(2023) 07 SHI CK 0100

In the High Court Of Himachal Pradesh

Case No : Criminal Appeals No. 15 Of 2021

State Of Himachal Pradesh APPELLANT

Vs

Bharat Bhushan And Ors RESPONDENT

Date of Decision : 27-07-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 218, 420, 467, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(2)
Code Of Criminal Procedure, 1973 — Section 313

Citation : (2023) 07 SHI CK 0100

Hon'ble Judges : Tarlok Singh Chauhan, J;Satyen Vaidya, J

Bench : Division Bench

Advocate : Anup Rattan,. I.N. Mehta, Ramakant Sharma, Sharmila Patial, Priyanka Chauhan, Rajat Chauhan, Rana, Rajiv Rai, Shikha Chauhan, B.M. Chauhan, Amit Himalvi

Final Decision : Disposed Of

Judgement

Satyen Vaidya, J

1. State of Himachal Pradesh is in appeal against judgment of acquittal dated 31.10.2015, passed by learned Special Judge (Forest), Shimla, H.P., in Sessions Trial No. 4-S/7 of 2013.

2. The Himachal Pradesh State Co-operative Bank (for short, ‘the bank’) had invited applications for filling up 12 posts (later increased to 26) of officers in the bank by way of selection process including written and viva-voce test. The process of selection so undertaken came under scanner and the respondents herein were charged and prosecuted as under:

3. Respondents No. 1, 3 and 4 were charged for offences under Sections 420, 467, 468, 471, 218, 120-B of the Indian Penal Code and Section 13(2) of the Prevention of Corruption Act. It was alleged against them that in the year 2000, respondent No.1, Bharat Bhushan was the Managing Director, Himachal Pradesh

State Cooperative Bank (for short, 'the bank') and the respondents No. 3 and 4 were its President and Director respectively. These respondents along with one Sh. K.S. Dhaulta were nominated as members of the interview board (for short, 'the board') constituted for the purposes of conducting viva-voce test of candidates for the post of officers in the Bank. It was also alleged that respondents No. 1, 3 and 4 entered into a criminal conspiracy with respondent No. 5 and despite the fact that respondent No. 5 had remained absent at the time of viva-voce, still he was awarded marks by the board that resulted in his selection as officer in the bank.

4. It was alleged against respondent No. 5, Mahesh Kumar that he had entered into a criminal conspiracy with other respondents and despite having not appeared in the interview, was awarded marks that resulted in his final selection. Respondent No. 5 was accordingly charged for offences under Sections 420 and 120-B of the Indian Penal Code.

5. It was further alleged that respondent No. 2, Keshav Ram Chandel had been deputed to evaluate the answer sheets of the candidates and while discharging such duty, respondent No.2 had committed th offence of cheating and criminal misconduct by manipulating the marks awarded to co-accused Mahesh Kumar and other candidates. He was thus charged for commission of offences under section 420 IPC and 13(2) of the Prevention of Corruption Act.

6. Prosecution examined total twenty-six witnesses and also proved on record a number of documents. PWs 1, 4, 17 and 20 were the bank officials. PWs 1 and 4 were allegedly deputed by the bank from 06.07.2000 to 08.07.2000 to assist the board. PWs 2, 5 and 18 were examined to prove the fact that these witnesses had not appeared for the viva-voce test and hence were rightly marked absent in the attendance sheets Ext. PW-1/A-9 to A-11. PW-6 was examined as a witness to prove the handing over of record of the bank to the police, vide memo Ext. PW6/A. PWs 3, 7 and 8 were examined as witnesses to prove the factum of re-examination of the answer sheets of the candidates. PWs 9 to 12 and 19 were the employees of H.P. University, Summerhill, Shimla, H.P., whose services were engaged by the bank for conduct of examination. PW-16, Sh. S.K.B.S. Negi, was examined to prove the grant of prosecution sanction against respondent No. 1, Bharat Bhushan. PWs 13 to 15, 21 and 22 were the investigating officers of the case. PW-23 was examined as Government Examiner of Questioned Documents. PWs 24 to 26 were the formal witnesses.

7. Respondents were examined under Section 313 of Cr.P.C. None of them led defence evidence. Learned Trial Court after hearing both the parties came to the conclusion that none of the offences were proved against respondents and accordingly acquitted them of all charges.

8. Mr. Rajat Chauhan learned Law Officer for the State has contended that the offences against respondents were proved beyond shadow of doubt. The judgment of acquittal passed by learned trial court has been alleged to be the

result of wrong appreciation of evidence. It has further been contended that learned trial court has given benefit of doubt to the respondents against settle canons of law.

9. We have heard learned counsel for the parties and have also gone through the record of the case carefully.

10. Prosecution had based its case primarily on two allegations. Firstly, that respondents No. 1, 3 and 4 while conducting viva-voce test for the post of officers in the bank had awarded marks even to those candidates who had not even appeared and respondent No. 5 was one of them. As per the case of prosecution, respondent No. 5 got selected as officer in the bank only on the basis of marks illegally awarded to him and secondly, that respondent No. 2 while examining the answer sheets of the candidates had manipulated the marks in order to give advantage to un-deserving candidates. Respondents were also charged for commission of offence of criminal conspiracy.

11. It order to prove that respondent No.5 was awarded marks for the viva-voce test without appearance, prosecution had placed reliance on the statements of PWs 1 and 4 besides relying upon the documents Ext. PW1/A-9 to A-11. PWs 1 and 4 tried to establish that they along with certain other officials of the bank were deputed to check the credentials of the candidates and to mark their presence during the conduct of viva-voce test scheduled between 6. 07.2000 to 08.07.2000. Ext. PW1/A-9 to A-11, were stated by these witnesses to be the attendance sheets prepared on 6th, 7th and 8th July 2020 respectively.

12. The cross-examination of PWs 1 and 4, however, revealed such information which was sufficient to doubt the prosecution story. In the first instance, both of these witnesses clearly stated that the documents Ext. PW1/A-9 to A-11 were not signed either by them or any other person. They also did not disclose as to in whose hands the entries were recorded in such documents. These documents were stated to have been finally handed over to another bank official named Mr. B.D. Kapil, who for the reasons best known to the prosecution was not examined as a witness. Further various material discrepancies was elicited from the cross-examination of these witnesses viz-a-viz documents i.e Ext. PW1/ A-9 to A-11, so much so that even the seal of the bank was not found on these documents. It was also pointed out that one of the candidates, namely, Mr. Rajesh Mahajan, was to appear for viva-voce test on 06.07.2020, but had instead appeared on the next date i.e. 07.07.2000. Nonetheless, he was not marked absent in Ext. PW1/ A-9, rather it was mentioned that said Rajesh Mahajan had appeared on 07.07.2000. Further, it was brought to our notice that in Ext. PW1/A-9, the column of signature against the name of candidate Vikas Kashyap was empty.

13. Another fact which has been admitted by PWs 1 and 4 is that none of them personally knew any of the candidates hence could not identify them. They had further admitted that at the time of viva-voce test there was huge rush outside the interview hall and thus the possibility of some of the candidates having

appeared in the test without signing the attendance sheet could not be ruled out.

14. There is yet another weak link in the prosecution case. The Board admittedly was constituted of four persons. One Mr. K. S. Dhaulta was also the member of the Board besides respondents No. 1, 3 and 4. Though, he was arrayed as an accused by the investigating agency, but he could save himself from the trial as the sanction to prosecute was refused by the competent authority. No explanation has been rendered by prosecution, as to what were the special reasons for refusal of prosecution sanction to prosecute Mr. K.S. Dhaulta, who had been nominated as member of the Board by the Registrar of Co-operative Societies. The allegation against Mr. K.S. Dhaulta was similar to those as levelled against respondents No. 1, 3 and 4.

15. The prosecution had further failed to prove any motive or reason for allowing respondent No. 5 a special treatment. None of the other candidates, who allegedly were also awarded marks for viva-voce test by the Board without appearance, had been arrayed as the accused in the case. Thus, the allegation that respondent No. 5 was awarded marks for viva-voce test without appearance has not been proved beyond all reasonable doubts.

16. Similarly, the prosecution case has also been found wanting in proving interpolation in answer sheets by respondent No. 2. On re-examination of the answer sheet of respondent No.5 difference of only one mark was found. Evidently, no other alleged beneficiary of such interpolation was arrayed as an accused. Even the examiners from H.P. University, who were later engaged to reassess the answer sheets, have not been able to prove that the marks awarded by respondent No. 2 were result of interpolation or could otherwise also not have been awarded for the answers rendered by the candidates.

17. The findings and conclusions drawn by learned Trial Court are borne from the record and the view formed is a possible view. It is more than settled that though in appeal against acquittal the Appellate Court has jurisdiction to form its own opinion by assessing the entire evidence on record, yet the scope of interference is restricted to the cases where the view taken by learned Trial Court is found to be highly improbable or perverse.

18. In light of above discussion, we find no merit in the appeal and the same is dismissed. Judgment of acquittal dated 31.10.2015, passed by learned Special Judge (Forests), Shimla, H.P., in Sessions Trial No. 4-S/7 of 2013, is affirmed.

19. Appeal stands accordingly disposed of, so also the pending miscellaneous application(s), if any