
(2009) 04 JH CK 0104
In the Jharkhand High Court

Shobhan Ram

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 16-04-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2009) 04 JH CK 0104

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jaya Roy, J.—Petitioner has filed the instant revision against the judgment dated 17.6.2006 passed by Sri Pradeep Kumar Choubey, Additional Sessions Judge, Fast Track Court No. IV, Dhanbad, in Criminal Appeal No. 7 of 1999, whereby the petitioner's convicted u/s 120B of the I.P.C. and the sentence to undergo R.I. for one years awarded by the trial court is up held,

2. The prosecution case in brief is that on 30.1.1984 the Deputy Superintendent of Police SPE/CBI Dhanbad lodged a FIR against eight accused persons namely Sri Indrajit Singh, Sri K.K.Das, Sri Hanuman Singh, Sri B.N.Singh, Md, Motima, Sri Ramjit Srivastava (all are underground loader), Sri S. Pandya, Project Officer and Sri R.K.Arora with an allegation that he received a credible information that accused No. 1 to 6 entering into criminal conspiracy with Accused No. 7 and 8 maneuvered their appointment as underground loader on forged and fabricated appointment letters and in order to conceal their misdeeds they have adhered illegal documents in order to show their appointment being genuine one. The further case of the prosecution was that a forged appointment letter bearing No. ,GM/AR II/ appointment /81/6472 dated 17.1.81 which is purported to have been signed by one Sri S.K.Sinha the then General Manager Area-II, have been manipulated on the records. The further case of the prosecution was that in order to conceal their misdeeds accused persons again manipulated to get Accused No. 1 to 6 shifted from the initial place of posting i.e. Bhurungia Project,

they manipulated some representation for on behalf of the accused No. 1 to 6 dated May, 1981, i.e. long before the alleged forged appointment letters. They have also maneuvered forged letter on their representation petition forwarded by the accused No. 7 with his recommendation under the signature dated 25.05.81 which formed the basis for issuance of transfer letter vide office order No. BCCL-P.A.I/00/01/8431742 dated 26/27-11-81 duly signed by Sri S.K. Banerjee Personnel Manager, Karmic Bhawan, BCCL,Dhanbad. The further case of the prosecution was that the involvement of accused No. 8, Sri R.K.Arora in the said conspiracy is very much evident from the fact that although no appointment letter duly dispatched from G.M. Area-II, was ever received in Bhurungia Project still said Mr. Arora not only allowed accused No. 1 to 6 to join but also issued release order in favour of Accused No. 1 to 6. On the aforesaid ground FIR was registered u/s 120B read with Section 420, 467, 468, 471 of the I.P.C. vide R.C.Case No. 03 of 1984 against the aforesaid eight persons.

3. An another FIR bearing R.C. Case No. 09/84 dated 09.05.84 was again drawn by Sri A.K.Asthana, C.B.I. Inspector, Dhanbad u/s 120B read with Section 420, 467, 468, 471 of the I.P.C. against Sri Ramakkant Dubey, Haidar Ali, Sri Madan Lal Sharma, Sri Bhusan Singh (all are underground loader)Sri S.Pandya, Project Officer, Sri R.K.Arora and in the said FIR it was stated that accused No. 1 to 4 entered into criminal conspiracy with accused No. 5 and 6 thereby securing employment on the basis of fictitious and forged appointment letters purported to be issued under signature and S.K.Singh the then General Manager of Area-II BCCL and joined their duty at Bhurungia Project on 18.11.81. It was further alleged that long before their joining on duties accused No. 1 to 4 had submitted a representation i.e. on 15.05.81 for their transfer from Bhurungia Project to some other colliery of Area-IV and said representation was recommended by accused No. 5 and 6 having full knowledge that in May 1981 the accused persons were not employee of the BCCL but accused No. 5 and 6 issued release order in favour of Accused No. 1 to 4.

4. Both the FIR have been amalgamated and after investigation Mr. Asthana submitted charge sheet u/s 120B read with Section 467, 468, 471, 420 of the I.P.C against all persons including the petitioner.

5. The prosecution has examined 18 witnesses and produced several documents which have been marked as Exhibit No 1 to 38. The trial court after considering all the evidence oral and documentary, came to this conclusion that the evidence is of sufficient to convict the petitioner Shobhan Ram u/s 120B read with 468, 471, 420 I.P.C. and accordingly the petitioner has been convicted and directed to go R.I. for one year for the offence u/s 120B I.P.C.

6. Against the aforesaid conviction and sentence, the petitioner preferred an appeal i.e. Cr.Appeal No. 07 of 1999. After hearing the parties, the said appeal was dismissed by Sri Pradeep Kumar Choubey,Additional Sessions Judge, Fast Track Court No. IV Dhanbad.

7. According to the appellate court the prosecution has established the following facts:

(i) Prosecution has established that the appellant was the Personnel Officer at Bhurungia Project.

(ii) Witnesses have clearly stated that B Form register and Bonus register were always lies in the custody of this appellant.

(iii) In the B form register name of 13 persons were not found to be included when the said register has been checked by P.W.4 on 07.03.82.

(iv) Thereafter the names of 13 appointed persons (forged) have been found to be incorporated in the said B form register.

(v) Bonus register as also lies in the custody of this appellant and entry of the aforesaid 13 persons were also found in the said register.

8. Mr. Mahesh Tiwary, counsel for the petitioner submits that only allegation against the petitioner that he was the custodian of B form register and Bonus register and hence he is responsible for manipulation. He further contended that P.W.2 has clearly stated that the Bonus clerk used to write in the Bonus register. Thus any entry found in the Bonus register cannot be said that the same has been done by the petitioner. He has further drawn my attention to the evidence of P.W.5 who has clearly stated that he used to keep the register on the rack as there was no Almirah for keeping the register and a number of clerks used to handle and deal with the said register whenever they need it. Therefore both the courts below have erred in holding that the aforesaid two registers were kept under exclusive possession and custody of the petitioner.

9. The learned Counsel further submits that the function of the petitioner being the personnel officer can not keep the form B register under his personal custody or under lock and key at all times as the said register has to make available to Mines Inspector who frequently inspect the mines. It is further submitted that there is no iota of direct or substantial evidence of conspiracy against the petitioner. Thus, he cannot be convicted u/s 120B I.P.C.

10. Mr. Rajesh Kumar the learned Counsel of the C.B.I. submits that it is well settled principle that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. Admittedly Bonus register and B form register were always lies in the custody of the petitioner as he was the Personnel Officer.

11. Considering the evidence of P.W.2 and P.W.5 as stated above I find though the Bonus register and B form register were always lies with the petitioner but at the same time those registered were kept in an open rack not under the personal custody or under lock and key of the petitioner as because the number of clerks used to deal with the said registers. Further more, Mines Inspector also used to handle those registers. In view of all this facts and circumstances it cannot be

said that the said registers were exclusive possession and custody of the petitioner for all the times. Therefore, there is some doubts whether the petitioner has any knowledge regarding this manipulation or he was in the conspiracy in maneuvering in the aforesaid two registers i.e. B. form register and Bonus register.

12. It is well settle principle of law that if there is any doubt, the benefit of doubt should go to the accused person. Its seems in this case, the prosecution has not been able to prove and establish the charge u/s 120B I.P.C. against the petitioner beyond the shadows of reasonable and probable doubts. Therefore, in the aforesaid facts and circumstances of the case in my view the petitioner cannot be convicted u/s 120B of the I.P.C. Accordingly the revision is allowed. Conviction and Sentence passed by the court below against the petitioner are set aside and he is discharged from the liability of bail bond.