(2013) 05 SHI CK 0033

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 616 of 2003

State of Himachal Pradesh APPELLANT

Vs

Hemant Mahashwari and Others RESPONDENT

Date of Decision : 01-05-2013

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 420, 467, 468

Citation : (2013) 2 ShimLC 1050

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

Bench : Division Bench

Advocate : J.S. Rana, Assistant A.G. and Mr. Ramesh Thakur, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

Surinder Singh, J.—Acquittal of the respondents, hereinafter referred as "the accused persons", passed in Case No. 105/2 of 2000/89 decided on 13.5.2002, has been challenged by the State in the instant appeal for the offences punishable under Sections 420, 467 and 468 of Indian Penal Code. Though the accused persons were represented, but none has put in appearance for them, despite repeated opportunities. However, we have heard Shri J.S. Rana, Assistant Advocate General with respect to the evidence on record. We have also re-assessed the evidence led by the prosecution before the learned trial Court.

2. In short, the prosecution case can be summed up thus. On 22.5.1982 the Chief Purchase Officer of the Electricity Board placed a supply order of 40 number of 25 K.V. and 28 number of 63 K.V.A. transformers to "M/S. Zenith Electricals Private Limited", Sahibabad. They failed to supply 28 transformers, though they were released the payment on the vouchers alleged to have been forged by them. Thus, they cheated the state to the tune of Rs. 3,60,688.32 paisa.

3. The police conducted the investigation of the case. They colleted the relevant

documents from the concerned Department and after completing the investigation, challan was presented in the Court, for trial of the accused persons. They were accordingly charge-sheeted for the aforesaid offences, to which they pleaded not guilty and claimed trial.

4. To prove its case prosecution examined as many as sixteen witnesses and the accused persons were also examined u/s 313 of the Code of Criminal Procedure. They alleged false implication in the instant case, however, they did not lead any evidence in defence.

5. At the end of the trial, the prosecution has failed to prove original supply order and alleged forged vouchers.

6. On reappraisal, we also find the acquittal of the respondents reasonable as the prosecution has failed to prove the initial supply order issued by the State to "M/S. Zenith Electricals company Limited". There is absolutely nothing in evidence to show that what is the relation of the respondent with that concern nor any of them have been connected with alleged forgery.

7. PW-1 Madan Lal has been examined by the prosecution to the fact of handing over the bank draft to the police along with transmission receipts, during the investigation which was taken into possession vide seizure memo Ex. PW-1/A.

8. PW-2 is the Chief Purchase Officer, he had placed the supply order to M/s. Zenith Electricals Limited, aforesaid with respect to the transformers. According to him, it was informed by one of the consignees that the payments were released to the aforesaid concern without having supplied requisite number of transformers. But this deposition looses its importance in absence of original record which he did not produce during the trial of the case.

9. Further PW-3 Vijay Kumar has stated that though the respondents had supplied the transformers to the Board but some of them were defective. Whereas PW-4 Rakesh Jain and PW-10 Raman Khanna did not support the prosecution case as they turned hostile. PW-5 R.K. Kapoor remained posted in the office of Chief Engineer of the board, he came to know only from the file that the payment was released to the said concern with respect to the transformers, which were not supplied to the Board. But he was not aware of the payment so made. PW-7 Ashok Kumar, Junior Engineer, stated that he had handed over the items delivered to the storekeeper after making entries in the relevant register. Further that the company also did not send any challan nor were received with respect to the payments made to them. He further stated that once a letter was received from the accounts officer to verify the fact about receipt, they sent communication to SDO concerned and it was found that there were forged signatures thereupon. As such, Senior Accounts Officer sent for the various challans vide letter Ex. PW-7/A along with other concerned documents, but pertinently in cross examination he stated that he was not aware of the supply order.

10. In whole of the evidence led by the prosecution before the learned trial Court, the supply order for the aforesaid concern was not produced and proved. Merely by saying that signatures on vouchers were forged, the prosecution case cannot be said to have been proved. When such a forgery and receipt of payment is not proved to have been done by the accused persons in accordance with law. Since the prosecution has failed to prove the forgery and dishonest intention of the accused persons and also the receipt of payments by them, and also in absence of proof as to who had forged the voucher, the prosecution case cannot be said to have been proved.

11. For the aforesaid reasons, we do not find force in the said appeal. As such, this appeal is dismissed.

12. The bail bonds entered upon by the accused persons during the proceedings of the case are hereby discharged. Send down the records.