
(2011) 04 SHI CK 0183
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 133 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Daya Ram and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 207, 313, 378
Forest Act, 1927 — Section 41, 42
Penal Code, 1860 (IPC) — Section 120B, 218, 379, 420, 467
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2011) 04 SHI CK 0183

Hon'ble Judges : Surjit Singh, J;Rajiv Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—This appeal by the State, u/s 378, Code of Criminal Procedure, is directed against the judgment dated 30th September, 2002, of learned Special Judge (Forests), Shimla, whereby Respondent Padam Dass (now dead) and Ors. (hereinafter called accused), have been acquitted of charge, under Sections 379, 420, 467, 468, 471, 218 and 120-B of the Indian Penal Code, Sections 41 and 42 of the Indian Forest Act and Section 5(2)(d) of the Prevention of Corruption Act, 1947.

2. Case of the prosecution is that in the year 1980, a criminal conspiracy was hatched by accused Vidya Dutt and Partap Singh, who were private forest contractors with Padam Dass (deceased), who was then working as Forest Guard in Summer Kot beat of Rohru Forest Division and Daya Ram, Field Kanungo in the area of Rohru, for felling trees on Government land in the guise of felling trees on private land. To give practicable shape to that conspiracy, five applications signed by seven land owners of private land, were submitted to J.S. Chauhan, Range Officer (discharged accused), for marking trees on the private land described in those applications. Applications were submitted to the D.F.O. by the said Range Officer. D.F.O. directed that the land described in those

applications be demarcated and trees standing thereon marked. Demarcation was carried out on the spot by Daya Ram, Field Kanungo. List of trees was prepared by Padam Dass, Forest Guard. Certificates were appended on the list of trees that no tree had been marked on Government land and that all the marked trees stood on the private land, mentioned in the applications. D.F.O. then passed the order for felling of trees included in the marking list. As per that list, there were 23 kail and 13 deodar trees. Those trees were felled. They yielded 502 scants, the volume of which was 1060.28 Cft.. An application was submitted to the D.F.O., together with list of timber for grant of export permit. Block Officer, Kalmi Nand (now deceased) verified that the timber included in the list, had been extracted from the trees marked on private land and that no felling had taken place on Government land. Export permit, Ex. PW-2/B bearing No. 190/81/82 was issued. The permit was valid up to 15.01.1982. 459 scants, as per the allegation of the prosecution, were exported within the validity period of permit Ex. P.W. 2/B against Railway Receipts, Ex. PW 12/A and Ex. PW 12/B. Thus, there remained 43 scants with accused Vidya Dutt and Partap Singh Dutta. In the application, seeking extension of time for export of timber, they claimed that 280 scants remained to be exported. Accused Surinder Singh, Forest Guard, Khara Pathar Check Post, certified that 280 scants remained to be exported. On the basis of his recommendation, 280 scants were shown to be in balance with accused Vidya Dutt and Partap Singh and the time for export of these scants was extended up to 26th March, 1982 vide permit Ex. P.W. 2/C. The said accused then exported 211 scants against Railway Receipts, Ex. P.W. 6/A and Ex. P.W. 13/A. Thus, against the total quantity of 502 scants, 663 scants were exported.

3. Allegation of the prosecution is that excess timber was exported by the Forest contractors as a result of criminal conspiracy with accused Nathu Singh, Station Master, Shoghi, accused Subhash Chand, Assistant Station Master at Shoghi, accused Vinod Kumar, Loading Agent at Railway Station, Shoghi, accused Anil Kumar, a Timber Dealer of Shimla and one Satish Kumar, Loading Agent, who is now dead. Accused Anil Kumar was alleged to have received the payment of timber exported in excess of the quantity mentioned in Ex. P.W. 2/B.

4. Case was registered, when during the course of investigation of another case, it came to light that against 502 scants, permitted to be exported under permit Ex. P.W. 2/B, 663 scants had been exported against Railway Receipts Ex. P.W. 12/A, Ex. P.W. 12/B, Ex. P.W. 6/A and Ex. P.W. 13/A.

5. Investigation of the case revealed that as a matter of fact, in the garb of marking trees on private land, referred to in the applications, three trees had been marked on Government land. It was also revealed that signatures of some of the applicants in the applications had been forged by accused Vidya Dutt (now dead). Timber, which had been exported in excess of the permitted quantity, was found to have been extracted from those three trees felled on adjoining Government land.

6. On completion of investigation, report u/s 173 of the Code of Criminal

Procedure alongwith relevant papers, was filed in the Court of learned Special Judge (Forests), who after complying with the provisions of Section 207, Code of Criminal Procedure and hearing the learned Public Prosecutor and the counsel engaged by the accused, found that a prima-facie case under the aforesaid penal provisions of law was made out against the accused. They were charged accordingly. They pleaded not guilty and were, therefore, put on trial.

7. Prosecution examined a number of witnesses, besides proving various documents to substantiate its case. Accused were also examined u/s 313, Code of Criminal Procedure. They denied having committed any crime or that there was any conspiracy of the type, alleged by the prosecution. Trial court acquitted the Respondents, holding that the case did not stand established against them beyond reasonable doubt.

8. We have heard learned Assistant Advocate General, as also learned Counsel representing the Respondents and gone through the record.

9. Allegation of the prosecution that three trees were marked on the adjoining Government land, is based upon the demarcation report of P.W. 37 Jagan Nath, Naib Tehsildar. The report is Ex. P.W. 26/C. P.W. 37 Jagan Nath was not competent to give demarcation, he being only an Assistant Collector of 2nd Grade. As per Para-10.10 of the Land Records Mannual, where a boundary between private land and Government land is required to be ascertained (as in the present case, because trees were suspected to have been felled on Government land) demarcation is required to be carried out by an Assistant Collector of 1st Grade. Also, the witness did not have the copy of Musabi with him. He, per his own statement, carried out the demarcation on the basis of Tatimas prepared on the spot, which fact implies that only Latha, supposed to be with the Patwari, was available and Tatimas were prepared from that Latha. Latha being stretchable, no authenticity attaches to the Tatimas prepared on the basis of it. The witness also did not have with him the record of forest department, indicating permanent boundary of Government land. Witness also did not fix three undisputed points on three different sides of the starting point of demarcation.

10. In any case, the stumps of three trees on the alleged adjoining Government land, do not stand connected with the trees that were marked by Padam Dass, Forest Guard on the basis of demarcation given by Daya Ram accused, in his capacity as Kanungo. So, allegation that three trees were marked on the Government land in the garb of marking on private land, cannot be said to have been established beyond reasonable doubt.

11. P.W. 25 Gopi Chand, Block Officer, who prepared the list of stumps, testified that stumps did not bear the hammer mark or the Khudan mark, which were supposed to have been embossed at the time of the marking of trees by Padam Dass.

12. Coming to the allegation regarding export of more timber than the

permitted, vide permit Ex. P.W. 2/B, case of the prosecution is that timber was exported against four Railway Receipts, Ex. P.W. 12/A, Ex. P.W. 12/B, Ex. P.W. 6/A and Ex. P.W. 13/A. The total number of scants exported against these Railway Receipts comes to 663. On all these four receipts, permit number written is the same as that on Ex. P.W. 2/B. However, the investigating agency, while seeking opinion of hand-writing expert, did not seek the opinion in respect of that portion of the writing which pertains to number of its permit on Railway Receipt, Ex. P.W. 12/B, against which, 220 scants were exported. Permit number on this receipt is written outside the portion encircled in red about which, hand-writing expert has expressed his opinion. That means, there is no opinion with regard to this portion of writing on the permit Ex. P.W. 2/B. In respect of other three permits, permit number is included in the red circles. Non-inclusion of the portion of writing regarding permit number on Ex. P.W. 12/B in the red circle and inclusion of writing regarding permit numbers in the red circles in respect of other three Railway Receipts, gives the impression that probably permit number was not written on Railway Receipt, Ex. P.W. 12/B, when the opinion of hand-writing expert was sought. If that is so, it can legitimately be said that permit number on Railway Receipt, Ex. P.W. 12/B was written after the opinion of expert had been received. So, the quantity of timber exported against this Railway Receipt, Ex. P.W. 12/B does not stand connected with permit Ex. P.W. 2/B and is therefore required to be excluded from the total quantity of 663 scants. Number of scants mentioned in Ex. P.W. 12/B is 220. Thus, the total quantity exported against permit Ex. P.W. 12/B comes to 443.

13. As regards the allegation that accused Surinder Singh, in his capacity as Forest Guard of Check Post, Khara Pathar, made a wrong report that 280 scants remained to be exported out of the quantity permitted to be exported against permit, Ex. P.W. 2/B, prosecution itself has proved two Rawanas, Ex. P.W. 4/B and Ex. P.W. 4/C, which are dated 06.01.1982 and 01.01.1982. Against these two Rawanas, $95+127=222$ scants crossed the Check Post at Khara Pathar within the initial validity period of permit, Ex. P.W. 2/B. If this numerical quantity of timber is excluded from the numerical quantity permitted to be exported vide Ex. P.W. 2/B, the balance comes to 280. Accused Surinder Singh was supposed to have made the report on the basis of Rawanas and other record maintained at the Check Post regarding the quantity of timber crossing through that Check Post. The aforesaid two Rawanas show that only 222 scants had been carried via Check Post Khara Pathar. Other record maintained at the Check Post has not been produced by the prosecution. So, accused Surinder Singh cannot be said to have committed any wrongful act. When no timber is shown to have been exported, in excess of the quantity prescribed in Ex. P.W. 2/B, question of accused Anil Kumar having received payment of the timber exported in excess, does not arise.

14. For the foregoing reasons, we see no merit in the appeal. The same is, therefore, dismissed.