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**(2011) 04 SHI CK 0132**

**In the High Court Of Himachal Pradesh**

**Case No : Criminal Appeal No. 490 of 2003**

State of Himachal Pradesh

APPELLANT

Vs

Narain Dass and Others

RESPONDENT

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**Date of Decision : 18-04-2011**

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313  
Penal Code, 1860 (IPC) — Section 120(B), 167, 218, 379, 381  
Prevention of Corruption Act, 1988 — Section 5(1)

**Citation : (2011) 04 SHI CK 0132**

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

**Bench : Division Bench**

**Final Decision : Dismissed**

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## **Judgement**

Surjit Singh, J.—State has appealed against the judgment dated 24th June, 2003, of the learned Special Judge, whereby Respondents Narain Dass, Shyam Lal, Krishan Chand, Laiq Ram, Chet Ram, Ram Prakash and Piare Lal Sudan and some other persons, who are now no more, have been acquitted of charge of offences, under Sections 465, 467, 468, 471, 420, 167, 218, 381, 447, 379 and 120-B of the India Penal Code and Section 5(1)(d) of the Prevention of Corruption Act.

2. Prosecution case, as per record, may be stated. There used to be a small State, having territorial area of only seven villages, known as Ravingarh. Now this State is part of Jubbal Tehsil of Shimla District. In the year 1948, when the aforesaid State merged in the Union of India, revenue record of all the seven villages, comprised in it, was handed over to the Tehsil Office at Jubbal. Original map, known as Musabi, and one Latha were also handed over to the Tehsil Office. Mouni was, however, not handed over. As per practice, original map, known as Musabi, is supposed to be in the Office of Collector. Prior to 1948, it was supposed to be with the Head of the State, who was known as Rana. From this Musabi, a copy is traced on tracing paper, known as Mouni. It is supposed to

be with the Tehsildar. From Mouni, copy is traced on a piece of cloth, known as Latha and this Latha is meant for use by the Patwari of the concerned Mohal (village), in day-to-day working.

3. On 25th May, 1985, Divisional Commissioner, Shimla, addressed a letter to the Inspector General of Police (Enforcement), Shimla, complaining that revenue record of one of the aforesaid seven villages, forming part of erstwhile State of Ravingarh, had been tampered with/ mutilated. Name of the village, as per that report (Ex. PW-65/A), is Sabhar. It was reported that original Musabi, which had been kept at Tehsil Office at Jubbal, and Latha Ex. PW-6/C, which was handed over to the Tehsildar, in the year 1948, had been mutilated and tampered with, so as to show the location of Khasra No.290, which was in the north and was contiguous to Khasra Nos. 1 and 2, in a portion of Undemarcated Protected Forest, bearing Khasra No. 302, located in south, and also to shift the location of Khasra No. 151, from its original site to a different place, where there existed Khasra No. 186 and this Khasra No. 186 had been shifted in a portion of Khasra No. 189.

4. It was also reported that Khasra No. 290 and Khasra Nos. 1 and 2, which were situated in contiguity to the north of the village, were owned by Respondents Narain Dass, Shyam Singh and their co-owners Jia Lal and two other persons. It was alleged that there was a conspiracy between the co-owners of Khasra Nos. 290, 1 and 2, and Field Kanoongo and the Patwari, namely Shalig Ram and Rama Nand and the aforesaid mutilation was the result of the aforesaid criminal conspiracy.

5. According to the prosecution, land bearing Khasra No. 302 was much more valuable, because of its being fertile and also on account of growth of timber trees thereon, compared to Khasra No. 290, which was in the form of barren hillock. Also, it was alleged that after the aforesaid mischief was committed, Jia Lal applied for demarcation of Khasra No. 290, which was carried out by Respondent Krishan Chand, Field Kanoongo, on the basis of mutilated Latha and on the basis of demarcation report, land forming part of Khasra No. 302, surreptitiously shown as Khasra No. 290, because of the aforesaid act of mischief, was occupied by Respondents Narain Dass, Shyam Singh, Jia Lal and their co-owners.

6. In the year 1980, Respondents Narain Dass, Shyam Singh and Jia Lal made an application that in the year 1977 their land, bearing Khasra Nos. 1 and 2, had been washed away in a flood and that they be given 23 bigha 4 biswa land, equivalent in area to the area of the aforesaid two Khasra numbers, in Khasra No. 302. This time Respondents Laiq Ram Jhalta, the then Patwari, Chet Ram, the then Field Kanoongo, Hari Saran Tehsildar, Ram Prakash, Camp Clerk in the Office of Divisional Forest Officer, Rohru and Piare Lal Sudan, Range Officer, Jubbal, helped them, by submitting false reports and passing illegal orders for the transfer of 23 bigha 4 biswa land, out of that area of Khasra No. 302, which remained after illegal shifting of Khasra No. 290 into a portion of it.

7. According to the prosecution, mischief of mutilating the Latha and the Musabi was committed sometime during the years 1972 to 1975, when Shalig Ram, Record Kanoongo and Rama Nand Balta, Patwari, were posted in the area. Both Shalig Ram and Rama Nand are now dead.

8. Report, u/s 173 of the Code of Criminal Procedure, was filed against the Respondents and deceased Rama Nand and Shalig Ram, on completion of investigation of the case, which was registered on the basis of the aforesaid complaint of Divisional Commissioner.

9. The then Deputy Commissioner, Shri Mohinder Lal, was also made an accused in the case. He applied to this Court for quashing the case against him. His petition was allowed and the case, as against him, was quashed on 1st June, 1993.

10. The present Respondents were charged with the aforesaid offences, by the trial Court. They pleaded not guilty. So, they were put on trial.

11. Prosecution examined a number of witnesses, besides proving some documents. Respondents, in their statements, u/s 313 of the Code of Criminal Procedure, denied having tampered with the Musabi or Latha or any other record. They stated that the record was already in the allegedly tampered/mutilated condition and state, when they took over the charge.

12. Learned trial Court concluded that case of the prosecution did not stand established, beyond reasonable doubt. It observed that there was no evidence, suggesting that it was during the period from 1972 to 1975, when Shalig Ram, Record Kanoongo and Rama Nand Baltu, Patwari, were working in the area and that the maps were tampered with and that the possibility of the record having been tampered with before their joining, in the area, cannot be ruled out. Consequently, Respondents were acquitted.

13. We have heard learned Assistant Advocate General, as also learned Counsel representing the Respondents and reappraised the entire evidence.

14. We find no definite evidence, suggesting that Musabi and the Latha Ex. PW-6/C had been tampered with, when Shalig Ram, Record Kanoongo and Rama Nand, Patwari were posted in the area. Not only this, the evidence on record suggests that the alleged tampering with of Musabi and Latha could have been there, even when the documents alongwith other revenue papers were handed over by the Ruler of the erstwhile State of Ravingarh to the revenue officials of the Union of India. The reason is that when the record was handed over, mouni was not there, which, on account of its texture, could not have been tampered with and, therefore, it was withheld by the then Ruler of the erstwhile State. Also, we do not find definite evidence that Khasra Nos. 290 and 151 had locations different from those as are shown, after the alleged tampering with/mutilation.

15. Original Musabi has been withheld by the prosecution, for the reasons best known to it. Also, no attempt had been made by the Investigating Agency to get

hold of certified copies of the Musabi or the Latha procured prior to the alleged mischief, by any of the residents of the village. They could have very easily procured such copies, by making reference to the registers and other records, pertaining to supply of copies of revenue papers. Such copies could have thrown some light as to when did the alleged mischief was committed.

16. Since it has not been established that the Musabi/Latha had been tampered with, it cannot be said that demarcation given by Respondent Krishan Chand, Kanoongo, on the basis of the allegedly mutilated Latha, was part of any conspiracy to help Narain Dass, Shyam Singh and their co-owner Jia Lal. For the same very reason, allegation that exchange of a portion of Khasra No. 302 for Khasra Nos. 1 and 2, in favour of Respondents Narain Dass, Shyam Singh and Jia Lal can also not be held to be illegal.

17. Allegation that the exchange of the land was contrary to the prevailing Rules and Instructions of the Government, can also not be upheld, in view of the decision rendered by this Court in Criminal Writ Petition No. 22 of 1992, in which proceedings against Mohinder Lal, the then Deputy Commissioner, were quashed, with the observation that there was no violation of the Rules and/or Instructions of the Government.

In view of the abovestated position, we see no reason to interfere with the judgment of acquittal passed by the trial Court. Hence, the appeal is dismissed.