

(2011) 05 SHI CK 0064

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 240 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Nathu Singh and Others

RESPONDENT

Date of Decision : 02-05-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173

Forest Act, 1927 — Section 41, 42

Himachal Pradesh Forest Produce Transit (Land Routes) Rules, 1978 — Rule 11, 18, 20

Penal Code, 1860 (IPC) — Section 120B, 218, 379, 420, 467

Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2011) 05 SHI CK 0064

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 25.10.2002 of the learned Special Judge (Forests), Shimla, whereby Respondents Nathu Singh, Subhash Chand and Om Parkash, who at the relevant time remained posted as Station Masters, Railway Station, Shoghi and Respondent, Gurcharan Singh, who at the relevant time remained posted as Station Master, Railway Station, Summer Hill, Shimla, have been acquitted of charge under Sections 218, 467, 468, 471, 420, 379, 120-B of the Indian Penal Code, Sections 41-42 of the Indian Forest Act, Rules 11/20, 18/20 of the H.P. Forest Produce Transit (Land Routes) Rules, 1978 and Section 5(2) of the Prevention of Corruption Act, 1947.

2. Case of the prosecution is that during the year 1981-82, one Nand Lal had been granted permission to export 2426 scants of timber vide permit Nos. 201/81-82, Ex.PW-1/V, 141/81-82, Ex.PW-1/P and 27/81-82, Ex.PW-1/ Z-4, but, actually 3478 scants had been dispatched from Railway Station, Shoghi and Railway Station, Summer Hill against those permits. This was done in pursuance of criminal conspiracy hatched among these Respondents and permit holder, Shri Nand Lal, who is no more. It was alleged that railway record was falsely

prepared. The record was also forged and thus, offences of preparation of false record, forgery, cheating, theft and illegal export of timber, as also the offence of misconduct by the public servants were committed pursuant to aforesaid criminal conspiracy u/s 120-B of the Indian Penal Code.

3. During the course of investigation, prosecution took into possession the railway receipts against which timber had been exported. The permits were also taken into possession. On completion of investigation, report u/s 173 Code of Criminal Procedure together with relevant papers was filed in the trial Court. Copies of the report along with relevant papers were supplied to the Respondents. Learned Special Judge (Forests) then went through the record, heard learned Public Prosecutor and learned defense counsel and charged the Respondents for the offences aforesaid. They pleaded not guilty and were therefore, put on trial.

4. Prosecution examined a number of witnesses and also proved various documents, including 22 railway receipts and the three permits. Respondents denied their involvement in the criminal conspiracy. They also denied that timber in excess of the quantity permitted to be exported, had been dispatched from railway stations. It is stated that increase in the number of scants could have been due to cutting of some of scants into pieces to properly load and adjust the scants in railway bogies.

5. Learned trial Court acquitted the Respondents, holding that the prosecution had failed to prove the charge against the Respondents beyond reasonable doubt.

6. We have heard learned Additional Advocate General for the Appellant as also the learned Counsel representing the Respondents and gone through the record.

7. It is not disputed that no timber in excess of the quantity mentioned in permit No. 141/81-82, Ex.PW-1/P and permit No. 27/81-82, Ex.PW-2/Z-4 had been exported. The allegation is with regard to third permit only, i.e. permit No. 201/81-82, Ex.PW-1/B.

8. Relevant railway receipts in respect of permit No. 201/81-82, Ex.PW-4/B are Ex.PW-3/A-1, PW-3/A-2, PW-3/A-5, PW-3/A-6, PW-3/A-7, PW-3/A-8, PW-3/A-9 and PW-21/A-9. There is one more railway receipt, i.e. Ex.PW-3/A-10, which is alleged to pertain to permit No. 201 of 81-82, but, as a matter of fact, permit number written on this railway receipt is 20 and not 201. The total number of scants exported against the aforesaid 8 railway receipts is 1346. We find no evidence of alleged conspiracy among the Respondents. So, the Respondents are liable for their individual acts.

9. From Railway Station, Shoghi 1265 scants have been dispatched. Railway receipts are prepared by Respondents, Nathu Singh, Subhash Chand and Om Parkash. Nathu Singh prepared three railway receipts, Ex.PW-3/A-5, Ex.PW-3/A-6 and Ex.PW-3/A-7, dated 10.1.1982. These are first three railway receipts against which timber against permit No. 201/81-82 was exported. Total quantity

comes to 538 scants. The quantity is within the prescribed limit of 898 scants. This Respondent did not fill-in any railway receipt subsequently, and therefore, he may not be held liable for the subsequent export of timber against permit No. 201/81-82 especially when evidence of conspiracy is not there. Next three railway receipts are in the hand of Respondent, Subhash Chand. They are Ex.PW-3/A-8, Ex.PW-3/A-9 and PW-21/A-9. First two railway receipts are dated 11.1.82 and the third one dated 12.1.82. The total number of scants exported against these railway receipts comes to 449. After export of 538 scants against railway receipts dated 10.1.82, which are in the hand of Nathu Singh, only 360 scants could have been exported. Respondent, Subhash Chand issued railway receipts in respect of 449 scants against the aforesaid three railway receipts. Thus, there is an excess of 89 scants. His explanation is that often some scants are required to be cut into pieces to properly load and adjust timber in the wagons. His explanation finds corroboration from the testimony of PW-18, K.C. Nandwani, who has testified that at times scants have to be cut into pieces for proper loading and adjustment. So, this Respondent cannot be said to have been proved to have exported more timber than permitted quantity against permit No. 201/81-82, Ex.PW-1/B. It has been the third Respondent, namely Om Parkash Sharma, who prepared the subsequent RRs, dated 3.5.82, Ex.PW-3/A-1 and Ex.PW-3/A-2, against which 359 scants were exported. He is stated to have died during the pendency of the appeal. So, the appeal as against him abates.

10. So far as 4th Respondent, Gurcharan Singh is concerned, he was posted at Summer Hill, Shimla. He dispatched only 81 scants from Railway Station, Summer, Hill, Shimla against RR, Ex.PW-3/A-10. Number of permit written in the RR is 20/81-82 and not 201/81-82. There is no other evidence linking the timber mentioned in RR, Ex.PW-3/A-10 with permit No. 201/81-82. Thus, this Respondent does not stand connected with the case of export of excess timber against permit No. 201/81-82.

11. As a result of above stated position, appeal is dismissed.