

(2011) 04 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 13 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Hardeep Goel

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 409, 411
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2011) 2 ShimLC 385

Hon'ble Judges : Surjit Singh, J;Kuldip Singh, J

Bench : Division Bench

Judgement

Surjit Singh, J.—State has appealed against the judgment dated 25th August, 2003 of learned Special Judge, whereby respondent Hardeep Goel has been acquitted of charge, u/s 409 of the Indian Penal Code and Section 13(2) of the Prevention of Corruption Act, 1988.

2. Prosecution's case is that while posted as Junior Engineer, in Solan Sub Division of Himachal Pradesh State Electricity Board, respondent Hardeep Goel used to operate Central Store, which was under the charge of Shri S.M. Bhatti (PW-5), when the latter happened to be on leave. Said Shri S.M. Bhatti went on casual leave on 27th and 28th July, 1998. He handed over the key of the store to the respondent. Respondent is alleged to have removed two gunny bags, containing copper wire, from the store on 27th July, 1988, in the evening. Those two gunny bags were kept by him in his own store, situated close to the aforesaid Central Store. On 1st August, 1998, in the evening, he brought two Kashmiri Khan labourers and carried those two gunny bags, containing copper wire, to Railway Station, Solan, where Forwarding Note Ex. P-1 was filled-in, in which consigner was shown to be a fictitious person, by the name of Ramesh Kumar. The goods were to be delivered to the consigner himself at Patiala. Railway Receipt Ex. PW-6/A was issued.

3. On 3rd August, 1998, respondent went to Patiala to take delivery of those two gunny bags. He produced Railway Receipt Ex. PW-6/A to PW-6 Shri Sunder Lal, Senior Parcel Clerk, to seek delivery of the two gunny bags. Said PW-6 Shri Sunder Lal procured his (respondent's) signature in Register Ex. PW-6/B at Page 657688, at serial No. 1. Respondent signed as Ramesh Kumar and took the delivery of the two gunny bags, containing copper wire. When carrying those gunny bags, he was apprehended by PW-22 Shri Gurmail Singh, Sub Inspector of Railway Protection Force, on suspicion, because the gunny bags bore Railways mark. The said Sub Inspector thought that the property belonged to the Railways and it was being taken by the respondent, illegally. He asked the respondent his name. Respondent disclosed his name as Hardeep Goel (the real name). For verification, PW-22 Shri Gurmail Singh took the respondent to PW-6 Shri Sunder Lal, Senior Parcel Clerk, who told that the respondent had taken the delivery of gunny bags, by disclosing his name as Ramesh Kumar and producing Railway Receipt Ex. PW-6/A, which was in the name of Ramesh Kumar.

4. Respondent was arrested and a case, under the Railways Act, was registered against him. Complaint was filed in the Court of Chief Judicial Magistrate at Patiala. After recording the preliminary evidence, the Chief Judicial Magistrate discharged the respondent, holding that the case property was not proved to be of the Railways and that the story that he was carrying two gunny bags, containing copper wire, appeared to be unnatural, as one person could not have carried two gunny bags, weighing 108 kgs, simultaneously.

5. Case against the respondent was registered at Solan also, when PW-5 Shri S.M. Bhatti, on return from leave, came to know that two bundles of copper wire had been removed from the Central Store by the respondent, in his absence, and he reported the matter to the concerned Executive Engineer.

6. During the course of investigation, it was found that the respondent had got the Central Store opened on 27th July, 1998, in the evening, and had removed two gunny bags, containing copper wire, to his own adjoining store, with the help of Chowkidars Shri Harbans Lal (PW-2) and Shri Virender Singh (PW-3) and that on 1st August, 1998 those two gunny bags were carried by the respondent to Railway Station at Solan, through two Kashmiri labourers, where he booked the same for transportation to Patiala, giving out his name as Ramesh Kumar. Consignee was indicated to be the consigner himself.

7. On completion of the investigation, report, u/s 173 of the Code of Criminal Procedure, was filed in the Court of Special Judge, Solan. Respondent was charged, u/s 409 of the Indian Penal Code, and Section 13(2) of the Prevention of Corruption Act, 1988. He pleaded not guilty.

8. Prosecution examined 22 witnesses to bring the charge home to the respondent. Respondent admitted that he was arrested at Patiala on 3rd August, 1998, but stated that he was arrested at 7.30 p.m., when he was waiting for a Bus outside the Railway Gate, Patiala, for going to Malerkotla to visit his sister, at

a Bus Stop. He denied having gone to the Railway Station at Patiala to take delivery of the two gunny bags. Also, he denied having booked the two gunny bags at Railway Station Solan. He also denied having signed as Ramesh Kumar, in Register Ex. PW-6/B, maintained by PW-6 Shri Sunder Lal, Senior Parcel Clerk of Railway Station Patiala. He pleaded that he had been falsely implicated, at the instance of PW-5 Shri S.M. Bhatti, Incharge Central Store, Solan, who, according to him, had embezzled stores worth more than Rs. 2,00,000/-.

9. Learned trial Court held that the case of the prosecution did not stand established and consequently acquitted the respondent.

10. We have heard learned Assistant Advocate General as also learned Counsel representing the respondent and gone through the record.

11. We find ourselves in agreement with the finding of the learned trial Court that evidence of the prosecution does not establish, beyond reasonable doubt, that the respondent removed, from the Central Store, two gunny bags, containing copper wire, on 27th July, 1998, as testified by PW-2 Shri Harbans Lal, a Chowkidar and PW-3 Shri Virender Singh, also a Chowkidar. The reason is that according to the testimony of these two witnesses gunny bags were shifted by the respondent to his own store and from there he carried those bags to Railway Station Solan, in the evening of 1st August, 1998. Personal store of the respondent was checked on 1st August-, 1998 by Executive Engineer Shri K.D. Gupta (PW-1), in the company of Shri Dina Nath (PW-4), Assistant Engineer, on complaint of PW-5 Shri S.M. Bhatti that two bundles of copper wire had been removed from Central Store during his absence, by the respondent, and during such checking the two gunny bags, containing copper wire, were not found there. Only 25 kgs copper scrap was found, which was unaccounted and, therefore, the respondent was required to make an entry of that scrap in the concerned Register, Ex. PW-1 /A. Now, if the two gunny bags, containing copper wire, were not there in the store of the respondent, during day time, on 1st August, 1998, the story of PW-2 Shri Harbans Lal Chowkidar and PW-3 Shri Virender Singh, another Chowkidar, that the two gunny bags, containing copper wire, had been shifted by them, at the instance of the respondent, to his store on 27th July, 1998 and that on 1st August, 1998, in the evening he carried those bags, through some Kashmiri labourers, cannot be believed.

12. However, we cannot agree with the finding of the learned trial Court that the respondent did not take the delivery of two gunny bags, containing copper wire, from PW-6 Shri Sunder Lal, Senior Parcel Clerk at Railway Station Patiala. PW-6 Shri Sunder Lal, while in the witness box, stated, in no uncertain terms, that the respondent produced Railway Receipt Ex. PW-6/A to claim the two gunny bags, containing copper wire, and disclosed his name as Ramesh Kumar or say the name written as consigner and consignee in Railway Receipt Ex. PW-6/A. He also stated that the respondent signed as Ramesh Kumar in the Parcels Delivery Register Ex. PW-6/B, at page 657688. He further stated that after some time the respondent was brought by Railway Protection Force people, including PW-22

Shri Gurmail Singh, Sub Inspector, for verification and that he told those Railway Protection Force people that the respondent had disclosed his name as Ramesh Kumar to take delivery of two gunny bags, against Railway Receipt Ex. PW-6/A. There should be no reason to disbelieve the testimony of this witness, because his testimony, with regard to the aforesaid facts, was not subjected to cross-examination.

13. Not only this, testimony of PW-6 Shri Sunder Lal, Senior Parcel Clerk, is corroborated by PW-22 Shri Gurmail Singh, Sub Inspector, who testified that around 5 p.m. the respondent was apprehended, when trying to pull two gunny bags, containing copper wire, from Railways Parcel Office and that, on enquiry, he disclosed his name as Hardeep Goel. Respondent denies that he was apprehended, while pulling two gunny bags from Railways Parcel Office, at 5 p.m. His plea is that he was apprehended at 7.30 p.m., when he was waiting for a Bus, outside the gate of Railway Station Patiala, for going to Malerkotla, to see his sister. This plea he raised, for the first time, in his examination, u/s 313 of the Code of Criminal Procedure. No suggestion was thrown, either to PW-22 Shri Gurmail Singh, Sub Inspector or to PW-6 Shri Sunder Lal, Senior Parcel Clerk of Railway Station Patiala, that he (the respondent) was not there at the Railways Parcel Office at 5 p.m. and that he was apprehended at 7.30 p.m., when he was waiting for a Bus to go to Malerkotla, outside the gate of Railway Station.

14. It is true that PW-5 Shri S.M. Bhatti, Incharge of Central Store Solan, stated that on 3rd August, 1998, he also went to Patiala and informed Sub Inspector Shri Gurmail Singh (PW-22) that if someone came to take the delivery of two gunny bags, containing copper wire, against Railway Receipt Ex. PW-6/A, he be apprehended and PW-22 Shri Gurmali Singh, when questioned, during the course of cross-examination that he had been approached by PW-5 Shri S.M. Bhatti from Solan, denied the suggestion, but that by itself is no ground for disbelieving the evidence of PW-22 Shri Gurmail Singh and PW-6 Shri Sunder Lal, Senior Parcel Clerk, with regard to the respondent having taken delivery of the two gunny bags, containing copper wire, and the respondent having been nabbed with those two gunny bags at Railways Parcel Office, around 5 p.m.

15. It is also not in dispute that Handwriting Expert, in his opinion Ex. PW-19/J, has expressed inability to give any definite opinion, with regard to signature Mark Q-19 in Parcels Register Ex. PW-6/B, which is alleged to have been written by the respondent, but his inability to give any opinion, in no way, dilutes the direct evidence of PW-6 Shri Sunder Lal, Senior Parcel Clerk, who, in no uncertain terms, testified that it was the respondent who had signed as Ramesh Kumar, in Register Ex. PW-6/B. This testimony of the witness is further corroborated by the fact that the respondent was apprehended with the two gunny bags, containing copper wire, at 5 p.m., at Railway Station Patiala.

16. Learned Counsel representing the respondent has pointed out that while appearing as PW-1, before the Chief Judicial Magistrate at Patiala, PW-6 Shri Sunder Lal, Senior Parcel Clerk, testified that he was unable to identify the

respondent as the person who put signature as Ramesh Kumar in Register Ex. PW-6/B. He has drawn our attention to the statement, which Shri Sunder Lal made before the Chief Judicial Magistrate, Patiala. Copy of the said statement is Ex. DB. In the said statement Shri Sunder Lal did state that he was unable to say if the person who signed as Ramesh Kumar, in Register Ex. PW- 6/B, was the respondent, but the fact that the respondent was arrested, with two gunny bags, containing copper wire, by PW-22 Shri Gurmail Singh and these gunny bags were the same, delivery of which was taken against Railway Receipt Ex. PW-6/A, after putting signature Q-19 in Register Ex. PW-6/B, within minutes of putting signature Q-19, leaves no doubt that it was the respondent who had put signature Q-19 in Register Ex. PW-6/B.

17. Learned trial Judge has not appreciated the aforesaid evidence. Rather he has overlooked it. Therefore, the judgment of acquittal rendered by the trial Judge cannot be upheld.

18. The above discussed evidence conclusively proves that the respondent is atleast guilty of receiving stolen property, punishable u/s 411 of the Indian Penal Code. Though no specific charge, u/s 411 of the Indian Penal Code, was framed against the respondent, he can be convicted of this offence with the aid of sub-section (2) of Section 221, read with Illustrations (a) and (b) of the Code of Criminal Procedure. Consequently, we convict the respondent of the offence, u/s 411 of the Indian Penal Code.

Respondent-convict be produced in this Court on 11th May, 2011, for being heard on quantum of sentence. Non-bailable warrant of arrest be also issued against the respondent, for the aforesaid date.