(2015) 02 GAU CK 0058

In the Gauhati High Court

Case No : Criminal Appeal No. 332 of 2014

Sitaram Jha APPELLANT

Vs

Superintendent of Police, CBI RESPONDENT

Date of Decision : 10-02-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 409, 420, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 30

Citation : (2015) 2 GLD 242 : (2015) 2 GLT 265

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : I. Imti Longchar, S.N. Pandey, A. Zho, K. Renbemo, Hisinio Himb and S.W. Walling, for the Appellant; Bendangwapang, Senior Counsel, Advocates for the Respondent

Judgement

Biplab Kumar Sharma, J.—This appeal is directed against the judgment of conviction dated 16th December, 2013 of the learned Special Judge, CBI/District and Sessions Judge, Dimapur, Nagaland in R.C. 11/1985, by which the accused/ appellant has been convicted under Sections 409/420 IPC, read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Pursuant to such conviction, he has been sentenced to undergo rigorous imprisonment for 3(three) years for the offences under Sections 409 and 420 IPC and rigorous imprisonment for 5(five) years for the offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988. Both the sentences are to run concurrently. The prosecution story in brief is that the accused/appellant during his incumbency as Manager, Allahabad Bank, Changtongya Branch (Nagaland) from August, 1979 to August, 1981 entered into a criminal conspiracy with some unknown person(s) and dishonestly removed 15(fifteen) numbers of blank demand drafts Form from the Bank with the intention to defraud the bank. Out of the said demand drafts, 5(five) demand drafts had been issued on various Branches of Allahabad Banks for different amounts, such as Rs. 45,000/- (Khurseong); Rs. 48,000/- (Darjeeling); Rs. 20,000/- (Silchar); Rs. 20,000/- (Silchar) and Rs. 24,000/-

(Silchar) in favour of Tapan Paul; Tapan Paul; Asit Roy and Sujit Paul, respectively. Out of the aforesaid 5(five) demand drafts allegedly issued by the accused/appellant, 4(four) Drafts aggregating to Rs. 1,12,000/- had been paid by the respective drawee Branches, whereas, according to the records of Changtongya Branch, Allahabad Bank, no money had been received at the Branch in consideration of the demand drafts so issued. It was alleged that the accused/appellant was responsible towards issuance of those demand drafts either without receiving any consideration money or misappropriated the entire amount of consideration money received against the same. It was further alleged that to facilitate the payment of those demand drafts, signatures/endorsements of the payee were also attested by the accused/appellant on the reverse of the instruments as also on the relative Draft advices sent to the Branches concerned.

2. To the above effect, Annexure-III complaint was lodged by the Superintendent of Police, CBI, SPE-Division, Silchar vide Crime No. 11/85-SIC dated 28th August, 1985, alleging offence against the accused/appellant under Sections 120B/409/420 IPC and Section 5(2) read with Section 5(1)(d) of the then Prevention of Corruption Act.

3. In due course, investigation was carried out and charge-sheet No. 7/1986 dated 29th December, 1986 was submitted against the accused/appellant. From the materials on record, it appears that there was considerable delay in commencing the trial. Although the case was registered way back in 1985 but the judgment could be delivered only on 16th December, 2013. It is in the evidence that there was delay as documents had to be collected by the prosecution to establish the prosecution case in the trial.

4. The issue that fell for consideration was as to whether the accused/appellant was responsible towards issuance of the aforementioned 5 (five) Drafts bearing No. 840431/1 dated 3rd February, 1981 for an amount of Rs. 45,000/-; No. B.840457/2 dated 2nd February, 1981 for an amount of Rs. 48,000/-; No. B.840719/2 dated 6th April, 1981 for an amount of Rs. 20,000/-; No. B.840745/3 dated 3rd August, 1981 for an amount of Rs. 20,000/- and No. B.840746/4 dated 4th August, 1981 for an amount of Rs. 24,000/-. Out of the said 5(five) drafts, 4 (four) Drafts aggregating Rs. 1,12,000/- have been paid by the respective drawee Branches. As noted above, according to the records of Allahabad Bank (Changtongya Branch), no money had been received at the Branch in consideration of the demand drafts so issued.

5. During trial, prosecution examined 7 (seven) witnesses. The accused/ appellant was examined as D.W. -1. Their testimonies are briefly discussed below.

6. D.W. -1, i.e. the accused/appellant, in his deposition stated that the Drafts in question had been prepared and issued by one Shri Subhash Dey, who was Peon-cum-Farash, although he was not authorized to do so. It will be pertinent to mention here that while submitting the charge-sheet, the name of said Shri Subhash Dey was also mentioned under the column "not sent out for trial". D.W.

-1 in his deposition also stated that the prosecution having not examined the beneficiaries of the Bank Drafts in question, it was fatal to the case of the prosecution. Referring to the drafts (Exhibit: P-1/4; Exhibit: P-1/5; Exhibit: P-1/1; Exhibit: P-1/2), he stated that although there were recording of the name and signatures of the accused/appellant but the same were not written and/or signed by him. As regards the expert opinion also, he reiterated the same stand. When he was reexamined and put the question as to whether the Drafts in question were the same sent from Head Office, Stationary Department, his reply was to the effect that those were issued from Mokokchung Branch.

7. PW-1, one Joy Kumar Thadani, deposing for the prosecution stated that he had joined at Allahabad Bank on 29th January, 1970. Referring to the Drafts in question, he stated that the same were issued in 1981. He also stated that he could identify the accused/appellant, who was present in the Court. In the cross-examination, answering the question put at serial Nos. 4, 6, 7, 8 and 14, his answers were as follows:--

"4. I cannot say as to whether the draft which I have exhibited in my examination in chief were the draft issued to Mokokchung branch/allotted to Mokokchung branch of Allahabad bank.

6. Normally in such circumstances, the chance of fraudulent issue of draft is out of question./It is normal procedure for sending Bank draft customer has to fill up the requisition form/it will be scrolled in the register/money will be deposited to the cashier. Then cashier will also make his necessary entries. Only after that the concerned Bank will issue the draft. After completion of all this formalities the Bank will put up before the issuing authority.

7. It is correct to say that the requisition form and the relevant register are not produced before the court today.

8. I cannot say on the relevant date reflected in the Bank draft which I have exhibited before the court/the concern Branch Manager was on leave or not.

14. I was never called by CBI in connection with the present case."

8. In the reexamination, he stated thus:--

"My statement to the effect that consideration for purchase of demand draft is first to be deposited in the concerned Bank. This statement is a general rule. However, I have no knowledge whether consideration money was paid in the instant case."

9. PW-2 is one Jatindra Nath Changmai, who also joined Allahabad Bank on 27th December, 1978 as a Clerk. He also, in his deposition, stated that he could identify the signatures of the accused/appellant, as has been documented, as he had worked under him for more than 2(two) years. Referring to the drafts in question, he stated that the same bore the signatures of the accused/appellant. However, in the cross-examination, he stated that he was not in a position to say

as to who was the author of the Exhibits. In the cross-examination, re-examination and re-cross, he stated thus:--

Cross

"I am still working at Allahabad Bank posted at Jorhat branch.

It is correct to say that preparation of draft receipt of money and payment of money is part of my assigned duty.

I cannot say who is the writer of the exhibits.

It is correct to say that the earlier statement "The drafts were most of the time written by Sitaram Jha himself" is wrong.

I deny the suggestion that some payments in connection with some of the draft which I mentioned in examination-in-chief, payment were made after expiry date.

I cannot say as to whether some of the drafts which I exhibited in my examination-in-chief were issued/prepared when our Manager Sitaram Jha was on leave.

I cannot say now who was the respective depositors of money in relation to the drafts which I have exhibited in the court.

I deny the suggestion that the draft in question were not forms issued by Changtongya branch.

It is correct to say that there is a register mentioned by Changtongya branch to indicate the name of the depositor of money in connection with each draft. Because of the non production of the relevant register I cannot say who is the depositor of money.

It is correct to say that no one other then the beneficiary/payee can withdraw money with draft in question.

I agree with the suggestion that the amount mentioned in each of the draft has been drawn/received by respective payees.

I deny the suggestion that I have falsely deposed before the court today.

Re-examined

When I have made my statement that most of the draft were issued by accused Shri. Sitaram Jha I man to state that during his tenure for about 2 years he has issued a number of draft and not only this exhibited draft.

The question only the beneficiary can withdraw the draft amount is a general principle.

It is not in my knowledge that the draft amount has been paid at the issuing branch by means of documents. However, I came to learn at the later stage that the draft amounts were not deposited at Changtongya branch. The drafts in question could be issued at other places and not necessary in the branch itself.

Re-Cross

It is correct to say that in normal practices draft cannot be issued without receiving money in advance."

10. PW-3 is one Samir Bhattacharjee, who was in service of Allahabad Bank since 1965. He, in his deposition, stated that the drafts in question were drawn from Changtongya Branch. He referred to the procedure to be followed towards issuance of the draft. According to him, he had seen the drafts bearing signatures of the accused/appellant on the reverse side. He, in his cross-examination stated thus:--

Cross

"XXX I cannot say as to whether the draft in question which is exhibited as Ex. P 2(iii) bearing printed No. 840457 was in possession of Changtongya.

XXX Further I cannot say the leaf of the same draft was issued to Changtongya Branch by the Head office Controlling Officer for the issuance.

XXX I deny the suggestion that the signature appended on the back side of the draft is not the signature of Sitaram Jha.

XXX It is correct to say that there is no irregularity rather abnormality of the draft at the paying Branch level. However, I cannot say whether banking procedure were followed at the issuance branch level i.e. Changtongya Branch.

XXX It is correct to say that at the moment I am not in a position to identify the scroll/register during the deposition as the same has not been produced.

XXX If the draft is below Rs. 50,000/- it can be paid in cash on identification of the payee by the paying branch i.e. Darjeeling Branch. Here, the identification has been made by the drawing officer Sitaram Jha of Changtongya Branch whose signature is appended on the draft and draft advice.

XXX I say that there is no irregularity regarding payment of the draft in question at the payee branch i.e. Darjeeling Branch.

XXX I deny the suggestion that I have deposed falsely before the court."

11. PW-4 is one M. Sinha, who took voluntary retirement from the services of the Bank in 2001. In 1985, he was an Officer of the Allahabad Bank, Silchar Branch. He, in his deposition, generally stated as to how the drafts were issued by Changtongya Branch, where advice receipts were duly received. According to him, Exhibit: P-1/4 and Exhibit: P-1/5 confirmed that the cash payment book and draft account register related to Shri S. Paul @ Sujit Paul. PW-5 is one Aminesh Ranjan Nandy, who, in his deposition, stated that he was an Officer of the United Bank of India, Lumding Branch from 16th December, 1980 to 9th November, 1985. Referring to the statement of the account of one Shri Asit Roy,

he, in his deposition, stated that a draft was deposited into United Bank of India after deduction of Bank''s commission of Rs. 62.50 P. for the amount of Rs. 19,937/-. This witness was examined in connection with encashment of the bank drafts. In the cross-examination, he admitted that he was not in a position to say as to who was the writer of Exhibit: P-5/6.

12. PW-6 is the handwriting expert, who, in his deposition, stated that he had examined the signatures of the accused/appellant appearing in the drafts in question in reference to his specimen signatures. According to him, the signatures appearing in the drafts in question were that of the accused/appellant. He further stated that the report was prepared on his behalf by a Government stenographer and the same was also signed by one Shri Santosh Sing, the then Government Examiner of Questioned Documents at Calcutta. According to him, the said Santosh Singh also came to the same conclusion. However, when the report of Santosh Singh is seen (Annexure-VI), what has transpired is that there is no such authentication of the opinion given by the PW-6. For a ready reference, the opinion of Santosh Singh is reproduced below:--

"Opinion

The documents of this case have been carefully and thoroughly examined.

2. The person who wrote the blue enclosed writing stamped and marked S1 to S10 also wrote the red enclosed writings similarly stamped and marked Q1, Q2, Q3, Q3a and Q4 to Q14.

3. A few admittedly genuine writings of the person called Subhash Dey written by in routine course on some bank records are also needed for comparison."

13. PW-7 is one Shri A.K. Saha, who was the Investigating Officer, who, in his deposition stated that during 1982 to 1985, he was posted at CBI, Silchar Branch as Inspector of Police. Referring to the Fir, he stated that the same was registered at Silchar Branch by the then Superintendent of Police, Shri Ranjit Biswas against the accused/appellant and some unknown persons. Referring to the allegation, he in his deposition stated that the accused/appellant while was working at the particular Branch of Allahabad Bank during the period from August, 1979 to August, 1981 entered into criminal conspiracy with some unknown persons and dishonestly removed 15(fifteen) drafts/forms. He, in his deposition referred to the above mentioned 5(five) drafts. According to him, during investigation specimen signatures of the accused and some other suspects were taken. Referring to the Exhibit: P-6(2), he further stated that the signatures appearing in the drafts were that of the accused/appellant as was confirmed by the handwriting expert. As per his statement during investigation, a prima facie case was found against the accused/appellant under Sections 120B/420/468/471 IPC and Section 5(1)(D) of the Prevention of Corruption Act, 1947. Significantly in the cross-examination, he stated the following:--

"1. After investigation I have submitted the charge sheet against the accused

Sitaram Jha U/S 120B/420/468/471 IPC r/w/5(2)r/w 5(1)(d) of P.C. Act 1987.

5. I do not agree with the suggestion that some of the draft which I mentioned in chief, was deposited while the concerned Manager (Sitaram Jha) was on leave.

6. I agree with the suggestion that I have mentioned all the names of the beneficiaries of the drafts in question.

8. It is correct to say that the drafts in question can be issued after the receipt of the money in question. Manager is to confirm that receipt of the money has been reflected in the relevant records of the Branch Bank and draft issue register.

10. I agree to the suggestion that the handwriting found in drafts in question were not handwriting of accd. Sitaram Jha.

17. It is not a fact that the draft was encashed after the expiry of six months relating to Darjeeling branch. As per exhibit, P-7(10) payment was made on 4/3/81 i.e. within the validity period."

14. If we go by the aforesaid admission on the part of this Investigating Officer, he had admitted the suggestion that that handwritings found in the drafts in question were not the handwritings of the accused/appellant. This clearly confronts the purported opinion of the handwriting expert. Above are the evidences, on the basis of which the accused/appellant has been convicted.

15. I have heard Mr. I. Imti Longcher, learned counsel for the accused/appellant and have also heard Mr. Bendangwapang, learned special counsel, CBI. I have also perused the entire materials on record.

16. Mr. Longcher, learned counsel submits that there being no evidence towards convicting the accused/appellant, it is a case of acquittal. According to him, there is error of fact as well as law in convicting the accused/appellant.

17. On the other hand, Mr. Bendangwapang, learned special counsel, CBI submits that there being overwhelming evidence, the impugned judgment of conviction is required to be sustained. He has placed reliance on certain decisions, which are Abuthagir and Others Vs. State rep. by Inspector of Police, Madurai, AIR 2009 SC 2797 : (2009) CriLJ 3987 : (2009) 13 JT 25 : (2009) 7 SCALE 585 : (2009) 17 SCC 208 : (2011) 1 SCC(Cri) 970 : (2009) 8 SCR 432 : (2009) AIRSCW 4248 : (2009) 5 Supreme 138 ; Balasubramanian Vs. State thr. Inspector of Police, (2010) CriLJ 4727 : (2010) 9 SCC 20 ; Santosh Kumar Singh Vs. State thr. CBI, (2010) 4 Crimes 226 : (2010) 11 JT 1 : (2010) 9 SCC 747 : (2010) 9 UJ 4611 ; Madala Venkata Narsimha Rao Vs. State of A.P., (2013) 1 JCC 734 : (2013) 3 RCR(Criminal) 33 : (2012) 11 SCALE 383 and N.V. Subba Rao Vs. State, through Inspector of Police, CBI/SPE, Visakhapatnam, A.P., (2013) 115 CLT 1153 : (2013) CriLJ 953 : (2013) 1 Crimes 350 : (2013) 1 JCC 235 : (2012) 1 JCC 235 : (2012) 12 JT 245 : (2013) 1 RCR(Criminal) 606 : (2012) 11 SCALE 614 : (2013) 2 SCC 162 .

18. All the decisions are on the principles of conviction on the basis of the

evidence found on record. Placing reliance on the decisions, it is the submission of the learned counsel representing the CBI that when the credibility of the PWs could not be discredited by the defence, their evidence cannot be discarded. According to him, the opinion of the handwriting expert is required to be accepted. On this, the learned counsel representing the accused/appellant submits that the opinion of the handwriting expert being only an expert opinion, the same cannot be held to be conclusive in reference to the evidentiary value. He submits that unless and until the evidence of the handwriting expert is supported by any corroborative evidence, it will be dangerous to convict a person on the basis of such opinion of a handwriting expert.

19. I have given my anxious consideration to the submissions advanced by the learned counsel appearing for the parties.

20. As to what are the evidences led during the trial has been noted above. Although the handwriting expert (PW-6), in his evidence, stated that the signatures appearing in the drafts in question were that of the accused/appellant and the said opinion was confirmed by Santosh Singh, the then Government Examiner of Questioned Documents at Calcutta, but apart from the fact that the said Santosh Singh was not examined by the prosecution, he also opined otherwise. His opinion has been quoted above. As per the said opinion, genuine writing of the person called Subhash Dey written in routine course on some blank records were also needed for comparison. Thus, it cannot be conclusively said that PW-6, definitely concluded that the handwriting and/or signatures of the accused/appellant appearing in the drafts in fact belonged to him. This aspect of the matter will have to be considered in reference to the testimonies of other witnesses, more particularly, PW-7, who in his deposition answering the question No. 10 in the cross-examination categorically stated that:

"I agree to the suggestion that the handwriting found in draft in question were not of handwriting of accd. Sitaram Jha."

Similarly, PW-2 in his cross-examination categorically admitted that his earlier statement that most of the drafts were written by the accused/appellant was wrong. He also admitted that in a normal practice draft cannot be issued without receiving money in advance. PW-3 in his cross-examination stated that he was not in a position to say as to whether the draft in question was in possession of Changtongya Branch. He further stated that he was not in a position to identify the scroll register as the same had not been produced. PW-4 also stated that he was not in a position to say as to who was the purchaser of the drafts in question. As noted above, PW-5 in his cross-examination stated that he was not in a position to say as to who was the writer of Exhibit: P-5/6. Above apart, the prosecution did not examine the beneficiaries of the drafts. Their statements were not recorded during investigation nor they were produced during trial. That apart, although in the list of witnesses, altogether 12(twelve) persons were named but as submitted by the learned counsel for the appellant, out of the said 12(twelve) witnesses only 7(seven) could be examined by the prosecution.

21. In the impugned judgment of conviction, the learned trial Court while holding that the accused/appellant was guilty of the offence punishable under Sections 409/420 IPC read with Section 13(1)(d) of the Prevention of Corruption Act, acquitted him of the other charges. However, while doing so, the evidence discussed above, was not taken into consideration in its true perspective. It appears that the learned trial Court, after discussing the arguments advanced by the learned counsel representing the parties in reference to the evidence on record, came to the abrupt finding that the accused/appellant is guilty of the offence punishable under the aforesaid Sections.

22. Above apart, although the accused/appellant was charged under Section 5 of the Prevention of Corruption Act, 1947 but he has been convicted under Section 13(1)(d) of the Prevention of Corruption Act, 1988. There is no recording of finding that the trial proceeded against the accused/appellant under the new provisions was in reference to Section 30 of the Prevention of Corruption Act, 1988.

23. For all the aforesaid reasons, I am of the considered opinion that the accused/ appellant is entitled to benefit of doubt and accordingly, the impugned judgment of conviction stands set aside and quashed.

24. Consequently, the accused/appellant shall be released forthwith if not warranted in connection with any other case. The Registry shall send down the LCR to the learned trial Court alongwith a copy of this judgment and order.

