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 OFFICIAL  
 LIQUIDATOR,  
 U. P. OIL  
 MILLS  
 COMPANY,  
 LIMITED  
 v.  
 JAMNA  
 PRASAD

words "shall be deemed to have agreed to become members of the company" mean that the subscribers of the memorandum of a company are to be treated as having become members of the company by the fact of the subscription. This view was taken in *In the matter of the Union Bank, Allahabad* (1) and in the case of *In the matter of J. H. Chandler & Co.* (2). No decided case in conflict with these authorities has been produced before us and we hold that by merely subscribing to the memorandum of association Jagmohan Ram became a member of the company.

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The result is that we allow the application of the Official Liquidator to this extent that we direct Ram Lakhan to be placed on the list of contributories for 151 shares and that he be liable "in due course of administration" as the legal representative of Jagmohan Ram. The Liquidator will have his costs from Ram Lakhan personally, inasmuch as Ram Lakhan unnecessarily raised pleas against his liability to be brought on the list of contributories.

## APPELLATE CRIMINAL

*Before Mr. Justice Young*

EMPEROR v. RAM BARAN SHUKLA\*

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 February, 6

*Criminal Procedure Code, section 164—Written confession—Magistrate accepting a confession already written out and signed by the person while under police control—Such confession inadmissible in evidence—"Record" a confession, meaning of.*

While an accused person was under the control of the police he wrote out a confession and signed it. He was thereafter taken before a Magistrate for recording his confession under section 164 of the Criminal Procedure Code. After the Magistrate had given him the usual warnings the accused person handed over the written confession to the Magistrate and said

\* Criminal Appeal No. 906 of 1932, from an order of Rup Kishan Aga, Additional Session Judge of Aligarh, dated the 16th of September, 1932.

(1) (1925) I.L.R., 47 All., 669.

(2) (1926) I.L.R., 48 All. 580.

that whatever he had to say was contained therein. The written confession was then read over to the accused and he said it was correct and that he wanted to make no alteration in it. *Held* that the confession was not recorded as required by section 164 and was inadmissible in evidence.

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Section 164 of the Criminal Procedure Code must be construed strictly. The section enacts that the Magistrate must "record" a statement or confession; and "recording" means, and must mean, writing down the confession and not merely filing a written confession.

If a confession already written out when the accused is under the control of the police was once allowed to be admitted in evidence, the door would be opened wide to the grossest forms of abuse, and the safeguards against admitting confessions which were not voluntary would be destroyed to a large extent.

There is no analogy between a written statement made by the accused during the course of the trial in the presence of the court and a written confession handed in to a Magistrate in proceedings under section 164 of the Criminal Procedure Code.

Mr. *K. D. Malaviya*, for the appellant.

The Government Pleader (*Mr. Shankar Saran*), for the Crown.

YOUNG, J. :—*Ram Baran Shukla* was rations clerk in the District Jail of Aligarh. He was charged before the Additional Sessions Judge of Aligarh under sections 409 and 218 of the Indian Penal Code for criminal breach of trust, and for making false entries in his ledgers in order to cover up his defalcations. The learned Additional Sessions Judge found *Ram Baran Shukla* guilty on both charges, sentenced him under section 409 to one year's rigorous imprisonment, but did not sentence him at all under section 218. *Ram Baran Shukla* appeals.

The evidence against *Ram Baran Shukla* was in the first place a confession purporting to have been made by him and to have been recorded under section 164 of the Code of Criminal Procedure, and, secondly, evidence of a shortage of 37 maunds of *ata*, which *ata* was under his

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control, and of falsification of the accounts by him. There was also a statement by him made in the Magistrate's court that he had made alterations in the registers and that he had done this to avoid departmental action against himself and the jailor.

It is admitted that there was a shortage of 37 maunds 26 seers of *ata* during the months of September and October. It was admitted that Ram Baran Shukla was in charge of the *ata*, and it was further admitted by Ram Baran Shukla that he had falsified the accounts.

The first point taken by the appellant is that the confession made under section 164 of the Code of Criminal Procedure ought not to have been admitted against him by the learned Additional Sessions Judge. It appears that this confession was made under somewhat unusual circumstances. While Ram Baran Shukla was under the control of the police he reduced his confession into writing and signed it. Thereafter he was taken before the Magistrate to record his confession under section 164 of the Code of Criminal Procedure. The Magistrate warned Ram Baran Shukla according to the procedure laid down, and thereafter Ram Baran Shukla handed over the written document to the Magistrate, saying "Whatever I want to state in my confession is in writing before you and is marked by you as Ex. 1. I shall say nothing beyond that." The written confession was then read over to the accused and he stated: "I have heard this statement. It is correct. I do not want to make any alteration in it. It is in my handwriting and the signatures on it are mine." Section 164 enacts as follows: "Any Presidency Magistrate, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf by the Local Government may, if he is not a police officer, record any statement or confession made to him in the course of an investigation under this chapter or at any time afterwards before the commencement of the inquiry or trial." The learned Additional Sessions Judge admitted this confession against the prisoner on the

analogy of a written statement tendered by an accused person to the court during the hearing of the trial. Such a written statement would be admissible. The learned Additional Sessions Judge goes on to say: "The mere fact, therefore, that such delivery took place at a time when the Magistrate was under the impression that the accused would make a verbal statement to him, but the accused instead of making a verbal statement delivered the document in question to the Magistrate, would not make the proof of such document inadmissible because under a mistaken notion that the accused was going to make a verbal statement the Magistrate may have first gone through the procedure which is laid down by section 164 for recording such statement." In my opinion, the learned Additional Sessions Judge has completely misdirected himself in law. There is no analogy between a written statement made during the course of the trial in the presence of the court and a written confession handed in to a Magistrate in proceedings under section 164. The learned Judge could not have noticed the last part of section 164, which only allows confessions to be recorded "in the course of an investigation under this Chapter or at any time afterwards *before* the commencement of the inquiry or trial". It is further to be noted that the learned Magistrate who received this confession must have known that he was proceeding illegally, for he records, as is usual, at the end of the confession in his own handwriting that "it was *written* by me and read over to the person making it, and it was admitted by him to be correct". It is perfectly clear that this confession was not written by the learned Magistrate.

Section 164 must be construed strictly. The section enacts that the Magistrate must "*record*" any statement or confession. It is playing with words to suggest that the procedure in this case amounted to "*recording*" a confession. "*Recording*", in my opinion, means, and must mean, writing down the confession. It does not

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mean merely filing it. Further, it is to be noted that one of the essential rules is that the Magistrate should draw the attention of the confessing accused to the fact that there are no police present while the confession is being recorded, the reason being that there may be less risk that the confession is made under the influence of the police. If the confession is written down when the accused is under the control of the police and then handed to the Magistrate the reason for insisting upon this precaution is destroyed. The law enacts that a confession should be recorded by a Magistrate himself. When an accused is making an oral confession it is much easier for the Magistrate who records it to make up his mind whether that confession is voluntary or not.

It is of the utmost importance that the strict rules laid down by the Criminal Procedure Code and the High Court for the recording of such confessions should be strictly followed in every respect. For a criminal to confess his guilt is an unnatural proceeding. It is possible that remorse may produce a confession in a very small number of cases, but material advantage or fear is at the root of most confessions. Either the accused thinks that he will obtain some benefit from making a confession, by being made an approver or getting a lesser sentence; or he may even be induced or compelled to make such a confession. Self-interest or fear are not sound foundations for a true confession; this the Code of Criminal Procedure, the Evidence Act and the courts recognize, and therefore the greatest care is insisted on in the recording of such confessions. If a confession already written out when the accused is under the control of the police was once allowed to be admitted as evidence, the door would be opened wide to the grossest forms of abuse. The difficulties that courts now have with regard to confessions would be very largely increased. If interested parties were inclined to bring pressure to bear on an accused, or to induce him to make a confession, it would be a simple matter for false statements to

be introduced into a written confession. There would then be no necessity even for "tutoring".

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I have not been referred to any authority on this point. But it appears to me that it cannot be too clearly laid down that such a confession is inadmissible as evidence.

Omitting, therefore, the confession as evidence against the accused, it has to be seen if there is sufficient evidence on the record to justify a conviction. In my opinion, there is. When a public servant is in charge of goods and it has been proved or admitted that there is a large shortage in those goods, and it is also proved or admitted that the accused, in order to hide the loss, has falsified the books, it seems to me that there is only one inference possible, that of guilt. In a case like this the onus would be on the accused,—the facts being admitted or proved—to give some reasonable explanation for the facts. Such an onus, in my opinion, is almost impossible to discharge. It is further contended for the appellant that where there may be another inference equally possible, a conviction would not be justified. The accused himself says in his statement that he did this, knowing that there was a shortage, in order to avoid departmental action. Counsel contends that a possible inference to be drawn is that the accused being negligent with regard to the goods under his control, merely falsified the accounts in order to escape departmental punishment. Apart from the fact that this is an admission of guilt under section 218 of the Indian Penal Code, I do not think that such an inference can possibly be drawn in this case. 37 maunds 26 seers of *ata* cannot disappear through mere negligence. The accused blames the kitchen warders for making these defalcations. In my opinion, it is impossible for any one to have made these defalcations without the accused knowing all about them. There is therefore sufficient evidence on the facts proved, apart from the confession, in this case to justify conviction.

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An appeal has also been made to me to reduce the sentence of one year's rigorous imprisonment. I cannot see my way to alter the sentence, though it is perfectly true that a good many other people in the jail as well as the accused must have been implicated in this fraud. The result is that both the conviction and sentence are upheld and the appeal is dismissed.

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FULL BENCH

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*Before Sir Lal Gopal Mukerji, Acting Chief Justice, Mr. Justice King and Mr. Justice Niamat-ullah*

1933  
February, 9

BAHADUR LAL (APPLICANT) v. JUDGES OF THE HIGH COURT AT ALLAHABAD (OPPOSITE PARTIES)\*

*Civil Procedure Code, order XLV, rule 7—Limitation and Civil Procedure (Amendment) Act (XXVI of 1920), section 3—Privy Council Rules, 1920, Rule 9—Appeal to Privy Council—Deposit of translation etc. charges—Power to extend time beyond the statutory period for such deposit—Interpretation of statutes.*

*Held* (NIAMAT-ULLAH, J., dissenting) that rule 9 of the Privy Council Rules, 1920, does not empower the Court to extend, beyond the limit fixed by order XLV, rule 7 of the Civil Procedure Code, the time for furnishing the security and depositing the translation etc. charges required by that rule in connection with an appeal to the Privy Council.

*Per* KING, J.—Even if an order allowing more time was intended to be included among the orders to be passed under rule 9 of the Privy Council Rules, 1920, it must be taken that it was intended that time could be allowed only in accordance with order XLV, rule 7. According to the maxim "*generalia specialibus non derogant*" the provisions of rule 9 of the Privy Council Rules could not, in the matter of allowing time, be deemed to override the provisions of order XLV, rule 7.

Mr. A. Sanyal, for the applicant.

Mr. Muhammad Ismail (Government Advocate), for the opposite parties.

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\*Application No. 27 of 1932, for leave to appeal to His Majesty in Council.