

(2010) 05 SHI CK 0179
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 275 of 2002

Ajay Dawra and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 11-05-2010

Acts Referred:

Forest Act, 1927 — Section 41, 42

Penal Code, 1860 (IPC) — Section 120B, 420, 468, 471

Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2010) CriLJ 4473 : (2011) 2 Crimes 119 : (2011) 5 RCR(Criminal) 245

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Surinder Singh, J.—The Appellants herein, to be referred the accused persons hereafter, were tried under Sections 420, 468, 471 of the Indian Penal Code and also u/s 13 of the Prevention of Corruption Act read with Section 120B, I.P.C. and 41 and 42 of the Indian Forest Act. They were acquitted for the offence under the Forest Act, but convicted and sentenced under the other various Sections by the Special Judge, Kullu in Corruption Case No. 2/95-5/98, decided on 14th May, 2002 as under:

Section

Sentence

Fine

Under Section 420, I.P.C.

6 months each

Rs. 500/-each.

Under Section 467, I.P.C.

6 months each

Rs. 500/-each.

Under Section 468, I.P.C.

6 months each

Rs. 500/-each.

Under Section 471, I.P.C.

6 months each

Rs. 500/-each.

Under Section 120B, I.P.C.

6 months each

Rs. 500/-each.

Under Section 13(2) of the Prevention of Corruption Act

One year rigorous imprisonment each.

Rs. 2,000/-each.

All the sentences were ordered to run currently with default clause.

2. The accused persons have challenged their conviction and sentence in this appeal on law and facts.

3. Accused Chetan Thakur, was the then Range Officer, Nokhu Ram, Block Officer, Bhagat Ram Forest Guard and Lal Chand, Patwari. They were alleged to have connived with accused Ajay Dawra the Director of M/s. Dawra Hotel (P) Ltd. Company to fabricate the record qua felling of 10 trees of Devdar and two trees of Kail from the land owned by the Company and said Ajay Dawra had used more timber than permitted, from illegal source, in his Hotel at Manali.

4. In short, the prosecution story can be stated thus. M/s. Dawra Hotel (Pvt.) Limited, Manali is a Company duly constituted under the Companies Act. As stated above, accused Ajay Dawra is one of the Directors along with Sanjay, Jagdish, Ashok and Inder Pal Dawra. The said Company purchased land on 3rd February, 1987 in Phati Shalin, Tehsil Manali, District Kullu, comprised of khasra Nos. 1182, 1183 and 1184 abutting the Government owned land, for the construction of a Hotel. It is alleged that the said land was in cultivating possession of the land owners before purchase by the Company having no forest trees standing thereon. When the construction of the Hotel was going on, there was a complaint that the said concern had encroached upon the Government land. The revenue officials, on the complaint demarcated the land purchased by the Company and detected encroachment as such the prosecution was launched against them, but later they were acquitted.

4(a). Further in the year 1990, when Hotel building came up on the aforesaid site at Manali, again a complaint was received by the Conservator of Forest with respect to the illegal timber used in the said Hotel.

4(b). In the month of June, 1990, PW-33 Shri S.D. Sharma, the then Assistant Conservator of Forests was deputed to verify the authenticity of the complaint. He visited the Hotel premises along with other forest officials. The said Forest Officer took three days, with effect from 21st June -- 23rd June, 1990 for its inspection and measuring the timber used. Finally, he came to the conclusion that 142.298 cubic meters Devdar and 36.441 cubic meters of Kail wood was used in the construction of the said Hotel building.

4(c). Shri Ajay Dawra accused was afforded an opportunity by PW-33 Shri S.D. Sharma, ACF to explain the source of timber. He sought time and after couple of days produced 37 bills/cash memos against which the said Company had purchased the timber from various sources and also produced eight bills, i.e., Ext. PW-6/A-1 Ext. PW-6/A-8 with respect to purchase of Devdar and Kail wood in the year 1978 from "Ashoka Timber Market, Bilaspur" which were also used in the construction of the Hotel.

4(d). Shri S.D. Sharma aforesaid after verifying the correctness of the bills and the claim staked by Shri Ajay Dawra found that 37.723 cubic meters Devdar wood was legal but 105.757 cubic meters of Devdar and 31.653 cubic meters of Kail wood used was of illegal origin, as the said Forest Officer did not find any entry with respect to its transportation from Bilaspur to Manali either in the forest Check Posts, Vrindavan at Mandi or at Bajara in District Kullu. Therefore, he rejected all the eight bills/cash memos.

4(e). Further, Shri Ajay Dawra also claimed having felled 10 trees of Devdar and two Kail trees from the land purchased by the Company at Manali, the timber of which was also used in the construction of the said Hotel. To substantiate his claim, he produced the photocopies of his applications moved to the Range Officer along with the report dated 16-11-1988 and its conversion, which necessitated PW-33 Shri S.D. Sharma, ACF, to further inquire into the matter. On inquiry he came to know that accused Chetan Singh Thakur, who was the Range Officer, had earlier reported that there were no trees standing in khasra Nos. 1182 and 1183, but later to save the Directors of the said Company hatched a criminal conspiracy and prepared the false report in June, 1988 by fudging the record by reporting that such forest trees did exist over the said khasra numbers.

4(f). During the course of inquiry PW-33 Shri S.D. Sharma, had also recorded the statements of previous owners, namely Vishwav Dev, Tirath Ram, Dhallu Ram and Chuni Lal earlier land owners. According to them, the land sold to the Company was a cultivable piece of land having no trees and submitted his detailed report Ext. PW-33/A to the Conservator of Forest, Kullu.

5. On the receipt of the report Ext. PW-33/A, PW-35 Shri Piare Lal Conservator of Forest informed the Director (Vigilance) Government of Himachal Pradesh,

Shimla vide his letter Ext. PW 11/D, which in turn was sent to Shri B.M. Sharma, Dy. S.P. (Enforcement) for necessary action. He sent a Ruka Ext. PW-14/A, on the basis of which FIR Ext. PW-11/B was formally registered.

6. During the investigation of this case, PW-7 Devi Singh, the then Range Officer deputed in the Enforcement Department visited the said Hotel, measured the timber used and prepared his reports Ext. PW-7/A to 7/C.

7. Further, PW-10 Shri S.S. Thakur, Naib Tehsildar, who had earlier to the FIR, demarcated the land in question allegedly encroached by the Company, issued his report Ext. PW-8/A on 7-5-1992 that no tree was existing on the land purchased by the Company.

8. Police had also taken into possession the registers Ext. P-1 to P-4 with respect to the Forest Check Posts, Vrindavan (Mandi) and Ext. P-5 to 7 of Forest Check Post, Bajora (Kullu).

9. In the year 1988 a joint inspection of land in dispute was conducted by the forest, revenue and Officers of the State Industries Department before constructing the Hotel during the year 1988 to see the viability of the Hotel, per the requirement of Tourism Department. PW-18 Bhola Ram was field Kanungo at that time. His statement along with PW-25 Sohal Lal and PW-27 Jagmohan Sharma were also recorded.

10. The State Enforcement Department after the investigation concluded that Shri Ajay Dawra the Director of the Company had raised the construction of the Hotel building by using the illegal timber in collusion with the Forest Range Officer Chetan Thakur and with Bhagat Ram the then Forest Guard showing the existence of the Devdar/Kail trees over the land purchased by the Company and by forging the documents, hatched the conspiracy, thus cheated the Government by using the illegal timber and the above officials abused their position as public servant by illegally helping the aforesaid Director of the Company. Thus, a Challan was presented against the accused persons in the Court of the Special Judge for their trial.

11. The aforesaid accused persons were charge-sheeted for the aforesaid offences, but they abjured their guilt and claimed trial. During the trial, the prosecution examined as much as 36 witnesses. The defence of the accused Ajay Dawra during the trial remained the same, whereas the other accused denied having conspired with him as alleged. No evidence in defence was led and at the end of trial, they were acquitted under Sections 41 and 42 of the Forest Act for want of evidence, but however convicted and sentenced for the other offences, as stated above, which is under challenge in this appeal.

12. Shri M.S. Chandel, learned Senior Advocate duly assisted by Shri N.S. Chandel vehemently argued that the learned trial Court had taken the lop-sided view of the matter on the evidence adduced on record. The learned Counsel also ventilated that the learned trial Court did not appreciate the statement of PW-7

Devi Singh Range Officer of the Enforcement Department in the right perspective and further that the enquiry conducted by PW-33 Shri S.D. Sharma was prejudicial. He had arbitrarily rejected the bills produced by Shri Ajay Dawra without verifying the record existing in the office of DFO concerned and further that the Investigating agency only relied upon the inadmissible evidence of the revenue officials and no fresh demarcation was conducted to verify the correctness of the claim put forth by Shri Ajay Dawra. He also ventilated that in the encroachment case the accused was acquitted and further that the learned trial Court blindly relied upon the inadmissible evidence, whereas from the evidence on record two parallel views were deducible, which were wrongly ignored. The accused persons had probalised their defence and the learned trial Court had wrongly convicted and sentenced the Appellants.

13. Shri Anup Chitkara representing Shri Chetan Thakur, Range Officer-accused forcefully argued that the evidence led by the prosecution with respect to the non-existence of the Devdar/Kail trees on the private land is very dicey, whereas, according to him, even the persons who are the alleged land owners, when examined in the Court stated that the trees were existing on the boundary of the aforesaid khasra numbers purchasued by the Company. No correct demarcation was conducted by the investigating agency. The trees were in existence before June, 1988 on the private land. Its felling was governed, as per the order issued by the Government of Himachal Pradesh bearing No. Fts (A)3-1/81-II Part dated September, 1984 under the "HP Land Preservation Act, 1978". Further in the Municipal Area vide Notification dated 27-8-1980 issued by the Government of Himachal Pradesh, Department of Forest Farming and Environment the land owner was not required to take any permission for felling of trees up to 10 trees and above that the permission of the DFO concerned was required. He further ventilated that the accused Range Officer was held guilty even for the period when he was not posted in the said Ranger He also pointed out that the report of the Patwari shows the existence of the trees over khasra Nos. 1182, 1183 and 1184. The photocopies produced on record alleged to have signed by him were inadmissible in evidence and the secondary evidence led without permission by the prosecution is of no consequence. The official concerned must be in the office of D.F.O. The signatures were not sent for expert opinion, therefore, the charges stand not proved.

14. Contra, Shri J.S. Rana, learned Assistant Advocate General, forcefully argued that the original record of the application moved by Shri Ajay Dawra was misplaced in the office of Divisional Forest Officer, therefore, the permission to lead the secondary evidence was sought. The evidence led on record shows that the accused persons had hatched the conspiracy to legalize the illegal source of the timber used in the Hotel and the evidence led by the prosecution is worth inspiring confidence and meets the requirement of law, therefore, the impugned judgment of conviction and sentence passed against the accused persons are legally and factually sustainable.

15. I have given my thoughtful consideration to the rival contentions of the parties and have carefully scanned the evidence on record.

16. The prosecution launched the attack on the accused persons in two ways, firstly, that accused Ajay Dawra while explaining the legitimacy of the timber used in his Hotel had forged the documents in connivance with the other accused persons thereby attempted to show its legal source, when there were no trees existing on the land purchased by the Company. Secondly, eight bills produced by him were not found to be connected with the timber used.

17. I shall now proceed to examine the evidence of the prosecution led to prove the charges and to find out whether the conviction and sentence passed by the learned trial Court were legally and factually sustainable.

18. Admittedly, khasra No. 1182, measuring 16 Biswas, Khasra No. 1183 measuring 2 Bighas 2 biswas and Khasra No. 1184, measuring 12 biswas were purchased by M/s. Dawra Hotel Private Limited through its Managing Director Inder Pal. Khasra No. 1182/1 measuring 7 biswas (Banjar Kadim) abutting the National Highway, was owned by the Provincial Government as per the entry in the Jamabandi for the year 1981-82 Ext. PW-5/A. The land purchased by the Company is situated on the bank of river Beas, sandwiched between khasra No. 1182 and plot No. 1 and 2 owned by the Government but recorded as third class forest in the revenue record, as depicted in the Tatima Ext. PW-5/E which was alleged to have been prepared on the basis of Tatima prepared earlier on 13-9-1988 for the encroachment case. The area alleged to have been encroached was having Poplar and other trees as noted in the said Tatima. The species of other trees have not been mentioned, which could be of Devdar/Kail etc. For that a proper demarcation and detailed report was required to be prepared and proved.

19. Further, PW-2 Chuni Lal and PW-3 Shri Hira Lal sons of the original owners, although stated that the land purchased by the company was cultivated land. They used to sow paddy crop on it, but in his cross examination, PW-3 aforesaid categorically Stated that their land was never demarcated and whereas. PW-2 Chuni Lal in the first line of his cross-examination specifically stated that the Devdar trees were existing on the boundary of the land in question.

20. PW-10 Shri S.S. Thakur, was posted as Naib Tehsildar, Kullu with effect from 1988 to 1993. He stated that on the request of the police he visited the spot to demarcate the land along with other revenue officials and police and he submitted his demarcation report Ext. PW-8/A dated 7-5-1992 and the Company was found to have encroached upon 2 Bighas 16 Biswas of the land. It is pertinent to note that before the year 1992 the Hotel stood already constructed. Its surface and topography was totally changed. The report (Ext. PW-8/A) does not show whether the said revenue Officer was able to locate a Pucca Point on the spot. He only fixed the boundaries of khasra No. 1185, thereafter demarcated the other khasra numbers in dispute. It is not known who was the

owner of khasra No. 1185, whether he admitted the correctness of its boundary. However, he further stated that after preparing the Tatima it was handed over to the Enforcement Department. Neither he testified in his statement nor its report reveals that he had taken the assistance of any Musabi for demarcating the land and was able to locate any, permanent point as per the record. The demarcation conducted by him is of no consequence for the simple reason that the trees in question were alleged to have been existing on the said khasra numbers in the year 1988, when Ajay Dawra, and Inder Pal are stated to have applied for permission to fell the trees on their own land. Accused Lal Chand Patwari on 19-6-1988 had also reported the existence of five trees of Devdar and two trees of Kail over khasra numbers 1182-1183 (certificate of Patwari Ext. PW-33/A-5) on the application moved by Inder Pal Managing Director of the Company (certificate Ext. PW-33/A-6) and five trees of Devdar over khasra No. 1183 on the application moved by Shri Ajay Dawra. These applications were marked by the then Range Officer to the Block Officer Manali, who reported the species and class of the said trees. All these trees were marked and the conversion timber was also noted. The original of Ext. PW 33/A-5 and 6 were not produced. The writings/signatures of the accused persons were not sent for comparison. The prosecution did not take permission to lead secondary evidence qua these documents. Shri Chetan Thakur Range Officer, Nokhu Ram, Block Officer, Bhagat Ram, Forest Guard and Patwari Lal Chand stand not connected with it. Therefore, their conviction and sentence both are unsustainable.

21. Further, PW-11 Sonam Angrup DFO placed on record letters Ext. PW-11/A and PW-11/B received from Shri S.D. Sharma (PW-33) regarding the checking of the Hotel at Manali and also produced on record a photocopy of the joint inspection report Ext. PW-11/C. Its date is not decipherable nor was its original produced. Further, it is pertinent to note that the "no objection" was accorded by the Revenue and Industries Departments for the use of two khasra numbers i.e., 1182 and 1183 and recommended for the grant of the permission by the State Government. Pertinently it does not say anything about khasra No. 1184.

22. PW-28 Shri Lok Raj Saini was the Kanungo in the Forest Department during the year 1987-88. On 29-6-1988 he is alleged to have given the demarcation of the area and prepared a case of encroachment of the Company. On 10-8-1990 he was asked by S.D. Sharma (PW-33) to submit a report about the existence of any tree. He pertinently stated that on 10-8-1990 he did not demarcate the land. When the trees were already felled earlier to 10-8-1990 there was no question of existence of any tree on the private land in the month of August, 1990. Similarly, the report Ext. PW-25/A alleged to have been signed by PW-25 Bhola Ram and accused Range Officer, which is dated 16-11-1988, is of no significance for the same reason. As per the claim of Shri Ajay Dawra, regarding which he produced the permission/information given to the forests department vide letter Ext. PW-33/1 to 33/3. There is no evidence that the Hotel in question fell out of the Municipal area. He and Inder Paul had informed the forest Officials about the felling of trees which was the requirement under the notification/order issued

under the Land Preservation Act. If the said accused had acted against the provisions of said Act the prosecution was obliged to prove the necessary notifications issued under the said Act which was not done. In the construction of the Hotel same timber purchased from Bilaspur against eight bills was also stated to have been used and PW-7 Devi Singh Range Officer of the Enforcement Department stated that the timber used in the Hotel was less than the timber claimed to have been purchased by the said company.

23. PW-33 Shri S.D. Sharma, Assistant Conservator of Forest had considered the bills produced by Shri Ajay Dawra, but he rejected eight bills Ext. PW-8/A-1 to Ext. PW-8/A-8 outrightly for the reason that there was no entry in the registers of the Forest Barriers with respect to its transit from Bilaspur to Manali. He also did not verify the bills produced by the Hotel owner from the sale depots from where the timber was alleged to have been purchased. He also did not enquire where the timber qua the bills purchased in the year 1978 was used and stated that it was not within the purview of his enquiry. He admitted that there was no restriction for the use of the timber so purchased within a particular time. However, he did not rule out the possibility that the total timber purchased under the bills and supplied to him consisted of valid and invalid timber clubbed together could be in excess in quantity than the timber used in the construction. As against this the statement of PW-7 Devi Singh, Range Officer of Enforcement Department assumes importance. He had also visited the said Hotel along with with Police and Mohan Lal Forest Guard and inspected the Hotel for three days, i.e., 16-5-1993 to 19-5-1993. He prepared his report Ext. PW-7/A (consisting of 14 sheets. Only one sheet is placed in the exhibited file and others are in unexhibited file). He worked out the details of the timber used through different bills as Ext. PW-7/B. He categorically stated that the timber used in Dawra Resorts in his assessment was 80.163 cubic meters. Though he could not mention the species of the timber used as it was polished, but the 17 bills regarding the purchase of timber by the Company handed over to him by the police, it came out to be 105.197 cubic meters. If both the statements are read and appreciated together the logical conclusion is that the timber purchased by the Company is more than the timber used in the said Hotel. The presumption drawn by the learned trial Court on the basis of non-existence of the entries in forest barriers Vridavan and Bajora is of no consequence for the reasons that all the entries in the said registers (Ext. P-1 to P-7) are one side entries, of the vehicles coming from Kullu towards Mandi and there is no register wherein the vehicles going loaded with timber or other articles from Mandi to Kullu were entered.

24. Further the record reveals that eight bills aforesaid which were outrightly rejected by Shri S.D. Sharma were taken into possession by the police vide memo Ext. PW-6/ A. The very opening lines of the memo show the statement of timber purchased for the Hotel, as per attached bills/challans and permit etc. in original. The details of eight bills have been given but the original challans and permit taken were not placed on record. This material evidence though appears

to have been taken into possession, but withheld. The suggestion though put to the Investigating Officer PW-36 Hardeh Bisht to this fact was denied by him that since the original record produced was not supporting the case of the prosecution, was intentionally suppressed/ withheld appears to be correct. Therefore, no presumption in favour of the prosecution can be drawn for the reason that the evidence regarding its transportation from Bilaspur to Manali was not produced by them.

25. Thus, keeping in view the statement of PW-7 Devi Singh, Range Officer as discussed above and also the statement of PW-33 Shri S.D. Sharma, the then ACF, which is self-contradictory no case against the Appellants stands proved beyond reasonable doubt. As stated above, PW-33 S.D. Sharma ACF found having used 143.298 cubic meters of Devdar and 34.441 cubic meters Kail wood in the Hotel from the valid source having purchased it from Nehru Ram and Company Dhanotu and according to him, the remaining timber was illegal, if we take the statement of PW-7 Devi Singh Range Officer into consideration, then it appears that the timber used in the said Hotel was 80.173 cubic meters and the assessment of the timber shown in Ext. PW-7/C as stated above legally purchased by the Company comes to 105.9 cubic meters, which casts a doubt on the authenticity of the prosecution. Therefore, two views are deducible from the evidence on record. The benefit of favourable view thus has to be given to the accused.

26. For the foregoing reasons, in my opinion, the prosecution could not prove the case against the Appellants beyond reasonable doubt, as such the conviction and sentence passed by the learned Special Judge, Kullu is hereby set aside. Consequently, the Appellants are acquitted of the offences charged. The fine amount, if any deposited be returned to them forthwith. The appeal stands allowed. The accused persons are discharged of their bail bonds.

Appeal allowed.