
(2011) 03 SHI CK 0031

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 508 of 2001

State of Himachal Pradesh

APPELLANT

Vs

Sada Nand and Others

RESPONDENT

Date of Decision : 21-03-2011

Acts Referred:

Forest Act, 1927 — Section 41, 42

Penal Code, 1860 (IPC) — Section 120B, 379, 420, 467, 468

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

Citation : (2011) 2 ShimLC 204

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

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surjit Singh, J.—This appeal by the State is directed against the judgment dated 30th March, 2001, of learned Special Judge (Forest), Shimla, whereby respondents Sada Nand (now dead), Pratap Singh, Laiq Ram, Roshan Lal, Devinder Singh Bamta, all representing a firm by the name of Sada Nand & Company, Range Officer Ram Lal Thakur (now dead), Field Kanoongo Chet Ram, Deputy Ranger Balak Ram Nainta, Tehsildar S.R. Mehta (now dead), Assistant Conservator of Forests D.N. Machhan (now dead), Forest Guard Shyam Lal (now dead), Forest Guard Saran Dass (now dead), Camp Clerk Ram Parkash and Station Master Amrit Singh, have been acquitted of charge, under Sections 379, 420, 467, 468, 471, read with Section 120-B of the Indian Penal Code and Section 5(2) of the Prevention of Corruption Act, 1947, Sections 41 and 42 of the Indian Forest Act and penal provisions of H.P. Taxation of Certain Goods Carried by Road Act, 1976.

2. Prosecution case, which led to the trial of the respondents, may be noticed. A case came to be registered by Enforcement Department, South Zone, Shimla, vide FIR No. 17 of 1984. During the course of investigation of that case, when the record of Summer Hill Railway Station was being examined, it came to light

that firm M/s Sada Nand & Company had exported 1964 scants of Cheel against 1820 scants permitted to be exported, vide Permit No. 46/81-82, Ex. PW-61/B. Investigating Officer of the said case made a report to the Enforcement Directorate and a case was registered vide FIR Ex.PW-1/C, after holding a preliminary inquiry.

3. During the investigation of case FIR Ex. PW-1/C, it came to light that applications, affidavits and agreements, in the names of 19 persons, residents of villages Sainj, Salana and Mungra, falling in Forest Division, Rohru, had been submitted to the Divisional Forest Officer, for demarcation of their private lands and marking of trees, which could be felled, under Ten Years Felling Programme. Those applications, affidavits and agreements were marked by the Divisional Forest Officer to Range Officer Ram Lal, one of the respondents for marking the trees, after obtaining demarcation from competent Revenue Officer. Kanoongo Mast Ram (now dead) carried out demarcation of the land, situated in village Sainj and on the basis of his demarcation, 427 trees were marked by Range Officer Ram Lal.

4. In the case of villages Salana and Mungra, demarcation was given by Field Kanoongo Chet Ram, a respondent herein, and trees were marked by Balak Ram, another respondent. Lists of the trees, marked in all the three villages, were submitted to the Divisional Forest Officer, with certification that no tree had been marked on Government land. Random checking was done by respondent Tehsildar S.R. Mehta (now dead) and Assistant Conservator of Forests D.N. Machhan, who is also no more. After the certification by the said deceased Tehsildar and deceased Assistant Conservator of Forests, Divisional Forest Officer granted permission to fell the trees, indicated in the lists of marked trees.

5. Trees were permitted to be felled by M/s Sada Nand & Company. After felling the trees. Company submitted an application for grant of separate export permits, in respect of each of the three villages. Timber scants were counted and measured, on the spot, by Balak Ram, Block Officer, and Shyam Lal, Forest Guard. Lists were prepared and submitted. Three permits were issued by the Divisional Forest Officer, on the basis of lists submitted to him by the above-named two forest officials (respondents herein). One permit No. 45/81-82 Ex. PW-58/A-31 authorized export of 622 scants. Another permit No. 255/81-82 authorized export of 2230 scants of timber and the third permit No.46/81-82, Ex. PW-61 /B, authorized export of 1820 scants.

6. Investigation revealed that 67 scants were exported, in excess, against permit No. 45/81-82 and 144 scants had been exported, in excess, against permit No. 46/81-82.

7. When it was noticed that excess umber had been exported against two of the three permits, it was felt that illicit felling might also have taken place in Government forest, adjoining the private lands. Therefore, demarcation was obtained from PW-24 Jagan Nath, Naib Tehsildar. His report is Ex.PW-24/A. On

the basis of demarcation, given by him, stumps were counted, on the adjoining Government land, which were 310 in number. Stump lists were prepared by PW-27 Kewal Ram, Block Officer. Such lists are Ex. PW-27/A-1 to Ex. PW-27/A-15.

8. Investigation also revealed that applications, affidavits and agreements, which were submitted by Sada Nand & Company, in the names of 19 private land owners, were forged and those persons had neither applied for demarcation of their lands nor had they entered into any agreement with the firm, for sale of the trees, standing on their lands.

9. On completion of investigation, challan was filed in the Court of learned Special Judge, who supplied copies thereof, alongwith relevant documents, to the respondents. After hearing learned Public Prosecutor and learned defence Counsel and going through the record, learned Special Judge felt that a prima facie case, under the aforesaid penal provisions of law, was made out against all of the respondents. Charge was framed, accordingly.

10. Prosecution examined 88 witnesses to prove its case. It also proved a large number of documents to substantiate the allegations. Respondents denied that they had indulged in illicit felling or had exported more timber than permitted to be exported: They also denied that they had forged applications, affidavits and agreements.

11. Learned trial Court concluded that the case of prosecution did not stand established, beyond reasonable doubt and, therefore, acquitted the respondents.

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

13. Most of the respondents have died since the filing of the appeal. They are Sada Nand (respondent No. 1), Ram Lal Thakur (respondent No. 6), D.N. Machhan (respondent No. 10) and Saran Dass (respondent No. 12). So, the appeal as against them abates.

14. To prove the allegation that applications, affidavits and agreements, purporting to be of private land owners, are forged, prosecution examined the persons, in whose names applications, affidavits and agreements, etc., were submitted to the Divisional Forest Officer, seeking permission to fell the trees. These witnesses are PW-4 Jagat Singh, PW-5 Rama Nand, PW-6 Hansu, PW-7 Lal Singh, PW-8 Mohi Ram, PW-9 Mangat Ram, PW-20 Attar Singh, PW-21 Kishan Singh, PW-26 Balram Singh, PW-32 Het Ram, PW-33 Narain Chand and PW-35 Dhani Ram. None of them have stated that he had not agreed with the firm, for selling trees standing on his land or had not executed the agreement or signed the applications and affidavits. Prosecution also examined Ashok Jain (PW-71), Oath Commissioner, who attested the allegedly forged affidavits of the land owners. The witness stated that the affidavits had been sworn before him, by all the above-named land owners and thereafter he attested them. In view of this evidence, the allegation that the applications, affidavits and agreements, in the

names of the above-named persons, were forged cannot be said to have been proved.

15. Next allegation is that 310 trees had been felled in Government forest, adjoining the private lands, in respect of which applications had been submitted by the Company and that the Government land, on which trees had been illicitly felled, had been shown to be private land, during demarcation, by deceased respondents Field Kanoongo Chet Ram and Tehsildar S.R. Mehta, while trees were marked by respondents Range Officer Ram Lai Thakur and Balak Ram, then posted as Block Officer. Random verification of marking was done by respondent D.N. Machhan (now dead), Assistant Conservator of Forests, on the basis of demarcation given by deceased respondent S.R. Mehta.

16. To prove the aforesaid allegations, prosecution relies upon the demarcation given by PW-24 Jagan Nath, Naib Tehsildar and stump counting done by PW-27 Kewal Ram, Block Officer. Demarcation report is Ex. PW-24/A and sump lists are Ex. PW-27/A-1 to Ex. PW-27/A-15.

17. As per Government instruction, Para 10.10 of H.P. Land Records Manual, when demarcation of some land, adjoining Government land, is to be carried out, with a view to determining the boundary of private land and Government land, demarcation is required to be carried out by Assistant Collector 1st Grade.

18. In this case, demarcation was carried out by Naib Tehsildar, who does not enjoy the powers of Assistant Collector 1st Grade, but of Assistant Collector 2nd Grade. Also, the witness did not have with him copy of Musabi, at the time of demarcation. He prepared Tatimas, on the spot, but did not testify as to from which map(s), on which those Tatimas were prepared, had been traced. Also, he did not fix permanent points, while carrying out demarcation, per his own statement. Though he stated that he had issued notices to the private land owners, whose lands had been demarcated, but there are no notices on record. He also did not measure the Government land. How could he have assumed the land, on which stumps were counted, to be Government land, without demarcating it and for its demarcation measurement was required to be carried out.

19. Stumps, numbering 310, which were counted by PW-27 Kewal Ram, Block Officer and in respect of which lists Ex. PW-27/A-1 to Ex. PW-27/A-15 were prepared, have also not been connected with the trees, which were felled by the Company of respondents No. 1 to 5, in the year 1980. These stump lists were prepared in the year 1987, by PW-27 Kewal Ram. The witness, in the cross-examination, stated that the hammer marks, on the stumps were not decipherable. He stated that the stumps were old and decayed and it appeared from their condition that the trees (of which those stumps were) had been felled ten to twelve years ago. Under these circumstances, it cannot be held that prosecution's allegation that trees were marked and felled on Government land, adjoining the private lands of the above-named land owners, stands established.

20. Coming to the allegation that timber, in excess of the permissible limit, had been exported, it has been conceded that there is no evidence of export of excess timber, so far permits No. 255/81-82 and 45/81-82 (Ex. PW-58/A-31) are concerned. Learned Assistant Advocate General submits that as regards the third permit, i.e. permit No.46/81-82 (Ex. PW-61/B), Railway Receipts Ex. PW-3/A to Ex. PW-3/H, Ex. PW-3/J & Ex. PW-3/K prove the charge. Against these Railway Receipts, 1964 scants had been exported. Export permit number is given in these Railway Receipts and the number is 46/81-82, which is Ex. PW-61/B. The number of scants exported through these Railway Receipts comes to 1964. However, the corresponding forwarding notes of the Railway Receipts, which are Ex. PW-43/A, Ex. PW-43/B, Ex. PW-43/C, Ex. PW-58/A-16, Ex. PW-58/ A-38, Ex. PW-58/A-40, Ex. PW-44, Ex. PW-58/A- 46 and Ex. PW-58/ A- 49 do not record the number of the permits or the number of scants.

21. Timber was carried from the site to Summer Hill Railway Station by Trucks. Case of the prosecution is that it was exported against 16 challans. However, only 15 challans have been proved, which are Ex. PW-18/C-1 to Ex. PW-18/C-15. There are 12 other documents, purporting to be challans, which are Ex. PW-10/A-1 to Ex. PW-10/A-12. These are the duplicate copies of 12 of the 15 challans, marked Ex. PW-18/C-1 to Ex. PW-18/C-15. Against these 15 challans, only 1542 scants were carried from the site to the Railway Station. These challans give a lie to the prosecution story that more timber than permitted was exported against permit Ex. PW-61/B.

22. It is true that against Railway Receipts Ex. PW-3/A to Ex. PW-3/H, Ex. PW-3/J & Ex. PW-3/K, 1964 scants are shown to have been exported, but that, by itself, does not mean that timber, in excess of the limit, prescribed in Ex. PW-61/B, had been exported. Prosecution's own witnesses, namely PW-61 K.C. Nandwani and PW-25 M.A. Siddiqui, who, as Inspectors of Railways, were required to inquire into the matter, testified that while loading timber in the wagons, some scants have to be cut into two or more pieces to properly adjust the timber in the wagon, so that the scants do not rattle, when being carried. If that is so, it can legitimately be presumed that increase in the number of scants could have been due to cutting of some of scants into two or more pieces. This is especially so, when there is no evidence that the number of scants, booked with the Railways by the Company or carried by road upto the Railway Station from the site, was more than the permitted number of scants or the volume of the exported timber was more than that mentioned in the permit.

23. One more allegation is that permit No. 45/81-82 (Ex. PW-58/ A-31) did not prescribe a route on which atleast one excise barrier falls and thus there was violation of H.P. Forest Produce Transit (Land Routes) Rules, 1978. One of the witnesses of the prosecution, namely PW-67 Beli Ram Mehta, testified that on the route prescribed in the permit, Check Post Dak Pathar is there. If that is so, this allegation can also not be said to have been proved.

In view of the above discussion, we find no merit in the appeal. The same is,

therefore, dismissed.