(2011) 11 PAT CK 0069

In the Patna High Court

Case No : Criminal Appeal (SJ) No.430 of 2006 with Criminal Appeal (SJ) No. 418 of 2006

Shiv Narain Bansal — APPELLANT

Vs

State of Bihar
 Ramji Prasad Jaiswal @ Ramjee Prasad Jaiswal, Ashok Kumar Jaiswal and Bal Mukund Jaiswal @ Prasad Jaiswal Vs State of Bihar — RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 440, 468, 471
Prevention of Corruption Act, 1947 — Section 5(1), 5(2)

Citation : (2011) 11 PAT CK 0069

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha, J.—The appellants of the two appeals along with Chetharu Singh (since dead) were charged by the learned Special Judge, CBI, South Bihar, Patna for committing offences under sections 440, 420, 468, 471, 120B IPC and section 5(2) read with sections 5(1)(d) of the Prevention of Corruption Act, 1947 for being tried with deceased accused Ajay Kumar Srivastava, who was, during the relevant period, Branch Manager of State Bank of India, Agriculture Market Yard Branch, Mohania, who, besides being charged for the commission of above offences was also charged u/s 5(2) read with sections 5(1)(d) of the Prevention of Corruption Act, 1947. By judgment dated 29.5.2006 the appellants and deceased appellant Chethru Singh who was also a co appellant with appellant Shiv Narain Bansal were found guilty of committing offence under sections 420, 468, 471 and 120B IPC read with section 5(2) read with 5(1)(d) of the Prevention of Corruption Act and, accordingly, they were directed to suffer RI for three years under sections 420 IPC as also to pay a fine of rupees forty thousand. They were also directed to suffer RI for three years u/s 468 IPC besides paying a fine of rupees five thousand for their individual conviction for that particular offence. In addition to the above, each of the appellants was directed to suffer RI for two years and one year respectively under sections 471 read with 468, 420 and 120B IPC. The substantive sentence of imprisonment of one year was inclusive of the sentence awarded to each of the appellants for having committed the offence under sections 5(2) read with sections 5(1)(d) of the P.C. Act. The sentences passed upon the appellants were directed to run concurrently.

2. The appeal of appellant Chetharu Singh, one of the appellants in Cr. Appeal (SJ) No. 430 of 2006 abated due to his death as may appear from order dated 6.4.2011 passed in the said appeal, thus, leaving appellant Shiv Narain Bansal as the solitary appellant.

3. The two appeals, arising out of the same judgment of conviction, have been heard together and are being disposed of by this common judgment.

4. The case relates to a period ranging from September to December, 1982 and further relates to defalcating public money in league with the appellants and the deceased appellant Ajay Kumar Srivastava by forging and fabricating the consignment notes and showing their purchase by the State Bank of India, Agriculture Market Yard Branch, Mohania of which the deceased accused Ajay Kumar Srivastava, during that particular period, was the Branch Manager. It was stated that by misuse of his official position A.K. Srivastava, in conspiracy with deceased appellant Chetharu Singh who was the proprietor of M/s Bishnujee Bhandar and appellant Shiv Narain Banshal, Proprietors of M/s Banshal Stores, Mohania and three appellants of Cr. Appeal (SJ) No. 418 of 2006, namely, Ramji Prasad Jaiswal alias Ramjee Prasad Jaiswal and his two sons Bal Mukund Jaiswal alias Prasad Jaiswal and Ashok Kumar Jaiswal (also being referred to herein as Jaiswal appellants), fraudulently and dishonestly obtained payment of Rs.71,456 to Chethru Singh and Rs. 12,57,810 to appellant Shiv Narain Banshal against three and 31 bills respectively which were accompanied by fake transport receipts issued by three appellants, namely, Ramjee Prasad Jaiswal and his two sons aforenamed purported to be issued by M/s Rohtas Carriers showing the consignment of grains to different consignees and thereby causing loss to the State Bank of India to the tune of Rs. 13,29,266 besides the interest which could have accrued thereon.

5. It was stated further that M/s Bishnujee Bhandar had current account in the said branch of SBI, which was operated by its proprietor Chethru Singh and a similar account in the same bank was also held by appellant Shiv Narain Banshal. M/s Rohtas Carriers were shown the transport agency and it was shown that the three appellants Ramjee Jaiswal and his two sons were running the transport agency. However, during investigation, it was revealed that deceased accused A.K. Srivastava, the Branch Manager of the bank, had purchased three bills from appellant Chetharu Singh, the proprietor of M/s Bishnujee Bhandar which was bearing DD No. 2,79,321 and 336 and were consolidately valued at Rs.71,456. The three DDs were encashed at State Bank of India, Chas branch in respect of

M/s Mahavir Bhandar of Chas. The above DDs were supported by consignment notes or transport receipts allegedly issued by M/s Rohtas Carriers showing dispatch of goods from Mohania to Chas and the amount of Rs.71,456 covered by three DDs were credited in the account of M/s Bishnujee Bhandar. The above bills were sent to SBI, Chas branch by State Bank of India, AMY branch, Mohania for collection but, it was reported that the consignee did not turn up and the bills were returned unpaid to the SBI, Mohania by which the same has been purchased. During investigation, it was further revealed that there was no firm in the name and style of M/s Mahavir Bhandar at Chas and there was no branch or office also of M/s Rohtas Carrier either at Chas or at Mohania. Thus, it was found that the above three DDs of the value of Rs.71456 only were forged and fabricated showing bogus dispatch of goods to non-existent consignee.

6. In addition to the above, what further transpired was that A.K. Srivastava, the Branch Manager, SBI, Mohania also purchased 31 similar bills accompanied by similar transport receipts issued by the same transporters M/s Rohtas Carriers being presented by Shiv Narayan Bansal, which was valued at Rs.12,57,810 and the amounts were credited without verifying any thing, specially, the cash credit limit which could be available to Shiv Narain Banshal and also exceeding the financial power of A.K. Srivastava in such cases. It was found that out of 31 bills 17 bills were to be drawn on the State Bank of India, Posta branch, Kolkata, consignee being M/s Murari Lal Co. and those bills were bearing nos. DD 292, 293, 294, 297, 298, 302, 303, 307, 308, 309, 311, 315, 319, 320, 332, 337 and 338. The remaining bills out of 31 were to be drawn at SBI, Burra branch, Kolkata and the consignees being M/s Shyam Sunder and Co., M/s Murari Lal and Co. and M/s Dwarika Prasad Gauri Shankar, Kolkata. It was revealed that A.K. Srivastava, Branch Manager had purchased the bills indiscriminately without making any appraisal thereof and without verifying the nature and extent of business transaction of the drawers of the bills, which were also accompanied by the consignment notes issued by the transporter M/s Rohtas Carriers which were also returned back unrealized and dishonoured.

7. In spite of the above, A.K. Srivastava continued to purchase the bills from the same parties, i.e., M/s Bansal Stores owned by appellant Shiv Narain Banshal and it was found that Shiv Narain Bansal had a sanctioned financial limit only of Rs.1,50,000 and likewise, M/s Bishnujee Bhandar had also a sanction limit of Rs.50,000 only on their current accounts. But, without apprising their business transactions or reviewing the same, deceased accused A.K. Srivastava continued to purchase the D.D. bills from the aforesaid two firms in excess of his own discretionary powers which was up to Rupees two lacs in respect of the nature of the transaction which at the same time exceeded the financial limits which were put on the current accounts of the appellants Shiv Narain Bansal and Chetharu Singh. He did not even care that earlier purchased similar bills had bounced unpaid and had not even been entered into the relevant registers and retained the dishonoured bills in his personal possession and custody so as not to allow any restriction to be imposed on illegal transaction and thus continued the same.

8. As regards M/s Rohtas Carriers and the case in respect of appellant Ramjee Jaiswal and his two sons, who are appellants before this Court, it was found that M/s Rohtas Carriers had no vehicles of their own nor had any branch out of Bihar. They did not even have any godown or business premises and they had no branch or office in Mohania and had rather no business in the area. In fact, it was found that the consignment notes which were the basis for purchasing Hundi or DDs were retained by the appellant Ramjee Prasad Jaiswal or any of his two sons without any sequence of date or serial number A.K. Srivastava in conspiracy with the present appellant and deceased appellant cheated and defalcated the bank and thus, wrongfully caused a loss to it to the tune of Rs.13,29,266.

9. Two formal reports were registered by the CBI vide R.C. 18 of 1983 and 17A of 1983 and on that basis the investigation concluded by submitting charge sheet against accused persons which went to trial and that ended in the impugned judgment.

10. The defence, which appears from the trend of cross examination of witnesses was that Hundis or bills which have been referred to as DDs and which were, admittedly, purchased by the deceased accused A.K. Srivastava in his capacity as Branch Manager of concerned branch of S.B.I. were not fake, neither the consigner nor the consignee were fictitious persons and in fact appellants Ramji Prasad Jaiswal, Ashok Kumar Jaiswal and Bal Mukund Jaiswal had the authority from the proprietors of M/s Rohtas Carriers to issue them as their agents who were working in Mohania and there might be other acceptable reasons for the non payment of those demand drafts.

11. During the course of trial, the prosecution examined as many as 27 witnesses. P.Ws 1 and 6, namely, Sheopujan Singh and Kedar Nath Gupta, who were constable and Deputy Superintendent of Police in the CBI tendered the FIRs (Ext.1 and 1/a) of the two cases RC 18/83 and 17A/83. So far as P.W. 2 A.K. Krishnan was concerned, he was a clerk in the Vigilance Department of the SBI and he proved the order sanctioning the prosecution of A.K. Srivastava which was marked as Ext. 2. P.W. 4 Chandra Mohan Sahay and P.W. 5 K.N. Jha were witnesses before whom specimen signatures of the accused persons were obtained by the CBI and those have been marked Ext. 4 series right from 4/14 to 4/48. P.W. 20 Rajendra Sinha was also a formal witness who deposed on the writings of the case diaries of the two cases on account of the non examination of the I.O.

12. So far as the other witnesses are concerned, P.Ws 3 Rameshwar Lal Sharma was the proprietor of M/s Rohtas Carriers. It appears from his evidence as also from the evidence of P.W. 25 Ved Kumar, who was the Business Executive of the said firm M/s Rohtas Carriers, that it was originally a partnership firm, the deed in respect of which was brought into existence on 2.5.1979, but the partnership was dissolved on 28.11.1979 on account of the appellant Ramji Jaiswal walking out of the joint venture leaving the firm completely in the hands of P.W. 3 Rameshwar Lal Sharma. It is true that P.W. 3 had admitted and as may appear

from Ext. 1/1 and 1/ 2 which has also been marked Ext. A on behalf of the defence as may appear from paragraph 12 of P.W. 3 that he had issued some sort of authorization in favour of Ramji Jaiswal to act as an agent of his firm, namely, M/s Rohtas Carriers, the head quarters of which was in Patna, as may appear from the evidence of P.W. 25 Ved kumar, who has given a detailed account regarding the firm never having any office anywhere either at Mohania or at any of the places, like, Arrah, Sasaram, Aurangabad or Dehri-on-Sone and who has further stated, as may appear from paragraph 4 of P.W. 5, that his firm transported the consignment only to places where it had its branches and that there was no branch in Calcutta, Delhi, Mumbai and Chas and, as such, there was no transaction with any one at those places. So far as the evidence of P.W. 3 Rameshwar Lal Sharma, the proprietor of the firm M/s Rohtas Carriers was concerned, he was tendering evidence on the consignment notes and was stating as to who had written those notes or signed the notes. Ext. 2 to 2/13 were in the hands of the appellant Ramji Jaiswal and three out of those 14 consignment notes or transport receipts, as they have been described to be called by the witnesses who were the employees of the State bank of India as may be disclosed from the discussion of their evidence, were bearing the signatures of deceased appellant Chetharu Singh while the remaining 11 were carrying the signature of appellant Shiv Narain Banshal. Another set of eleven consignment notes were written by appellant Ashok Kumar Jaiswal and they were marked Ext. 3/14 to 3/24 and each of them was bearing the signature of appellant Shiv Narain Banshal. Five consignment notes or transport receipts were written by appellant Bal Mukund Jaiswal which were marked Ext. 3/25 to 3/29 and 4 by appellant Shiv Narain Banshal which all were bearing the signature of appellant Shiv Narain Banshal and later four notes were marked Ext. 3/30 to 3/33. These sets of consignment notes, as may appear from evidence of P.W. 3, were issued in 1983 by appellants Ramji Prasad Jaiswal, Ashok Kumar Jaiswal and Bal Mukund Jaiswal as proprietors of M/s Rohtas Carriers. This would appear from paragraph 5 of the evidence of P.W. 3 which further reveals that M/s Rohtas Carriers was never having any office or existence in Mohania and that the three appellants, namely, Ramji Prasad Jaiswal, Ashok Kumar Jaiswal and Bal Mukund Jaiswal were not competent to issue them as they had shown themselves the proprietors of M/s Rohtas Carriers.

13. It is true that Ext. 1/ 2 or Ext. A, which is the authorization in the writing of P.W. 3 was issued in favour of the appellant Ramji Prasad Jaiswal but that was for the limited purpose of acting as an agent of M/s Rohtas Carriers in Mohania. It was never creating any interest in their favour in M/s Rohtas Carriers and that could have never allowed or permitted them to step into the shoes of the proprietors of M/s Rohtas Carriers. I have scanned the evidence of P.W. 3 very carefully as have done that of other witnesses, only to find out as to whether there was any challenge or case set up by the Jaiswal set of appellants that they had issued the notes in their capacities of being the proprietors. I also scanned the evidence with a view to finding out as to whether they have challenged that

they had not issued the notes and that too in the capacity of being the proprietors of the said carriers. I must note with all emphasis at my command that there was not even a line of suggestion thrown to any of the witnesses least to talk of P.W. 3 Rameshwar Lal Sharma that Ramji Prasad Jaiswal or the remaining two Jaiswal appellants were the proprietors of the firm on the day the notes were issued. Thus, in spite of accepting the plea of the defence that Ext. A, the authorization, issued by P.W. 3 in favour of Ramji Prasad Jaiswal the consignment notes which were the instrument of defrauding the public fund through the SBI, Mohania, were out and out fabricated and forged documents inasmuch as none of the three Jaiswal appellants had the capacity of issuing them as proprietors. This is the reason that in spite of the learned counsel on behalf of the three appellants pointing out to me, time and again, that that particular defence on Ext. A, the case of three appellants have to be accepted, I am rejecting their plea by holding that the consignment notes or the transport receipts, as they are known in banking or business parlance, were quite fabricated documents as I have just pointed out that none of the three Jaiswal appellants were the proprietors of M/s Rohtas Carriers and were not authorized in that capacity to issue them.

14. In addition to the above, what may further be found from the cross-examination of P.W. 3 Rameshwar Lal Sharma, undisputed proprietor of M/s Rohtas Carriers that Jaiswal appellants were indeed admitting the fabrication of the transport receipts or consignment receipts by themselves, as they were admitting the issuance of the documents. As such, there is no denial anywhere in the plethora of evidence coming from the Jaiswal accused even faintly suggesting that they had played no role in their fabrication or the writings as deposed to by P.W. 3 to be theirs, were, in fact, not their.

15. So far as other witnesses are concerned, P.W. 8 Lal Muni Singh again appears of a formal character, but nonetheless an important witness. He was, undeniably, an employee and was working in M/s Banshal Stores which was the firm of appellant Shiv Narain Banshal, which was using the fake and forged consignment notes to send the consignment of things to different destinations in Chas and Calcutta and was receiving the price of the bills created on that account. P.W. 8 has stated that he was acquainted with the writings of Shiv Narain Banshal and 31 Hundis, i.e., Ext. 7 to 7/30 were in his hand. Likewise, the remaining three bills, i.e., Ext. 3/31 to 3/33 were bearing the writings of Shiv Narain Banshal but were also bearing the signature of deceased appellant Chetharu Singh, thus, there is complete evidence as to who were the participants in forging and fabricating the consignment notes or transport receipts for defrauding the State Bank of India in league with its Branch Manager A.K. Srivastava.

16. Out of the remaining witnesses P.W. 9 Ram Briksh Prasad and P.W. 21 Vijay Shankar Mishra were tendered by the prosecution for being cross examined by the defence. The remaining witnesses, most of whom are the employees or officers of the SBI, have spoken on the procedure as to how the DDs are

encashed on the basis of consignment notes, except P.Ws 22 and 23 who are the commission agents and proprietors of M/s Shyam Sundar & Co., one of the firms in Calcutta, which was, allegedly consigned some goods. The sum and substance of the evidence of witnesses, like, P.W. 10 Satya Narain Rai, who was the passing officer in the SBI, Chas, P.W. 11 Om Vilas Kumar, another employee and officer in the SBI, P.W. 12 Vishwanath Chandra, P.W. 13 Shambhu Suman and P.W. 14 Birendra Kumar who succeeded Branch Manager A.K. Srivastava after the fraud was detected as also P.W. 15 Shivanand Tiwari who was the cashier at the relevant time in the same branch of the SBI, Mohania along with P.W. 16 K.J. Devasia and P.W. 17 A.R. Ansari, yet another manager of the same bank with a highly placed officer like P.W. 19 R.P. Gupta who was at the relevant time, one of the Regional Managers posted at Patna is on different aspects of the encashment of Hundis prepared on the basis of consignment notes or transport receipts. In addition to that, P.Ws. 10 and 11 and others have also produced different registers showing the entry or non-entry of the documents which was required to be made in them.

17. The sum and substance of the evidence of these witnesses was that when a business man required money after having consigned his consignment to any transporter who is necessarily to be a registered transporter with the SBI, he could approach a branch of the SBI with consignment notes or transport receipts which are prepared in four copies, two copies of which are retained by the consigner, one is given to the driver of the vehicle and one is retained in the office of the transporter. One of the copies is presented with a bill in the bank in case of want of money and the bank enters it into the Demand Draft Receipt Register after having purchased it. As soon as the purchase is made, amount of the consignment note which may be constituted by freight and other charges which could be levied on account of the consignment of goods has to be credited into the account of the business man. Each business man has a specified cash credit limit. In case of appellant Shiv Narain Banshal, witnesses have stated that it was about Rs.1.5 lac. While purchasing the consignment notes, the manager of the branch has to ensure that sufficient cash credit was available in the current account of the business man and at the same time his own financial limits in purchasing the Hundis were not exceeded. Witnesses have said that in case both of appellants Shiv Narain Banshal and Chetharu Singh, not only their cash limits were exceeded but also that their current account were deplete with money and further that the branch manager, A.K. Srivastava, had exceeded his limits.

18. The further procedure is that when the transport receipts or consignment notes are received with the Hundis which are presented for purchase and the same are purchased, the Hundis are sent to another bank of the place where the consignee could be living. The branch which purchases the Hundis are called ORIGINATING BRANCH while the branch which receives it for realization of the amount from the consignee is called the RESPONDING BRANCH. P.W. 10 Satya Narain Rai was the passing officer in SBI, Chas where was located one of the consignees, namely, M/s Mahavir Bhandar. P.W. 10 has stated that on notice

being given, no one turned up on behalf of M/s Mahavir Bhandar, Chas to pay up the value of 31 Hundis which were accompanied by transport receipts/ consignment notes from the counter part branch of SBI, Mohania for realization of bill amount from the said consignee so that as soon as the payment was made the transport receipts and Hundis were realized in favour of consignee who could collect the consignment from the transporters.

19. That there was no M/s Mahavir Bhandar at Chas has been stated too by P.W. 7 Sheo Lal Mahto, who was one of the postmen posted in Chas post office. He has stated that there were many areas or bits which were constituted by mohallas or other localities in which the township was divided for delivery of postal articles and he used to deliver registered letters in some of them or most of them. He stated that he received a registered letter addressed to M/s Mahavir Bhandar, Chas and on making best of his efforts he could not locate any such establishment. During cross examination, it appears suggested to the witness by putting questions that it was located in Market Yard, Chas but again there is no specific address given by the defence so as to negating the effect of the evidence of P.W. 7 that a particular address could be assigned to the said firm, namely, Mahavir Bhandar. Likewise, his evidence was castigated by cross-examining P.W. 7 on the date on which he had gone to look for the establishment and when he had made an endorsement on the envelop that the establishment was not found. This question was completely meaningless as the records could have been the only substantial proof to castigate the evidence of P.W. 7 by seeking their production from the post office so as to point out to the court as to on which date the registered envelop was received in Chas and till which date it was retained and thereafter returned to the sender post office. There does not appear to me any reason to doubt the evidence of Sheo Lal Mahto (P.W. 7), the Postman of Chas. Likewise, on similar lines is the evidence of P.W. 22 Bishwanath Jhunjhunwala, the Commission Agent of Calcutta through whom the three firms, namely, M/s Murari lal & Co., M/s Shyam Sundar & Co. and M/s Dwarika Prasad Gauri Shankar were consigned different consignments through consignment notes by appellant Shiv Narain Banshal and Chetharu Singh. One of the firms M/s Shyam Sundar & Co. had come before the court through its proprietor P.W. 23 Shyam Sundar Agrawal to say that there was never ever any intimation nor did he receive any consignment in that behalf which could indicate that he had been consigned any goods by the two consigner appellants Shiv Narain Banshal and Chetharu Singh on the basis of the consignment notes written and prepared by the three Jaiswal appellants. Likewise, P.W. 22 Bishwanath Jhunjhunwala also stated that there was no firm of the names as indicated above, who had been consigned goods allegedly by the appellants on the basis of the consignment notes. Thus, it is established satisfactorily that the consignees were fictitious or non existent firms or in case they were existing, they had no knowledge of any consignment being received or sent to them.

20. Coming back to the procedure, as soon as the Hundis are received, notices are sent to the consignee for making payment so that the same be released in

his favour for receiving the goods. The bank employees, like, P.Ws 10, 11 as also other witnesses who come to depose in this case stated that after having received the Hundis, they were entered into the Payment Remittance Receipt Register (Ext.8) and then also in Demand Draft Receipt Register and thereafter sent the notice, but none turned up. The same is the evidence of P.W. 11 also. Likewise, P.W. 12 has also given the same evidence as to how on having received the documents in Burra branch in Calcutta, no one had turned up to honour the Hundis and, as such, they were returned back to the originating bank at Mohania. The procedure further was that on receiving back unpaid or dishonoured Hundis, the Branch Manager of the originating branch had to ensure the entry of the same in the Demand Draft register which is the register maintained by the bank also for issuing the demand draft. The Branch Manager thereafter has to initiate process of realizing the sum covered by Demand Drafts or Hundis. P.W. 19 R.P. Gupta who was one of the high ranking officers of the SBI as also P.W. 14 Birendra Kumar, who succeeded Branch Manager A.K. Srivastava in spite of P.W. 17 who was also a manager in the same bank have uniformly stated that not only A.K. Srivastava exceeded his own purchase limits but also allowed the appellant Sheo Narain Banshal and Chetharu to have Hundis sold to the bank in excess of their financial limits and during most of the periods their current account was not having any money so that money could be realized. It appears that the fact was in full knowledge of A.K. Srivastava and he was making some interpolations in the ledgers of the appellants as may appear from the evidence of P.W. 17 A.R. Ansari and P.W. 15 Shivanand Tiwari by use of a pencil.

21. Evidence of above witnesses, who worked in Mohania branch, i.e., P.Ws 13, 14, 15, 17 and above all, P.W. 19 R.P. Gupta, a high ranking officer of the SBI indicates that not only the Branch Manager A.K. Srivastava exceeded his limits and allowed the limits of two accused Shiv Narain Banshal and Chetharu Singh being undermined but, after he had received the Hundis from the responding branches of the SBI, was also not making any entries in their respect in the relevant registers and was on enquiry, as may appear from the evidence of P.W. 14, was telling him that those were lying in the safe of the bank. Thus, the evidence indicates as to how callously but consciously the accused A.K. Srivastava had not only plundered the finance of his own bank but allowed the same to be plundered by the remaining appellants.

22. On reading of the evidence of the witnesses, I come to the conclusion that the appellants were appropriately convicted and correctly sentenced. The appeals, in the result, fail and are hereby dismissed.