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(2011) 04 SHI CK 0126

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 86 of 2002

State of Himachal Pradesh — APPELLANT

Vs

Murti Ram and Others — RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:
Penal Code, 1860 (IPC) — Section 109, 120B, 167, 173, 207

Citation : (2011) 04 SHI CK 0126

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—State has appealed against the judgment dated 19th October, 2001, of the learned Special Judge (Forests), Shimla, whereby Respondents Murti Ram and Ors. (hereinafter called accused), have been acquitted of charge, under Sections 379, 411, 420, 467, 468, 471, 109, 167, 218 and 120-B of the India Penal Code and Section 5(2) of the Prevention of Corruption Act.

2. Accused-Respondent Murti Ram and his deceased co-accused Mohi Ram were petty forest contractors. They used to enter into agreements with private land owners to purchase timber trees standing on private land and after obtaining permission from Forest Authorities, lumber those trees. In the year 1974, they submitted an application (Ex. PW-9/A) alongwith affidavits and agreement of a private land owner, situated in village Gurar, to the Divisional Forest Officer, with the request to mark the trees, standing on the land described in the said application. Divisional Forest Officer marked the application to accused Satya Dev Sharma, who was then working as Range Officer, with the direction to mark the trees on the private land described in those applications, after obtaining demarcation from the revenue officials.

3. Satya Dev Sharma approached Shri Sher Singh (deceased), the then S.D.O. (Civil), for carrying out the demarcation. Said Sher Singh carried out the

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demarcation with the assistance of Kanungo Kanwar Singh (now dead). Trees were marked by accused Satya Dev Sharma, Range Officer, accused Bir Singh, who was Block Officer and accused Kewal Ram, who was then working as Forest Guard.

4. 14 trees were marked, in respect of which, list Ex.PW-5/A-3 was prepared. It was certified by S.D.O. (Civil) Sher Singh (now dead) and the above-named accused forest officials that no tree had been marked on Government land and all the marked trees stood on the private land, described in application Ex.PW-9/A.

5. On the basis of the aforesaid marking list and the recommendation of Revenue and Forest Officials, Divisional Forest Officer, Chopal granted permission to fell 14 trees, included in the list. Copy of the felling order is Ex. PW-24/A-1. It is dated 24th July, 1975. The trees were felled by deceased-Respondent Mohi Ram and Respondent Murti Ram, pursuant to the aforesaid felling order. The list of the timber extracted from the aforesaid trees was submitted to the Divisional Forest Officer, seeking permission to export the same. Permission was granted.

6. While investigating case F.I.R. No. 69/77, Sukh Ram, Superintendent of Police, noticed that in the garb of felling of trees on private land in village Gurar, a large scale felling of trees had taken place, on Government land. He made a report to S.H.O., Police Station, Chopal, who registered a case vide F.I.R. No. 104/1977, Ex. PW-40/C. The case was investigated. During the course of investigation, PW-28 Abhey Pant, S.D.O. (Civil) demarcated the land on which marking was required to be done. He also demarcated the adjoining Government land. As per his report, Ex. PW-28/A, as also the list of stumps prepared by PW-24 Atma Ram, Block Officer and PW-37 Liaq Ram, Range Officer, it was noticed that 178 trees had been felled, out of which 148 trees were on Government land.

7. According to the prosecution, there was a conspiracy among the private accused, including deceased Mohi Ram and the officials of Revenue and Forest Departments, named as accused, to fell trees from Government land, in the garb of felling from private land and in pursuance of that conspiracy, 148 trees had been felled from Government land.

8. On completion of investigation, report u/s 173 of the Code of Criminal Procedure alongwith relevant papers, was filed in the Court of learned Special Judge (Forests), who after complying with the provisions of Section 207 of the Code of Criminal Procedure, and hearing the learned Public Prosecutor and learned defence counsel, charged the Respondents with the offences of criminal conspiracy, forgery, cheating, preparation of incorrect record under Indian Penal Code and offence of misconduct u/s 5(2) of the Prevention of Corruption Act, 1947.

9. Accused pleaded not guilty to the charge. Prosecution examined 53 witnesses, besides proving a large number of documents to substantiate its case. Respondents in their statements, u/s 313 of the Code of Criminal Procedure,

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denied that there was any conspiracy of the type, alleged by the prosecution or that the felling of trees had been carried out on Government land or even private land, other than the land mentioned in the applications.

10. Learned trial Court concluded that the case of the prosecution that felling had taken place on Government land did not stand established. Consequently, accused were acquitted.

11. Learned trial Court has concluded that demarcation given by Shri Abhey Pant (PW-28), suffers from no illegality or irregularity. However, it has been held by the learned trial Court that stumps, which were found on Government land and also on private land, other than the land of the applicant, do not stand connected with the trees, which were marked by Respondent Satya Dev Sharma, Bir Singh and Kewal Ram, on the basis of demarcation given by late Sher Singh, S.D.O. (Civil) and his subordinate field staff, namely, Kanwar Singh. Learned trial Court has given this finding on the basis of testimony of PW-37 Liaq Ram, Range Officer and PW-24 Atma Ram, Block Officer.

12. We have heard learned Assistant Advocate General, as also learned Counsel representing the Respondents and gone through the record.

13. We find ourselves in agreement with the findings of learned trial Court that the stumps found on Government land and some private land, other than the land in respect of which application was moved, do not stand connected with the trees that were marked on the private land the applicant. PW-37 Liaq Ram, Range Officer and PW-24 Atma Ram, Block Officer, who, on the basis of demarcation given by PW-28 Abhey Pant counted the stumps on Government land very categorically testified that most of stumps were decayed and rotten and hammer mark was not decipherable and also the stumps were very old. Now, when the hammer mark, which was supposed to have been embossed on the trees by the accused Satya Dev Sharma, Bir Singh and Kewal Ram, Forest Officials, was not available on the stumps counted on Government land and the private land, other than the land described in the application, it cannot be said that the stumps so found on Government land and private land were of the trees marked by the aforesaid Forest Officials, who are accused in this case.

14. Learned Assistant Advocate General submits that the fact that there were 30 stumps (as against 14 trees permitted to be felled) on the land, on which trees were shown to have been marked, itself is enough to jump to the conclusion that unmarked trees were felled atleast on private land.

15. There is no evidence, indicating that extra stumps, which were found on the private land, on which . trees were marked, were of the trees felled by the accused. As a matter of fact, presumption should be that the stumps were of the trees felled by the land owners themselves, because had the accused felled those extra trees, the land owners must have complained against them.

In view of the abovestated position, we see no reason to interfere with the

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judgment of acquittal passed, by the trial Court. Hence, the appeal is dismissed.

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