
(2009) 11 JH CK 0015
In the Jharkhand High Court

Gauri Shankar Prasad

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 454
Penal Code, 1860 (IPC) — Section 120(B), 120B, 409, 465, 467
Prevention of Corruption Act, 1988 — Section 13(1)(c)(d), 13(2)

Citation : (2010) CriLJ 2959 : (2011) 6 RCR(Criminal) 604

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—This appeal filed u/s 454 of the Code of Criminal Procedure is directed against the order dated 5.3.2009 passed by learned Additional Judicial Commissioner-cum-Special Judge (AHD Scam) IV, CBI, Ranchi in R.C. No. 19A of 1996 whereby learned Special Judge rejected the petition filed u/s 452 of the Code of Criminal Procedure for release of a sum of Rs. 9 lacs in favour of the appellant.

2. Learned Counsel appearing for the appellant submitted that when it was noticed by the Deputy Commissioner, Chaibasa that huge amount has been withdrawn from the Treasury on the basis of forged allotment letters, Deputy Commissioner, Chaibasa ordered for enquiry and in course of enquiry, certain materials including briefcase containing hard cash of Rs. 9 lacs were seized on 4.2.1996 from the office of D.A.H.O., Chaibasa, inventory of which was prepared. Subsequently, a case was lodged against the accused person including the appellant, who at that time was posted as District Animal Husbandry Officer, Chaibasa under Sections 467, 468, 471, 465, 477A read with Section 120B of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act. Later on, when the matter was referred to C.B.I., it registered a case as R.C.19A of 1996. After investigation, charge sheet was

submitted whereby this petitioner and other accused persons were put on trial. The trial court having found the appellant guilty, convicted him for the offences under Sections 409, 467, 468, 471, 465, 477A and 120(B) of the Indian Penal Code and also u/s 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act.

3. Being aggrieved with the judgment of conviction and order of sentence, the appellant preferred an appeal which is pending for hearing but in the meantime, the petitioner filed an application before the learned trial court u/s 452 of the Code of Criminal Procedure for release of hard cash amounting to Rs. 9 lacs on the ground that the said amount belonging to this appellant though had been seized by the Civil Administration, had never been made subject matter of the case and that the fact that the money belonged to this appellant has been admitted by one Shiv Kumar Singh, one of the prosecution witness, who has been examined as P.W.90. The said witness in his examination-in-chief has categorically admitted that Rs. 9 lacs, which had been seized by the Civil Administration, had been given him by this appellant for keeping it in the office and then he had given it to one Lai Mohan Gope so that he may keep it in his Almirah.

4. Learned Counsel further submitted that under those circumstances, prayer was made to release the said amount to him as it belonged to him which had been admitted by one of the prosecution witnesses but the trial court rejected the prayer on the ground that the said amount had never been claimed by this appellant earlier.

5. It was further submitted that in similar circumstance, Rs. 1 lac and other materials have been released in favour of the co-accused, Lai Mohan Gope by this Court and, therefore, the appellant is entitled to get the said amount.

6. As against this, learned Counsel appearing for the C.B.I. submits that the appellant, before the trial ended, had never made any claim over the said amount of Rs. 9 lacs but after the appellant was convicted by the trial court, the appellant put forth claim of his ownership over the said amount on the basis of the statement made by one of the witnesses, namely, Shiv Kumar Singh, P.W.90, who in his evidence, though has stated that the money was given to him by this appellant, but the appellant while cross-examining the said witness gave suggestion to the witness that it never belonged to this appellant and, therefore, the appellant is not entitled to get the said amount as the suggestion given to the witness does indicate that it never belonged to him and therefore, the trial court has rightly rejected the claim as the appellant is never entitled to have possession of the money.

7. Having heard learned Counsel appearing for the parties and on perusal of the record, I do find that after the appellant was convicted by the trial court, an application u/s 452 of the Code of Criminal Procedure was filed on behalf of the appellant for release of the money amounting to Rs. 9 lacs which had been

seized from the office of D.A.H.O., Chaibasa by the Civil Administration as according to him, it belonged to him. The said assertion was made on the basis of statement made by one of the prosecution witnesses namely, Shiv Kumar Singh, P.W.90, wherein he has deposed before the court that this appellant had given Rs. 9 lacs for keeping it In the office and then he gave that money to one Lai Mohan Gope for keeping it in his Almirah from where it was seized. On the one hand, the appellant has claimed ownership on the basis of the statement made in the examination-in-Chief but, surprisingly, when the said witness was cross-examined on behalf of the appellant, suggestion was given to him that the said amount never belonged to this appellant, rather it belongs to him and one Srikant Madhav. In this situation, assertion of this appellant that the money belongs to him can never be accepted. Consequently, the appellant in terms of the provisions as contained in Section 452 of the Code of Criminal Procedure never seems to be entitled to have possession of the money in question.

8. Thus, I do not find any illegality in the order passed by the learned trial court. Accordingly, the appeal being devoid of any merit is dismissed.