
(2011) 05 SHI CK 0211
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 96 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Dharam Chand and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2011) 05 SHI CK 0211

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—This appeal is directed against the judgment dated 19.11.2003 passed by the Special Judge (Forest), Shimla in Corruption Case No. 4-S/7 of 2000, whereby the Respondents, who were charged with and tried for offences, under Sections 409, 420, 467, 468, 471 and 120-B of the Indian Penal Code and 13(1)(c) & (2) of the Prevention of Corruption Act, were acquitted.

2. Case of the prosecution, which led to the trial of the Respondents is that Dharam Singh, Respondent No. 1, was working as Pradhan, Gram Panchayat, Chanog under Mashobra Block, District Shimla, Tarun Nehru, Respondent No. 2, was working as Gram Panchayat Vikas Adhikari (Secretary) and Suresh Kumar, Respondent No. 3 was working as Junior Engineer in the office of Block Development Officer, Mashobra District Shimla. Money was withdrawn for executing construction work of two rooms of Government Primary School, Pawaboo falling in the area of Gram Panchayat, Chanog, by Dharam Singh, Respondent No. 1. A sum of Rs. 50,000/- was sanctioned for the construction of two rooms. A sum of Rs. 40,000/- was released to Respondent No. 1 and a sum of Rs. 54,052/- was shown to have been spent, but on the spot no work was found to have been done except laying of foundation of two rooms and having

stacked 6000 bricks and some sand.

3. Matter came to light when a complaint was lodged by the residents of the village to the Director Panchayati Raj and the latter deputed PW-18 Bal Krishan, Joint Director to enquire into the matter. The said Joint Director submitted the report Ex.PW-5/A on the basis of which, complaint Ex.PW-5/B was lodged by PW-5 Jai Lal Kanan and case was formally registered vide FIR Ex.PW-9/A.

4. During investigation, PW-21 ASI Gurdeep Singh visited the spot on 27.8.1996. He also found irregularities and discrepancies in the construction of two rooms. He got the site photographed vide photographs Ex.PW-7/D-1 to Ex.PW-7/D-10. He also took into possession the documents, namely, bills, muster rolls etc. (Ex.PW-5/D-1 and Ex.PW-4/D-39). He also took into possession applications moved by Respondent No. 1 for release of money alongwith receipts, Ex.PW-1/A-1, Ex.PW-1/A-9, Ex.PW-1/A-4, Ex.PW-1/B-1, Ex.PW-1/B-9 and Ex.PW-1/B-4. He also took into possession the inquiry report of Block Development Officer, Mashobra Ex.PW-26/A. It also transpired during the course of investigation that Respondent No. 3, being Junior Engineer, had wrongly verified the payments made to Respondent No. 1 in collusion with Respondents No. 1 and 2 and the Respondents were party to the criminal conspiracy in the matter of preparing wrong record, forging the muster rolls, bills and misappropriated the Government money.

5. On completion of investigation and after obtaining sanction to prosecute the Respondents, report u/s 173 of the Code of Criminal was filed in the court of Special Judge, who supplied the copies of the said report and relevant papers to the Respondents and after hearing learned Public Prosecutor, learned defence counsel and perusing the record, felt that a prima facie case, under the aforesaid provisions of law was made out. Respondents were charged accordingly and on their pleading not guilty, they were 4ed to be tried.

6. Prosecution examined as many as 28 witnesses and also proved certain documents to prove entrustment of money to Dharam Singh, Respondent No. 1, and also to substantiate the allegation that the money had not been spent fully on the execution of two rooms of Government Primary School, Pawabo.

7. Respondents denied that they had misappropriated any amount of money. Respondents Dharam Singh and Suresh Kumar, Junior Engineer, pleaded that there was no time limit prescribed for completing execution of works and that as a matter of fact they had spent the entire withdrawn amount of money on part execution of the construction of two rooms and purchase of material required for construction. Respondent, Tarun Nehru, pleaded that he was Secretary of Panchayat and except for maintaining the records, as per instructions of elected representatives of the Panchayat, including Respondent Dharam Singh, Pradhan, he had no role in the execution of the works.

8. Learned trial court concluded that prosecution case did not stand established, beyond reasonable doubt, inasmuch as the evidence indicated that the

construction work had been executed, though partly, and that the Respondents had, at no stage, claimed that the work stood completed nor did they submit the final bills to claim remaining sanctioned amounts. It has also been held by the learned trial court that the allegation of muster rolls having been forged does not stand proved. Consequently, Respondents were acquitted.

9. We have heard the learned Assistant Advocate General and the learned Advocate for the Respondents and perused the record carefully.

10. PW-5 Jai Lal Kanan, District Panchayat Officer, who lodged complaint Ex.PW-5/B on the basis of report Ex.PW-5/A of PW-18 Bal Krishan, stated in his cross-examination that he visited the spot in the month of September, 1996, after lodging of the FIR. He has admitted that walls were constructed up to the height of 3-4 feet and the material was lying there and the construction of Government Primary School, Pawabo was going on. If that is so, prosecution case that no work had been executed on the spot cannot be accepted. May be that the construction of two rooms was completed after registration of the case, but then we find no reason to disagree with the view taken by the learned trial court that no time limit was fixed for the construction of two rooms, this could not be a case of misappropriation of money released for the works, but only a case of delayed execution of works.

11. PW-26 Prabha Rajiv, the-then Block Development Officer stated that as regards the developmental works, which are executed by the Gram Panchayats, are required to be completed within six months, but in her cross-examination, she stated that she did not remember whether any time limit was fixed for the execution of the work in question.

12. It is also the allegation of prosecution that in the muster rolls Ex.PW-5/D-24, Ex.PW-5/D-25 and Ex.PW-5/D-39, names of two persons, namely PW-15 Ram Lal and PW-25 Prabhu Ram had been falsely indicated, as labourers and that as a matter of fact neither these two persons were ever engaged nor was any money paid to them and, thus, these muster rolls had been forged.

13. Names of these witnesses are there in the muster rolls Ex.PW-5/D-24, Ex.PW-5/D-25 and Ex.PW-5/D-39. Their purported signatures are there in the muster rolls, in token of their having been paid the wages. Their purported signatures had not been got compared with their standard signatures from Handwriting Expert. Testimony of these witnesses does not inspire confidence. PW-15 Ram Lal though denied his signatures on the muster rolls, in token of his having received the wages or having worked on the projects to which these muster rolls pertain, he stands contradicted with his statement, u/s 161 of the Code of Criminal Procedure, with which he was duly confronted, during the course of his cross-examination. That statement is marked as PW-15/A wherein he stated to the police that his signatures were there on the muster rolls, but he had not been engaged in connection with any of the works nor had he received any wages, mentioned against his name. In view of the witness having been

contradicted with his previous statement, u/s 161 of the Code of Criminal Procedure as also the fact that his purported signatures on the muster rolls have not been opined to have been written by him, no reliance can be placed upon his statement to hold the Respondents guilty of forgery.

14. PW-25 Prabhu Ram is shown in two of the muster rolls. He has admitted his signatures on one of the muster rolls, though he denied having received any wages. Once his signature is there, in token of his having received the money, his uncorroborated testimony that he did not receive any wages cannot be believed. On the second muster-roll he denied his signatures, but that signature was not got compared with his standard signature and so, his sole testimony cannot be said to be enough evidence to conclude that his purported signature is forged.

15. Accordingly, in view of the observations and discussions made hereinabove, we find no merit in the appeal and the same is dismissed.