(1989) 05 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 95 of 1986

Kashmir Singh Guleria — APPELLANT

Vs

State of Himachal Pradesh — RESPONDENT

Date of Decision : 31-05-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 367, 420, 467, 468, 471
Prevention of Corruption Act, 1947 — Section 5(1), 5(2), 5(3A)

Citation : (1989) 1 ILR HP 505

Hon'ble Judges : Bhawani Singh, J

Bench : Single Bench

Advocate : T.R. Chandel, for the Appellant; M.L. Chauhan, Assistant A.G., for the Respondent

Final Decision : Allowed

Judgement

Bhawani Singh, J.—This appeal, by the Appellant, is from the judgment of conviction in Sessions Trial No. 8-S/7 of 1986, decided on 11-11-1986, under Sections 467, 471 of the Indian Penal Code and Section 5(1) (d) read with Section 5, Sub-Section 3A, of the Prevention of Corruption Act. The Appellant has been convicted for offences under these provisions, except Section 467 of the Indian Penal Code, and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs. 500/- and in default of payment of fine, further imprisonment for three months u/s 471 of the Indian Penal Code and rigorous imprisonment for six months and to pay a fine of Rs. 200/- and in default of payment of fine to undergo rigorous imprisonment for a period of one month u/s 5(1) (d) read with Section 5, Sub-Section 3A of the Prevention of Corruption Act, though all the sentences h ave been made to run concurrently. The Appellant has a grievance against this conviction and sentence, as aforesaid, and, therefore, he assails the same by way of this appeal.

2. The prosecution case, in brief, is that the accused was working as a Trained

Graduate Teacher in Pangna School in District Mandi in the year 1982. In the month of May of the same year, he was shifted from this place and posted as Block Education Officer, Chirgaon. The accused submitted a Transfer T. A. bill for a sum of Rs. 942.65. He claimed through this bill a sum of Rs. 573.75 on account of the charges for carriage to luggage and personal effects besides other claimable dues, as reflected in this bill. In support of his claim qua carriage charges for house hold luggage and personal effects, he submitted a receipt (Ex. PD) dated 12-5-1982 showing that the goods were carried by one Para''s Ram, a driver and owner of Truck No. H IL-4727 and, therefore, an amount of Rs. 825/- was paid for the carriage of goods. However, as the Appellant was entitled to claim only for 30 quintals, therefore, he confined this claim to this extent although, according to the receipt, amount more than this is indicated to have been paid. This receipt was attested by the accused himself and the bill was submitted for payment. The matter was taken up by the Anti-Corruption Department, Shimla Unit, Shimla. It inquired into the genuineness of the claim of the accused and came to the conclusion that the accused had not carried any luggage from Pangna to Chirgaon at the time of his transfer through truck No. HIL-3727 and had not paid any money on account of the carriage charges to the driver-cum-owner of the truck and the receipt submitted by him with his TTA bill was not genuine. A case, vide first Information Report No. 2 of 1983, under Sections 420, 468, 471 of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947 was registered. During the course of investigation, specimen writings of Paras Ram, the owner of the truck, vis-a-vis, the receipt in question, were taken and sent to the Government Examiner of Questioned Documents and it was reported, after examination, that the signatures on the receipt did not tally with the standard signatures of Shri Paras Ram who also denied having issued any such receipt or carried any luggage of the accused from Pangna to Chirgaon, as alleged. Specimen writings and signatures of the accused were also taken and examined. There also, it was found that the accused had not written any part of the receipt in question. Log Book of the vehicle was taken into possession. It indicated that no such carriage of goods was there. On inquiries from Kalka-Shimla Goods Transport Union, on whose pad the receipt in question was prepared, it was found that the accused had neither booked this vehicle nor placed any goods at their disposal for carriage. The result of the investigation was that the police initiated the present case against the accused and he was charged for the offence under Sections 467, 471 of the Indian Penal Code and Section 5(1) (d) read with Section 5, Sub-Section 3A of the Prevention of Corruption Act. The accused pleaded innocence and claimed to be tried. He examined three witnesses in defense besides his statement u/s 313 of the Code of Criminal Procedure.

3. The learned Sessions Judge has come to a definite conclusion that the receipt (Ex. PD), attested by the accused and attached with his T. A. Bill Ex. PA, has not been forged by him personally. Taking this view of the matter, the accused has been found not guilty u/s 467. This conclusion, on perusal of the evidence on

record of the learned Session Judge is right.

4. Adverting to the other part of case, it is to be seen whether the accused knowingly and fraudulently used the receipt as genuine for claiming the amount in question. The answer, in my opinion, is that this offence has not been proved against the accused.

5. It is a fact that the accused was transferred during this time from Pangna to Chirgaon. It is also a fact that he carried domestic articles to this place as it is not possible to imagine that he would go to the place of his posting without anything. There is variation in the number of articles carried-list prepared by the prosecution does not tally with the list submitted by the accused with his T.A. Bill. However, it appears that the accused carried articles to the place of his posting and the articles, about which there is some difference in these two lists, cannot be considered to have been added falsely. They are normal and necessary articles and the version of the accused on this account is believable. It is also noticeable that the volume of these articles is such that it happens to occupy more space. Therefore, the accused appears to have given much more amount by way of carriage charges than he was actually entitled.

6. Now, I examine the receipt (Ex.PD), which forms the basis of the prosecution case. The accused alleges that it is a genuine whereas the prosecution says otherwise.

7. Perusal of this receipt indicates that it has been prepared on the writing pad of Kalka-Shimla Goods Transport Union located at Shimla. It is a printed pad and has been issued by this Company. Now, the question arises as to who has prepared it. Evidence on record has excluded the accused and Shri Paras Ram, the driver-cum- owner of Truck No. HIL 4727. The only person left to be examined is Shri Krishan Lal, (PW-7), a Clerk in the office of Kalka-Shimla Goods Transport Union. Either it has been done by him or it has been prepared by him through someone else. He states in his examination-in-Chief that he never booked the goods of the accused for carriage in this Transport Company. Whenever anybody books his goods with this Union and the goods are of full truck load, entry is made in the register. Further he states that the receipt (Ex. PD), though is on the pad of their Transport Company, but the same is not written in his hand. In his cross examination, at one place, he denies the suggestion that in the first week of May, 1982 the accused visited the office of this Company to book his goods for carriage from Pangna to Shimla and Shimla to Chirgaon and that his goods were received for carriage against the receipt Ex. PD. Everybody has access to their office and can have a sheet of the letter pad of the Company without their knowledge. He states that the accused never visited their office. The statement of this witness evokes complete unreliability. His statement is incoherent and contradictory. Ft indicates that this witness intends to conceal the real facts to escape responsibility. The fact that the writing pad of this Company has been used to prepare the receipt (Ex. PD), has been established. It is also clear that this witness works in the office of this Company.

It is also clear that goods, in case they are of full truck load size, an entry in the register is made, otherwise not. Goods in question are obviously very much less than this. It appears that this receipt, (ExPD) has been issued by this Company although it is not idea as to who has actually written it. As soon as it is held that it issued by this Company, irrespective of its author, the genuineness of the explanation of the accused that the goods were 1 carried through tins Company and against payment of82g is established. Whether they are carried through truck to. HIL4727 by Shri Paras Ram or someone else, lineal But the fact remains that the goods are'' actually cared. Gnat circumstances, it can be inferred that someone in the Company has played the trick. This receipt has been Shri Paras Ram and the goods have been indicated to have been carried by his truck which may otherwise, have in sent by this Company through some other vehicle e adventure of the goods and the quantity shows that the same could one carried by any vehicle in addition to other normal goods being otherwise

8. The accused, a teacher, a class well-known for their innocence and straightforwardness. He appears to have been hoodwinked by a class which is well-known The of the accused is evidenced by the fact that [despite denials of Shri Krishan Lal (P.W. 7) and Para''s _ R.L ff sticks to the assertion that the receipt Ex PD was prepared by P.W. 7 without saying that the chances of the same having been got prepared from someone else by him can be there "in, Therefore, be reasonably concluded that the act of the Appellant can neither be considered to be fraudulent by the use o. this document to support his T. A. Bill. He appears to have gluing i believed the honest execution of receipt Ex PD although this T document cannot be considered to be the sole basis for claiming the charges in question. Even otherwise, simply because me Appellant used this document, it cannot be concluded than he had requisite guilty knowledge of its to raged character least he has not forged this document and, as already observed goods were actually carried through this company, but thought which, vehicle then were actually carried, is not easily ascertainable by the accused as it is rather difficult to know and remember the number of vehicles and the Petitioner by honestly believing me genuineness of there receipt, asserted that his goods were carried through this vehicle.

9. By the aforesaid examination of this case and the submissions of the learned Counsel appearing for the parties, ins absolutely clear that the prosecution has not been able to establish this case against the accused. The conclusions drawn by the learned Sessions Judge in such facts and circumstances of this case are not legally tenable and the result is that the conviction and sentences imposed upon the accused are liable to be set-aside.

10. The result, therefore, is that there is merit in the appeal of the accused, the same is allowed; the judgment of the trial Court is set-aside and the accused is acquitted of the charges. Bail bond and surety bond, if any, executed by the accused at any stage of the trial are hereby discharged.

