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(2014) 02 PAT CK 0049

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 810 of 2004

Krishna Prasad Working as Deputy Manager Cash — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 319
Penal Code, 1860 (IPC) — Section 120A, 120B, 4(57), 409, 418
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 5(1)(c)(d), 5(1)(d), 5(2)

Citation : (2014) 02 PAT CK 0049

Hon'ble Judges : Aditya Kumar Trivedi, J

Bench : Single Bench

Advocate : S.N.P. Sinha, Mr. J.N. Sinha, Mr. Rohit Kumar, Mrs. Shikha Roy and Mr. Arun, for the Appellant; Bipin Kumar Sinha, SC, CBI, for the Respondent

Final Decision : Dismissed

Judgement

Aditya Kumar Trivedi, J

1. Criminal Appeal (SJ) No. 810 of 2004 wherein Krishna Prasad happens to be the appellant and Criminal Appeal (SJ) No. 25 of 2005 wherein Sheojee Prasad Gupta happens to be the appellant commonly originate from judgment of conviction and sentence dated 06.12.2004 passed by Special Judge, CBI, North Bihar, Patna in Special Case No. 70 of 1990 and on account thereof both the appeals have been heard together and are being disposed of by a common judgment. Appellant, Krishna Prasad has been found guilty u/s 418, 120B/420, 477A IPC as well as u/s 13(2) read with 13(1)(d) of the P.C. Act, 1988 corresponding to Section 5(2) read with Section 5(1)(c)(d) of the P.C. Act, 1947 and further been directed to undergo R.I. for six months and to pay fine of Rs. 1000/- and in default thereof to undergo R.I. for 15 days additionally under each head of Section 418, 420, 420/120B IPC. He has further been directed to pay fine of Rs. 1000/- and in default thereof to undergo R.I. for 15 days for an offence punishable u/s 477A of the IPC. He has further been sentenced to

undergo R.I. for one year and to pay fine of Rs. 1000/- in default thereof to undergo R.I. for 15 days additionally u/s 13(2) of the P.C. Act with a further direction to run the sentences concurrently.

2. Appellant, Sheojee Prasad Gupta has been filed guilty for an offence punishable u/s 420 IPC/120B/420 IPC, 5(2) read with 5(1)(d) of P.C. Act, 1947 corresponding to 13(2) read with 13(1)(d) of P.C. Act, 1988 and for that he has been sentenced to undergo R.I. for six months and to pay fine of Rs. 1000/- and in default thereof to undergo R.I. for 15 days additionally under each head Section 420 as well as 120B/420. He has further been directed to undergo R.I. for one year and to pay fine of Rs. 1000/- and in default thereof to undergo R.I. for 15 days additionally. He has been further sentenced to undergo R.I. for a year and to pay fine of Rs. 1000/- in default thereof to undergo R.I. for 15 days additionally u/s 120B read with Section 13(2) of the P.C. Act with a further direction to run the sentences concurrently.

3. PW-6, Shantanu Kar, Inspector of Police, CBI filed written report disclosing therein that an information has been received that Krishana Prasad, the then Accountant of SBI, Chapra and R.N. Jaiswal the then Clerk-cum-Cashier, SBI, Chapra entered into a criminal conspiracy with Sheojee Prasad Gupta partner of M/S. Shiv Leela Grain and others in the year 1987 whereunder Sheojee Prasad Gupta had opened Current Account No. 43229 and deposited Rs. 16000/- on 19.12.1987. Thereafter, Krishana Prasad as well as R.N. Jaiswal manipulated concerned ledger by prefixing digit ''2'' inflating the amount to 2,16,000/- instead of 16,000/- misusing their officials status and on account of such manipulation Sheojee Prasad Gupta issued a cheque for Rs. 2,00,400/- on 21.12.1987 for preparation of a draft. The aforesaid cheque was passed by Krishna Prasad and accordingly draft was prepared by R.N. Jaiswal which was signed by Krishna Prasad and on the basis thereof Sheojee Prasad Gupta managed to obtain the payment.

4. On the basis of the aforesaid written report R.C. Case No. 30(A)/90 was registered whereupon investigation commenced and concluded by way of submission of charge sheet only against Krishana Prasad as well as Sheojee Prasad Gupta and on the basis thereof, after taking cognizance trial commenced. During continuance of trial, as is evident R.N. Jaiswal was also summoned invoking application of Section 319 of the Cr.P.C. and his trial is found bifurcated. However, the trial against remaining two proceeded and concluded in a manner, the subject matter of instant appeal.

5. The main crux of argument made on behalf of appellants is that the whole proceeding happens to be bad in law because of the fact as neither there was interpolation nor any forgery was committed rather the whole event visualized on account of overlooking of relevant entry due to over work and just after coming to know regarding the aforesaid misfortune, the amount had already been deposited on 19.12.1987 which the Bank had accepted. It has further been submitted that then thereafter the Bank had also directed Sheojee Prasad Gupta

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to pay the interest which had also been paid and in the aforesaid background, it is evident that neither there was intention to cheat the Bank nor was to misappropriate the amount. In worst case, the amount was released under over draft. It has also been submitted that as before institution of the case the amount had already been deposited as the bank had not come forward on its own to launch criminal prosecution against the appellant therefore, criminal prosecution should not have been allowed to proceed. Hence, the criminal prosecution since its inception is misconceived.

6. It has also been submitted that the occurrence is of the year 1987 and much stress, mental agony has been faced by the appellants during the intervening period hence a lenient view be taken. Also relied upon decisions reported in 2004 Cr.L.J. 365 Narendra Pratap Narain Singh and another Vs. State of U.P., Kuso Sah Vs. The State of Bihar and Others,

7. On the other hand, learned counsel representing the CBI has stated that it is true that amount had already been deposited but that process is not going to exonerate the culpability of the appellants. It has also been submitted that withdrawal of aforesaid amount was done on the basis of forgery and interpolation in the ledger which was consented by the Krishna Prasad knowingly as well as illegally for which they are liable. In the aforesaid background, the conviction so inflicted by the learned trial court happens to be just, legal and proper.

8. Defence as is evident from cross-examination as well as coming out from the statement u/s 313 of the Cr.P.C. is of complete denial of occurrence and in support thereof also adduced oral as well as documentary evidence.

9. In order to substantiate its case, the prosecution had examined altogether seven PWs out of whom PW-1 Gyaneshwar Kumar, PW-2 is Anurag Kumar Singh, PW-3 is D.K. Binay, PW-4 is Jungli Sah, PW-5 is R. Narasimhan, PW-6 is Shantanu Kumar and PW-7 is Satya Narayan Gupta as well as had also exhibited series of document. In similar way appellants have also examined four DWs out of whom DW-1 is Lalji Prasad Singh, DW-2 is Shrikant Prasad, DW-3 is Umesh Kumar Singh, DW-4 is Binod Kumar Mishra and had also exhibited the documents.

10. After hearing argument of rival parties as well as going through the evidence oral as well as documentary so led on behalf of appellant it is apparent that status of appellant Krishna Prasad as accountant at State Bank of India, Main Branch, Chapra in the year 1987 is un-controverted. In likewise manner opening of Current Account No. 43229 standing in name of M/S. Shiv Leela Grain Udyog to be operative by Sheojee Prasad Gupta, Leelawati Devi either or survivor is also found admitted. There is also uncontroverted feet that Cheque No. 702 was issued for 2,00,400/- by appellant Sheojee Prasad Gupta on 21.12.1987 which was passed by appellant Krishana Prasad on the basis of which bank draft was prepared by R.N. Jaiswal in name of Food Corporation of India and the same was also signed by Kishori Prasad (Ext. 2, 4/1, 5/1, 6/1). It is also evident from

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Ext.-1 ledger that digits are being noted down under column credit/drawer and before the date of interpolation in the ledger dated 19.12.1987 it was 500/- and accordingly it shows three digit. On 19.12.1987 16,000/- was deposited total 1(5,500/-and accordingly it contains five digit. However there happens to be interpolation/insertion of ''2'' as prefix giving an impression of amount appertaining to 2,16,500/- and certainly on account thereof, it has become inconsistent with the digit so mentioned as ''5'' as being ''6''. Therefore, on 21.12.1987 while Cheque No. 702 (Ext.-4) issued by appellant Sheojee Prasad Gupta came before appellant Krishna Prasad, he should have atleast inspected the relevant column as well as the inconsistency present in the said column and on account thereof, should not have passed the cheque because of inconsistency in the digit so incorporated and the figure which was persisting. Appellate Krishan Prasad have got an ample opportunity to see the aforesaid entry at the time of passing of Cheque No. 702 as well as at the time of signing over the bank draft but the same, as is evident from his conduct, intention been passed.

11. Although there happens to be absence of concrete, positive evidence on the score of author of manipulation in the register whether it was in the pen of appellant Krishna Prasad or under the pen of R.N. Jaiswal in whose custody the ledger happens to be. But the facts remains that appellant Krishna Prasad happens to be the person who had passed the cheque as well as issued the bank draft by signing over the same, for the amount which was never deposited by the account holder. It is further evident that he could not exercised his duty in protecting interest of the Bank for which he was under obligation under official capacity.

12. In likewise manner, being on account holder Sheojee Prasad Gupta was well aware of the fact that no such amount was ever deposited by him at an earlier occasion, issued cheque and that shows that he was well aware of manipulation whereunder he succeeded in obtaining Bank draft in connivance with Krishna Prasad Jaiswal.

13. The plea of Krishna Prasad that it was mere a mistake without having fraudulent design is not found acceptable when the act of all the accused is chained through. It conclusively interprets that under ill design the interpolation was made facilitating procurement of Bank draft for an amount which was never deposited at his end in the bank. Though the amount has been deposited but that would not exonerate the liability whereunder withdrawal has been made on the basis of interpolation made in the ledger.

14. Mens rea is the mental condition of an accused which could be perceived only by their action. Appellant, Sheojee Prasad Gupta was well aware of the fact that no such amount was available in his account and having the bank draft prepared in favour of Food Corporation of India for the amount which was not deposited in his account since before certainly for business purpose and by such interpolation he had managed the same hence procured it as illegal gain while putting the Bank under illegal loss.

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15. Now, coming to the score of application of relevant provisions of penal law, the Apex Court took into consideration and laid down the ingredients for application of conspiracy as well as Prevention of Corruption Act in N.V. Subba Rao Vs. State, through Inspector of Police, CBI/SPE, Visakhapatnam, A.P.,

35. Relying on another decision of this Court in State of Madhya Pradesh Vs. Sheetla Sahai and Others, the learned counsel for A-1 submitted that the prosecution has not established conspiracy among the accused. Criminal conspiracy has been defined u/s 120A IPC. It is an independent offence, hence, the prosecution for the purpose of bringing the charge of criminal conspiracy read with the provisions of the PC Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of the accused. In order to establish the guilt what is necessary is to show the meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Conspiracy is hatched in secrecy and for proving the said offence substantial direct evidence may not be possible to be obtained. An offence of criminal conspiracy can also be proved by circumstantial evidence.

37. Insofar as the charge u/s 13(1)(d) read with Section 13(2) of the PC Act is concerned, the ingredients of that offence are viz.: (a) that the accused should be a public servant; (b) that he should use some corrupt or illegal means or otherwise abuse his position as a public servant; (c) he should not have obtained a valuable thing or pecuniary advantage; and (d) for himself or any other person, and we have already noted the materials placed by the prosecution to substantiate the above said offence.

16. From the evidence available on the record, it is evident that prosecution had succeeded in proving that from the circumstances there was meeting of minds for releasing of Bank Draft for the amount which was never existing in the account of Sheojee Prasad Gupta. It is also evident that for such purpose interpolation was made and that was intentionally allowed to persist to dupe at a glance otherwise must have been pointed out by Krishna Prasad, while passing the cheque as well as preparing Bank draft. However, with regard to application of P.C. Act the same is not found proved in terms of ingredients so formulated by the Apex Court, as disclosed above.

17. The ruling cited on behalf of appellant have got no application because of the feet that in Narendra Pratap Narain Singh and another Vs. State of U.P., the offence was u/s 409, 4(57), 471 of the IPC whereunder on the basis of forged and fabricated bills the amount was withdrawn which later on was deposited as well as having acquitted u/s 467, 471 IPC by the Appellate Court. In L. Chandraiah Vs. State of A.P. and Another, the amount was withdrawn from the account on the basis of fabricated vouchers which were prepared on the basis of forged signature and forged sheet for which appellant was not accountable. The decision reported in Kuso Sah Vs. The State of Bihar and Others, is also not applicable on account of having the aforesaid case launched on the basis of

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preparation of fictitious pay bill wherein so many persons were involved out of whom only accountant and casher have gone up to Hon''ble Apex Court and as per duty chart they were not at all concerned with the same. However, in para-11, it has been held for the purpose of holding them guilty, the evidence adduced must established beyond reasonable doubt, mens rea on their part and so far this particular case is concerned, the same is found properly exposed. Now coming to application of penal provision, it is evident that 477A of the IPC is not found applicable against appellant Krishna Prasad in the background of the fact that none of the prosecution witnesses have disclosed that he was custodian of the ledger as well a the aforesaid interpolation was made by him. In likewise manner, application of Section 13(1)(d), 13(2) of the P.C. Act is found deficient one. However, with regard to remaining sections, certainly Section 418 as well as 120B/420 is made out against Krishna Prasad, while against Shivjee Prasad Gupta, 120B/420 IPC. So far sentence is concerned, it appears from the judgment impugned that the learned lower court had already taken pain of the event that the amount had already been deposited before institution of the case. As such, both these appeals are dismissed with aforesaid modification. Appellants are on bail hence their bail bonds are cancelled with a direction to surrender before the learned lower court to serve out the remaining part of sentence.

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