
(2012) 01 SHI CK 0070
In the High Court Of Himachal Pradesh
Case No : Criminal A. No. 150 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Hari Chand and Suba Ram

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313, 378
Penal Code, 1860 (IPC) — Section 409, 467, 468, 471

Citation : (2012) 01 SHI CK 0070

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Judgement

V.K. Ahuja, J.—This is an appeal filed by State of Himachal Pradesh u/s 378 of the Cr.P.C. against the judgment of the court of learned Judicial Magistrate Ist Class, Baijnath, District Kangra, H.P., dated 31.12.2002, vide which the respondents were acquitted of the charge framed against them under Sections 409, 467, 468 and 471 IPC.

2. Briefly stated, the facts of the case are that accused No. 1 was the President of Gram Panchayat, Kothi Kohar w.e.f. April 1988 to 17 March, 1991, while accused No. 2 was working as a Panchayat Secretary in the same Panchayat. Many development works were undertaken by the Panchayat, which were got done by accused Nos. 1 and 2. The accused persons did the work under Jawahar Rojgar Yojna and under some other Schemes also. The amounts were received by them from the BDO for the various works by preparing forged documents. Special audit of the Panchayat was conducted and it was found that names of some labourers were mentioned in two muster rolls for different works on the same date. Thus, it was clear, according to the police, that the accused had forged these muster rolls by entering the names of labourers in both the muster rolls. There were also other evidence in regard to tampering of the record and misuse of the amount by both the respondents. On investigation, a prima facie case was made out under the Sections mentioned above as against both the respondents, who were tried by the learned trial Court, as detailed above,

leading to their acquittal.

4. We have heard Mr. Vivek Thakur, learned Additional Advocate General for the appellant, Mr. Ajay Mohan Goel, Advocate, for respondent No. 1 and Mr. R.K. Gautam, learned Senior Advocate for the respondent No. 2, and have gone through the record of the case.

5. On appraisal of the record of the case, it is clear that the State has challenged the judgment passed by the learned trial Court on various grounds that it was against law and facts, was based on hypothesis, surmises and conjectures and the evidence was appreciated in a slipshod and perfunctory manner. It was also pleaded that the accused were acquitted on flimsy ground.

6. During the course of arguments, it was pointed out by the learned Additional Advocate General for the State that no reasonable opportunities had been given to the prosecution to lead evidence and the evidence was closed wrongly by order of the Court. This plea was not specifically taken in the grounds of appeal but had been taken in general and, therefore, this Court is not precluded from considering this plea when the judgment has been challenged on various grounds. In the interest of justice, we have allowed the learned Additional Advocate General to raise this point since the judgment can be challenged on all the grounds by the appellant.

7. It has been pointed out during the course of arguments before us that there were three Investigating Officers in the case and one of them has been examined, but no reasonable opportunity was given to examine two other Investigating Officers, namely, Jodha Mal and Balbir Singh, whose names figure at Sl.Nos.35 and 38, respectively, and their non-examination has been taken as one of the grounds by the learned trial Court to hold that the prosecution case does not stand proved. We have gone through the record of the case in detail and we find that the names of Investigating Officers i.e. Jodha Mal and Balbir Singh are at Sl.Nos.35 and 38, respectively. A perusal of the record shows that for the first time on the date fixed for 4.1.2001, the learned trial Court had directed that summons be issued to PW Jodha Mal for 23.3.2001, apart from other witnesses and PW Balbir Singh was summoned for 28.3.2001, apart from other witnesses. The said Jodha Mal had been summoned for 23.3.2001 and on that date two witnesses were examined, namely, Nirmal Singh and Ashwani Kumar and the order sheet also shows that two witnesses were examined but it was observed that no other PWs were present nor served. On 28.3.2001, statements of three witnesses were recorded and it was mentioned that PW Balbir Singh summoned for the date is exempted for today only on the grounds stated in the wireless message. This clearly shows that the witness Balbir Singh was served, but he sent a wireless message, the cognizance of which was taken by the learned trial Court and adjournment was granted. On the same date, an application was filed by the accused for closing the evidence of the prosecution. In our view, the said application was not proper since it was for the court, on oral prayer, to consider as to whether sufficient opportunities had been given to the

prosecution to produce evidence or not. However, it is clear that for these two witnesses, two dates had been fixed and only one of the witnesses was served for 28.3.2001 for which request was also received through wireless message and was accepted by the learned trial Court. On 28.3.2001, the Court simply observed that one more opportunity is being granted to the prosecution to produce the evidence. The plea was accepted that the prosecution wants to examine PW Jodha Mal and PW Balbir Singh apart from other witnesses. The case was then adjourned for 3.5.2001, on which date the Court observed that one Rasil Singh was present but has not brought the record, though application was filed by the learned APP prior to the date for summoning the record, which was not been summoned. Therefore, the case was adjourned for the next date i.e. 6.6.2001 for summoning of the record. A request was made on behalf of SI Jodha Mal that he had already received summons from the Sessions Court, Dharamshala and no other witness was present. The Court observed that many opportunities had been given to the prosecution. The prayer of Jodha Mal was accepted and it was directed that fresh summons be issued to him for the next date and the prosecution should produce the witnesses of its own. There was no direction to issue summons for PW Balbir Singh also, who had been duly served for the previous date and his request for adjournment had been accepted. SI Jodha Mal had been summoned for the date and no specific directions were given by the Court to get the service of these two witnesses effected by deputing a special Constable or through wireless message or directing the prosecution to take the notices and get them served for the next date. However, the Court observed on 6.6.2001 that statement of one witness recorded, no other witness present or served and accordingly it proceeded to close the evidence.

8. It is clear from the above discussion that on the date when the evidence was closed, there was no observation in regard to these two witnesses as to whether the summons to them were issued by the office of the Court or not or were handed over to the prosecution for getting them served through special Constable or what was the report on these summons, but the court in a slipshod manner proceeded to close the evidence without going through the record and the summons received and making a specific reference to these two witnesses.

9. Therefore, it is clear from the above discussion that no reasonable opportunity was given to the prosecution to examine two Investigating Officers for which a prayer had also been made earlier and they were considered material witnesses by the prosecution and their non-examination has led to some adverse remarks being made by the learned trial Court that the case was not proved. We are, therefore, of the opinion, after perusing the record, that no reasonable opportunity had been given to the prosecution to produce these two Investigation Officers which has resulted in miscarriage of justice, which can be corrected by this Court by remaining the case to the learned trial Court for decision afresh.

9. In view of the above discussion, we accordingly set aside the judgment of the

learned trial Court acquitting the respondents of the charge framed against them. The case is remanded back to the learned trial Court, who shall proceed with the case and give reasonable opportunity to the prosecution for producing these two witnesses i.e. PW Jodha Mal and PW Balbir Singh, figuring at Sl.Nos.35 and 38. The learned trial Court shall take steps for getting the service effected of these witnesses by directing the prosecution to depute a special Constable. Once reasonable opportunities are given to the prosecution to produce the witnesses, then only the court shall form an opinion as to how it should proceed with the case, in case these witnesses are still not produced by the production, in spite of reasonable opportunities having been given to them. The Court shall give short date(s) for the service of these witnesses by giving specific directions to the prosecution to avoid any delay. Both these witnesses shall be examined and the statements of the accused persons u/s 313 Cr.P.C. shall again be recorded and after giving the accused an opportunity of defence evidence, if any, and after hearing the parties, the learned trial Court shall proceed with the trial of the case in accordance with law. We may make it clear and observe that no opinion has been expressed by us qua the findings so recorded by the learned trial Court and the learned trial Court shall take independent view on the basis of the evidence produced by the prosecution during the trial of the case. Parties through their counsel are directed to appear before the learned trial Court on 6.2.2012, failing which, the learned trial Court shall take steps to secure the presence of the respondents and proceed with the case in accordance with law. The appeal stands disposed of accordingly.