(2015) 02 P&H CK 0406

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal Nos. S-2806-SB, S-2807-SB, S-2862-SB, S-2899-SB, S-2920-SB, S-2924-SB, S-2925-SB, S-2926-SB, S-2963-SB, S-3006-SB, S-3156-SB, S-3157-SB, S-3158-SB, S-3159-SB, S-3160-SB, S-3177-SB, S-3199-SB, S-3200-SB, S-3201-SB, S-3202-SB, S-3203-SB, S-3

Anil Kumar Soni and Others APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 27-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 120-B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2), 19

Citation : (2015) 02 P&H CK 0406

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Advocate : Dilpreet Singh, for the Appellant; T.N. Sarup, Addl. AG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Daya Chaudhary, J.—By this judgment, 27 cases bearing Criminal Appeal Nos. S-2806-SB, S-2807-SB, S-2862-SB, S-2899-SB, S-2920-SB, S-2924 -SB to S-2926-SB, S-2963-SB, S-3006-SB, S-3156-SB to S-3160-SB, S-3177-SB, S-3199-SB to S-3203-SB, S-3411-SB of 2011 and S-110-SB, S-115-SB, S-36-SB and S-6-SB of 2012 shall be disposed of as common question of law and issues are involved. However, the facts are being extracted from CRA-S-2899-SB of 2011.

2. Briefly, the facts of the case as per prosecution version are that FIR No. 29 dated 29.04.1997 was registered on the basis of information received from reliable sources by Deputy Superintendent of Police, Vigilance Bureau, Amritsar to the effect that accused persons, who were the officers/officials of Punjab Financial Corporation, Amritsar (for short ''PFC'') during the period from 1992 to

1994, namely, Jatinder Singh Aulakh, DGM, Anil Kumar Soni ATO, Mohd. Naseruddin Gorkhi, ADM(F), Smt. Harpreet Kaur Grover AM Legal, Ravi Kant Senior Assistant, Paramjit Singh and Hardarshan Singh Senior Steno in connivance with its partners and owners of fake and bogus firms disbursed loan to the extent of Rs. 8,07,000/- to M/s. Swastik Foundary and Engineering Works, Amritsar and its partners, namely, Nawal Kishore Gandhi and Smt. Geeta Gandhi, residents of Adarsh Nagar, Jalandhar. The said firms never came in existence but the officers of PFC by misusing their official position disbursed loans to the said firm. During the course of investigation, it was found that bogus rent deeds, invoices/quotations were prepared. All the bills of raw materials and machines were found to be bogus. Even the mortgage deeds were also found bogus. On the basis of forged documents, the false reports were prepared.

3. During investigation, Nasruddin Gorkhi and Harpreet Kaur were found to be innocent. The challan was presented against accused Naval Kishore Gandhi, Jatinder Singh Aulakh, Sandeep Kumar and Hardarshan Singh. FIR was registered against said persons. Charges were framed by the Special Judge, Amritsar against all said accused persons under Sections 120-B, 420, 467, 468, 471 of Indian Penal Code (for short ''IPC'') and also under Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (for short ''PC Act'') to which they pleaded not guilty and claimed trial.

4. The prosecution examined as many as 10 witnesses in support of its case.

5. Thereafter, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied all the allegations and pleaded their innocence and false implication in the case. All the accused took specific stand in their statements recorded under Section 313 Cr.P.C.

6. In defence, the accused examined three witnesses.

7. On appraisal of evidence on record and after hearing both the parties, the trial Court convicted all the accused for offences punishable under Sections 120-B and 420 IPC by holding that all the accused had misused their position being public servants as a loan of Rs. 8,07,000/- along with subsidy of 15% was released to Naval Kishore Gandhi and Gita Gandhi inspite of knowing the fact that loan was meant for promoting industrial units whereas the loan was disbursed on the basis of fake inspection report without being their entitlement. It was also held that the amount of loan was misappropriated by way of illegal means by misusing their position.

8. Aggrieved by the said judgment of conviction and order of sentence, these 27 appeals were filed by the accused-appellants.

9. The details of appeals along with FIR, conviction and sentence are reproduced as under: -

10. Learned counsel for the appellants have raised various arguments in support of their cases in different appeals.

11. Ms. Tanu Bedi, learned counsel appearing for the appellants in CRAs-S-3156-SB to S-3160-SB, S-3177-SB of 2011 and CRA-S-115-SB of 2012 submits that the allegations of forgery have not been proved and no loss has been caused to PFC as loan amount has also been returned by some of the loanees. The officials were found innocent in the inquiry conducted by the department and revision petition filed against them was also dismissed by this Court. Learned counsel also submits that the inquiry was conducted at the back of accused appellants. The allegations of bribery were not proved and at the most it can be a case of dereliction of duty. Even no action was taken against the officers/officials by the department. Not only the documents were verified before sanctioning of loan but inspection report was also prepared. The allegations of forgery and misappropriation were not proved by the trial Court and in absence thereof, no offence is made out under Section 420 IPC.

12. Mr. Dilpreet Singh, Advocate appearing for the appellant in CRAs-S-2806-SB, S-2807-SB and S-2899-SB of 2011 submits that accused Anil Kumar Soni has falsely been implicated in the case with malafide intention as he represented against illegality in selection of Assistant Manager and brought it to the notice of higher authorities. He also challenged the order of PFC before this Court and termination order was set-aside in the year 1980. The post of Assistant Manager (Technical) was advertised and he applied for said post. His two juniors, namely, H.K. Mehrotra and K.S. Mahal also applied for the same post who were appointed as Manager (Technical). Manager (Technical) was a rank higher than the post of Assistant Manager (Technical). Appellant was appointed as Assistant Manager. This illegality was brought to the notice of higher authorities and accused-appellant Anil Kumar Soni was removed from service, which was challenged in the High Court but the same was dismissed and thereafter, he filed SLP before Hon''ble the Supreme Court, which was allowed and order of PFC was set-aside. Thereafter, review was filed by PFC, which was also dismissed. When the order was not implemented, he filed contempt petition before Hon''ble the Apex Court and notice of contempt was issued to Managing Director as well as to Deputy General Manager (Personnel), who conducted inquiry against him in the case. The appellant has falsely been implicated due to that grudge in mind. Learned counsel also submits that his case was at par with Kuldip Singh, who was found innocent in the investigation and his name was kept in column No. 2 of the challan. Even in that case, the prosecution did not apply for sanction to prosecute him and he was retained in service. Learned counsel further submits that the verification was also conducted by senior steno Kuldip Singh and that verification was exactly similar to the verification conducted by him, which was in accordance with PFC Rules. There was no evidence against him, still, he was made a scapegoat. Learned counsel for the appellant also submits that the role of the appellant as alleged by the prosecution has not been proved on the basis of evidence adduced by the prosecution. It is also the argument of learned counsel for the appellant that on three occasions, verifications were conducted and without visiting the site, verification report was prepared as has been stated

by D.P Soni. Neither any conspiracy has been proved against him nor has he conducted any inspection so the question of sharing common intention does not arise. Even the original rent deed and mortgage deed were not placed on record by the prosecution and in absence of documentary evidence, the appellant was acquitted of the charges under Sections 467, 468 and 471 IPC.

13. Mr. D.S. Pheruman, Advocate appearing for the appellants in CRAs-S-2862-SB, S-2924-SB to S-2926-SB of 2011 and CRA-S-36-SB of 2012 submits that the Court cannot take cognizance of the offence against the appellant in absence of sanction and the conviction of the appellant can be set-aside on this ground alone. No offence is made out on the basis of statements of prosecution witnesses. PW9-Mohinder Singh, retired SP, who was the Investigating Officer has admitted in his statement that he did not contact any buyer to whom the machinery was sold by the manufacturer or supplied by the firm. It is also clear from the statement of PW9-Mohinder Singh, (Retired SP) that the machinery was lifted to the loanee. Even PW9-A.R. Narang, Chief Officer, UCO Bank has also admitted that a draft issued in favour of M/s. Kaushal Chand Vohra and Company was deposited in UCO Bank, which was also credited in the account of said firm. Learned counsel also submits that in the statement recorded under Section 313 Cr.P.C, the question regarding alleged report was never put to the appellant and that statement cannot be read into evidence as has been held in various judgments. Mr. Pheruman also submits that there was no objection to the report, which was prepared by the Inquiry Officer and Capital Verification Report was found to be correct by the Department. Learned counsel also submits that a public servant cannot be prosecuted without sanction of the competent authority as provided under Section 19 of the Act and no Court can take cognizance in absence of any such sanction. Mr. Pheruman has also relied upon judgments of Hon''ble the Supreme Court in Sujit Biswas Vs. State of Assam, (2013) 6 AD 243 : AIR 2013 SC 3817 : (2013) CriLJ 3140 : (2013) 3 JCC 1887 : (2013) 8 JT 570 : (2013) 3 RCR(Criminal) 227 : (2013) 7 SCALE 546 : (2013) 12 SCC 406 , Liyakat Vs. State of Rajasthan, (2014) AIRSCW 5876 , Satvir Singh Vs. State of Delhi, (2014) AIRSCW 4924 : (2014) 9 SCALE 528 and Manzoor Ali Khan Vs. Union of India (UOI), (2014) AIRSCW 4544 : (2014) 9 SCALE 202 : (2014) 7 SCC 321 in support of his contentions.

14. Learned State counsel submits that the judgments passed by the trial Court are well reasoned and are based on proper appreciation of evidence. The accused-appellants have not only misused their official position but loan was also sanctioned with connivance of each other to the firms, which were not even in existence. It is a loss of public amount and the same has been proved not only in the investigation, but also on the basis of evidence produced by the prosecution, the case was proved beyond reasonable doubt. No interference is required by this Court.

15. Heard arguments of learned counsel for the appellants as well as learned State counsel and have also perused the evidence and other documents available

on the file of the lower Court as well as of this Court.

16. Admittedly, the FIR was registered on the basis of information received from reliable sources by Deputy Superintendent of Police, Vigilance Bureau, Amritsar to the effect that accused, who are officers/officials of PFC, in connivance with the partners and owners of the fake and bogus firms disbursed loan to the extent of Rs. 8,07,000/- to M/s. Swastik Foundary and Engineering Works, Amritsar. Accused Naval Kishore Gandhi and Smt. Geeta Gandhi are partners of said firm. It was the allegation that the aforesaid firms never came into existence. The officers/officials of PFC by misusing their official position secured loan to the fake firms. It was also the allegation that bogus rent deeds and bogus invoices/ quotations were prepared. The bills of raw materials and machines were also found to be bogus. However, Naseruddin Gorkhi and Harpreet Kaur were found innocent and challan was not presented against them. Charges were framed against remaining accused persons under Sections 120-B, 420, 467, 468, 471 IPC and Sections 13(1)(c) and 13(1)(d) read with Section 13(2) of PC Act.

17. The prosecution to prove its case examined as many as ten witnesses i.e., PW1 D.P Soni, Assistant General Manager, PFC, PW2 Dinesh Gupta, Assistant Manager, PW3 Balwinder Singh, PW4 Moreshwar Sharma, PW5 Balbir Kaur, PW6 Jaswant Singh, PW7 G.S. Batra, Advocate, PW8 DSP Ranbir Singh, PW9 A.R. Narang, Chief Officer, UCO Bank and PW10 Mohinder Singh (retired S.P).

18. Thereafter, statements of accused under Section 313 Cr.P.C. were recorded wherein they denied all the allegations of the prosecution and claimed their innocence and false implication.

19. Learned counsel for the appellants have raised various arguments to challenge the judgment of conviction and order of sentence. It is the argument of all learned counsel for the appellants that the loan was disbursed after compliance of all the formalities and the firms were in existence at that time. While convicting the accused, no document was brought on record to prove the forgery of rent deed dated 06.08.1993 and mortgage deed dated 12.10.1993. The prosecution did not prove these two documents on record. It is also the argument of learned counsel for the appellants that without proving on record these documents, it cannot be said that forgery was committed by the accused persons as neither the original rent deed dated 06.08.1993 nor mortgage deed dated 12.10.1993 were placed on record and only the photocopies of said documents were placed on record and in absence of original documents, the offence of forgery cannot be proved. It is also the contention of learned counsel for the appellants that the criminal liability cannot be fixed without placing on record the original certificate bearing signatures of the accused. It is also the argument of learned counsel for the appellants that the prosecution has not been able to prove that accused had entered into criminal conspiracy with each other and had cheated the PFC in order to give benefit of loan of Rs. 8,07,000/- to M/s. Swastik Foundry and Engineering Works, Amritsar.

20. It has been proved on record that loan amount to the extent of Rs. 24,00,000/- was sanctioned by PFC in favour of M/s. Rajan Valves and Cocks, Manawala, Amritsar and said amount was paid through Bank of Rajasthan, Amritsar on 06.04.1994. A committee was constituted to inquire into the matter pertaining to disbursement of loan to non-existence firms. First inspection report was submitted by Sanjeev Kumar and second verification report was submitted by Hardarshan Singh.

21. It has been proved from the statement of PW1-D.P. Soni, Assistant General Manager, PFC, Chandigarh that the loan to the extent of Rs. 10,00,000 was sanctioned in favour of said firm and the government had also provided subsidy to the extent of 15% of total value of fixed assets and the loan amounting to Rs. 9,50,000/- was disbursed to the said firm.

22. PW2-Sulkhan Singh has stated in his statement that he had started his business of motor bindings and welding under the name and style of M/s. Khalsa Engineering Works and no firm in the name and style of M/s. Rajan Valves and Cocks, Manawala was existing and he never sold any material to said firm.

23. It has been proved from the statement of PW12-Tarsem Singh that no quotation was given by him in favour of M/s. Rajan Valves and Cocks, Manawala, Amritsar and no payment was received in cash or through cheque or even draft. It has also been stated that no machinery was surrendered by him to PFC. He has also stated that the draft amounting to Rs. 85,000/- shown to be in his name is fake as he has never received any payment from said firm.

24. It has also been proved from the statements of prosecution witnesses that a false report was given by Sanjeev Kumar and Hardarshan Singh and all formalities were completed only on the papers. An amount of Rs. 9,50,000/- was disbursed to the said firm without conducting any verification regarding existence of the unit/firm. Even it has come in the inquiry conducted by the members of committee that no such unit in the name of M/s. Rajan Valves and Cocks came into existence or was even set up. A wrong report was made regarding visiting the site of the proposed unit at the time of appraisal. A draft of Rs. 3,31,000/- has been shown to be released in favour of M/s. Rattandeep Machine Tools, Ludhiana whereas PW12 Tarsem Singh had denied regarding receipt of said payment. An amount of Rs. 1,50,000/- was released in favour of fake firm.

25. Even the officers of PFC could not produce any document to show that the firm was in existence at the time of approval of the loan. PW7-DSP Ranvir Singh of Vigilance Bureau, Amritsar has also stated that no firm was in existence. Similarly, PW9 DSP Mohinder Singh Sindhu, Investigating Officer has stated that he had personally visited the spot and found that no such firm was installed by Rajan Sharma and Amita Sharma and loan amount was mis-utilized by furnishing false documents before PFC.

26. The trial Court had given a categoric finding that accused Rajan Sharma and Amita Sharma had conspired with other accused.

27. As per arguments of learned counsel for the appellants, accused J.S. Aulakh was working as District Manager, Hardarshan Singh was working as Senior Assistant and Sanjeev Kumar was working as Junior Assistant at the time of commission of crime but before prosecution, no sanction was obtained. Said officers/officials had misused their position as public servant. In case, the public servant misuses his official position just to give benefit to the other accused, it cannot be considered as part of official duty as the benefit of loan has been given to other accused by misusing his official position, which was not a part of his job but for some ulterior motive. In that situation, the sanction to prosecute is not necessary to be obtained as has been held in various judgments.

28. The prosecution has fully proved that a fake mortgage deed and rent deed was prepared for securing loan in the name of bogus firms. Even it is clear from the statement of PW3 Balwinder Singh, who was owner of shed in dispute that he did not know Naval Kishore Gandhi and Geeta Gandhi and no such shed was taken on rent at any time. He has also stated that once Kuldip Singh came for inspection of said shed but no machinery was installed by any person on the said shed. The second verification of the project was conducted by accused Hardarshan Singh on 31.03.1994. He has stated that he conducted inspection of the project after releasing the loan amount and the inspection was based upon the verification of account books, bills, vouchers and site verification.

29. On the basis of evidence on record, the prosecution has successfully proved that accused Naval Kishore Gandhi and Geeta Gandhi had availed benefit of loan after entering into criminal conspiracy with other accused. It has also been proved that all the accused in connivance of each other had caused loss to PFC as loan was sanctioned without any verification and without completing the required formalities.

30. In view of facts and law position as discussed above, there is no merit in the contentions raised by learned counsel for the appellants and the appeals being devoid of any merit are hereby dismissed.

