

(2023) 01 OHC CK 0003

In the Orissa High Court

Case No : Criminal Appeal No.310 Of 1993

Brajabihiari Palit (since dead) Through LRs

APPELLANT

Vs

Republic Of India

RESPONDENT

Date of Decision : 06-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313

Indian Penal Code, 1860 — Section 120B, 420, 463, 464, 467, 471, 511

Prevention of Corruption Act, 1940 — Section 5(1)(a), 5(1)(b), 5(1)(c), 5(1)(d), 5(2)

Citation : (2023) 01 OHC CK 0003

Hon'ble Judges : B. P. Routray, J

Bench : Single Bench

Advocate : S.P. Mishra, Sarthak Nayak

Final Decision : Disposed Of

Judgement

B. P. Routray, J

1. The original Appellant-Brajabihari Palit (now dead) was convicted for offence under Section 467 of the Indian Penal Code (IPC) and Section 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1940 (P.C. Act) and directed to undergo imprisonment for one year on each count concurrently. He was further convicted for offences under Section 120-B read with Sections 420/511, I.P.C., for which no separate sentence was directed.

2. Altogether, three accused persons, namely, Brajabihari Palit, Badan Ram Agarwal and Bed Prakash Agarwal faced prosecution for charges under Sections 120-B/420/467,471, I.P.C. and Section 5(2) read Section 5(1)(d) of the P.C. Act, 1940.

3. The original Appellant-Brajabihari Palit, was the Manager of Andhra Bank, Bolangir; Badan Ram Agarwal was the Insurance Inspector of Oriental Fire and General Insurance Company Ltd., Bolangir and Bed Prakash Agarwal was a private businessman of Bolangir.

4. A riot took place on 28.9.1980 at Bolangir by the protesting students and many business establishments were damaged and ransacked. Bed Prakash Agarwal is the proprietor of M/s Metal Industries at Bolangir. As per prosecution allegation, an insurance claim was processed by Bed Prakash Agarwal on account of loss sustained during the riot on the basis of backdated cover note, which was assessed for a sum of Rs.65,969.40 paise. The further allegation goes to the extent that all the three accused persons conspired criminally to manipulate issuance of Pay Order and cover note backdating the same to 27.9.1980 though it was actually effected on 29.9.1980 to benefit the claim of insurance in favour of Bed Prakash Agarwal. 27th, 28th, and 29th days of September 1980 were Saturday, Sunday and Monday respectively. The office working hours of the Bank on Saturday, particularly on 27th of September 1980, were in between 10.00 a.m. to 2.00 p.m. and the business hours were between 10.00 a.m. to 12.00 noon. Brajabihari Palit (the original Appellant) being the Manager of Andhra Bank, Bolangir manipulated the Pay Order No.242/80 by corrections, overwriting and interpolation. Consequently, the cover note was issued with manipulation backdating to 27.9.1980 though actually issued on 29.9.1980. The charges are to the effect that the original Appellant by abusing his official power as Manager of Andhra Bank, Bolangir proceeded to forge and manipulate the Pay Order resulting issuance of the manipulated cover note to benefit the private businessman.

5. The FIR was registered on 14.1.1982 by the C.B.I.

6. Prosecution examined 13 witnesses in support of their case and exhibited several documents. P.W.7 is the Asst. General Manager of Andhra Bank, who accorded sanction for prosecution of accused-Brajabihari Palit. P.W.3, 4, 5 and 6 are the Officers and employees of Andhra Bank, Bolanigr, who spoke about the allegation of forgery and issuance of Pay Order No.242/80 (Ext.6 series) by putting the backdate. Ext.22 is the Cover Note bearing No.445990 issued in favour of M/s.Metal Industries, Bolangir and Ext.30 is the counter-foil of deposit of Pay Order in State Bank of India dated 29.9.1980. P.W.10 was the Branch Manager of State Bank of India. P.W.13 is the Investigating Officer, the then Inspector of C.B.I., Bhubaneswar.

7. No evidence was adduced from the side of the defence. The fact that Brajabihari Palit was working as Branch Manager, Andhra Bank, Bolangir Branch in the month of September, 1980 is not denied. Similarly, the official status of Badan Ram Agarwal as Inspector of Insurance of Oriental Fire and General Insurance Company Ltd. at Bolangir is not disputed. Issuance of the Pay Order No.242/80 and Cover Note No.445990 is not disputed. Issuance of the Pay Order as well as the Cover Note by Brajabihari Palit and Badan Ram Agarwal respectively are also not disputed.

It is explained by Brajabihari Palit in his statement recorded under Section 313, Cr.P.C. that on 29.9.1980 he noticed the Clerk of the Bank prepared a Pay Order on the leaf which was already torn. As such, he (the original Appellant) as the

Manager of the Branch advised not to issue any Pay Order on torn leaf and so, the Pay Order No.242/80 was prepared on the next leaf upon cancellation of the same, for Rs.1360/- in favour of Oriental Insurance Co. Ltd.

8. The disputed Pay Order No.242/80 is dated 27.9.1980 and the timing mentioned is 12.30 p.m. Undisputedly, Pay Order No.241/80 is dated 27.9.1980 and Pay Order No.243/80 is dated 29.9.1980. As per prosecution allegations, initially Pay Order No.242/80 was issued in favour of one Raj Kumar Brothers of Bolangir for Rs.760/- which was manipulated by forgery with corrections in the Pay Order Book (Ext.6 series) scrolling the digit '9' with digit '7' in the date column and the digit '760' with '1360' in the amount column with initials of Brajabihari Palit. The Original Leaf No.139142 had been corrected with super additions and the next Pay Order No.243 dated 29.9.1980 was issued in favour of R.K. Brothers. The Pay Order No.242/80 was presented through pay-in-slip at State Bank of India, Bolangir on 29.9.1980. The amount in the Pay Order was bifurcated, one for Rs.1242/- in favour of M/s.Metal Industries with miscellaneous Cover Note No.091759 and other for Rs.118/- in miscellaneous Cover Note No.091760 in favour of accused-Badan Ram Agarwal.

9. Ext.5 is the Pay Order Book maintained in the Bank during that relevant period. Ext.5/1 is the Pay Order with regard to Rs.760/- dated 29.9.1980 which was shown to be cancelled by the original Appellant. Ext.5/2 is the counter-foil of the same shown to have been cancelled in red letters. The date '29.9.80' appearing in Ext.5/1 and Ext.5/3 (Parties copy, i.e. R.K. Brothers) has been corrected and overwritten as '27.9.80'. Ext.6 is the Pay Order Issue Register and similarly the date and amount in the same have been changed from '29.9.80' and 'Rs.760/-' to '27.9.80' and 'Rs.1360/-' respectively. All the changes by way of correction and overwriting are clearly seen to the naked eye from the original record. Therefore, it is established that subsequently the dates '29.9.80' appearing on Ext.5/1, 5/2 and 5/3 have been changed by way of correction and overwriting to '27.9.80' and according to P.W.6, the Clerk of the Bank, all these corrections were made as per the direction of the Branch Manager, Brajabihari Palit. Undoubtedly, Ext.6 series, the Pay Order Issue Register and relevant entries, were corrected with initials of Brajabihari Palit. These corrections in Ext.6 series has been answered in affirmative by the original Appellant during his examination under Sec.313, Cr.P.C. with the explanation that it was done so due to tearing of the leaf.

10. The further fact as evident from Ext.10, 11 and 12, i.e. the Day Book, General Ledger and Transfer Scroll that the total transaction amount on 27.9.1980 was also corrected both the receipt side and payment side upon insertion of Rs.1360/- towards issue of the Payment Order No.242/80 in favour of the Insurance Company. This is also stated by P.W.6 that such corrections have been made on the direction of the Branch Manager-Brajabihari Palit. Therefore, it is clear that the transaction for the day was closed on 27.9.1980 with Pay Order No.241/80 and the next transaction, i.e. Pay Order No.242/80

was started on 29.9.1980 for Rs.760/- on the account of one R.K. Brothers. But everything was corrected or cancelled either at the behest of Brajabihari Palit or by himself. It is also clear that the disputed Pay Order No.242/80 would in its normal course have been numbered 243/80 dated 29.9.1980, but have been manipulated with corrections, overwriting and interpolation as 242/80 dated 27.9.1980. The explanation offered by the original Appellant before the learned trial court regarding correction due to tearing of the leaf is not found acceptable for many reasons. The first one is that, there was no correction in the Pay Order Issue Register from 14.8.80 till 27.9.80 except the present one. Secondly, the timing is 12.30 p.m. on a Saturday and the consequential amount was deposited in the State Bank Account of the Insurance Company on 29.9.1980. Therefore, the oral evidences adduced by the witnesses coupled with the documentary evidences are telling the circumstances against the original Appellant to establish the prosecution allegation of manipulation of the Pay Order and consequent issuance of the cover note by the Insurance Company in favour of Bed Prakash Agarwal.

11. Now coming to see the forgery aspect, as per Sec.463, I.P.C., a person commits forgery if he makes any forged document or part of the document with intent to cause damage or injury to the public or to any person. Section 463, I.P.C. is reproduced below:-

"463. Forgery:-Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."

12. The preparation of a false document is explained in Sec.464, I.P.C.

13. In the instant case, the expected beneficiary, Bed Prakash Agarwal was not convicted. He has been acquitted on benefit of doubt. It is true that no material has been produced on record to establish that Bed Prakash Agarwal has got any money from the Insurance Company for damage to his shop and building, i.e. M/s Metal Industries, as rightly observed by the learned trial court while acquitting Bed Prakash Agarwal from the charges.

14. It is submitted on behalf of the Appellant that when no money or benefit has been flown out of the alleged manipulation of the Pay Order and issuance of cover note and moreover, the ultimate beneficiary Bed Prakash Agarwal has been acquitted, no case is made out against Brajabihari Palit or Badan Ram Agarwal, the officials. The submission is not correct for the offences under the I.P.C. It is a different consideration for the offence under Sec.5(2) read with Sec.5(1)(d) of the P.C. Act, 1947. A public servant is punishable under sub-Section (2) of Section 5 of the P.C. Act, 1947 for commission of the offence of criminal misconduct on various contingencies including clause (d) of sub-Section (1), which stipulates that if he by corrupt or illegal means or otherwise abusing his

position as public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. Of course, no such happening of events to attract other contingencies for commission of offence of criminal misconduct mentioned in Clause (a), (b), (c) or (e) of sub-Section (1) has been alleged by prosecution or attracted in the present facts of the case. The charge is in respect of Section 5(1)(d) of the P.C. Act. When admittedly no benefit of pecuniary advantage is obtained for Bed Prakash Agarwal, then the commission of offence under Section 5(2) against Brajabihari Palit and Badan Ram Agarwal cannot be said to have committed. It needs to be mentioned here that the amount of Rs.118/- out of the same Pay Order No.242/80 has though been stated to have utilized for own benefits of insurance claim in favour of Badan Ram Agarwal, but no details of the same have been adduced on record and no evidence has been brought on that aspect. The amount of insurance claim released, if any, in favour of Badan Ram Agarwal has also not been stated in the charge-sheet. Therefore, in the circumstances, in absence of any material regarding pecuniary advantage obtained in favour of Bed Prakash Agarwal or any other person in respect of the same Pay Order No.242/80, the offence under Sec.5(2) of the P.C. Act, 1947 is not established against the original Appellant-Brajabihari Palit.

15. In view of the requirements and ingredient of forgery as discussed in the earlier paragraphs above, no merit is seen in the contention of the Appellant not to attract the offences under the I.P.C. against him. It is to be stated here that the attempt to commit cheating by the original Appellant as concluded by the learned trial court upon criminal conspiracy with Badan Ram Agarwal has been undoubtedly established by the prosecution on record. As such, no reason is seen to interfere with the conviction of Brajabihari Palit in respect of the offences under Sec.420/511 read with Sec.120-B, and Sec.467 of the I.P.C.

16. The sentence imposed was for one year only for Sec.467, I.P.C. and no separate sentence was imposed by the learned trial court under Sec.120-B read with Sec.420/511 of the I.P.C. In the meantime, during pendency of the appeal, the original Appellant-Brajabihari Palit also died. Therefore, no reason is there to interfere with sentencing.

17. In the result, the appeal is disposed of and the conviction against the original Appellant-Brajabihari Palit, as stated above, is upheld..

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