in 1952 as well and, in the first half of 1953, Dalmia increased the number of his shares to 1,800 and Govan Brothers increased theirs to 1,200 and the total shares issued thus stood at 3,000. This position continued up to September 21, 1954.

On September 22, 1954, 2,000 shares were further issued to S. N. Dudani, a nominee of Asia Udyog. The total shares on that date stood at 5,000 of which Dalmia held 1,800, Govan Brothers 1,200, and Dudani 2,000. On October 4, 1954, R.P. Gurha and J. S. Mittal each got 100 shares from Govan Brothers with the result that thereafter the position of share-holding was: Dalmia 1,800; Govan Brothers 1000; Dudani 2,000; Gurha 100; and Mittal 100, out of the total number of issued shares of 5000.

It is said that Dalmia transferred his 1,800 shares to one L. R. Sharma on October 30, 1954. Sharma's holding 1,800 shares was mentioned in the return, Exhibit P. 3122 filed by the Union Agencies as regards share capital and shares as on December 31, 1955, in the office of the Register of Companies in January 1956 with respect to the year 1955. The return showed that the transfer had taken place on January 31, 1955. It would appear that the alleged sale of shares to Sharma in October 1954 was not mentioned in a similar return which must have been submitted to the Registrar of Companies in January, 1955, and that therefore its transfer was shown on January 31, 1955, probably

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a date subsequent to the submission of the relevant return for the year 1954.

A brief account of the various share-holders may be given. Dalmia was a Director of Govan Brothers Ltd., and was succeeded, on his resignation, by O. P. Dhawan, who was an Accountant in the Delhi Office of the Union Agencies. He was also an employee of another company named Asia Udyog Ltd. Another Director of Govan Brothers Ltd. was D. A. Patil, Income-tax Adviser in the concerns of Dalmia. The share scrips in the Marketing Company standing in the name of Govan Brothers Ltd. and three blank share transfer forms signed by S. N. Dudani as Secretary of Govan Brother Ltd., in the column entitled 'seller' were recovered from Dalmia's house on search on November 25, 1955. Dudani was the personal accountant of Dalmia and Manager of the Delhi Office of Bharat Union Agencies. The inference drawn by the Courts below from these circumstances is that Govan Brothers Ltd. was the concern of Dalmia, and this is reasonable. No Satisfactory explanation is given why the shares standing in the name of Govan Brothers Ltd. and the blank transfer forms should be found in Dalmia's residence.

Dudani was the personal accountant of Dalmia and Manager of the Delhi Office of the Union Agencies, and was also Secretary of Asia Udyog Ltd. Asia Udyog appears to be a sister concern of the Union Agencies. It was previously known as Dalmia Jain Aviation Ltd. It installed a telephone at one of Dalmia's residences in January, 1953. Its offices were in the same room in which the offices of the Union Agencies were. Dhawan, who succeeded Dalmia as Director of Govan Brothers Ltd., was an employee of Asia Udyog. Gurha was the Accountant of Asia Udyog, in addition to being Director of the Union Agencies. He had powers over the staff of both the companies. J. S. Mittal was Director of

Union Agencies and held 100 shares in the Union Agencies as nominee of Govan Brothers Ltd., from October 4, 1954, and 1,000 shares as nominee of Crosswords Ltd., from some time about January 31, 1955. L. N. Pathak, R. B. Jain and G. L. Dalmia, were authorised to operate on the account of both the Union Agencies, Calcutta, and Asia Udyog Ltd., with the United Bank of India, Calcutta.

The issue and transfer of shares of the Union Agencies in September and October, 1954, seem to be in pursuance of an attempt to meet a contention, as at present urged for the State, that Dalmia was the largest shareholder in it. The same idea seemed to have led to the transfer of shares to Sharma by Dalmia. The verbal assertion of the sale having taken place in October, 1954, is not supported by the entry in Exhibit P. 3122 and what may be taken to be the entries in a similar return for the year 1954. This can go to support the allegation that Dalmia knew about the shady transactions which were in progress from early August, 1954.

The learned Sessions Judge relied on the following circumstances for his conclusion that Dalmia was synonymous with Bharat Union Agencies.

> "1. The speculation business of Dalmia Cement and Paper Marketing Co. Ltd., the paid up capital of which nearly all belonged to Dalmia was on the liquidation of that company taken over by Bharat Union Agencies and more or less the same persons conducted the business of Bharat Union Agencies who were previously looking after Dalmia Cement & Paper Marketing Company.
>
> 2. Bharat Union Agencies was known and taken to be the concern of Dalmia by its then Accountant Dhawan and by the brokers with whom it had dealings.

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3. Chokhani, who held power of attorney on behalf of Dalmia and Bharat Union Agencies, told the brokers at the time he gave business of Bharat Union Agencies to them that it was the business of Dalmia.

4. The salaries of personal and domestic employees of Dalmia were paid by Bharat Union Agencies and those payments were debited to the Salaries Account of the company. The personal employees of Dalmia were thus treated as the employees of Bharat Union Agencies.

5. The business done in the name of Dalmia with Jagdish Jagmohan Kapadia was treated as the business of Bharat Union Agencies.

6. The funds of Bharat Union Agencies were used to discharge an obligation personally undertaken by Dalmia. The price of the shares purchased in the process in the name of Dalmia was paid out of the funds of Bharat Union Agencies and the purchase of those shares was treated in the books of Bharat Union Agencies as part of its investment.

7. When sister-in-law of Dalmia wanted money it was lent to her out of the funds of Bharat Union Agencies and in the books of that company no interest was charged from her".

It has been strenuously urged by Mr. Dingle Foot that what certain persons considered to be the nature of the Union Agencies or what Chokhani told them could not be evidence against Dalmia with respect to the question whether he could be said to be identical with the Union Agencies. We need not consider this legal objection as it is not very necessary to rely on these considerations for

the purpose of the finding on this point. It may be said, however, that *prima facie* there seems to be no legal bar to the admissibility of statements that Chokhani told certain persons that Union Agencies was the business of Dalmia. He had authority to represent Dalmia and Union Agencies on the basis of the power of attorney held by him from both. His statement would thus appear to be the statement of their 'agent' in the course of the business. We have considered the reasons given for the other findings by the learned Sessions Judge and accepted by the High Court and are of opinion that the findings are correct and that they can lead to no other conclusion than that no distinction existed between Dalmia and the Union Agencies and that whenever it suited Dalmia or the interests of the Union Agencies such transactions of one could be changed to those on behalf of the other. We may, however, refer to one matter.

Dalmia admits having purchased shares of Dalmia Jain Airways of the face value of Rs.6,00,000/- from Anis Haji Ali Mohammad, on behalf of the Union Agencies, in his own name, though the real purchaser was the Union Agencies and that he did so as the seller and his solicitor did not agree to sell the shares in the name of the latter. The explanation does not appear to be satisfactory. The seller had no interest in whose name the sale took place so long as he gets the money for the shares he was selling.

Mr. Dingle Foot has urged that these various considerations may indicate strong association of Dalmia with the Union Agencies but are not sufficient to establish his complete identity with it, as is necessary to establish in view of the charges framed. Dalmia's identity with Union Agencies or having great interest in it is really a matter providing motive for Dalmia's going to the length of entering into a conspiracy to raise funds for meeting the

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losses of the Union Agencies by diverting the funds of the Insurance Company and which would amount to committing criminal breach of trust.

Dalmia admits having given instructions about the business of the Union Agencies in 1954 when he was not a Director of that company, and in 1955 when he was not even a shareholder.

Dalmia's own statement to Annadhanam on September 20, 1955, goes to support the conclusion in this respect. He stated to him then that he had lost the moneys in speculation which he did through his private companies and that most of those transactions were through the Union Agencies.

Further, the charge said that he committed criminal breach of trust of the funds of the Insurance Company by wilfully suffering Chokhani to dishonestly misappropriate them and dishonestly use them or dispose of them in violation of the directions of law and the implied contract existing between Dalmia and the Insurance Company prescribing the mode in which such trust was to be discharged. It was in describing the manner of the alleged dishonest misappropriation or the use or disposal of the said funds in violation of the legal and contractual directions that the charge under s. 409 I.P.C. described the manner to consist of withdrawing the funds from the banks by cheques in favour of Bhagwati Trading Company and by the utilisation of those funds for meeting losses suffered by Dalmia in forward transactions in shares carried on in the name of Bharat Union Agencies, and for other purposes not connected with the affairs of the Insurance Company. Even in this description of the manner, the emphasis ought to be placed on the expression 'for meeting losses suffered by Dalmia in forward transactions in shares carried on in the name of the Bharat Union Agencies and for other purposes not connected with

the affairs of the said Bharat Insurance Company and not on the alleged losses suffered by Dalmia personally. We are therefore of opinion that firstly the evidence is adequate to establish that Dalmia and the Union Agencies can be said to be interchangeable and, secondly, that even if that is not possible to say, Dalmia had sufficient motive, on account of his intimate relations with the Union Agencies, for committing breach of trust, and thirdly, that the second finding does not in any way adversely affect the establishment of the offence under s. 409 I. P. C. against Dalmia even though the charge described the utilisation of the money in a somewhat different manner.

The entire scheme of the transactions must start at the instance of the person or persons who were likely to suffer in case the losses of the Union Agencies were not paid at the proper time. There is no doubt that in the first instance it would be the Union Agencies as a company which would suffer in its credit and its activities. We have found that Dalmia was so intimately connected with this company as could make him a sort of a sole proprietor of the company. He was to lose immensely in case the credit of the Union Agencies suffered, as it was commonly believed to be his concern and he had connections and control over a number of business concerns and had a high stake in the business world. His prestige and credit were bound to suffer severely as a result of the Union Agencies losing credit in the market. There is evidence on record that if the losses are not promptly paid, the defaulter would suffer in credit and may not be able to persuade the brokers to enter into contracts with him.

It is suggested for Dalmia that Chokhani had a greater interest in seeing that Union Agencies does not suffer in credit. We do not agree. If the Union Agencies failed on account of its losing credit in the market on its failure to meet the losses, Chokhani

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may stand to lose his service with the Union Agencies. That would have meant the loss of a few hundred rupees a month. In fact, he need not have suffered any loss. He could have been employed by Dalmia who had great confidence in him and whom he had been serving faithfully for a long time. Chokhani, as agent of Dalmia, had certainly credit in the market. There is evidence of his good reputation, but much of it must have been the result of his association with Dalmia and his concerns. He really enjoyed reflected glory. He had no personal interest in the matter as Dalmia had. We therefore do not consider this suggestion to be sound and are of opinion that Dalmia was the only person who had to devise means to meet the losses of the Union Agencies.

Further, Dalmia admits that he used to give instructions with regard to the speculation-in-shares business of the Union Agencies at Calcutta and Delhi during 1954 and 1955, and stated, in answer to question No. 210 with respect to the evidence that Delhi Office of the Union Agencies used to supply funds for meeting the losses suffered by it in the speculation business at Calcutta and Delhi:

> "It is correct that as the result of shares speculation business at Calcutta and Delhi Bharat Union Agencies suffered losses in the final analysis. I was once told by R. P. Mittal on telephone from Calcutta that G.L. Chokhani had informed him that the Bombay Office would arrange for funds for the losses suffered by the Calcutta Office of the Bharat Union Agencies. It was within my knowledge that if the Bombay Office of the Bharat Union Agencies was not in a position to supply full funds for meeting the losses at Calcutta the Delhi Office of the Company would supply those funds."

And, in answer to question No. 211 which referred

to the evidence about the Delhi Office of the Union Agencies being short of liquid funds from August, 1954, onwards and in 1955, to meet the losses, he said :

> "It was within my knowledge that Bharat Union Agencies was holding very large number of shares. But I did not know the name of the Companies of which the shares were held by the Bharat Union Agencies and the quantum of those shares."

Dalmia also admitted his knowledge that Chokhani had entered into contract for the forward sale of Tata Shares at Bombay on behalf of the Union Agencies during 1954 and 1955 and that the Union Agencies suffered losses on this business, but stated that he did not know the extent or details of the losses. Dalmia must be expected not only to know the losses which the Union Agencies suffered, but also their extent. He is also expected to devise or at least know the ways in which those losses would be met. A mere vague knowledge, as stated, about the Union Agencies possessing a number of shares could not have been sufficient satisfaction about the losses being successfully met. It is to be noted that he did not deny that the Delhi Office was short of funds and that it used to supply funds to meet the losses.

Further, if Dalmia's statement about Mittal's communication to him be correct, it would appear that when the Bombay Office of the Union Agencies was not in a position to meet the losses, Chokhani would not think of arranging, on his own, funds to meet the losses, but would first approach the Delhi Office of the Union Agencies. The Delhi Office, then, if unable to meet the losses, would necessarily obtain instructions from Dalmia. It can therefore be legitimately concluded that Dalmia alone, or in consultation with Chokhani, devised the scheme of

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the transactions which led to the diversion of the funds of the Insurance Company to the Union Agencies and carried it out with the help of the other appellants.

It has been contended both for Chokhani and for Dalmia that funds could have been found to meet the losses of the Union Agencies by means other than the diversion of the Insurance Company's funds. We need not discuss whether the shares held by the Union Agencies at the time could be sold to raise the funds or whether on the mere credit of Dalmia funds could be raised in no time. These courses were not adopted. The selling of the shares which the Union Agencies possessed, might itself affect its credit, and that no business concern desires, especially a concern dealing in share-speculation business.

Dalmia had been in telephonic communication with Chokhani. It is significant, even though there is no evidence about the content of the conversations, that there had been frequent calls, during the period of the losses in August and September, 1954, between Dalmia's telephone and that of Chokhani at Bombay. That was the period when Dalmia was confronted with the position of arranging sufficient funds at Bombay for the purpose of diverting them to the Union Agencies. Very heavy losses were suffered in July and August, 1955. Securities of the face value of Rs. 79,00,000 and Rs. 60,00,000 were purchased in July and August, 1955, respectively. A very large number of telephone calls took place during that period between Dalmia at Delhi and Chokhani at Bombay. It is true that during certain periods of losses, the record of telephonic communications does not indicate that any telephonic communication took place. We have already stated, in considering the transactions, that the pattern of action to be taken had been fully determined by the course adopted in the first few transactions.

Ghokhani acted according to that pattern. The only thing that he had to do in connection with further contingencies of demands for losses, was to send for securities from Delhi when the funds at Bombay were low. Such requests for the transfer of securities could be made in good time or by telephonic communication or even by letters addressed to Dalmia personally. The fact remains that a number of securities were sent from Delhi to Bombay under the directions of Dalmia when there was no apparent reason to send them other than the need to meet losses incurred or expected.

Dalmia informed the Imperial Bank at Delhi about his power to deal with securities on September 4, 1954, though he had that power from September, 1951, itself. This was at the early stage of the commencement of the losses of the Union Agencies suffered for a period of over a year and the planned diversion of the funds of the Insurance Company to meet the losses of the Union Agencies.

Raghunath Rai states that on the resignation of Chordia it was deemed necessary that the powers of the Chairman be registered with the Bank so that he be in a position to operate on the securities' safe-custody account of the company with the Bank, and that he sent the copy of the bye-laws etc., without the instructions of Dalmia, though with his knowledge, as he was told that it was necessary for the purpose of the withdrawal of the securities for which he had given instructions. This was, however, not necessary, as Raghunath Rai had the authority to endorse, transfer, negotiate and or deal with Government securities, etc., standing in the name of the company. We are of opinion that Dalmia took this step to enable him to withdraw the securities from the Bank when urgently required and another person authorised to withdraw be not available or be not prepared to withdraw them on his own.

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The position of the securities may be brifely described on the basis of Appendix I of the Investigator's report Exhibit D. 74. The amount of securities at Bombay with the Chartered Bank, on June 30, 1953, was Rs. 53,25,000 out of a total worth Rs. 2,69,57,200. The amount of securities in the Bank continued to be the same till March 31, 1954, even though the total amount of securities rose to Rs. 3,04,88,600. Thereafter, there had been a depletion of securities with the Chartered Bank at Bombay with the result that on December 31, 1954, it had no securities in deposit. The amount of securities in the Imperial Bank of India, New Delhi, also fell subsequent to June 30, 1954. It came down to Rs. 2,60,000 on March 31, 1955, from Rs. 59,11,100 on June 30, 1954.

Securities worth Rs. 52,00,000 were in the two offices on June 30, 1953. The amount of such securities kept on steadily increasing. It was Rs. 1,88,47,500 from September, 1953, to March 31, 1954. Thereafter, it rapidly increased every quarter, with the result that on March 31, 1955, the securities worth Rs. 3,76,50,804 out of the total worth Rs. 3,86,97,204 were in the offices. The overall position of the securities must have been known to Dalmia. The saving of Bank charges is no good explanation for keeping the securities of such a large amount, which formed a large percentage of the Company's holdings, in the offices and not in deposit with a recognized bank. The explanation seems to be that most of the securities were not really in existence.

Raghunath Rai states that he spoke to Dalmia a number of times, presumably, in July and August, 1955, about the non-receipt of the securities of the value of Rs. 81,25,000, Rs. 75,00,000 and Rs. 69,00,000 which were purchased in the months of April-May, July and August 1955 respectively, and Dalmia used

to tell him that as the purchase and sale of securities had to be effected at Bombay, Chokhani could send them to the head office only after it had been decided about which securities would be finally retained by the Insurance Company. This statement implies that Dalmia knew and anticipated the sale of those securities and such a sale of those securities, as already mentioned, could not be in the usual course of business of the company. The securities were to be sold only if by the next due date for payment of interest they could not be recouped and did not exist with the company. Such an inference is sufficient to impute Dalmia with the knowledge of the working of the scheme.

Securities were sent to Bombay from Delhi seven times during the relevant period and they were of the face value of Rs. 2,14,82,500. Securities of the face value of Rs. 17,50,000 were withdrawn from the Imperial Bank, Delhi, on September 4, 1954—vide Exhibit P. 1351. They were sold at Bombay on September 9, 1954. Thereafter, 3% 1957 securities of the face value of Rs. 37,75,000 were sent on January 6, 1955. Raghunath Rai deposes that he withdrew these from the Imperial Bank, Delhi, under the directions of Dalmia, and that he handed them over to Dalmia. These securites did reach Bombay. There is no clear evidence as to how they went from Delhi to Bombay. They were sold on January 11, 1955.

Eleven stock certificates of the face value of Rs. 57,72,000 were sent to Bombay on March 16, 1955, vide letter Ex. D. 3. Thereafter, stock certificates were sent thrice in July 1955. Stock certificate in respect of 3% Bombay Loan of 1955, of the face value of Rs. 29,75,000 was sent to Bombay on July 15, 1955—vide Exhibit P. 923. On the next day, i.e., on July 16, 1955, stock certificates of 3% Bombay Loan of 1955 of the face value of Rs. 15,50,000 and stock

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certificates of 3 % Loan of Government of Madhya Pradesh of the face value of Rs. 60,500 were sent to Bombay—vide Exs. D. 1 and D. 2 respectively.

Lastly, stock certificates of 2 3/4% Loan of 1962 of the face value of Rs. 56,00,000 were sent to Bombay on August 5, 1955.

Letters Exhibits D. 3 and P. 892 state that the stock certificates mentioned therein were being sent 'under instructions of the Chairman'.

Raghunath Rai has deposed that the other stock certificates send with letters Exhibits D. 1, D. 2 and P. 923, were sent by him as the securities with respect to which those certificates were granted were maturing in September and were redeemable at Bombay. It has been urged that they could have been redeemed at Delhi and that they need not have been sent by Raghunath Rai on his own a couple of months earlier. We do not consider the sending of the securities a month and a half or two months earlier than the date of maturity to be unjustified in the course of business. It is to be noticed that what was sent were the stock certificates and it might have been necessary to get the securities covered by those certificates for the purpose of redemption and that might have taken time. No pointed question was put to Raghunath Rai as to why he sent the securities two months ahead of the date of maturity.

Dalmia denies that he gave any instructions for the sending of the securities. There seems to us to be no good reason why the expression 'under the instructions of the Chairman' would be noted in letters Exhibits D. 3 and P. 892, unless that represented the true statement of fact.

We have already discussed and expressed the opinion, in considering the evidence of Raghunath Rai, that Raghunath Rai was told by

Dalmia, when informed of the purchase or sale of securities, that had been done under instructions and that he had confirmed them. We may further state that there is no resolution of the Board of Directors empowering Chokhani to deal with the securities. He was, however, empowered by resolutions at the meeting of the Board dated June 29, 1953, to lodge and receive G. P. Notes from the Reserve Bank of India for verification and endorsement on the same and to endorse or withdraw the G. P. Notes on behalf of the company in the capacity of an agent. Chokhani was also empowered by a resolution dated October 1, 1953, to deposit and withdraw Government securities held in safe custody account by the company. The aforesaid powers conferred on Chokhani are different from the powers of sale or purchase of securities.

Dalmia has stated that he authorised Chokhani to purchase securities in about October, 1953, when he was to leave for abroad and that thereafter Chokhani had been purchasing and selling securities in the exercise of that authority without consulting him. It is urged for him that Raghunath Rai's statement that be used to obtain confirmation of the purchase and sale of the securities from him cannot be true, as there was no necessity for such confirmation. Chokhani does not appear to have exercised any such authority during the period Dalmia was abroad or till August, 1954, and therefore Dalmia's statement does not appear to be correct.

Chokhani and Raghunath Rai were authorised to operate upon the Bank account at Bombay on October 1, 1953. Dalmia states, in paragraph 17 of the written statement dated March 30, 1959, that this was done as Chokhani had been given

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the authority for the sale and purchase of securities at the same time. The Board did not give any such authority to Chokhani and if the system of joint signatures was introduced for the reason alleged, there seems to be no good reason why the Board itself did not resolve that Chokhani be empowered to sell and purchase securities. The explanation for the introduction of joint-signature scheme does not stand to reason.

Even if it be not correct that Raghunath Rai had to obtain confirmation, it stands to reason that he should report such transactions on the part of Chokhani to the Chairman, if not necessarily for his approval, at least for his information, as Chokhani had no authority to purchase and sell securities. These transactions have to be confirmed by the Board of Directors and therefore confirmation of the Chairman who was the only person authorised to purchase and sell securities was natural.

Raghunath Rai states that when he received no reply to his letter dated November 19, 1954, asking for distinctive numbers of securities not received at headquarters. Dalmia said that he would arrange for the despatch of those securities from Bombay to the head office. No action was apparently taken in that connection. Raghunath Rai further states that on March 23, 1955, when he spoke to Dalmia about the non-receipt of certain securities Dalmia told him that he had already instructed Chokhani for the conversion of those securities into stock certificates and that it was in view of this statement of Dalmia that he had written letter Exhibit P. 916 to Chokhani stating therein.

"You were requested for conversion of the above said G. P. Notes into Stock Certificate. The said certificate has not been received by us

as yet. It may be sent now immediately as it is required for the inspection of the company's auditors."

This indicates that Dalmia was in the know of the position of securities and, on his own, gave instructions to Chokhani to convert certain securities into inscribed stock.

Dalmia admits Raghunath Rai's speaking to him about the non-receipt of the securities and his telling him that he would ask Chokhani to send them when he would happen to talk to him on the telephone.

Mention has already been made of securities of the face value of Rs. 17,50,000 being sent to Bombay from Delhi in the first week of September 1954. At the time securities of the face value of Rs.53,25,000 were in deposit in the Chartered Bank at Bombay. There was thus no need for sending these securities from Delhi. Chokhani could have withdrawn the necessary securities from the Bank at Bombay. This indicates that on learning that there were no liquid funds for meeting the losses at Bombay, Dalmia himself decided to send these securities to Bombay for sale and for thus providing for the liquid funds there for meeting the cost of the intended fictitious purchase of securities to meet the losses of the Union Agencies. It is not suggested that these securities were sent to Bombay at the request of Chokhani.

Securities withdrawn in January, 1955, and stock certificates sent in March and August, 1955, coincided with the period when the Union Agencies suffered losses and the funds of the Insurance Company at Bombay were low and were insufficient to meet the losses of the Union Agencies.

3% 1957 securities of the face value of Rs. 46,00,000 (Rs. 37,75,000 sent from Delhi and

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Rs. 8,25,000 withdrawn from the Chartered Bank at Bombay) were sold on January 11, 1955, and the proceeds were utilised in purchasing 2-3/4% 1962 securities of the face value of Rs. 46,00,000 in two lots, one of Rs. 35,00,000 and the other of Rs. 11,00,000.

On January 11, 1955, Rs. 3,34,039-15-3, the balance of the sale proceeds was deposited in the accounts of the Insurance Company. Inscribed stock for these securities worth Rs. 46,00,000 was duly obtained. Dalmia himself handed over inscribed stock certificate to Raghunath Rai some time in the end of January 1955.

This purchase, though genuine, was not a purchase in the ordinary course of business, but was for the purpose of procuring the inscribed stock certificate to satisfy the auditors, as already discussed earlier, that similar securities purchased in December, 1954 existed. The auditors were than to audit accounts of 1954 and not of 1955. In this connection reference may be made to Dalmia's attitude to the auditors' surprise inspection on September 9, 1954, on the ground that they could not ask for inspection of securities purchased in 1955.

It may also be mentioned that purchasing and selling securities was not really the business of the Insurance Company. The Insurance Company had to invest its money and, under the statutory requirements, had to invest a certain portion at least in Government Securities. The value of Government securities does not fluctuate much. Dalmia states, in answer to question No. 25 (under s. 342 Cr. P. C.): 'Government securities are gift edged securities and there is very small fluctation in these.' The question of purchasing and selling of securities with a view to profit could not therefore be the ordinary business of the Insurance

Company. It has to purchase securities when the statutory requirements make it necessary, or when it has got funds which could be invested.

The Insurance Company had Government of India 3% Loan of 1957 in deposit with the Chartered Bank, Bombay, the face value of the securities being Rs. 53,25,000, from April 6, 1951, onward. The fact that these securities remained intact for a period of over three years, bears out our view that the purchasing and selling of securities was not the normal business of the Insurance Company, Securities are purchased for investment and are redeemed on the date of maturity.

In this connection, reference may be made to Khanna's statement in answer to question in cross-examination—The frequency of transactions relating to purchase and sale of securities depends upon the share market and its trends ? His answer was that that was so, but that it also depended on the character of the company making the investment in securities. It may be said that the trend of the share market will only guide the purchase or sale transactions of securities of a company speculating in shares, like the Union Agencies, but will not affect the purchase and sale by a company whose business is not speculation of shares like the Insurance Company.

Raghunath Rai states that when on September 9, 1955, the auditors wanted the production of the securities, said to be at Bombay, in the next two days, he informed Dalmia about it and Dalmia said that he would arrange for their production after two days. Dalmia, however, took no steps to contact Chokhani at Bombay, but rang up Khanna instead and asked him to certify the accounts as they had to be laid before the Company by September 30, and told him that everything was in order, that he would give all satisfaction later,

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soon after Chokhani was available and that he did not ask for an extension of time for the filing of the accounts as that would affect the prestige of the company. On September 10, 1955, when Raghunath Rai handed over the letter Exhibit P. 2 of even date from the auditors asking him to produce a statement of investments as on September 9, 1955, along with the securities or evidence if they were with other persons, by Tuesday, September 13, Dalmia had stated that Chokhani's mother had died and that he would himself arrange for the inspection of securities direct with the auditors. Chokhani's mother died on September 4, 1955. Dalmia had no reason to tell Raghunath Rai on September 9 that the securities would be produced for inspection in the next two days, unless he believed that he could get them in that time on contacting Chokhani, or did not wish to tell him the real position. Dalmia states that he contacted Chokhani for the first time on September 15, the last day of the mourning and then learnt from Chokhani that the securities were not in existence, the money withdrawn for their purchase having been lent to the Union Agencies. The various statements made by Dalmia in these circumstances and his conduct go to show that he had a guilty mind and when he made the statement to Raghunath Rai that the securities would be produced within two days, he trusted that he would be persuasive enough for the auditors to pass the accounts without further insistence on the production of those securities.

Dalmia's not going to Mr. Kaul's Office on September 16, and sending his relations to inform the latter of the shortfall in securities can have no other explanation than that he was guilty and therefore did not desire to have any direct talk about the matter with Mr. Kaul. There was no need to avoid meeting him and miss the opportunity

of explaining fully what Chokhani had done without his own knowledge.

Dalmia has admitted that he sent his relations to Mr. Kaul and has also admitted that what they stated to Mr. Kaul was under his instructions. He states in answer to question No. 450, that after the telephonic talk with Chokhani on the evening of September 15, he consulted his brother Jai Dayal Dalmia and his son-in-law S. P. Jain about the position and about the action to be taken and that it was decided between them before they left for the office of Mr. Kaul that they would tell him that either the securities would be restored or their price would be paid off as would be desired by the Government and in answer to question No. 451, said that it was correct that these persons told Mr. Kaul that a considerable amount of the securities were missing and that they were to make good the loss. It is clear that these persons decided not to disclose to Mr. Kaul that the securities were not in stock because they were not actually purchased and the amount shown to be spent on them was lent to the Union Agencies. It was not a case of the securities missing but a case of the Insurance Company not getting those securities at all. It is a reasonable inference from this conduct of Dalmia that he did not go himself to Mr. Kaul as he was guilty and would have found it inconvenient to explain to him how the shortfall had taken place.

We may now discuss the evidence relating to Dalmia's making a confession to Annadhanam. Annadhanam was a Chartered Accountant and partner of the Firm of Chartered Accountants M/s. Khanna and Annadhanam, New Delhi, and he was appointed by the Central Government, in exercise of its powers under s. 33(1) of the Insurance Act, 1938, on September 19, 1955, to investigate into the affairs of the Bharat Insurance

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Company and to report to the Government on such investigation. He started this work on September 20. Annadhanam, having learnt from Raghunath Rai about the missing of a number of Government securities and the amount of their value from the statement prepared by him, called Dalmia to his office that evening in order to make a statement. Dalmia made the statements Exhibits P. 10 and P. 11. P. 10 reads :

> "I have misappropriated securities of the order of Rs. 2,20,00,000 of the Bharat Insurance Company Ltd. I have lost this money in speculation."

Exhibit P. 11 reads:

> "Further stated on solemn affirmation.
>
> At any cost, I want to pay full amount by requesting my relatives or myself in the interest of the policy holders."

Dalmia admits having made the statement Exhibit P. 11. but made some inconsistent statements about his making the statement Exhibit P. 10. It is said that he never made that statement, but in certain circumstances he asked the Investigator to write what he considered proper and that he signed what Annadhanam recorded. He did not directly state, but it was suggested in cross-examination of Annadhanam and in his written statement that he made that statement as a result of inducement and promise held out by either Annadhanam of Khanna (the other partner of M/s. Khanna and Annadhanam, Chartered Accountants, New Delhi) or both.

Dalmia's contention that Exhibit P. 10 was inadmissible in evidence, it being not voluntary, was repelled by the learned Sessions Judge, but was, in a way, accepted by the High Court which did not consider it safe to rely on it. The learned Solicitor General urged that the confession Exhibit P. 10 was

voluntary and was wrongly not taken into consideration by the High Court. Mr. Dingle Foot contended that the High Court took the proper view and the confession was not voluntary. He further urged that the confession was hit by the provisions of cl. (3) of Art. 20 of the Constitution.

The only witnesses with respect to the recording of the statement Exhibit P. 10. are Annadhanam and Khanna. The third person who knew about it and has stated about it is Dalmia himself. He has given his version both in his statement recorded under s. 342 Cr. P. C.. and in his written statement filed on October 24, 1958.

We may first note the relevant statement in this connection before discussing the question whether the alleged confession is voluntary and therefore admissible in evidence. Annadhanam made the following relevant statements:

Dalmia came to the office at 6.30 p. m., though the appointment was for 5.30 p. m. His companion stayed outside the office room. Annadhanam asked Dalmia the explanation with regard to the missing securities. Dalmia wanted two hours' time to give the explanation. This was refused. He then asked for half-an-hour's time at least. This was allowed. Dalmia went out of the office, but returned within ten minutes and said that he would make the statement and it be recorded. Annadhanam, in the exercise of the powers under s. 33(3) of the Insurance Act, administered oath to Dalmia and recorded the statement Exhibit P. 10. It was read over to Dalmia. Dalmia admitted it to be correct and signed it. Shortly after, Dalmia stated that he wanted to add one more sentence to his statement. He was again administered oath and his further statement, Exhibit P. 11 was recorded. This was also read over and Dalmia signed it, admitting its accuracy.

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Annadhanam states that no threat or inducement or promise was offered to Dalmia before he made these statements.

A third statement is also attributed to Dalmia and it is that when Dalmia was going away and was nearing the stair-case, Annadhanam asked him whether the speculation in which he had lost the money was carried on by him in the company's account or in his private account. Dalmia replied that he had lost that money in his personal speculation business which was carried on chiefly through one of his private companies, viz., the Union Agencies. This statement was not recorded in writing. Annadhanam did not consider it necessary, but this was mentioned by Annadhanam in his supplementary interim report, Exhibit P. 13, which he submitted to the Deputy Secretary, Ministry of Finance, on September 21, 1955. Annadhanan also mentioned about the statement recorded in Exhibit P. 10 in his interim report, Exhibit P. 12, dated September 21, 1955, to the Deputy Secretary, Ministry of Finance.

In cross-examination, Annadhanam stated that he did not send for Dalmia to the office of the Bharat Insurance Company where he had examined Raghunath Rai, as he had not made up his mind with respect to the further action to be taken. He denied that he had any telephonic talk with Mr. Kaul, the Deputy Secretary, Ministry of Finance, prior to the recording of the statements, Exhibits P. 10 and P. 11. His explanation for keeping Khanna with him during the examination of Dalmia was that Khanna had done the detailed auditing of the accounts of the company in pursuance of the firm Khanna and Annadhanam being appointed auditors for 1954 by the Insurance Company. He denied that Dalmia told him that he had no personal knowledge of the securities and that the only information he had from Chokhani was that the

latter had given money on loan to the Union Agencies. He stated that the statements Exhibits P. 10 and 11 were recorded in the very words of Dalmia. The statements were not actually read over to Dalmia but Dalmia himself read them over.

Annadhanam denied that he told Dalmia that he would not be prosecuted if he made the statements Exhibit P. 10 and P. 11 and deposited the money alleged to have been embezzled and further stated that Khanna did not tell this to Dalmia. He denied that Exhibit P. 10 was never made by Dalmia and was false and reiterated that that statement was made by Dalmia. He did not consider it proper to reduce to writing every word of what transpired between him and Dalmia from the moment of the latter's arrival in his office till the time of his departure, and considered it proper to reduce in writing the statement which was made with regard to the missing securities. He further stated that his statement above Dalmia's making statements Exhibits P. 10 and P. 11 voluntarily was on account of the facts that Dalmia himself volunteered to make those statements and that he himself had offered no inducements or promises.

In cross-examination by Mr. T. C. Mathur, he denied that he told Dalmia that as Chairman of the Insurance Company he should own responsibility for the missing securities and that that would make him a greater Dalmia because he was prepared to pay for the short-fall and further denied that it was on account of the suggested statement that Dalmia had asked for two hours' time before making his statement.

In cross-examination by Dalmia personally, Annadhanam explained the discrepancy in the amount of the securities admitted to be misappropriated. Exhibit P. 10, mentions the securities to be of the order of Rs. 2,20,00,000/- In his report

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Exhibit P. 12, he stated the admission to be with respect to securities of the face value of Rs. 2,22,22,000/-. The explanation is that in he interim report he worked out the face value of the missing securities to be Rs. 2,22,22,000/-, and he mentioned this figure in his report as Dalmia had admitted the misappropriation of the securities. Nothing sinister can be inferred from this variation.

Khanna practically supports the statement of Annadhanam, not only with respect to Exhibit P. 10 and P. 11, but also with respect to the third statement said to have been made near the staircase. His statements in cross-examination that it was possible that Annadhanam might have asked the companion of Dalmia to stay outside the office as the proceedings were of a confidential nature, does not in any way belie Annadhanam's statement as this statement itself is not definite. In answer to the question whether it struck him rather improper that Dalmia made the statement Exhibit P. 10 in view of his previous statement to Khanna that satisfaction would be afforded to the auditors on the points raised by them after Chokhani was available, he replied that his own feeling was that the statements Exhibits P. 10 and P. 11 were the natural culmination of what he learnt in the office of Mr. Kaul on September 16, 1955. He also denied that he told Dalmia that whoever was at fault, the ultimate responsibility would fall on the Chairman and other Directors as well as the officers of the Insurance Company by way of misfeasance, an that Dalmia should sign the statement which would be prepared by himself and Annadhanam so that the other Directors and the officers of the Insurance Company be not harassed and that if this suggestion was accepted by Dalmia, he would save every one and become a greater Dalmia. He denied the suggestion that when Dalmia talked of his charitable disposition in his office on September 20, 1955, it should have been in answer to his (Khanna's)

provocative remarks wherein he had made insinuations regarding Dalmia's integrity and stated that he was merely a silent spectator of what actually had happened in the office that day. He further stated that no question arose of Annadhanam's attacking the integrity of Dalmia on September 20, 1955. He denied that Mr. Kaul had told him or Annadhanam on September 19, when the order appointing Annadhanam Investigator was delivered, that Dalmia had to be implicated in a criminal case.

Khanna denied that his tone and remarks during the discussion were very persuasive and that told Dalmia that it was very great of him that he was going to pay the amount represented by the short-fall of the securities. He also denied the suggestion that Dalmia told him and Annadhanam on September 20, at their office, that he had no knowledge of the missing securities, that it, appeared that the securities had either been sold or pledged and that the money had been paid to the Union Agencies, which Dalmia did not like, and that in the interest of the policy holders and the Insurance Company Dalmia was prepared to pay the amount of the short-fall of securities, and also that when Dalmia spoke about the securities being sold or pledged, Khanna and Annadhanam remarked that the securities had been misappropriated. He denied that he told Dalmia that if he took personal responsibility in the matter, it would be only then that no action would be taken and stated that he and Annadhanam were nobody to give any assurance to Dalmia.

Dalmia stated, in this statement under s. 342 Cr. P. C. on November 7, 1958, that his companion Raghunath Das Dalmia stayed out because he was not allowed to stay with him inside the office. He denied that he first spoke about his charitable disposition and piety when asked by Annadhanam to explain about the missing securities and stated that

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there could be no occasion for him to talk at that time of his piety and charitable disposition when he had been specifically called to explain with regard to the missing securities. His version of what took place may now be quoted (answer to question No. 471) in his own words:

> "What actually happened was that I told Shri Annadhanam that I had learnt from G. L. Chokhani that the amount of the missing securities had been lent temporarily on behalf of the Bharat Insurance Company by Shri G. L. Chokhani to Bharat Union Agencies and that the amount had been lost in speculation. Shri Annadhanam then asked me about the missing securities. I then told him that I did not know as to whether the securities had been sold or mortgaged. My replies here being noted by Shri Annadhanam on a piece of paper. Shri Annadhanam then asked me as to when the securities had been sold or mortgaged I replied that I did not know with regard to the time when the securities had been sold or mortgaged. Shri Annadhanam then asked me as to what were the places where there were offices of Bharat Union Agencies. I then told him that the offices were at Bombay and Delhi. I than remarked that whatever had happened, I wanted to pay the amount of the missing securities as the interest of the policy holders of the Bharat Insurance Company were close to my heart. During the course of that talk sometimes Shri Annadhanam questioned and sometimes the questions were asked by Shri Khanna. Shri Khanna then stated that I should forget the events of 9-9-1955. Shri Khanna further stated. 'We too are men of hearts. And not bereft of all feelings. We too have children. I am very much impressed by your offer of such a huge

amount'. Shri Khanna also remarked that Shri Annadhanam had been appointed under section 33 of the Insurance Act to investigate into the affairs of the Bharat Insurance Company and as such the words of Shri Khanna and Shri Annadhanam would carry weight with the Government. Shri Khanna also stated other things but I do not remember them. I however distinctly remember that Shri Khanna stated to me that I should go to Shri C. D. Deshmukh and that Shri Khanna would also help me. I then replied that I would not like to go to Shri Deshmukh. Shri Khanna then remarked that the Government attached great importance to the interests of the policy holders and that if the matter got undue publicity it would cause a great loss to the policy holders. Shri Khanna accordingly stated that if I agreed to his suggestion the matter would be settled satisfactorily and without any publicity. It was in those circumstances that I asked for two hours' time to consult my brother and son-in-law."

He further stated that when Annadhanam told him that he could have half-an-hour's time and that more time could not be given as the report had to be given to the Government immediately, he objected to the shortness of time as he could not during that interval go to meet his brother and son-in-law and return to the office after consulting them and further told Annadhanam and Khanna to write whatever they considered proper as he had trust in them.

His reply to question No. 476 is significant and reads:

"The statement was read over to me. I then pointed out that what I had stated had not been incorporated in Ex. P. 10. I made

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no mention that the statement Ex. P. 10 was correct or not. Shri Annadhanam then reduced to writing, whatever was stated by me. That writing if Ex. P. 11 and is in the very words used by me."

He does not directly answer question No. 479:

> "It is in evidence that the statement Ex. P. 11 was read over to you, you admitted it to be correct and signed it. Do you want to say anything with regard to that?"

and simply stated, 'I did sign that statement'. He denied the third statement alleged to have been made near the staircase.

Dalmia also stated that he had mentioned some facts about the statements Exhibits P. 10 and 11 in his written statement.

Paragraphs 53 to 59 of the written statement dated October, 24, 1958, refer to the circumstances about the making of the statements Exhibits P. 10. and P. 11. In paragraph 53 Dalmia states that the recording of his statement in Annadhanam's office took place as it was only there that Annadhanam and Khanna could get the necessary privacy. The insinuation is that they did not want any independent person to know of what transpired between them.

Paragraph 54 refers to a very minor discrepancy. Paragraph 55 really gives the version of what took place in, Annadhanam's office.

We refer only to such portions of this version as do not find a place either in the suggestions made to Annadhanam and Khanna in their cross-examination or in the statement of Dalmia under s. 342 or which be inconsistent with either of them. Dalmia stated that he told Annadhanam that the

money that had been received by Bharat Union Agencies as loan belonged to Bharat Insurance Company and it appeared that the Union Agencies had lost that money in speculation. He further made statements which tend to impute an inducement on the part of Khanna to him. These statements may be quoted in Dalmia's own words:

> "On this Shri Khanna said that I was a gentleman, that I was prepared to pay such a heavy amount which has never been paid so far by anybody, that I should accept his advice and that I should act according to his suggestion and not involve myself in this dispute, the Government was not such a fool that they would not arrive at a quiet settlement with a man who thought that his first duty was to protect the policy holders and thus by spoiling the credit of the Bharat Insurance Co. would harm its policy holders. If the Government did so it would be an act of cruelty to the policy holders, and when I was prepared to pay the money it (Government) would not take any such course by which I may have to face troubles, that my name would go very high, that he advised me as being my well-wisher that I should confess that I had taken the securities, that they would help me. They added that Shri Annadhanam has been appointed as Investigator by the Government and therefore their words carry weight with the Government, that it was my responsibility, being the Chairman and Principal Officer of the Bharat Insurance to pay the money. At that time I was restless to pay the money. I was influenced by their talk and anybody in my place would have trusted their words. I was impressed by their saying to me that no wise Government or officers would take

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such action which would harm the policy-holders through publicity. Therefore I took that whatever Shri Khanna and Annadhanam were saying was for my good".

He stated that he asked Annadhanam and Khanna for two hours' time to consult his brother and son-in-law and that one of them said that they could not give more than half-an-hour. This is inconsistent with what he stated under s. 342. He further stated :

> "I told them to write in whatever way they thought best and whatever they wrote I simply signed. After signing when I read it, I pointed out to them that they had not written that I wanted to pay every pie of the policy holders and then they wrote as I told them and I signed".

The statement referred to is a short one, and it is not possible to believe that he signed it without reading it.

Paragraph 56 makes no reference to the events of that evening, but paragraph 57 refers to the improbability of his writing things which brought trouble to him when just before it he had been talking irrelevantly. The question in cross-examination did suggest that he was forced to make irrelevant talk due to certain provocation. That does not fit in with the explanation in paragraph 57 that his talk about a temple was invented to support the statement Annadhanam had made to the police about Dalmia's talking irrelevantly. His statement 'How could I have acted in such a way without any positive assurances, implies that he did make the statements though on getting assurances. In paragraph 58 he states :

> "On 20th September Shri Khanna and Annadhanam had put all sorts of questions

to Raghunath Rai but let me off after recording my statement in just one or two lines. Their design had succeeded and therefore they did not care to record any further question".

This again implies his making the statement P. 10. Of course, after he had made the statement P. 10 there was no necessity of asking anything further. His statement explained the missing of the securities.

Reference may now be made to what Raghunath Rai, who was the Secretary of the Bharat Insurance Company, states in reference to the statement made by Dalmia to Annadhanam. Raghunath Rai states that when he went to Dalmia about 7 p. m. on September 20, 1955, and told him about the recording of his own statement by Annadhanam and the preparation of the statement about Exhibit P. 8 and about his talk regarding the securities at Bombay, Dalmia said : 'I have been myself in the office of the Investigator. He has recorded my statement wherein I have admitted the short-fall of the securities'. This also points to Dalmia's making the statement Exhibit P. 10.

Raghunath Rai did not admit, but simply said that Dalmia did tell him something when he was questioned as to whether Dalmia told him that he had been told by Annadhanam and Khanna that if he had made the statement in accordance with their desire, there would be no trouble.

Dalmia evaded a direct answer to the question put to him under s. 342, Cr. P. C. When question No. 482 was put to him with reference to this statement of Raghunath Rai he simply stated that he had briefly told Raghunath Rai with regard to what had transpired between him and Khanna and Annadhanam and that he had told Raghunath Rai that he need not worry.

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The various statements of Dalmia suggesting that inducement was held out to him by Khanna have not been believed by the Courts below, and we see no good reason to differ from their view. There was no reason for Annadhanam to record an incriminating statement like P. 10 and get it signed by Dalmia.

The High Court does not also hold that the confession was the result of some threat extended by Annadhanam. It did not consider it safe to rely upon it as it considered the confession to be not voluntary in a certain sense. It said :

> "In that sense, therefore, it was not a voluntary statement, because although no words of threat or inducement were uttered by Mr. Annadhanam or anyone else, the circumstances had shaped themselves in such a manner that there was an implied offer of amnesty being granted to him if he did not persist in his negative behaviour. He therefore made a statement that he had misappropriated the securities and immediately offered to make good the loss through his relatives".

What are those circumstances which implied an offer of amnesty being granted to him if he did not persist in his negative behaviour, presumably in not giving out full information about the missing securities ? Such circumstances, as can be gathered from the judgment of the High Court seem to be these : (1) Dalmia, a person of considerable courage in commecial affairs was not expected to make a voluntary confession. (2) He had evaded meeting the issue full-face whenever he could do so and did not appear before Mr. Kaul on September 16, 1955, to communicate to him the position about the securities. (3) He not only appeared before Annadhanam an hour late, but further asked for two hours' time before answering a simple question about the missing securities. (4) He made the

statement when he felt cornered on account of the knowledge that Annadhanam had the authority of law to question and thought that the only manner of postponing the evil consequence of his act was by making the statement which would soften the attitude of the authorities towards him.

We are of opinion that none of these circumstances would make the confession invalid. Dalmia's knowledge that Annadhanam could record his statement under law and his desire to soften the attitude of the authorities by making the statement do not establish that he was coerced or compelled to make the statement. A person of the position, grit and intelligence of Dalmia could not be so coerced. A person making a confession may be guided by any considerations which, according to him, would benefit him. Dalmia must have made the statement after weighing the consequences which he thought would be beneficial to him. His making the confession with a view to benefit himself would not make the confession not voluntary. A confession will not be voluntary only when it is made under some threat or inducement or promise, from a person in authority. Nothing of the kind happened in this case and the considerations mentioned in the High Court's judgment do not justify holding the confession to be not voluntary. We are therefore of opinion that Dalmia made the confession Exhibit P. 10, voluntarily.

It was argued in the High Court, for the State, that Dalmia thought it best to make the statement because, by doing so, he hoped to avoid the discovery of his entire scheme of conspiracy which had made it possible for him to misappropriate such a large amount of the assets of the Insurance Company. The High Court held that even if the confession was made for that purpose, it would not be a voluntary confession. We consider this ground to hold the confession involuntary unsound.

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Mr. Dingle Foot has contended that the statement, Exhibit P. 10, is not correct, that Annadhanam and Mr. Kaul colluded and wanted to get a confession from Dalmia and that is why Annadhanam extracted the confession and that various circumstances would show that the confession was not voluntary in the sense that it was induced or obtained by threat. He has also urged that Annadhanam was 'a person in authority' for the purpose of s. 24 of the Indian Evidence Act. These circumstances, according to him, are that Dalmia's companion was not allowed to stay in the office, that only half-an-hour was allowed for Dalmia to make consultations, that there had been a discussion before the recording of Exhibit P. 10, that no record on the discussion was maintained, that Annadhanam, as Investigator, was a public servant, that s. 176, I. P. C. was applicable to Dalmia if he had not made the statement and that the statement on oath really amounted to an inquisition. It was further contended that if the confession was not inadmissible under s. 24 of the Evidence Act; it was inadmissible in view of cl. (3) of Art. 20 of the Constitution.

Mr. Dingle Foot has further contended that the statement, Ex. P. 10, is not correct inasmuch as it records: 'I have misappropriated securities of the order of rupees two crores, twenty lakhs of the Bharat Insurance Company Ltd.', that it could not be the language of Dalmia and that these facts supported Dalmia's contention that he simply signed what Annadhanam had written.

The public prosecutor had also questioned the correctness of this statement inasmuch as the actual misappropriation was done by Chokhani and Dalmia had merely suffered it and as the accurate statement would have been that there was misappropriation of the money equivalent of the securities.

We are of opinion that any vagueness in the expression could have been deliberate. The expression used was not such that Dalmia, even if he had a poor knowledge of English, could not have used. The statement was undoubtedly very brief. It cannot be expected that every word was used in that statement in the strict legal sense. The expression 'I misappropriated the securities' can only mean that he misappropriated the amount which had been either spent on the purchase of the securities which were not in existence, or realised by the sale of securities, and which was shown to be utilised in the fictitous purchase of securities. The main fact is that Dalmia did admit his personal part in the loss of the amount due to the shortfall in the securities.

There is nothing on record to justify any conclusion that Annadhanam and Mr. Kaul had colluded and wanted to get a confession from Dalmia. It is suggested that Annadhanam was annoyed with Dalmia on account of the latter's resentment at the conduct of Annadhanam and Khanna in conducting a surprise inspection of the accounts and securities on September 9, 1955. Raghunath Rai protested saying that they had already verified the securities and that they, as auditors for the year 1954, had no right to ask for the inspection of securities in the year 1955. At their insistence, Raghunath Rai showed the securities.

After their return to the office, Dalmia rang them up and complained that they were unnecessarily harassing the officers of the Bharat Insurance Company and had no right to inspect the securities. Dalmia was not satisfied with their assertion of their right to make a surprise inspection. There was nothing in this conduct of Dalmia which should have annoyed Annadhanam or Khanna. They did

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what they considered to be their duty and successfully met the opposition of Raghunath Rai. If there could be any grievance on account of their inspection, it would be to Dalmia who, as a result, would not be easily induced by them to make the confession.

Mr. Kaul, as Deputy Secretary, Ministry of Finance, did take part in the bringing of the matter to a head, not on account of any personal animus against Dalmia—such animus is not even alleged—but on account of his official duties, when he heard a rumour in Bombay that Dalmia had incurred heavy losses amounting to over two crores of rupees through his speculative activities and had been drawing upon the funds of the Insurance Company of which he was the Chairman to cover his losses. He asked Dalmia on September 14, 1955, to see him on the 15th in connection with the securities of the Insurance Company. When Dalmia met him on the 15th in the presence of Mr. Barve, Joint Secretary, he asked whether he had brought with him an account of the securities of the Bharat Insurance Company. Dalmia expressed his inability to do so for want of sufficient time and promised to bring the account on September 16. On the 16th, Dalmia did not go to Mr. Kaul's office; instead, his relations S. P. Jain and others met Mr. Kaul and made certain statements. Mr. Kaul submitted a note, Ex. D. 67, to the Finance Minister on September 18, 1955, and in his note suggested that of all the courses of action open to the Government, the one to be taken should be to proceed in the matter in the legal manner and launch a prosecution as the acceptance of S. P. Jain's offer would amount to compounding with a criminal offender. Mr. Kaul stated that he did not consider it necessary to make any enquiry because the merits of the case against Dalmia remained unaffected whether the loss was rupees two crores or a few lakhs, more or less. On the basis of the aforesaid suggestion of

Mr. Kaul and his using the expression 'courses against Shri Dalmia' it is urged that criminal action was contemplated against Dalmia and that there must have been some understanding between Mr. Kaul and Annadhanam about securing some sort of confession from Dalmia for the purpose of the case which was contemplated. We consider this suggestion farfetched and not worthy of acceptance. As a part of his duty, Mr. Kaul had to consider the various courses of action open to the Government in connection with the alleged drawing upon the funds of the Insurance Company to cover his losses in the speculative activities. Mr. Kaul did not know what had actually transpired with respect to the securities. He had heard something in Bombay and then he was told about the short-fall in the securities of the Bharat Insurance Company and, naturally, he could contemplate that the alleged conduct could amount to a criminal offence. In fact, according to Mr. Kaul, a suggestion had been made to him by S. P. Jain that on the making up of the short-fall in securities no further action be taken which might affect the position of Dalmia and his other associates in business and of various businesses run by them. The fact that Annadhanam knew that there had been a short-fall of over rupees two crores prior to Dalmia's making the statement Exhibit P. 10 cannot justify the conclusion that Annadhanam and Mr. Kaul were in collusion.

Annadhanam does not admit he had ordered Dalmia's companion to stay out of the office. Even if he did, as stated by Dalmia, that would not mean that Annadhanam did it on purpose, the purpose being that he would act unfairly towards Dalmia and that there be not any witness of such an attempt. Similarly, the non-maintenance of the record of what conversation took place between Dalmia and the Investigator, does not point out to any sinister purpose on the part of Annadhanam. It was

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Annadhanam's discretion to examine a person in connection with the affairs of the Insurance Company. He put simple question to Dalmia and that required him to explain about the missing securities. So long as Dalmia did not make a statement in that connection, it was not necessary to make any record of the talk which might take place between the two. In fact, Annadhanam had stated that the word 'discussion' used by him in his supplementary interim report Exhibit P. 13, really be read as 'recording of the statement of Shri Dalmia and the talk he had with when he came to Annadhanam's office and which he had with him while going to the staircase'. This explanation seems to fit in with the context in which the word 'discussion' is used in Exhibit P. 13.

The interval of time allowed to Dalmia for consulting his relations might have been considered to be insufficient considering for confession voluntary in case that was the time allowed to a confessing accused produced before a Magistrate for recordiug a confession. But that was not the position in the present case. Annadhanam was not going to record the confession of Dalmia. He was just to examine him in connection with the affairs of the Insurance Company and had simply to tell him that he had called him to explain about the missing securities. There was therefore no question of Annadhanam allowing any time to Dalmia for pondering over the pros and cons of his making a statement about whose nature and effect he would have had no idea. We do not therefore consider that this fact that Dalmia was allowed half-an-hour to consult his relations can point to compelling Dalmia to make the statement.

We do not see that examination of Dalmia on oath be considered to be an inquisition. Sub-section (3) of s. 33 of the Insurance Act empowers the Investigator to examine on oath any manager, managing director or other officer of the insures in relation to his business. Section 176 of the Indian

Penal Code has no application to the examination of Dalmia under s. 33 of the Insurance Act. Section 176 reads:

> "Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant, as such, intentionally omits to give such notice or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.
>
> or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both;
>
> or, if the notice or information required to be given is required by an order passed under sub-section (1) of section 565 of the Code of Criminal Procedure, 1898, with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

For the application of this section, it is necessary that Annadhanam, as Investigator, be a public servant. Annadhanam cannot be said to be a servant. He was not an employee of Government. He was a Chartered Accountant and had been directed by the order of the Central Government to investigate into the affairs of the Insurance Company and to report to the Government on the investigation made by him. Of course, he was to get

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some remuneration for the work he was entrusted with.

'Public servant' is defined in s. 21 of Indian Penal Code. Mr. Dingle Foot has argued that Annadhanam was a public servant in view of the ninth clause of s. 21. According to this clause, every officer in the service or pay of the Government or remunerated by fees or commission for the purpose of any public duty would be a public servant. A person who is directed to investigate into the affairs of an Insurance Company under s. 33(1) of the Insurance Act, does not *ipso facto* become an officer. There is no office which he holds. He is not employed in service and therefore this definition would not apply to Annadhanam.

The making of a statement to the Investigator under s. 33(3) of the Insurance Act does not amount to furnishing information on any subject to any public servant as contemplated by s. 176 I. P. C., an omission to furnish which would be an offence under that section. This section refers to information to be given in statements required to be furnished under some provision of law. We are therefore of opinion that s. 176. I. P. C. did in no way compel Dalmia to make the statement Exhibit P. 10.

We believe the statements of Annadhanam and Khanna about Dalmia's making the statement Exhibit P. 10 without his being induced or threatened by them. Their statements find implied support from the statement of Raghunath Rai with respect to what Dalmia told him in connection with the making of the statement to Annadhanam and from certain statements of Dalmia himself in his written statement and in answers to questions put to him under s. 342, Cr. P. C.

We therefore hold the statement Exhibit P. 10 is a voluntary statement and is admissible in evidence.

We also hold that it is not inadmissible in view of cl. (3) of Art. 20 of the Constitution. It was not made by Dalmia at a time when he was accused of an offence, as is necessary for the application of that clause, in view of the decision of this Court in *The State of Bombay* v. *Kathi Kalu Oghad* (1) where the contention that the statement need not be made by the accused person at a time when he fulfilled that character was not accepted. Dalmia was not in duress at the time he made that statement and therefore was not compelled to make it. It was said in the aforesaid case :

> " 'Compulsion', in the context, must mean what in law is called 'duress'.....The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted."

The various circumstances preceding the making of the statement Exhibit P. 10 by Dalmia have all been considered and they fall far short of proving that Dalmia's mind had been so conditioned by some extraneous process as to render the making of this statement involuntary and therefore extorted.

We believe the statement of Annadhanam that Dalmia had told him near the staircase that he had lost the money in his personal speculation business which was carried on chiefly through one of his private companies, viz.. the Union Agencies. The later part of his confession, Exhibit P. 10, is an admission of Dalmia's losing the

(1) [1962] 3 S. C. R. 10, 35.

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money in speculation. His further statement was only an amplification of it as to the name under which speculation was carried on. The statement finds support from the facts established by other evidence that the speculation business carried on by the Union Agencies was really the business of Dalmia himself, though, ostensibly, it was the business of the company of which there were a few shareholders other than Dalmia.

Mr. Dingle Foot has urged that adverse inference be drawn against the prosecution case on account of the prosecution not producing certain documents and certain witnesses. We have considered the objection and are of opinion that there is no case for raising such an inference against the prosecution.

The prosecution did not lead evidence about the persons holding shares in Asia Udyog Ltd., and in Govan Brothers Ltd. Such evidence would have, at best, indicated how many shares Dalmia held in these companies. That was not necessary for the prosecution case. The extent of shares Dalmia held in these companies had no direct bearing on the matter under inquiry in the case.

The prosecution led evidence about the telephonic calls up to August 31, 1955, and did not lead evidence about the calls between September 1 and September 20. 1955, It is urged that presumption be raised that Dalmia and Chokhani had no telephonic communication in this period Admittedly, Dalmia had telephonic communication with Chokhani on September 15. The prosecution has not impugned any transaction entered into by Chokhani during this period. It is not therefore essential for the prosecution to have led evidence of telephonic calls between Dalmia and Chokhani during this period.

Another document which the prosecution is

said not to have produced is the Dak Receipt Register. The Register could have at best shown on which dates the various advices received from Bombay about the transactions were received. On that point there had been sufficient evidence led by the prosecution. The production of the Register was therefore not necessary. The accused could have summoned it if he had particular reason to rely on its entries to prove his case.

Lastly, complaint is made of the non-production of certain documents in connection with the despatch of certain securities from Delhi to Bombay. Again, there is oral evidence with respect to such despatch of securities and it was not essential for the prosecution to produce the documents in that connection.

Of the witnesses who were not produced, complaint is made about the prosecution not examining Mr. Barve, Joint-Secretary, Ministry of Finance, who was present at the interview which Dalmia had with Mr. Kaul on September 15, 1954, and of the non-production of the Directors of the Insurance Company. It was quite unnecessary to examine Mr. Barve when Mr. Kaul has been examined. It was also not necessary to examine the Directors of the company who are not alleged to have had any first-hand knowledge about the transactions. They could have spoken about the confirmation of the sale and purchase transactions and about the passing of the bye-laws and other relevant resolutions at the meeting of the Board of Directors. The minutes of the proceedings of the Board's meetings served this purpose.

It is admitted by Dalmia that there was no resolution of the Board of Directors conferring authority on Chokhani to purchase and sell securities.

Certain matters have been referred to at

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pages 206-210 of Dalmia's statement of case, which, according to Dalmia, could have been proved by the Directors. All these matters are such which were not necessary for the unfolding of the prosecution case and could be proved by the accused examining them if considered necessary. We therefore see no force in this contention.

It is urged for Dalmia that he could not have been a party to a scheme which would cause loss to the Insurance Company, because he was mainly responsible for the prosperity of the company. The Union Agencies has assets. The Government was displeased with Dalmia. The company readily agreed to the appointment of M/s. Khanna and Annadhanam as auditors. There was the risk of detection of the fraud to be committed and so Dalmia would have acted differently with respect to such affairs of the Union Agencies as have been used as evidence of Dalmia being synonymous with it. We are of opinion that these considerations are not such which would offset the inferences arrived at from the proved facts.

It cannot be a matter of mere coincidence that frequent telephonic conversations took place between Dalmia and Chokhani when the Union Agencies suffered losses, that the usual purchase transactions by which the funds of the Insurance Company were diverted to the Union Agencies took place then, that such purchases should recur several times during the relevant period, that such securities which could not be recouped had to be shown as sold and when the Union Agencies or Bhagwati Trading Company could not pay for the sale price which had to be credited to the account of the Insurance Company, a further usual purchase transaction took place.

We are therefore satisfied from the various facts considered above that the transactions which

led to the diversion of funds of the Insurance Company to the Union Agencies were carried through under the instructions and approval of Dalmia. It is clear that he had a dishonest intention to cause at least temporary loss of its funds to the Insurance Company and gain to the Union Agencies. This could be achieved only as a result of the conspiracy between him and Chokhani. Vishnu Prasad was taken in the conspiracy to facilitate diversion of funds and Gurha to facilitate the making up of false accounts etc. in the offices of the Union Agencies and Asia Udyog Ltd., as would be discussed hereafter.

We may now turn to the charges against Gurha, appellant. He was charged under s. 120-B read with s. 409 I. P. C. and also on three counts under s. 477 A for making or abetting the making of false entries in three journal vouchers Nos. 98, 106 and 107 dated January 12, 1955, of the Union Agencies. It is necessary to give a brief account of how these vouchers happened to be made.

Gurha was a Director of the Union Agencies and looked after the work of its office at Delhi. He was also the Accountant of Asia Udyog Ltd.

At Delhi there was a ledger with respect to the account of the transactions by the Bombay Office of the Union Agencies. Under the directions of Chokhani who was an agent of the Union Agencies at Bombay and also held power of attorney on its behalf. Kannan used to send a cash statement and a journal to the Bombay Office and the Union Agencies at Delhi. These documents used to be sent to Gurha personally. Now, the cash statement from Bombay showed correctly entries of the amounts received from Bhagwati Trading Company. Such amounts were noted to the credit of Bhagwati Trading Company. When the Union Agencies made payment to Bhagwati

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Trading Company, an entry to that effect was noted in the cash statement to the debit of Bhagwati Trading Company. On receipt of these cash statements in 1955, it is alleged, Gurha used to get the genuine cash statement substituted by another fictitious cash statement in which no mention was made of Bhagwati Trading Company. Entries to the credit of Bhagwati Trading Company used to be shown to be entries showing the receipt of those moneys from the Delhi Office of the Union Agencies through Chokhani. The debit entry in the name of Bhagwati Trading Company used to be shown as a debit to the Delhi Office of the Union Agencies. This substituted cash statement was then made over to one Lakhotia, who worked in the Delhi Office of the Union Agencies on behalf of the Bombay Office of the company. He was also prosecuted, but was acquitted. Lakhotia issued credit advices on behalf of the Bombay Office of the Union Agencies to the Delhi Office of the Union Agencies in reference to the entry in the cash statement which, in the original statement, was in respect of the amount received from Bhagwati Trading Company, intimating that that amount had been credited by the Bombay Office to the account of the Delhi Office. A debit advice on behalf of the Bombay Office to the Delhi Office was issued intimating that the amount had been debited to the account of the Delhi Office when in fact, the original entry debited that amount to the account of Bhagwati Trading Company. Lakhotia also made entries in the ledger of the Bombay Office which was maintained in the Delhi Office of the company. In its column entitled 'folios' reference to the folio of the cash statement was given by writing the letter 'C' and the number of the folio of the cash statement from which the entry was posted.

On receipt of such advices from Lakhotia on behalf of the Bombay Office, Dhawan, P. W. 19,

Accountant of the Delhi Office of the Union Agencies used to prepare the journal voucher. In the case of the credit advices, the amount was debited to the Bombay Office of the Union Agencies and credited to Asia Udyog Ltd. In the case of the debit advices, the amount was debited to Asia Udyog Ltd., and credited to the Bombay Office of the Union Agencies. According to the statement of Dhawan, he did so under the instructions of Gurha. Gurha used to sign these vouchers and when he fell ill, they were signed by another Director, J. S. Mittal. Corresponding entries used to be made in the account of the Bombay Office and the Asia Udyog Ltd., in the ledger of the Delhi Office of the Union Agencies.

After Dhawan had prepared these vouchers he also used to issue advices to Asia Udyog Ltd. intimating that the amount mentioned therein had been credited or debited to its account. Thus the name of Bhagwati Trading Company did not appear in the various advices, vouchers and the ledgers prepared at Delhi.

In the office of Asia Udyog Ltd., on receipt of the credit advice, a journal voucher crediting the amount to the Bombay Office and debiting it to the Delhi Office of the Union Agencies was prepared. A journal voucher showing the entries in the reverse order was prepared on the receipt of the debit advices. Asia Udyog Ltd., issued advice to the Bombay Office intimating that the amount had been credited or debited to the Bombay Office of the Union Agencies in the case of vouchers relating to the credit or debit advice from that Office. All such vouchers in Asia Udyog Ltd. were signed by Gurha even during the period when he was ill and was not attending the office of the Union Agencies.

The result of all such entries in the vouchers was that on paper it appeared in the case of credit

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advices that the Delhi Office of the Union Agencies advanced money to the Bombay Office which paid the money to Asia Udyog Ltd., which in its turn paid the money to the Delhi Office of the Union Agencies, and in the case of debit advices, the Bombay Office debited the amount to Delhi Office of the Union Agencies and that debited it to Asia Udyog Ltd., which in its turn debited it to the Bombay Office. All these entries were against facts and they must have been done with a motive and apparently it was to keep off the records any mention of Bhagwati Trading Company. No explanation has been given as to why this course of making entries was adopted.

The genuine cash statements are on record. The alleged fictitious statements are not on the record. It is not admitted by Gurha that any fictitious cash statement was prepared. It is not necessary for our purposes to hold whether a fictitious cash statement in lieu of the genuine cash statement received from Bombay was prepared under the directions of Gurha or not. The fact remains that the entries in the various advices prepared by Lakhotia on the basis of the cash statements received, did not represent the true entries in the genuine cash statements and that journal vouchers prepared by Dhawan also showed wrong entries and did not represent facts correctly.

Of the journal vouchers with respect to which the three charges under s. 477 A, I. P. C. had been framed, two are the vouchers prepared by Dhawan crediting the amounts mentioned the rein to Asia Udyog Ltd., and debiting them to the Bombay Office of the Union Agencies. They are Exhibits P. 2055 and P. 2060. Each of them is addressed to Asia Udyog Ltd. and states that the amount mentioned therein was the amount received by the former, i. e. the Bombay Office from Chokhani on account of the latter, i. e., Asia Udyog Ltd., on

January 7 and January 10, 1955, respectively and adjusted. One Exhibit P. 2042 debits the amount to Asia Udyog Ltd, and credits it to the Bombay Office of Union Agencies and states the amount mentioned therein to have been paid by the latter, i.e., Bombay Office to Chokhani on account of the former, i.e Asia Udyog Ltd., and adjusted.

Other facts which throw light on the deliberate preparation of these false vouchers are that there had been tampering of the ledger of the Bombay Office in the Delhi Office of the Union Agencies and also in the journal statement of that office. The letter 'C' in the folio column of the ledger had been altered to 'J' indicating that that entry referred to an entry in the journal statement received from Bombay. Sheets of the journal statement on which corresponding entries are noted have also been changed. These two documents remained in the possession of the Union Agencies till November 12, 1955, though the advices and vouchers in the Delhi Office were seized by the Police on September 22, 1955, and therefore interested persons could make alterations in them. It has been suggested for Gurha that the alterations were made by the Police. The suggestion has not been accepted by the learned Sessions Judge for good reasons. The changed entries did not in any way support the prosecution case and therefore the police had no reason to get those entries concocted. The entries did show the receipt of the amounts from Bhagwati Trading Company, but the prosecution case was that the amount was received in cash and not through transfers which transactions had to be adjusted. The learned Sessions Judge, did not, however, believe the statement of Sri Kishen Lal who investigated the case that he had noticed these alterations earlier than his statement in Court which was some time in 1958, for the reason that

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Dhawan was not questioned by the prosecution in this regard and no reference was made by Sri Kishen Lal in the case diary about his questioning Dhawan about the alterations. The learned Sessions Judge appears to have overlooked the statement of Sri Kishen Lal to the effect:

> "I made a note in the case diary about myself having put the overwriting to Lakhotia and about having asked his explanation about that."

The Court could have verified the fact from the case diary. It is too much to suppose that Sri Kishen Lal would make a wrong statement whose inaccuracy could be very easily detected. However, the learned Session Judge himself has given good reasons for not accepting the suggestion that the over-writing of the letter 'C' by the letter 'J' and the changing of the journal papers were made by the police.

The part that Gurha played in getting these false entries prepared is deposed to by Dhawan, P.W. 19, who used, occasionally, to approach Gurha for instructions.

Further, Gurha, as the accountant of Asia Udyog Ltd., must have known that Asia Udyog Ltd., had neither advanced any amounts to the Bombay Office of the Union Agencies nor received any amounts from the Bombay Office of the Union Agencies. He however signed all the vouchers prepared in the office of Asia Udyog Ltd., in connection with these transactions. He did so even during his illness (May, 1955, to July, 1955, which, according to the statement of Gurha, in answer to question No. 134 was from March 15 to August 12, 1955, during which period he did not attend the office of the Union Agencies). He signed them deliberately to state false facts.

Dhawan particularly stated that on receipt of the advice, Exhibit P. 2041, on the basis of which journal entry No. 98 was prepared by him, he went to Gurha to consult as it was not clear from that advice to whom the amount mentioned in it had been paid. Gurha, on looking up the Journal statement received from the Bombay Office told him to debit that amount to Asia Udyog Ltd. Dhawan prepared journal voucher P. 2042, accordingly, and Gurha initialled it. It may be mentioned that this debit advice was addressed to M/s. Delhi Office and therefore could be taken to refer either to the Delhi Office of the Union Agencies or the Delhi Office of Asia Udyog Ltd., both these offices being in the same building and being looked after by Gurha. Gurha admits in his statement under s.342, Cr P. C., that Dhawan referred this matter to him and that he asked him to debit the amount to Asia Udyog Ltd., The journal statement of the Bombay Office at the relevant time could have no reference to this item which was really entered in the cash statement and Gurha's conduct in looking up the journal was a mere ruse to show to Dhawan that was giving instructions on the basis of the entries and not on his own.

Gurha stated, in answer to question No. 45, that he remembered to have seen an entry relating to this amount of Rs. 4,61,000 which is the amount mentioned in Ex. P. 2042 in the cash statement of the Bombay Office of the Union Agencies when O.P. Dhawan referred an advice relating to that amount to him. In answer to questions Nos. 217 and 218, in connection with his advising Dhawan about the debiting of this amount to Asia Udyog Ltd., he stated that he gave that advice after tracing the relevant entry in the journal statement of the Bombay Office. This answer is not consistent with his earlier answer to question No. 45 as entry with respect to the same amount could not have existed

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simultaneously both in the cash statement and the journal statement of the Bombay Office. If his later answer is correct, his referring to the journal would have been just a ruse as already stated. If his earlier answer is correct that would indicate that either Gurha had supplied the office with the fictitious cash statement of the Bombay Office as alleged by the prosecution or that seeing in the journal cash statement that the entry related to Bhagwati Trading Company, deliberately told Dhawan, in accordence with the scheme, to debit that amount to Asia Udyog Ltd. In either view of the matter, this conduct of Gurha in advising Dhawan to debit the amount to Asia Udyog Ltd., is sufficient to indicate his complicity in the whole scheme, as otherwise, he had no reason to behave in that manner.

Gurha, among the accused, must have been chosen for the purpose of the conspiracy because he had connection both with the Union Agencies and with Asia Udyog Ltd. He had been in the employ of a Dalmia concern from long before. He was the Accountant of the Dalmia Cement and Paper Marketing Company from 1948 till its liquidation in 1953. Gurha, as Director of the Union Agencies, knew that it had suffered losses as a result of share-speculation business in 1954-55 and that the Delhi Office was short of liquid funds to meet these losses. He must have known how the funds to meet the losses were being secured from the funds of the Insurance Company through Bhagwati Trading Company. He must have also known that this was wrong. It is only with such knowledge that he could have been a party to the making of false advices and vouchers. There could be no other reason. It could not have been possible for the prosecution to lead direct evidence about Gurha's knowledge with respect to the full working of the scheme to provide for the losses of the Union Agencies from the funds of the Insurance Company. It is further

not necessary that each member of a conspiracy must know all the details of the conspiracy.

Mr. Kohli, for Gurha, has urged that Gurha could have had nothing to do with the diversion of the funds of the Insurance Company to the Union Agencies, even though he was a Director of the latter as he never issued instructions regarding the activities of the Union Agencies, had no knowledge of the passing of money from the funds of the Insurance Company to the Union Agencies as he had nothing to do with the movement of the securities held by the Insurance Company or the receipt of cash or the other transactions, his role having begun, according to the prosecution, after the offence under s. 409 I. P. C. had been actually committed, i.e., after Chokhani had issued cheques on the bank accounts of the Insurance Company with the Chartered Bank in favour of Bhagwati Trading Company, and therefore could know nothing regarding the diversion of funds and the desirability of falsifying the accounts and papers of the Offices he had to deal with. Great reliance is placed on the letter, Exhibit B. 956 in submitting that Gurha did not know about the whole affair and simply knew, as stated by him, that Chokhani had borrowed money, for the Union Agencies to pay its losses, from Bhagwati Trading Company. This letter is of significance and we quote it in full :

"Girdharilal Chokhani
Times of India
Building,
Hornby Road,
Bombay-1.

CONFIDENTIAL

17th September 55.

Bharat Union Agencies Ltd.,
Delhi.

Attn. Mr. R. P. Gurha

Dear Sir,

I have to inform you that the various amounts

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arranged by me as temporary loans to Bharat Union Agencies Ltd., Bombay Office from time to time in the name of Bhagwati Trading Company, actually represented the monies relating to the undernoted securities belonging to Bharat Insurance Company Limited.

	Face Value
2½% 1961	Rs. 56,00,000
3% 1963-65	Rs. 79,00,000
3% 1966-68	Rs. 60,00,000
	Rs. 1,94,00,000

I have now to request you to please arrange at your earliest to pay about Rs. 1,80,00,000 in cash or purchase the aforesaid securities (or their equivalent) and deliver the same to Bharat Insurance Company Ltd., 10, Daryaganj, Delhi on my behalf, debiting the amount to the credit standing in the books of the Company's Bombay Office in the name of M/s Bhagwati Trading Company. Any debit or credit balance left thereafter in the said account would be settled later on.

I am getting this letter also signed by Vishnuprasad on behalf of Bhagwati Trading Company although he had neither any knowledge of these transactions nor had any connection with these affairs.

Yours faithfully,

For: Bhagwati Trading Company

Sd/ G. L. Chokhani

Sd. Illegible
Vishnuprasad Bajranglal
Proprietor."

We are of opinion that this is a letter written for the purpose of the case and was, as urged for

the State, ante-dated. There is inherent evidence in this letter to support this view. The letter makes a reference to Vishnu Prasad's having no knowledge of the transactions and having no connection with the affairs. Mention of these facts was quite out of place in a letter which Chokhani was addressing to Gurha in the course of business for his immediately arranging for the payment of Rs. 1,80,00,000 in cash or securities to Bharat Insurance Company. Further, the opening expression in the letter does not necessarily mean that Gurha was being informed for the first time that the temporary loans arranged by him for the Union Agencies Ltd., in the name of Bhagwati Trading Company actually represented the moneys belonging to the Bharat Insurance Company. If it meant so, that must have been done so by design, just as the concluding portion of the letter was, as already mentioned, put in by design to protect Vishnu Prasad's interest.

The letter is dated September 17, 1955, and thus purports to have been written a few days before the formal complaint was made to the police. Even if it was written on September 17, it was written at a time when the matter of securities had come to the notice of the authorities and Dalmia was being pressed to satisfactorily explain the position of the securities. Chokhani could have written a letter of this kind in that setting.

Another fact relied upon by the learned Sessions Judge in considering this letter to be antedated is that it does not refer to one kind of securities which were not in the possession of the Insurance Company even though they had been ostensibly purchased. It does not mention of the securities worth Rs. 26,25,000 which were really supplied to the Insurance Company on September 23, 1955. This letter should have included securities of that amount and should have asked Gurha to make up

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for that amount to the Insurance Company. This is a clear indication that this letter was written after September 23, 1955.

Mr. Kohli has, however, urged that the contract for the purchase of these securities had taken place on September 16, 1955, and that therefore Chokhani did not include those securities in this letter. Reference is made to the statement of Jayantilal, P.W. 6, a partner of the Firm Devkaran Nanjee, Brokers in Shares and securities. He states that Bhagwati Trading Company wanted to purchase for immediate delivery 3% 1966-68 securities of the face value of Rs. 21,25,000 and that a contract about it was entered into. Securities of this amount were not available in the market. Securities worth Rs. 1,75,000 were available and were delivered to Chokhani that day. They had to purchase securities of the face value of Rs. 20,00,000, from the Reserve Bank of India in order to effect delivery and had to sell some other securities of that value. The result was that the required securities were received by them on September 22, 1955. Even this statement does not account for not including securities of the value of Rs. 4,50,000 in this letter Ex. P. 956.

It was further urged in the alternative that Chokhani had very extensive powers in all the alleged concerns of Dalmia and so could get anything done due to his influence without divulging secrets. That was not the position taken by Gurha in his statement. He did not say that he deliberately got false documents prepared due to directions from Chokhani and which he could not disregard. Even if it be so, that means that Gurha got false documents made deliberately.

Another submission for Gurha is that the case held proved for convicting him is different from the case as sought to be made out in the police charge-sheet submitted to the Court under s. 173 of the

Code of Criminal Procedure. The charge-sheet is hardly a complete or accurate thesis of the prosecution case. Clause (a) of sub-s. (1) of s. 173, Cr. P.C., requires the officer-in-charge of the police station to forward to the Magistrate empowered to take cognizance of the offence on a police report, the report in the prescribed form setting forth the names of the parties, the nature of the information, and the names of the persons who appear to be acquainted with the circumstances of the case. Nothing further need be said on this point.

Further, it is submitted that the prosecution case has changed from stage to stage. This can only mean that facts came on the record which were not known before and therefore the complexion of the allegations against Gurha's conduct varied. Even if this is so, he can have no grievance against it unless he had been unable to meet it in defence. No such inability has been expressed. It is however stated that the prosecution based its ultimate case against him on the allegation that the cash statement received from Bombay was suppressed and another false cash statement was prepared at Delhi under the directions of Gurha. We have already dealt with this matter. There was no such allegation on the basis of the statement of any prosecution witness. This way really a suggestion to explain how despite certain entries in the cash statements received from Bombay different entries were made in the advices issued by Lakhotia which advices ought to have been in accordance with the entries in the cash statement. The suggestion may be correct or may not be correct. It cannot, however, be said on its basis that there has been such a change in the prosecution case as would make the prosecution case reasonably doubtful.

In the same connection, a grievance has been made that Gurha was not questioned about the

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allegation that the cash statement had been suppressed and substituted by another fictitious one. No such question could have been put to him when there was no evidence about it. An accused is questioned under s. 342 Cr. P. C., to explain any circumstances appearing in the evidence against him. It is not necessary to ask him to explain any inference that a Court may be asked to draw and be prepared to draw from the evidence on record.

Another point stressed for Gurha is that the cash statements would not have mentioned Bhagwati Trading Company when the prosecution case is that Chokhani took deliberate steps to keep the Delhi Office of the Insurance Company in the dark about it. The fact is that the cash statement sent from Bombay did mention Bhagwati Trading Company. They were sent to Gurha personally. In the circumstances the reasonable conclusion can be that they mentioned Bhagwati Trading Company as that represented the true state of affairs and Chokhani had to inform the Delhi Office of the Bharat Union Agencies about the source of the money he was receiving for the Union Agencies to meet its losses. Chokhani did not disclose the true source, but disclosed a source fictitiously created to conceal the real source. There was no harm in disclosing Bhagwati Trading Company to the office of the Union Agencies at Delhi. With the same frankness it could not have been disclosed to the Insurance Company Office at Delhi both because that would required the complicity of the entire staff of the Insurance Company in the conspiracy and because otherwise, it would at once disclose to the Insurance Company and those who had to check its working that its funds were being misused. Disclosure of Bhagwati Trading Company to the Union Agencies was necessary and there was no harm in any way in informing Gurha confidentially about it. After Gurha had got possession of the cash

statement it was for him how to direct the necessary entries to be made in the advices prepared by Lakhotia on behalf of the Bombay Office at Delhi and on the basis of which journal vouchers were to be prepared by Dhawan and entries were to be made in the accounts of the Union Agencies at Delhi. We therefore do not consider that this contention in any way favours the appellent.

The fact that the account of the Asia Udyog Ltd., in the ledger Exhibit P. 2226 is not alleged to be fictitious and records in the column 'folio' the letter 'J' is of no help as the entries in that ledger must have been made on the basis of the journal vouchers issued by Dhawan. In fact once it is alleged that the advices issued by Lakhotia were fictitious any entry which can be traced to it must also be fictitious.

It is argued that the alleged scheme of making the circuitious entries could not have worked in keeping the source of money concealed as the Incometax Authorities could have detected by following the entries in the Bank records with respect to the source of payment of money (by cheques issued by Bhagwati Trading Company) to the Union Agencies at Bombay. They could have thus known only about Bhagwati Trading Company and, as already stated, it was not necessary to keep Bhagwati Trading Company secret from the Union Agencies. What was really to be kept secret was that the money came from the Insurance Company. The various circuitous entries were not really made to keep Bhagwati Trading Company unknown, but were made to make it difficult to trace that the money really was received from the Insurance Company.

A suggestion has been made by Mr. Kohli that Chokhani might have showed the same amount both in the cash statement and in the journal statement. No such case, however, seems to have been

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raised in the Courts below and has been made in the appellant's statement of case.

It has been contended that an offence under s. 477A I. P. C. has not been established against the accused as it is not proved that he falsified any book, papers, etc., in the possession of his employer with intent to defraud and that the intention to defraud should be to defraud someone in future and should not relate to an attempt to cover up what had already happened. It is submitted that an intent to defraud connotes an intention to deceive and make the person deceived suffer some loss, that the entries made in the journal vouchers did not make anyone suffer and therefore the entries could not be said to have been made with intent to defraud.

The expression 'intent to defraud' is not defined in the Penal Code but s. 25 defines 'fraudulently' thus :

> "A person is said to do a thing fraudulently, if he does that thing with intent to defraud and not otherwise."

The vouchers were falsified with one intention only and that was to let it go unnoticed that the Union Agencies had got funds from the Insurance Company. If they had shown the money received and paid to Bhagwati Trading Company, it was possible to trace the money back to the Insurance Company through Bhagwati Trading Company which received the money from the Insurance Company through cross cheques as well. Whoever would have tried to find out the source of the money would have been deceived by the entries. The Union Agencies made wrongful gain from the diversion of the Insurance Company's funds to it through Bhagwati Trading Company and the Insurance Company suffered loss of funds. The false entries were made to cover

up the diversion of funds and were thus to conceal and therefore to further the dishonest act already committed.

We agree with respect with the following observation in *Emperor* v. *Ragho Ram* (1) at page 788:

> "If the intention with which a false document is made is to conceal a fraudulent or dishonest act which had been previously committed, we fail to appreciate how that intention could be other than an intention to commit fraud. The concealment of an already committed fraud is a fraud."

And, again, at page 789:

> "Where, therefore, there is an intention to obtain an advantage by deceit there is fraud and if a document is fabricated with such intent, it is forgery. A man who deliberately makes a false document in order to conceal a fraud already committed by him is undoubtedly acting with intent to commit fraud, as by making the false document he intends the party concerned to believe that no fraud had been committed. It requires no argument to demonstrate that steps taken and devices adopted with a view to prevent persons already defrauded from ascertaining that fraud had been prepetrated on them, and thus to enable the person who practised the fraud to retain the illicit gain which he secured by the fraud, amount to the commission of a fraud. An act that is calculated to conceal fraud already committed and to make the party defrauded believe that no fraud had been committed is a fraudulent act and the person responsible for the act acts fraudulently within the meaning of section 25 of the Code."

(1) [1933] 1 L. R. 55 All. 783, 788, 789.

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We agree, with this observation, and repel the contention for the appellant.

It has then been submitted that the falsification should have been necessarily connected with the commission of the breach of trust. There is no question of immediate or remote connection with the commission of breach of trust which is sought to be covered up by the falsification, so long as the falsification is to cover that up. In the present case, introduction of Bhagwati Trading Company in the transactions was the first step to carry out deception about the actual payment of money out of the funds of the Insurance Company to the Union Agencies.

The second step of suppressing the name of Bhagwati Trading Company in the papers of the Union Agencies Delhi, made it more difficult to trace the passing of the money of the Insurance Company to the Union Agencies and therefore the falsification of the journal vouchers related back to the original diversion of the Insurance Companys moneys to the Union Agencies and was with a vew to deceive any such person in future who be tracing the source of the money received by the Union Agencies.

A grievance is made of the fact that certain witnesses were not examined by the prosecution. Of the persons working for the Union Agencies, five were accused at the trial, Kannan, Lakhotia, Gurha, Mittal and Dudani. Only Gurha among them was convicted. The others were acquitted. The remaining persons were Krishnan, Panchawagh and the clerks O. D. Mathur and Attarshi. Of the persons connected with Asia Udyog, one R. S. Jain of the Accounts Branch was not examined. Panchawagh who was an Accountant of the Union Agencies and had custody of the cash statements and journal was given up by the prosecution on the ground that

he was won over. We do not consider that it was necessary to examine him for the unfolding of the prosecution case against Gurha. Similarly it was not necessary to examine the others for that purpose. A mere consideration that they might have given a further description of how things happened in those offices would not justify the conclusion that the omission to examine them was an oblique motive and could go to benefit the accused.

A grievance was made that the High Court did not deal with the question whether the police tampered with the cash statement and the journal. It is not clear whether such a point was raised in the High Court. It was however not mentioned in the grounds of appeal. The trial Court did deal with the point and held against the appellant Gurha. In fact, paragraph 22 of the grounds of appeal by Gurha simply said that no value should have been attached to the said cuttings when it was not proved on the record as to who made the said cuttings and when they were not calculated to conceal the true facts or the further interest of the conspiracy.

We are therefore of opinion that Gurha has been rightly held to have been in the conspiracy and to have abetted the making of the false journal vouchers.

In view of the above, we are of opinion that the appellants have been rightly convicted of the offences charged.

It has been urged for Chokhani that his sentence be reduced to the period already undergone as he made no profit for himself out of the impugned transactions, that he is 59 years old and had already been ten days in jail. We do not consider these to justify the reduction of the sentence when

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he was the chief person to carry out the main work of the conspiracy.

We also do not consider Dalmia's sentence, in the circumstances of the case, to be severe.

We therefore dismiss these appeals.

Appeals Dismissed.

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April 6.

EAST INDIA TOBACCO CO.

v.

STATE OF ANDHRA PRADESH

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, N. RAJAGOPALA AYYANGAR and T. L. VENKATARAMA AIYAR, JJ.)

Sales Tax—Tobacco—Imposition of Tax on sale of Virginia Tobacco and exemption of country tobacco—Provision if discriminatory—Purchase which procedes sale for export if could be exempted from tax—Madras General Sales Tax Act, 1939 (Mad. 9 of 1939), as amended by the Madras General Sales Tax and the Madras Tobacco (Taxation of Sales and Registration) (Andhra Amendment) Act(Andhra XIV of 1955), ss. 5, 6—Constitution of India, Arts. 14, 286 (1) (b).

The appellants firms were doing business in the export of Virginia tobacco. The usual course of that business was stated to be that appellants first entered into contracts with their customers abroad for the sale of tobacco, and thereafter they purchased the requisite quantities of goods locally and then exported them to foreign purchasers in performance of their contracts. Section 5 of the Madras General Sales Tax Act, 1939, was amended by the Andhra State Legislature when the Andhra State came into existence by the Amending Act XIV of 1955. As a result of this enactment to sales of country tobacco were exempted ; while sale of Virginia tobacco were liable to be taxed. The appellants were called upon to produce their account books relating to their business in tobacco for the purpose of assessing sales tax. The appellants filed petitions under Art. 226 of the Constitution challenging the constitutionality of the Amending Act. XIV of 1955, on