(2021) 12 UK CK 0093

In the Uttarakhand High Court

Case No : Criminal Appeal No. 341 Of 2011, 05 Of 2012

Krishna Dev & Others — APPELLANT

Vs

Central Bureau Of Investigation — RESPONDENT

Date of Decision : 08-12-2021

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420
Code Of Criminal Procedure, 1973 — Section 313
Probation Of Offenders Act, 1958 — Section 12

Citation : (2021) 12 UK CK 0093

Hon'ble Judges : Alok Kumar Verma, J

Bench : Single Bench

Advocate : Tapan Singh, Sandeep Tandon

Final Decision : Disposed Of

Judgement

Alok Kumar Verma, J

1. These two criminal appeals are being decided by this common judgment because these two appeals arise from a common judgment dated 22.12.2011, passed by the learned Special Judge, Anti-Corruption (C.B.I.) Uttarakhand, Dehradun in C.B.I. Case No.4 of 1997 "CBI vs. Shri Krishna Dev and four Others", whereby the appellant-Krishna Dev has been convicted and sentenced to undergo rigorous imprisonment for a period of one year along with a fine of Rs.80,000/- for the offence punishable under Section 120B of IPC. The appellant-Krishna Dev has been further convicted and sentenced to undergo rigorous imprisonment for a period of one year along with a fine of Rs.40,000/- in the offence punishable under Section 420 of IPC, with the default clause. Both the sentences are directed to run concurrently.

2. The appellant-Om Prakash has been convicted and sentenced to undergo rigorous imprisonment for a period of one year along with a fine of Rs.65,000/- for the offence punishable under Section 120B of IPC. The appellant-Om Prakash has been further convicted and sentenced to undergo rigorous imprisonment for

a period of one year along with a fine of Rs.35,000/- in the offence punishable under Section 420 of IPC, with the default clause. Both the sentences are directed to run concurrently.

3. According to the prosecution, CBI, during the year 1989-1993, the appellant-accused Krishna Dev was a peon in the Income Tax Office, Haridwar and the appellant-Om Prakash was a Clerk in Oriental Bank of Commerce, Haridwar. Both the appellants along with co-accused persons agreed to cheat the Income Tax Department on the basis of forged documents to the tune of Rs.4,09,447/- and, in pursuance of the said agreement Krishan Kumar dishonestly and falsely prepared refund voucher no.664297 dated 13.07.1992 for Rs.61,999/- in the name of fictitious and non-existent person Shri Ajit Kumar, R/o Jassa Ram Road, Haridwar for the assessment year 1990-91 and Shri Krishan Kumar also dishonestly prepared false advice and counterfoil of the aforesaid refund voucher and V.B. Singh dishonestly and falsely issued the aforesaid refund voucher and advice under his signature and on 25.06.1992 an SB Account No.10877 was opened with an initial deposit of Rs.25/- only in the fictitious name of Shri Ajit Kumar in the Oriental Bank of Commerce, Haridwar and the aforesaid account was dishonestly introduced by Om Prakash and in the said account the aforesaid refund voucher was deposited on 01.08.1992 and subsequently the amount was withdrawn and Krishan Kumar also dishonestly prepared refund voucher no.664372 dated 22.07.1992 for Rs.37,999/-, its counterfoil and advice in the name of fictitious person Deepak Kumar, R/o Jwalapur Road, Haridwar and V.B. Singh dishonestly issued the refund voucher and advice under his signature and on 25.07.1992 an SB Account No.10920 was opened in the name of fictitious person Deepak Kumar in the Oriental Bank of Commerce, Haridwar and the said account was also dishonestly introduced by Om Prakash and the said refund voucher was credited in this account and subsequently the amount was withdrawn from the bank and Shri Krishan Kumar dishonestly prepared refund voucher no.353323 dated 31.03.1993 for Rs.18060/-, refund voucher no.353367 dated 31.03.1993 for Rs.12900/-, refund voucher no.353440 dated 10.05.1993 for Rs.1700/-, refund voucher no.353556 dated 31.05.1993 for Rs.24500/-, refund voucher no.353206 dated 10.03.1993 for Rs.14910/-, and its counterfoils and credit advices in the name of fictitious persons namely Shri Mukesh Kumar, R/o Devpura, Haridwar, Mukesh Kumar, R/o S.N. Nagar, Haridwar, Mukesh Kumar, R/o S.N. Nagar, Haridwar, Mukesh Kumar, R/o Devpura, Haridwar and Mukesh Kumar, R/o S.N. Nagar, Haridwar, respectively and V.B. Singh dishonestly and falsely issued all the aforesaid vouchers and advices under his signatures and on 25.01.1993 an SB Account No.8025 was opened with an initial deposit of Rs.100/- in the name of fictitious persons Shri Mukesh Kumar in Bank of Baroda, Haridwar and Shri Bhagat Ram dishonestly introduced the said account holder in the bank and the said refund vouchers were deposited in the said account and subsequently the said amount was withdrawn and Krishan Kumar also dishonestly prepared refund voucher no.353172 dated 19.02.1993 for Rs.14180/- for the assessment year 1991-92 in the name of fictitious person

Suresh Chand, Contractor, BHEL, Haridwar, refund voucher no.353597 dated 31.05.1993 for Rs.19310/- in the name of fictitious person Suresh Chand, R/o 105/II, BHEL, Haridwar, refund voucher no.353467 dated 10.05.1993 for Rs.15060/- in the name of fictitious person Suresh Chand, R/o Sharvan Nath Nagar, Haridwar, refund voucher no.353383 dated 27.04.1993 for Rs.18880/- in the name of Suresh Chand, R/o S.N. Nagar, Haridwar, refund voucher no.353228 dated 16.03.1993 for Rs.14360/- in the name of fictitious person Suresh Chand, Contractor, Haridwar and refund voucher no.353253 for Rs.33930/- in the name of fictitious person Suresh Chand, R/o S.N. Nagar, Haridwar, its corresponding counterfoils and advices and V.B. Singh falsely and dishonestly issued the said refund vouchers and advices under his signatures and an SB Account No.4674 was opened in the syndicate Bank, Haridwar in the name of fictitious person Shri Suresh Kumar R/o Jassa Ram Road, Haridwar and Shri Krishan Dev dishonestly introduced the fictitious account holder in the bank and two refund voucher nos. i.e. refund voucher no.353597 for Rs.19310/- and refund voucher no.353467 for Rs.15060/-were deposited in the said account and subsequently the amount of the said vouchers was withdrawn from the bank and Shri Krishan Kumar also dishonestly and falsely prepared refund voucher no.353546 dated 14.05.1993 for Rs.12700/- in the name of Raju Thekedar, R/o Brahmpuri, Haridwar. In fact the said Raju Thekedar was not entitled to obtain refund voucher and is corresponding counterfoil and advice. V.B. Singh dishonestly issued the said refund voucher and its advice under his signature and the said refund voucher was deposited in the account no.5908 of Raju Thekedar S/o Late Shri Rajendra Prasad Gupta R/o Brahmpuri, Haridwar in Bareilly Co-operative Bank Ltd., Haridwar and subsequently the said amount was withdrawn by Raju and Krishan Kumar also prepared refund voucher no.353599 dated 10.05.1993 for Rs.11,000/- in the name of Krishan Kumar S/o Shri Satya Prakash of Haridwar, refund voucher no.353444 dated 10.05.1993 for Rs.17880/- in the name of Krishan Kumar, its corresponding counterfoils and advices and V.B. Singh dishonestly issued these refund voucher and advices under his signatures and the said refund voucher were deposited into the account no.14089 of Shri Krishan Kumar in State Bank of India, Main Branch, Haridwar and subsequently the aforesaid amount was withdrawn by Shri Krishan Kumar and Krishan Kumar also dishonestly prepared refund voucher 353447 dated 10.05.1993 for Rs.16660/-in the name of Shri Vishnu Datt, R/o S.N. Nagar, Haridwar, refund voucher no.353368 dated 31.03.1993 for Rs.14,999/- in the name of fictitious person Shri Vishnu Datt, Thekedar, Haridwar and refund voucher no.353275 dated 24.03.1993 for Rs.33120/- in the name of Vishnu Datt, Thekedar of Haridwar and their corresponding advices and counterfoils and V.B. Singh dishonestly issued the said refund vouchers and advices under his signatures and all the aforesaid refund vouchers were deposited in the SB Account No.1222 of fictitious person Shri Vishnu Datt R/o Bhutani Bhawan, Jassaram Road, Haridwar in the State Bank of India, Haridwar and subsequently, the aforesaid amounts of refund vouchers was withdrawn from the bank.

4. The Income Tax Officer, Haridwar lodged a complaint with the CBI. The CBI enquired and investigated the matter. After completion of the investigation, the charge-sheet was submitted.

5. The charges were framed. The appellants-accused persons pleaded not guilty and claimed to be tried.

6. The prosecution has examined as many as 30 witnesses.

7. The statements of the appellants-accused persons were recorded under Section 313 of the Code of Criminal Procedure. The appellants denied all the incriminating evidence, produced by the prosecution.

8. The learned trial court heard the learned counsel for the parties, appraised the evidence, produced by the prosecution, and, passed the impugned judgment.

9. Heard, Mr. Rajat Mittal, the learned counsel for the appellant-Krishna Dev, Mr. Tapan Singh, the learned counsel for the appellant-Om Prakash and Mr. Sandeep Tandon, the learned counsel for the CBI/respondent.

10. During the arguments, Mr. Rajat Mittal, the learned counsel for the appellant-Krishna Dev and Mr. Tapan Singh, the learned counsel for the appellant-Om Prakash submitted that both the appellants do not want to press their conviction order. Both the appellants want to advance their arguments only on their sentences, passed by the learned trial court.

11. Mr. Rajat Mittal, the learned counsel for the appellant-Krishna Dev and Mr. Tapan Singh, the learned counsel for the appellant-Om Prakash submitted that the present matter is pending since the year 1993, when the complaint of this matter was lodged; both the appellants have been retired from their service; the appellants have no criminal history. Mr. Rajat Mittal, the learned counsel for the appellant further submitted that the appellant-Krishna Dev has already been served six months of his sentence and Mr. Tapan Singh, the learned counsel for the appellant, submitted that the appellant-Om Prakash has already been undergone for 57 days.

12. The learned counsel for both the appellants requested to give them the benefit of the probation. They further submitted that in case, the benefit of the probation is granted to the appellants, the appellants will not suffer disqualification, attaching to their conviction, under Section 12 of the Probation of Offenders Act, 1958.

13. After advancing the said submissions, the learned counsel for both the appellants requested to alter their sentences and give benefit of probation under the Probation of Offenders Act, 1958.

14. Mr. Sandeep Tandon, the learned counsel for the CBI has not seriously opposed the said submissions of the learned counsel for the appellants.

15. The present matter is pending since the year, 1993, when the complaint of

the present matter was lodged before the CBI. The present appeal is pending since 2011 and 2012 respectively. Both the appellants have crossed their age of superannuation. They are not in service. They have no criminal history. After considering the facts and circumstances of this case and the submissions advanced by the learned counsel for both the parties, it seems appropriate that the sentence, passed by the learned trial court, should be altered and the benefit of probation should be granted to the appellants. Consequently, without altering the findings of the learned trial court, the nature of these sentences is being altered.

16. Resultantly, both the appellants namely, Krishna Dev and Om Prakash are released on probation of good conduct for one year, on his entering into a bond of Rs. 30,000/-with one surety of the like amount by each appellant, to appear and receive sentence when they called upon during such period. In the meantime, the appellants are directed to keep the peace and be of good behavior. Both the appellants, namely, Krishna Dev and Om Prakash are directed to appear before the Probation Officer, Dehradun within a week from today.

17. The registry is directed to send a certified copy of this order forthwith to the Probation Officer, Dehradun for necessary action.

18. These two appeals are disposed of accordingly.