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No. 1 in all the three appeals were not entitled to curtail the benefits provided to the appellants by them and that the said benefits were not similar either qualitatively or quantitatively to the benefits under the Scheme which had been brought into force under the Act. The High Court has held that the question as to whether the notices and circulars issued by respondent No. 1 were invalid, could not be considered under Art. 226 of the Constitution; that is a matter which can be appropriately raised in the form of a dispute by the appellants under s. 10 of the Industrial Disputes Act. It is true that the powers conferred on the High Courts under Art. 226 are very wide, but it is not suggested by Mr. Chatterjee that even these powers can take in within their sweep industrial disputes of the kind which this contention seeks to raise. Therefore, without expressing any opinion on the merits of the contention, we would confirm the finding of the High Court that the proper remedy which is available to the appellants to ventilate their grievances in respect of the said notices and circulars is to take recourse to s. 10 of the Industrial Disputes Act, or seek relief, if possible, under sections 74 and 75 of the Act.

The result is, the appeals fail and are dismissed. There would be no order as to costs.

Appeals dismissed.

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SHIV PRASAD CHUNILAL JAIN

v.

THE STATE OF MAHARASHTRA

(K. SUBBA RAO, RAGHUBAR DAYAL AND J. R. MUDHOLKAR JJ.)

Criminal Trial—Whether the person must be physically present at the actual commission of the crime—Acts done by several persons in furtherance of common intention—Essence of—Indian Penal Code, 1860 (45 *of* 1860), *s.* 34.

In a trial by jury the appellants were jointly charged along with accused No. 1 with an offence punishable under ss. 471 and 467 read with s. 34 of the Indian Penal Code. The first charge was that in

furtherance of their common intention to cheat the railway administration, accused No. 1 had fraudulently or dishonestly used the forged railway receipt. The second charge was framed in the alternative. Firstly it charged all the accused under s. 467 read with s. 34 I.P.C. on account of accused No. 1 having forged the bill portion. In the alternative, accused No. 1 was charged under s. 467 I.P.C. and the appellants were charged under s. 467 read with s. 109 I.P.C. for having abetted accused No. 1 in the commission of that offence. Similarly charges Nos. 3 to 6 were framed in the alternative. The jury returned a unanimous verdict of guilty against all the accused for the various offences read with s. 34 I.P.C. The verdict of the jury was not recorded with respect to the five alternative charges against accused No. 1 regarding substantive offences and against appellants with respect to various offences read with s. 109 I.P.C. The Sessions Judge accepted the verdict of the jury and convicted them of the various offences read with s. 34 I.P.C. Their appeals to the High Court also failed. On appeal by Special Leave the appellants mainly contended that the learned Sessions Judge misdirected the jury with respect to the requirements of s. 34 I.P.C. It was urged that the various offences were actually committed by accused No. 1, that the appellants were not present when accused No. 1 presented the forged railway receipts, did other criminal acts and took delivery of the goods and that therefore even if they had agreed with accused No. 1 for the cheating of the railway by obtaining the goods dishonestly by presenting the forged receipt, they might have abetted the commission of the various offences, but could not be guilty of those offences with the aid of s. 34 I.P.C. whose provisions do not apply in the circumstances of the case. For the applicability of s. 34 against an accused, it is necessary that that accused had actually participated in the commission of the crime either by doing something which forms part of the criminal act or by at least doing something which would indicate that he was a participant in the commission of that criminal act at the time it was committed.

Held: In the present case, accused No. 1 alone did the various acts which constituted the offences of which he was convicted. The appellants took no part in the actual commission of those acts. Whatever they might have done prior to the doing of those acts, did not form an ingredient of the offences committed by accused No. 1. They could not be said to have participated in the commission of the criminal act which amounted to those various offences. They could not be therefore held liable, by virtue of s. 34 I.P.C., for the acts committed by accused No. 1 alone, even if those acts had been committed in furtherance of the common intention of all the three accused. Therefore, the conviction of the appellants, for the various offences read with s. 34 I.P.C. must be set aside.

Barendra Kumar Ghosh v. *The King Emperor*, (1929) L.R. 52 I.A. 40, *Shree Kantiah Ramayya Munipalli* v. *State of Bombay* [1955] 1 S.C.R. 1177 and *Jaikrishnadas Manohardas Desai* v. *State of Bombay* [1960] 3 S.C.R. 319, referred to.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 150 and 185 of 1961.

Appeals by special leave from the judgment and order dated June 19, 1961 of the former Bombay High Court in Criminal Appeals Nos. 218 and 242 of 1961 respectively.

S. Mohan Kumarmangalam, R. K. Garg and *M. K. Ramamurthi*, for the appellant (in Cr. A. No. 150/61).

B. M. Mistry, Ravinder Narain and *J. B. Dadachanji*, for the appellant (in Cr. A. No. 185 of 1961).

B. K. Khanna, B. R. G. K. Achar and *R. H. Dhebar*, for the respondent (in both the appeals).

February 26, 1964. The Judgment of the Court was delivered by

Raghubar Dayal J.

RAGHUBAR DAYAL J.—Shiv Prasad Chunilal Jain, appellant in Criminal Appeal No. 150 of 1961 was accused No. 3 and Pyarelal Ishwardas Kapoor, appellant in Criminal Appeal No. 185 of 1961 was accused No. 2, at the Sessions Trial before the Additional Sessions Judge, Greater Bombay. Along with them was a third accused, Rameshwarnath Brijmohan Shukla who was accused No. 1 at the trial.

As the two appeals arise from a common judgment, we would dispose of them by one judgment. The appellants would be referred to as accused No. 3 and accused No. 2 respectively.

The facts leading to the conviction of the appellants are that a large quantity of iron angles was consigned early in February 1959 from Gobind Garh to Raypuram under railway receipt No. 597481. They were despatched in an open wagon bearing E.R. No. 69667. The labels of the wagon were changed at Itarsi railway station and it was diverted to Wadi Bunder under a label showing that the iron angles had been despatched from Baran to Wadi Bunder under railway receipt No. 43352 dated February 6, 1959. This wagon reached Wadi Bunder on February 16, 1959. On February 17 it was unloaded by Baburao

Gawade, P.W. 1 and Shridhar, P.W. 14. On February 18, accused No. 1 obtained the delivery sheet of the bill and signed it in the name of Shri Datta. He also obtained delivery of the iron angles from the railway and signed the Railway Delivery Book in the name of Shri Datta. The railway authorities delivered these on the presentation of the forged receipt No. 43352 and on payment of the charges amounting to Rs. 1,500/-.

These iron angles were then transported to the godown of the National Transport Company at Sewri and stored there. The entries in the book showed their receipt in the account of accused No. 3 and also contained a further entry indicating the goods to be received in the account of accused No. 2. The latter entry was made on the receipt of a chit, Exhibit Z8, from accused No. 1 saying that the goods be entered in the name of accused No. 2. On February 24, 1959 the accused No. 2 signed an application, Exhibit K, addressed to the head office of the National Transport Company for delivering the goods. Accused No. 1 obtained the goods from the godown of that company on February 26 and March 3, 1959.

A complaint by the original consignee about the non-receipt of the iron angles sent from Gobind Garh led to an enquiry and eventual prosecution of the three accused.

Six charges were framed. The first charge was against all the accused for an offence punishable under ss. 471 and 467 read with s. 34 I.P.C. and stated that in furtherance of their common intention to cheat the railway administration, accused No. 1 had fraudulently or dishonestly used the forged railway receipt No. 43352.

The second charge was framed in the alternative. Firstly it charged all the accused for an offence under s. 467 read with s. 34 I.P.C. on account of accused No. 1 having forged the bill portion. In the alternative, accused No. 1 was charged with the offence under s. 467 I.P.C. and the other accused Nos. 2 and 3 were charged under s. 467 read with s. 109 I.P.C. for having abetted accused No. 1 in the commission of that offence.

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Charges Nos. 3 to 6 were similarly framed in the alternative, *i.e.*, in the first instance all the three accused were charged with certain offences read with s. 34 I.P.C. while in the alternative accused No. 1 was charged of the specific offence and the other two accused were charged with that offence read with s. 109 I.P.C.

The accused were tried by the Additional Sessions Judge, Greater Bombay, with the aid of a jury. The jury returned a unanimous verdict of guilty against all the accused for the various offences read with s. 34 I.P.C. The verdict of the jury was not recorded with respect to the five alternative charges against accused No. 1 regarding substantive offences and against accused Nos. 2 and 3 with respect to the various offences read with s. 109 I.P.C. The Sessions Judge accepted the verdict of the jury and convicted them of the various offences read with s. 34 I.P.C. Their appeals to the High Court were unsuccessful and therefore accused Nos. 2 and 3 have preferred these appeals after obtaining special leave from this Court.

The main contention for the appellants is that the learned Sessions Judge misdirected the jury with respect to the requirements of s. 34 I.P.C. The contention is that the various offences were actually committed by accused No. 1 on February 18, that neither accused No. 2 nor accused No. 3 was present when he presented the forged railway receipt, did other criminal acts and took delivery of the iron angles and that therefore even if they had agreed with accused No. 1 for the cheating of the railway administration by obtaining the iron angles dishonestly by presenting the forged receipt, they might have abetted the commission of the various offences, but could not be guilty of those offences with the aid of s. 34 I.P.C. whose provisions, it is contended, do not apply in the circumstances of the case. It is contended that for the applicability of s. 34 against an accused, it is necessary that that accused had actually participated in the commission of the crime either by doing something which forms part of the criminal act or by at least doing something which would indicate that he was a participant in the commission of that criminal act at the time it was committed. Reliance is placed on the

cases reported as *Barendra Kumar Ghosh* v. *The King Emperor*(1) and *Shreekantiah Ramayya Munipalli* v. *The State of Bombay*(2).

The learned Sessions Judge in the instant case had told the jury :

> "In case you come to the conclusion that there was a common intention in the minds of all the three accused and accused No. 1 was acting in furtherance of that common intention, all the accused would be answerable for the offences proved against accused No. 1 by virtue of the provisions of s. 34 of the Indian Penal Code, and it would be no answer to the charge to say that the acts were done by accused No. 1 alone. Therefore, you have first, to consider for yourselves what offences are proved against accused No. 1. You have next to ask yourselves whether it is proved (and it can also be proved by circumstantial evidence) that there was a common intention in the minds of all the three accused and the acts done by accused No. 1 were done in furtherance of that common intention. If your answer is 'yes' all the three accused would be guilty of the charges proved against accused No. 1 by virtue of s. 34 of the Indian Penal Code."

It is contended that in thus putting the case to the jury the learned Sessions Judge was in error as he did not take into consideration the fact that accused Nos. 2 and 3 were not present at all at the time when the various offences were actually committed by accused No. 1. The two cases relied upon by the appellants support their contention.

In *Shreekantiah's case*(2), three persons were convicted on several charges under s. 409 read with s. 34 I.P.C. for committing criminal breach of trust of certain goods entrusted to them as government servants in charge of the stores depot

(1) L.R. 52 I.A. 40.
(2) [1955] 1 S.C.R. 1177.

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at Dehu Road near Poona. The stores had illegally passed out of the depot and were handed over to a person who was not authorised to get them from the depot. It was alleged that those accused had conspired to defraud the Government of those properties and that it was in pursuance of that conspiracy that they had arranged to sell the goods to the other person. Accused No. 1 in that case was not present when the goods were loaded nor was he present when they were allowed to pass out of the gates, that is to say, he was not present when the offence was committed. Bose J., delivering the judgment of the Court, said at p. 1189 :

> "If he was not present, he cannot be convicted with the aid of section 34. He could have been convicted of the abetment had the jury returned a verdict to that effect because there is evidence of abetment and the charge about abetment is right in law. But the jury ignored the abetment part of the charge and we have no means of knowing whether they believed this part of the evidence or not."

In considering the misdirection in the charge to the jury and the requirements of s. 34 I.P.C. the learned Judge said at p. 1188 :

> "The essence of the misdirection consists in his direction to the jury that even though a person 'may not be present when the offence is actually committed' and even if he remains 'behind the screen' he can be convicted under section 34 provided it is proved that the offence was committed in furtherance of the common intention. This is wrong, for it is the essence of the section that the person must be physically present at the actual commission of the crime."

Shreekantiah's case(1) is practically similar to the present case. Both accused No. 2 and accused No. 3 deny their presence at the railway station on February 18 when the various offences were committed. None deposed that accused No. 3 was then present. The presence of accused No. 2 was, however, stated by Babu Rao Gawade, P.W. 1.

(1) [1955] 1 S.C.R. 1177.

He had not stated so in his statement before the police during investigation and the summing up by the learned Sessions Judge was that, under those circumstances, it was for the jury to consider whether to believe the statement of the witness in Court or not. It cannot be said as there was other evidence against accused No. 2 as well about his connection with this criminal transaction whether the jury believed his presence at the railway station on February 18 or not.

In *Jaikrishnadas Manohardas Desai* v. *The State of Bombay*(1), *Shreekantiah's case*(2) came up for consideration and was distinguished, on facts. In that case, the two accused, who were directors of a company, were convicted of an offence under s. 409 read with s. 34 I.P.C. for committing criminal breach of trust with respect to certain cloth supplied to them. It was alleged that one of the accused was not working at that factory during the period when the goods must have been removed and that therefore he could not be made liable for the misappropriation of the goods by taking recourse to the provisions of s. 34 I.P.C. Shah J., delivering the judgment of the Court, said at p. 326 :

> "But the essence of liability under s. 34 is to be found in the existence of a common intention animating the offenders leading to the doing of a criminal act in furtherance of the common intention and presence of the offender sought to be rendered liable under s. 34 is not, on the words of the statute, one of the conditions of its applicability. .....A common intention—a meeting of minds—to commit an offence and participation in the commission of the offence in furtherance of that common intention invite the application of s. 34. But this participation need not in all cases be by physical presence. In offences involving physical violence, normally presence at the scene of offence of the offenders sought to be rendered liable on the principle of joint liability may be necessary, but such is not the case in respect of other offences where the offence consists of diverse acts which may be

(1) [1960] 3. S.C.R. 319. (2) [1955] 1 S.C.R. 1177.

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done at different times and places. In *Shree Kantiah's case*(1), misappropriation was committed by removing the goods from a Government depot and on the occasion of the removal of the goods, the first accused was not present. It was therefore doubtful whether he had participated in the commission of the offence, and this Court in those circumstances held that participation by the first accused was not established. The observations in *Shree Kantiah's case*(1) in so far as they deal with s. 34 of the Indian Penal Code must, in our judgment, be read in the light of the facts established and are not intended to lay down a principle of universal application."

Accused No. 1, in the present case, alone did the various acts on February 18, 1959 which constituted the offences of which he was convicted. Accused Nos. 2 and 3 took no part in the actual commission of those acts. Whatever they might have done prior to the doing of those acts, did not form an ingredient of the offences committed by accused No. 1. They cannot be said to have participated in the commission of the criminal act which amounted to those various offences. They cannot be therefore held liable, by virtue of s. 34 I.P.C., for the acts committed by accused No. 1 alone, even if those acts had been committed in furtherance of the common intention of all the three accused. The result, therefore, is that the conviction of the appellants, *viz.*, accused Nos. 2 and 3, for the various offences read with s. 34 I.P.C. is to be set aside.

We did not hear, at first, the learned counsel for the appellants, on the alternative offences of abetment being made out against the appellants and with respect to which the verdict of the jury was not recorded by the Sessions Judge. We did not consider it necessary to remit the case for further proceedings with respect to those charges and preferred to dispose of the case finally after giving a further hearing to the learned counsel for the appellants. We accordingly heard them on the charges relating to the appellants abetting accused No. 1 in the commission of the

(1) [1955] 1 S.C.R. 1177.

various offences, subject matter of charges Nos. 2 to 6 and now deal with that matter.

We need not discuss the evidence on the record and would just note the various facts which are established from the evidence or which are admitted by the accused.

The relevant facts having a bearing on the question of accused No. 2 abetting the commission of the offences committed by accused No. 1 are :

1. Accused No. 1 is the servant of accused No. 3 at whose shop accused No. 2, who is a broker, sits.
2. Accused No. 2 deals in non-ferrous goods.
3. Accused No. 2 went with Baburam Gavade, P.W. 1, a clearing agent, on February 17, 1959, to see the goods.
4. The godown register showed the angle irons to be received in the account of Shiv Prasad Bimal Kumar and Pyare Lal, accused No. 2.
5. Accused No. 2 wrote the letter Exhibit K to the National Transport Company for issuing the delivery order with respect to the angle irons in order to enable him to take delivery thereof.
6. Accused No. 2 was in possession of the note Exhibit Z-7 which he delivered to the police during the investigation.

The relevant facts having a bearing on the alleged abetment of the offences by accused No. 3 are :

1. Accused No. 1 is an employee of accused No. 3.
2. The angle irons were stored at the depot of the National Transport Company at the instance of accused No. 1.
3. The books of the godown noted their receipt in the account of accused No. 3, though the account showed further that they were received in the account of accused No. 2. This further entry was made on receipt of Exhibit Z-8 from

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accused No. 1 when the last lot was delivered at the godown on February 18.

4. The entire writing on Exhibit Z-7 except the signature of an unknown person and the date below it, was written by accused No. 3. That document reads :

"To, Piaraya Lal c/o
M/s. Sheopershad Bimal Kumar, Bombay.

1. RR. No. 43351, dated 4-2-59
Ashoknagar to Carnac Bridge.

2. RR. No. 43352, dated 6-2-59
Baran to Wadi Bunder.

I have received the material of the above RR which I have handed over to you for clearance.

Sd./- Yashwant ....
24-2-1959."

Besides these circumstances, it is urged for the State that the effect of the diversion of the wagon from its right course at Itarsi railway station indicates that the people responsible for it must have a fairly large and influential organization with funds and that such a diversion could not have been merely at the instance of accused No. 1, an employee of accused No. 3, who is a substantial merchant. About Rs. 1,500/- were paid as charges to the railway authorities before the angle irons could be taken delivery of. Accused No. 1 could not have been in a position to make that payment.

It is further urged that accused No. 1 would not have stored the goods with the National Transport Company unless the storage was on account of his master, accused No. 3.

Accused No. 2 admits his going to see the goods on February 17, but states that he lost his interest in the goods as they were iron angles and his line of business was in non-ferrous goods. He explains his signing the letter Exhibit

K by saying that he did so at the instance of accused No. 3 who represented to him that accused No. 1 had, by mistake, stored the goods in the name of accused No. 2 and of accused No. 3 showing him the document Exhibit Z-7 which he retained with himself.

Accused No. 3 states that he had nothing to do with this matter and that he wrote Exhibit Z-7 at the instance of accused No. 2 who asked him to do so, he himself being unable to write in English or Hindi.

We now discuss the evidence to determine whether the accused Nos. 2 and 3 abetted the commission of the offences committed by accused No. 1.

Exhibit Z-7, as originally written, does not, appear to have had the first line, *viz.*, the writing of 'To, Piaraya Lal C/o'. This was written subsequently. This is clear, as urged for accused No. 2, from the facts that it appears to have been written with a different pen and, possibly, with different ink also, and because the word 'C/o' has been written at an unusual place. In ordinary writing, it should have been in line with the latter expression 'M/s. Sheopershad Bimal Kumar'. It follows therefore that this document was first written by accused No. 3 to show that a third person had entrusted him with the railway receipt No. 43352, dated February 6, 1959, and that that person had received the material to which the railway receipt related. In this original form, the only conclusion possible from the original contents of the document can be that M/s. Sheopershad Bimal Kumar, of which accused No. 3 is the proprietor, received this receipt from the third person in order to clear the goods from the railways. This would amply explain accused No. 1 taking delivery of the goods on February 18 and storing them with the National Transport Company in the account of accused No. 3 and the entries in the godown register.

Himmatlal, P.W. 13, is the godown-keeper. He issued the receipt Exhibit P1 which records :

> 'We have today received the under-mentioned goods for storage with us in our godown No. IPL on behalf of and under lien to Shiv Prasad Bimal Kumar."

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This is a clear indication of the fact that the goods were stored on behalf of Sheopershad Bimal Kumar, *i.e.*, accused No. 3. The words 'under lien' are of great significance in this respect and show that the storage was not shown to be on behalf of accused No. 3 merely because the angle irons were sent by accused No. 1 who was an employee of accused No. 3. The expression 'under lien' points to there being some specified transaction between accused No. 3 and the National Transport Company for the storing of the articles. This note further confirms the statement of Himmatlal that he had at first written in the accounts that the goods were received on account of Sheopershad Bimal Kumar and that it was on receipt of Exhibit Z-8 from accused No. 1 that he noted the words 'Account Pyare Lal' in the entries with respect to those goods.

The circumstance that accused No. 3 was in a better position to finance the transaction than accused No. 1, is also consistent with the aforesaid conclusion from the original contents of Exhibit Z-7.

Apart from the apparent later noting of the first line in this document, Exhibit Z-7, there appears no good reason why the receipt should have been written in this form if it was to be written at the instance of accused No. 2. There was no reason to give the address of Pyare Lal as c/o M/s. Sheopershad Bimal Kumar. The later entry in this document must have been therefore for a purpose and that could have only been to show that the railway receipt No. 43352 was dealt with by accused No. 2 and not by accused No. 3.

Mention may be made here of the fact that certain witnesses who had, during their police statements, referred to certain actions of accused No. 3, stated in Court that those acts were committed by accused No. 2. No reliance can be placed on any of the statements of those witnesses and this fact is just mentioned to show that it fits in with the very first attempt in converting the document originally prepared to show that accused No. 3 had dealt with this forged railway receipt into a document showing that it was

not accused No. 3 but accused No. 2 who dealt with that receipt.

Accused No. 2 has been acting as a broker. He signed Exhibit K. He must be conversant with the language in which he signed. It was not necessary that the receipt Exhibit Z-7 should have been written in English or in Hindi even if accused No. 2 did not know any of those languages.

We are therefore not prepared to accept the explanation of accused No. 3 with respect to his recording the document Exhibit Z-7. We hold, as admitted by him, that he had written this document. It makes reference to the forged receipt of which advantage was taken in getting delivery of the iron angles. Accused No. 3, writing such a receipt, clearly points to his being concerned with the taking delivery of the iron angles, by accused No. 1, his employee. Once the forged receipt is traced to accused No. 3, from his own writing, the natural conclusion is that it was he who passed it on to his employee accused No. 1 for the purpose of getting delivery of those goods from the railway authorities. He thus aided accused No. 1 in obtaining delivery of those goods, and in his committing the various offences for achieving that object. The further fact that the receipt was endorsed in the name of Datta and not in the name of accused No. 1, also proves that accused No. 3 must have known that the receipt he was dealing with was not a genuine receipt for the goods which were to be taken delivery of. If he had believed the receipt to be a genuine one, he would have endorsed it or got it endorsed in the true name of his employee. His employee too would not have taken delivery under a false name. We are therefore of opinion that it is established from these various circumstances and facts that accused No. 3 had abetted the commission of the offences, the subject matter of charges Nos. 2 to 6, by accused No. 1.

The points in favour of accused No. 2 are that he does not deal in non-ferrous metals and therefore he would not have taken any interest in the transaction after he had found out on February 17 that the goods were ferrous and not non-ferrous. The fact that the goods were not stored in his name in the accounts of the godown of the National Trans-

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port Company, but were stored in the first instance in the name of No. 3, also goes in his favour. If accused No. 3 had nothing to do with it and accused No. 1 was simply acting for accused No. 2, he would have sent instructions in the very first instance to Himmatlal that goods were to be stored in the account of accused No. 2. He did not do so. He sent intimation for storing the goods in the name of Pyarelal with the last lorry transporting the iron angles to the godown. Pyarelal had no previous dealings with the National Transport Company.

In this connection, the exact direction given by accused No. 1 is of some significance. The direction given by him in Exhibit Z-8 was 'Please give a receipt in the name of a/c Pyare Lal'. The request was not that the goods were of Pyare Lal and so be stored on his account. That should have been the natural direction. The receipt would have then been issued in the name of Pyare Lal and of nobody else. The direction given by accused No. 1 therefore indicates that for certain purposes he desired the receipt alone to be in the name of Pyare Lal. Naturally, Himmatlal had to make some entry in the books of the godown which would be consistent with a receipt issued in the name of Pyare Lal. Himmatlal therefore noted the words 'account Pyare Lal' below the original note 'account Sheopershad Bimal Kumar', but saw no reason to make a statement in the receipt Exhibit P that the goods were stored on behalf of Pyare Lal and noted in it that they were stored on behalf and under lien to Sheopershad Bimal Kumar.

Accused No. 2 signed the letter Exhibit K for the issue of the delivery order. His explanation is that he did so when accused No. 3 insisted and told him that his employee had by mistake stored the goods in his name. Ordinarily, this should not have been believed by accused No. 2 as there was no reason why accused No. 1 should store the goods in his name by mistake. He could have and might have suspected something not straight, but could shake off such suspicion by his being shown the receipt Exhibit Z-7, which showed that the goods had been cleared by A-3 on behalf of certain person who had passed on that receipt. He was under an obligation to accused No. 3 and it is possible that he could

not have strongly resisted the request of accused No. 3 to sign the letter Exhibit K. Accused No. 3 had necessarily to obtain a letter signed by Pyare Lal when the goods had not been shown to be stored in his account but were noted in the account of Pyare Lal or of both Sheopershad Bimal Kumar and Pyare Lal.

It is significant that accused No. 2 himself did not go to take delivery of the goods. It was accused No. 1 who took the delivery in two lots and each time signed the receipt in the name of Pyare Lal.

If accused No. 2 was also a party to the dishonest obtaining of the goods from the railway, there would not have been any occasion for such duplication of names on whose behalf the goods were stored with the National Transport Company or for such a document as Exhibit Z-7 coming into existence or for accused No. 2 keeping the document with himself. He kept it with himself for his protection and produced it for that purpose during investigation. It may be that when accused No. 3 tried to dispel his doubts when he was requested to sign the letter Exhibit K, accused No. 2 himself suggested the receipt Exhibit Z-7 to be addressed in his name, as only then that receipt could be of any help to him. In these circumstances, we are of opinion that the complicity of accused No. 2 in the commission of the various offences by accused No. 1 is not established beyond reasonable doubt.

We therefore allow the appeal of Pyare Lal and acquit him of the offences he was convicted of. We dismiss the appeal of accused No. 3, Shiv Prasad Chunilal Jain, but alter his conviction for the various offences read with s. 34 I.P.C. to those offences read with s. 109 I.P.C., and maintain the sentences.

Appeal No. 185 *allowed and Appeal No.* 150 *dismissed. Conviction altered and sentence maintained.*