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(2010) 07 UK CK 0077

In the Uttarakhand High Court

S.S. Bedi APPELLANT

Vs

State of U.P (Now State of Uttarakhand) RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207, 374
Penal Code, 1860 (IPC) — Section 109, 120B, 409, 461, 465

Citation : (2010) 07 UK CK 0077

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prafulla C. Pant, J.—This appeal, preferred u/s 374 of Code of Criminal Procedure, 1973, (for short Cr.P.C.), is directed against the judgment and order dated 04.03.1986 passed by Special Judge/Additional Sessions Judge, Anti Corruption Dehradun in C.B.I case no 11 of 1983, whereby appellant S.S. Bedi and two others were convicted u/s 409, 120B, 471 and 461 of Indian Penal Code 1860 (for short I.P.C) and one punishable u/s 5(1)(c) read with Section 5(2) of Prevention of Corruption Act 1947. The appellant was sentenced to rigorous imprisonment for a period of three years and directed to pay fine of Rs. 10,000/- u/s 409 of I.P.C, rigorous imprisonment for a period of one year on u/s 471 read with Section 465 of I.P.C., Rigorous imprisonment for a period of one year and directed to pay fine of Rs. 3,000/- u/s 5(1)(c) read with Section 5(2) Prevention of Corruption Act 1947. The two other accused namely M.S. Rana and Dhrampal were also convicted by the same judgment. The two filed separate appeals i.e., Criminal appeal no 168 of 2001 (old No. 868 of 1986) by accused Dhrampal and criminal appeal No. 174 of 2001 (old No. 961 of 1986) by accused M.S. Rana. Earlier the said two appeals along with the present criminal appeal no . 2099 of 2001 (old No. 896 of 1986) were decided by this Court vide its order dated 25.03.2008. It appears that only the present appellant S.S. Bedi challenged the order before the apex court and filed Special Leave to Appeal (criminal) No. 9266 of 2008 whereby the appeal of the present appellant S.S. Bedi was allowed and judgment and order dated 25.03.2008 passed by this Court in criminal appeal No. 2099 of 2001 was set aside on the ground that the appellant had no notice of the transfer of appeal from Allahabad High Court to High Court of Uttarakhand. The apex court did not touch merits of the case and directed this Court to decide criminal appeal No. 2099 of 2001 a fresh, vide its order dated 14.05.2010. In compliance of said order of the apex court, this appeal is being decided, after hearing the parties afresh.

2. Heard learned Counsel for the parties and perused the lower court record.

3. Prosecution story, in brief, is that an information was received by the Central Bureau of Investigation that Shri S.S. Bedi (appellant) while functioning as Branch Manager of the Punjab National Bank, Branch Roorkee Cantt, during the year 1980, entered into a criminal conspiracy with one Shri M.S. Rana, a cashier of said bank, with the object of cheating the bank, and fraudulently have shown disbursement of loan amount to various debtors without actually making the payment to them and transferred the amount of two account holders of the bank unauthorizedly in the account of co accused Dhrampal. It is mentioned in the First Information Report that accused S.S. Bedi (appellant) sanctioned a loan of Rs. 4,000/- to Smt Vijay Kusum (PW1) for purchase of knitting and sewing machine to be purchased from M/S Mohd. Qamar Mohd Saleem, of Roorkee. The accused/appellant prepared cash order no 85792/29/80 in the name of said supplier without making any payment to him. It is further alleged that accused/ appellant S. S .Bedi sanctioned another loan of Rs. 5,000/- to one Banwari lal (PW3) for purchase of two buffalos, and falsely shown disbursement of loan to Bansilal (PW1 1) alleged supplier of buffalos through pay order no 85792/31/80 dated 30.12.198. Actually the payment of loan was not made to the supplier. Apart from this a cheque no 059500 dated 14.08.1980 for an amount of Rs. 10,000/- tendered by M/S Aggarwal Trading Company, for deposition in their current account no 32, was credited by accused/appellant S.S. Bedi only to the extent of 5,000/- in the name of said firm, and transferred the remaining 5,000/- to the account of co accused Dharampal. Similarly a demand draft for a Rs. 6,000/- dated 12.08.1980, issued by Central Bank of India, Dehradun was tendered by Ramanand Chamoli (PW2) for crediting in his term loan account No. 25 of 80, was actually credited only for an amount of Rs. 3,000/- and rest of 3,000/- was credited in the account co accused Dharampal by making a separate credit voucher. The First Information Report was registered against S.S. Bedi (appellant) and M.S. Rana (co accused). After investigation Central Bureau of Investigation submitted charge sheet against three accused namely S.S. Bedi appellant, M.S. Rana cashier and Dhrampal for their trial in respect of offences punishable u/s 120B, 409, 468, 471 of I.P.C and one punishable u/s 5(2) read with Section 5(1)(c) of Prevention of Corruption Act 1947. The case was tried by the special judge C.B.I at Dehradun. After giving necessary copies, as required u/ s 207 Cr.P.C., the trial court after hearing parties framed charge in respect of offences punishable u/s 120B of I.P.C., 409 of I.P.C, Section 5(1)(c) read with Section 5(2) of Prevention of Corruption Act, 1947, Section 471 read with

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Section 465 of I.P.C, against accused/appellant S.S. Bedi on 23.05.1984, to which the accused/appellant pleaded not guilty and claimed to be tried. Similar charge was framed against accused M.S. Rana who also pleaded not guilty and claimed to be tried. A separate charge was framed against co accused Dharampal in respect of offences punishable u/s 120B, 409/109 I.P.C.. He too pleaded not guilty and claimed to be tried. On this, prosecution got examined PW1 Vijay Kusum, PW2 Ramanand Chamoli, PW3 Banwari Lal, PW4 Anandmani, PW5 B.R. Kher, PW6 Ramgopal Aggarwal, PW7 S.K. Gupta, PW8 Duli Chandra Jain, PW9 G.R. Vaid, PW10 Mohd Qamar, PW1 1 Bansilal, PW12 K.L. Arora and PW13 I.K. Bhakt [Deputy S.P of C .B .I. (Investigation Officer)]. Oral and documentary evidence was put to the accused. The accused/appellant admitted as to his posting as Branch Manager in Branch Roorkee Cantt of Punjab National Bank in the year 1980. He also admitted that there was an account of co accused Dharampal in the Branch. However, as to the allegation of forgery, conspiracy, criminal misappropriation and corruption , he pleaded the same to be false. Similar statement were made by other two co accused. In defence DW1 Harpal Singh Verma DW2 B.D. Sharma and DW3 Ram Singh Verma were got examined. The trial court after hearing the parties, found all the three accused guilty of the charge framed against them. After hearing on sentence the accused/appellant S.S. Bedi was sentenced to rigorous imprisonment for a period of three years and directed to pay fine of Rs. 10,000/- u/s 409 I.P.C., rigorous imprisonment for a period of one year u/s 471 read with Section 465 I.P.C., rigorous imprisonment for a period of one year 5(1)(c) read with Section 5(2) of Prevention of Corruption Act, 1947. Also, the accused/appellant S.S. Bedi was sentenced to rigorous imprisonment for a period of six months u/s 120B I.P.C.. Other accused were also sentenced to the various terms. I have already mentioned that all the three convicts filed separate appeals . All the three appeals were received from Allahabad High Court u/s 35 of U.P. Reorganization Act 2000 (Central Act 29 of 2000) for their disposal. Earlier all the three appeals were heard together with the assistance of the Amicus Curiae on behalf of the accused/appellant S.S. Bedi, counsel for the other appellants, counsel for the C.B.I, and counsel for the State. The three appeals were dismissed by this Court vide its order dated 25.03 .2008. It appears that only present accused/appellant S.S. Bedi challenged the order before the apex court which set aside the order in criminal appeal No. 2099 of 2001 (old No. 896 of 1986) pertaining to the present appellant on the ground that he had no opportunity of being heard as he pleaded before the apex court that he had no knowledge of the transfer of the appeal from Allahabad High Court to Uttarakhand High Court. The apex court vide its order dated 14.05.20 10 passed in Special Leave to Appeal (criminal) no 9266 of 2008 directed this Court to decide the appeal No. 2099 of 2001 afresh, on merits, within a period of three months.

4. Learned Counsel for the appellant S.S. Bedi submitted that the present appellant was simple sanctioning authority of loan. He was not responsible for actual disbursement of loan, as such the conviction recorded by the trial court

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against him is liable to be set aside. On examination of evidence on record this Court finds that the argument advanced on behalf of the present appellant has no force. In this connection this Court thinks it just and proper to mention the relevant portions of the statement of the witnesses examined on behalf of the prosecution. PW3 Banwari Lal in whose name, loan for purchase of two buffalos, was shown sanctioned, has stated that he did apply for the loan, and accused/ appellant and co accused Dharampal got signed the papers from him but he did not receive the loan. He has further stated as under:

---tc csnh lkgc dk rcknyk gksus yxk rks vkus okys eSustj us dgk fd rqEgkjs uke dk yksu ns fn;k x;k gS A tc eSus csnh lkgc ls ckr dh rks mUgksus dgk fd os :i;k nsxsa A fQj mUgksus ,d bdjkjukek /kjeiky ls vius lkeus fy[kokdj eq>s fn;k o dkxt uEcj 89,@1 o 89,@2 gSa bl ij /kjeiky o esjs gLrk{kj gSa A ;g bdjkj ukek izn"kZ d 38 csnh lkgc us /keZiky ls :M+dh dpgjh esa fy[kok;k blds ckn Hkh eq>s iSlk ugh feyk A----

5. PW6 Ramgopal Aggarwal who is partner of M/S Aggarwal Trading Company has stated that he deposited cheque (exhibit A-43) for being accounted in the account No. 32 of the firm. He has further stated as under:

--- eSa pSd pay in slip o Hkh csnh dks nsdj pyk vk;k A ckn esa tc fglkc feyk rks irk pyk bl pSd izn"kZ d 33 dks dsoy 5000 :i;k gekjs account la[;k 32 esa tek fd;k x;k gS tcfd gekjs cash credit account esa 10]000 :i;k tek fd;k gSA----

6. PW8 Duli Chandra Jain Accountant Punjab National Bank has stated in para-9 of a statement as under:

---pSd izn"kZ d 33 fnukad 14-08 d eqcfyd 10]000 Aggarwal Trading Company ds [kkrs esa tkuk Fkk D;kasfd ;g pSd QeZ ds uke ls tek gksuk Fkk ijUrq fy[kdj---- S.S. Bedi us nLr[kr fd;k tksQ-55 ls ?ksjs gSa---- izn"kZ d 1 ds }kjk 19-08-80 dks :i;k 5000 /keZiky current account no. 22 dks wet canteen uke ls Fkk esa tek gqvk gSA ;g izn"kZ d 1 ds csnh ds gkFk dk fy[kk gS vkSj mUgksus ;g ikl fd;k gSA----

7. PW10 Mohd Qamar from whose shop the knitting and sewing machine was to be supplied to the debtor Vijay Kusum (PW1), has stated that co accused Dharampal got collected quotation from his shop but no machine was purchased from his shop nor any payment made to his firm. In para-4 of examination in PW 10 Mohd Qamar states as under:

---eSus dksbZ e"khu fots;dqlqe dks ugha csph A u esjs ikl fQj dksbZ vk;k Fkk A Pay order izn"kZ d 46 eq>s cSad ls ugha feyk] eq>s bldk iSlk cSad ls ugh feyk] eq>s bldk iSlk cSad ls ugh feyk gS u gh bl ij esjs nLr[kr gSa A----

8. PW1 1 Bansilal who was shown as supplier of buffalos to Banwari lal (PW3) has stated that he never sold buffalos to Banwarilal. Para-3 of statement PW1 1 Bansilal is reproduced below:

---izn"kZ d 43 dks ns[kdj xokg us dgk fd mldh iq"r ij cuokjh yky esjs gkFk dk

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fy[kk gqvk ugh gS] u gh bldk dksbZ iSlk eq>s feyk A----

9. PW12 K.L. Arora Branch Manager of Punjab National Bank has stated that the power of Shri S.S. Bedi granting loan were cancelled in the year 1979. However, he was allowed to sanction the loan against the Fixed Deposit and IRDP. The witness further states as under:

---Pay order izn''kZ d 41 culhyky ds uke ls tkjh fd;k x;k gSa A tcfd bldk Hkqxrku cuokjh yky dks fn[kk;k gS A fu;ekuqlkj cuokjhyky dks Hkqxrku ugha gks ldrk Fkk A----

---Pay order izn''kZ d 46 dk Hkqxrku payee ds nLr[kr fd;s fcuk gh n''kkZ;k x;k gS tks ugha gks ldrk Fkk A----

---pSd izn''kZ 43 dk Hkqxrku ikVhZ dks O;fDrxr rkSj ij gks ldrk Fkk vkSj ml lwjr esa mlds nLr[kr eSustj o dSf''k;j }kjk vius lkeus fy;k tkuk pkfg;s Fkk ysfdu mldk Hkqxrku QeZ dks fn[kk;k x;k gS] tks fu;ekuqlkj xyr gS--- exhibit d 41 ij ikl djus ds nLr[kr S.S. Bedi ds gS A----

---;g culhyky ds uke ikl fd;k gqvk gS bldk Hkqxrku djus dh Accountant dh dksbZ ftEesnkjh ugha gS A----*

In the cross examination PW12 K.L. Arora Branch Manager States--- Ramanand Chamoli dks fn;k gqvk yksu recover gks x;k A mldks ml 3000 dk credit ugha fn;k /keZiky ds [kkrs esa tek x;k A mlus f''kdk;r dh Fkh fd mlds esa account esa dsoy 3000 tek gS tcfd mlus 6000 :i;s tek fd;s A---- fraud dk Kku rc gqvk tc geus customers to recovery ds fy, uksfVl Hksts A

cdk;knkj dks cSad eSustj dh vksj reminders ls tkrs gSa A csnh lkgc us account no. 21 o 22 ds cdk;snkj reminders dks ugh Hksts A----

10. Apart from this the above witness PW1 Vijay Kusum, PW2 Ramanand Chamoli (father in law of co accused Dharampal), PW4 Anandmani, PW9 G.R. Vaid, have also corroborated the prosecution case.

11. Having reassessed the evidence on record, this Court concurs with the view taken by the trial court that the charge against the accused/appellant S.S. Bedi is proved in respect of offences punishable u/s 120B, 409, 471/465 I.P.C and one punishable u/s 5(1)(c) read with Section 5(2) of Prevention of Corruption Act 1947.

12. It is pleaded on behalf of the appellant S.S. Bedi that Ramanand Chamoli is father in law of co accused Dharampal, as such if the payment of Ramanand Chamoli , is made to co-accused Dharampal, there is no criminal liability on the part of the appellant. However, this Court does not find any force in the submissions made on behalf of the appellant, as it is no body''s case that the co accused Dhrampal received cash amount on behalf of his father in law.

13. For the reasons as discussed above, this appeal is liable to be dismissed. The same is dismissed. The accused/appellant S.S. Bedi is on bail. His bail is

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cancelled. The lower court record be sent back to make the accused/appellant S.S. Bedi to serve out the sentence awarded against him.

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