

(2015) 05 SHI CK 0065
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 24 of 2012

State of Himachal Pradesh

APPELLANT

Vs

Kulbhushan Sood and Others

RESPONDENT

Date of Decision : 07-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 311, 313
Evidence Act, 1872 — Section 73
Penal Code, 1860 (IPC) — Section 120-B, 419, 420, 467, 468
Prevention of Corruption Act, 1988 — Section 12, 13, 13(2), 24, 7

Citation : (2015) 05 SHI CK 0065

Hon'ble Judges : Rajiv Sharma, J; Sureshwar Thakur, J

Bench : Division Bench

Advocate : Ramesh Thakur, Asstt. A.G., for the Appellant; Adarsh Sharma, Advocate vice and Ashok Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. This appeal is directed against the judgment of acquittal rendered on 6.6.2011 by the learned Special Judge, Kangra at Dharamshala, H.P. in Corruption Case No. 4-P/2004 whereby he acquitted the respondents for theirs having committed offences punishable under Sections 467, 468, 471, 419, 420 and 120-B IPC and under Section 13(2) of the Prevention of Corruption Act, 1988.

2. The prosecution story, in brief, is that during the period July 2001 to January 2002, PW-50 Devesh Kumar was posted as SDM, Palampur and was incharge of license branch and at that time accused Kulbhushan was working as license clerk. It is alleged that in the month of January, 2002 PW-50 Devesh Kumar conducted a surprise checking of the record pertaining to the licenses and it was found that in some of the forms his signatures were found forged, regarding which he sent intimation to Deputy Commissioner, Kangra. Deputy Commissioner, Kangra, ordered for an inquiry into the matter and during inquiry

PW-31 found that the licenses were not signed by the then SDM and forged signatures of SDM were on the licenses, about which PW-31 prepared his report and submitted the same to the Deputy Commissioner, Kangra, on which F.I.R. Ext.PW-49/A came to be registered. During investigation, the police impounded the record of the forged driving license from the SDM Office, Palampur. Some of the prosecution witnesses deposed during investigation that they had given money to accused Kulbhushan, which was in excess of the license fees and that the driving licenses after preparation were given to them by the accused. During investigation, accused Rameshwar Singh, Manager, Kundan Driving School, produced one register Ext.PW-43/A which was from November, 2001 to February 2002 which was impounded by the police vide memo Ext.PW-43/B. Accused Dinesh Awashti produced one diary to the police which was taken into possession vide seizure memo Ext.PW-47/A. Dr. Varinder Kumar, also produced one register of his clinic which was taken into possession vide memo Ext.PW-53/A. The specimen signatures for comparison of Devesh Kumar were taken before learned JMIC, Mandi and before the learned CJM, Hamirpur. I.O. during investigation took into possession some of the licenses and recorded the statements of the witnesses under Section 161 Cr.P.C. Dr. Meenakshi Mahajan, G.E.Q.D. had examined the above questioned writings, specimen handwritings and admitted writings and given her report Ext.PW-58/B.

3. After completion of the investigation, challan, under Section 173 of the Cr.P.C. was prepared and filed in the Court. The trial Court charged the accused for theirs having committed offence punishable under Sections 467, 468, 471, 419, 420 and 120-B IPC and under Section 13 of the Prevention of Corruption Act, 1988. to which they pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined as many as 61 witnesses. On closure of the prosecution evidence, the statements of the accused under Section 313 Cr.P.C. were recorded, in which they pleaded innocence. On closure of proceedings under Section 313 Cr.P.C. the accused were given an opportunity to adduce evidence in defence and they chose not to adduce any evidence in defence.

5. On appraisal of the evidence on record, the learned trial Court returned findings of acquittal in favour of the accused/respondents.

6. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. Shri Ramesh Thakur, Assistant Advocate General, has concertedly and vigorously contended that the findings of acquittal, recorded by the learned trial Court, are not based on a proper appreciation of the evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he contends that the findings of acquittal be reversed by this Court, in the exercise of its appellate jurisdiction and be replaced by findings of conviction and concomitantly an appropriate sentence be imposed upon the accused/respondents.

7. On the other hand, the learned counsel appearing for the respondents-accused, has, with considerable force and vigour, contended that the findings of acquittal, recorded by the Court below, are based on a mature and balanced appreciation of evidence on record and do not necessitate interference, rather merit vindication.

8. This Court with the able assistance of the learned counsel on either side, has with studied care and incision, evaluated the entire evidence on record.

9. PW-50 the then SDM Palampur, Devesh Kumar, initiated an inquiry qua the factum of driving licenses issued to PWs being forged by accused Kulbhushan Sood. PW-31 the then ADM, Kangra, S.S. Guleria, was appointed an inquiry officer. He submitted his report PW-31/A wherein he concluded that the accused Kulbhushan Sood had forged the signatures of PW-50 on driving licenses Ext.PW-4/D, Ext.PW-5/E, Ext.PW-7/A, Ext.PW-10/A, Ext.PW-17/A, Ext.PW-18/A, Ext.PW-19/A, Ext.PW26/A, Ext.PW-34/A, Ext.PW-35/A, Ext.PW-37/F, Ext.PW-39/A, Ext.PW-42/D. However, the preliminary inquiry does not hold good nor conclusively determines the factum of the prosecution hence having been able to prove its case against the accused, especially when then the signatures existing on the purportedly forged driving licenses of the prosecution witnesses, as also of the accused besides of PW-50 were not sent for comparison to the handwriting expert for rendition of opinion qua the factum of the accused Kulbhushan having forged the signatures of PW-50. In sequel to the furnishing of report by PW-31 comprised in Ext.PW-31/A an F.I.R. was lodged against the accused persons. The accused Kulbhushan was working as a license clerk in the office of PW-50, the then SDM Palampur and Motor Licensing Authority. PW-50 has deposed that accused Kulbhushan used to bring forms for preparation of license etc in bulk for signatures before him and he used to sign the licenses and forms in routine. Nonetheless, apart from offences of forgery attributed to Kulbhushan Sood, there is no depiction or disclosure in the deposition of the Investigating Officer of the driving license issued to the prosecution witnesses having not preceding their issuances to the prosecution witnesses undergone the enjoined processes of theirs having not come to be entered in the apposite register. Consequently, it can be with aplomb at this stage held that the accused Kulbhushan Sood did not present driving license before PW-50 without the necessary enjoined processes prior to their presentation before PW-50 having come to be completed or consummated.

10. In the month of January, 2002 when PW-50 conducted a surprise checking of the license register he found that in some of the forms his signatures did not exist and were forged qua which he sent intimation letter to Deputy Commissioner, Kangra. He disputed his signatures existing on the licenses of the prosecution witnesses. Though PW-58 has proved her opinion Ext.PW-58/B, underscoring the factum of the specimen handwritings of the accused Kulbhushan comprised in Ext.PW58/S-1 to Ext.PW58/S-18 on comparison with the questioned writings having been found to be in the handwritings of the

accused, nonetheless the aforesaid opinion rendered by the hand writing expert is of no avail to the prosecution in clinching the fact of the aforesaid accused having forged signatures of PW-50 on the license register as also on the driving licenses of PWs, especially when preponderantly the admitted handwritings of PW-50 the then Motor Licensing Authority were not sent for comparison with his purported disputed signatures existing on the license register or on the purported fake driving licenses held by the PWs. Hence, the deposition of PW-50 qua the factum of his having not signed either the license register or the driving licenses cannot be construed to be truthful, besides even in the absence of the investigating officer having uncontrovertedly not sent the specimen handwritings of the accused alongwith the purportedly forged signatures of PW-50 existing on the driving licenses of the PWs or the ones existing on the driving license for their inter se comparison for facilitating an opinion thereupon by the handwriting expert that hence the specimen handwritings of accused on being tallied with the disputed handwritings existing on both the driving licenses of the PWs and also those existing on the license register were similar, for as such constraining a conclusion that hence the accused Kulbhushan Sood had forged the signatures of PW-50 on both the license register and the driving licenses issued to PWs. Consequently, a sound and formidable conclusion, which is to be formed is that the prosecution has been unable to prove the factum of accused Kulbhushan Sood having forged the signatures of PW-50 either on the license register or on the driving licenses issued to PWs. Even the opinion of the handwriting expert comprised in Ext.PW-58/B does connect the accused in his having forged the signatures of PW-50 on driving license application forms. The reason for so concluding is anvilled on the factum that the specimen handwritings of accused Kulbhushan had been collected during the investigation of the case and not during its trial and with the amendment to Section 311 Cr.P.C. whereby clause (A) had come to be introduced on the statute book in the year 2006 to the provisions of Section 311 Cr.P.C. which then alone facilitated the collection of the specimen handwritings of the accused during the investigation of the case and not earlier in the year 2002 when the case was investigated against the accused, renders the collection of the specimen handwritings and signatures of the accused during investigation of the case to be legally impermissible besides constitutes the opinion of the handwriting expert comprised in Ext.PW-58/B connecting the accused Kulbhushan Sood with his having forged the signatures of PW-50 on driving license application forms to be concomitantly not binding upon this Court. Provision, if any, which empowered the Court to render any conclusion on comparison of the specimen handwritings of the accused collected by it from the accused with his admitted handwritings qua the factum of accused Kulbhushan Sood hence having forged the signatures of PW-50 on driving license application forms existed in Section 73 of the Evidence Act. However, the said provisions have their application, only during the course of trial of the case. Nonetheless the said provisions were never resorted to by the learned Court. In aftermath, for reiteration the opinion of the handwriting expert comprised in Ext.PW-58/B connecting the accused Kulbhushan Sood in his having forged the

signatures of PW-50 on the driving license forms are rendered to be acquiring no probative tenacity or force. Consequently, the opinion of the handwriting expert comprised in Ext.PW-58/B is not handy to the prosecution for succoring a conclusion qua the factum of accused Kulbhushan Sood having forged the signatures of PW-50 on driving license application forms.

11. Moreover, accused Kulbhushan Sood was charged for his having committed offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988 inasmuch, as, in the face of the testimonies of the prosecution witnesses underlining the factum of theirs having paid the driving license fees to accused Kulbhushan Sood in excess of their mandatory obligation to do so, hence he is canvassed to be liable for conviction for committing an offence punishable under Section 13(2) of the Prevention of Corruption Act. However, the license fee as purportedly received by him from the prosecution witnesses had come to be deposited by Kulbhushan Sood in the manner as ordained by law. Potent evidence ought to exist on record portraying the factum of the precise quantum of the license fees to be deposited by the PWs in the branch concerned, as a pre requisite process for theirs obtaining a driving license from the Motor Licensing Authority, Palampur, for rendering an apt and concomitant finding that the money, if any, constituting the license fee was purportedly in excess of the enjoined fee. Now when the license fees stood deposited in the branch concerned even though it was handed over to Kulbhushan Sood by the PWs, the factum of its deposit by Kulbhushan Sood in the branch concerned, as also the prosecution witnesses omitting to underline in their respective testimonies that the accused was demanding fees, purportedly in excess of the license fees, per se entwined with the factum that when they took to handover the cash to Kulbhushan Sood rather than depositing it with the branch concerned, renders an inference that except for the immunity granted to them under Section 24 of the Prevention of Corruption Act for theirs allegedly paying bribe to the accused, who is a public servant, they would have stood prosecuted for the offence constituted under Section 7 of the Prevention of Corruption Act for giving bribe and would have also rendered themselves punishable under Section 12 of the prevention of Corruption Act. Even if they enjoyed the immunity from Section 24 of the Prevention of Corruption Act against their prosecution yet their testimonies are fraught with discrepancies constituted in the fact that they omitted to at the time of handing over license fees in its purported excess to accused Kulbhushan Sood, which came to be deposited by Kulbhushan Sood in the branch concerned of the Motor Licensing Authority, reported the said fact to the authority concerned or rather when they remained reticent qua the aforesaid fact till the lodging of the F.I.R. qua the occurrence, renders their testimonies to be suspect qua accused Kulbhushan Sood having committed offence punishable under Section 13(2) of the Prevention of Corruption Act, 1988.

12. In so far accused Ajay Mehta is concerned, he is the proprietor of Kundan Driving School, Dharamshala. No specific evidence of probative worth has been brought by the prosecution portraying his connectivity or collusion with accused

Kulbhushan Sood in the preparation of forged driving license especially when none of the witnesses deposed against the accused. Hence, his exculpation from guilt by the learned trial Court does not warrant any interference. Besides, accused Rameshwar Singh, who is the owner of Kundan Driving School at Dharamshala and whom PW-21 paid Rs. 3000/- for his being imparted training in driving by accused Rameshwar Singh is alleged to have as connoted by the testimony of PW-21 to have obtained Rs. 1500/- from him for his getting his driving license prepared. However, his testimony is vague qua the date and time on which he handed over the money to accused Rameshwar Singh as also qua the persons in whose presence such money was demanded and handed over to accused Rameshwar Singh, as such, with an imprecise occurrence in his deposition qua the date and time on which he handed over Rs. 1500/- to accused Rameshwar Singh to get his driving license prepared renders the testimony of PW-21 while connoting a role to accused Rameshwar Singh of his having colluded with accused Kulbhushan Sood for the offences which the latter came to be charged, to be legally unworthwhile.

13. Accused Dinesh Kumar is a document writer and is alleged to be working as a middleman for accused Kulbhushan Sood. However, the investigating officer impounded his diary Ext.PW47/B. In it there is no portrayal of his having colluded or connived with accused Kulbhushan Sood and theirs having committed an offence for which the latter came to be charged. There has also been omission on the part of the prosecution to either collect the opinion of the handwriting expert telling upon the factum of accused Dinesh Kumar having forged signatures of PW-50 on driving licenses as also on license register. As such, his role in the alleged commission of offence stands negated.

14. Lastly the only role which has been ascribed to Dr. Varinder Kumar is that of his having issued medical certificates. However, there has been no evidence on record by the prosecution underscoring the factum of his having played any role in the preparation of the purportedly forged licenses held by the PWs. Rather even the factum of his having issued medical certificate Ext.PW59/A to one of the prosecution witnesses per se would not render him liable inculpation for his having purportedly colluded or connived with other accused in the commission of offences attributed to other accused. Moreso when Ext.PW-59/A has not been proved by cogent evidence to be a forged medical certificate.

15. In view of the above discussion, the learned trial Court is to be concluded to have appreciated the evidence in a mature and balanced manner and its findings, hence, do not necessitate interference. The appeal is dismissed being devoid of any merit and the findings rendered by the learned trial Court are affirmed and maintained.