
(2012) 01 SHI CK 0140
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 373 of 2003

State of Himachal Pradesh

APPELLANT

Vs

Sada Nand, Diwakar Dutt and Prem Singh

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 120B, 408, 409, 468, 471

Citation : (2012) 01 SHI CK 0140

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal by the State is directed against the judgment dated 18.2.2003 passed by learned Judicial Magistrate Ist Class, Kandaghat, District Solan, whereby he acquitted accused Diwakar Dutt of having committed offences under Sections 409 and 408 read with Section 120-B I.P.C. and accused Prem Singh of having committed offence u/s 409 read with Section 120-B I.P.C. and Section 477-A I.P.C.

2. It would be pertinent to mention here that by the same judgment one Sada Nand was convicted of having committed offences under Sections 408, 468 and 471 I.P.C. and was sentenced to undergo imprisonment and to pay fine for these offences.

3. The prosecution story in brief was that Sada Nand was the Secretary of Richhana Co-operative Agricultural Services Society registered under the Himachal Pradesh Co-operative Societies Act, 1968. Accused Diwakar Dutt was the President of the Society and accused Prem Singh was the Cashier of the Society. FIR No. 28/1985 was lodged on 16.5.1985 on the basis of the complaint filed by Diwakar Dutt accused in the Court u/s 156(3) Cr.P.C. on 9.5.1985. After order by the Court, FIR was registered and the police swung into action and investigation was conducted.

4. The allegations against Sada Nand was that without the consent and knowledge of the Managing Committee, he withdrew certain amounts from the account of the Society through cheques. The prosecution case was that the amount was used for the purchase of articles of sale in the Fair Price Shop of the Society and that these cheques bore forged signatures of Diwakar Dutt.

5. The allegations against Diwakar Dutt was that vide receipts dated 17.12.1984 and 31.12.1984, he received two amounts of Rs. 16,000/- and Rs. 2300/- from Sada Nand, Secretary, but did not deposit the same in the Bank and misutilized the same.

6. As far as Prem Singh, Cashier, is concerned, the allegations made were that he was responsible to maintain the cash book in a proper manner. He had put his signatures on the cash book after the same had been completed at a later stage. There were cuttings and rubbing on the cash book. Thereafter, all the three accused were charged with the offences committed aforesaid.

7. The learned trial Court acquitted Diwakar Dutt, President and Prem Singh, Cashier and convicted Sada Nand. Common evidence was led by the prosecution against all the accused. The defence examined two witnesses i.e. DW-1 Ramesh Dutt Sharma, who produced audit report and DW-2 Prem Singh.

8. The case of Diwakar Dutt was that though he was the President of the Society, he was employed with the Government and was thus not always available and, therefore, he had signed certain blank papers for communications to be addressed on his behalf as President of the Society. These blank papers were kept with Sada Nand, Secretary of the Society. This fact has been stated by PW-1 Bishan Dutt Sharma, who is also a close relative of Sada Nand. The testimony of PW-1 coupled with the opinion of the expert indicates that the receipts, which were alleged to have been forged by the President, have been fabricated by none else but by Sada Nand. While coming to the conclusion, the learned trial Court referred to the resolution dated 5.2.1984 wherein the Managing Committee of the Society had taken a decision that in case of transaction with the bank, the authorized persons have to put the signatures on the counter foil of the disputed cheques and withdrawal forms. This resolution was passed on 5.2.1984, was in the knowledge of Sada Nand, since vide resolution dated 4.3.1984 minutes of the meeting of the Managing Committee dated 5.2.1984 were confirmed in the hand of Sada Nand. The President was acquitted.

9. As far as Cashier Prem Singh was concerned, there was virtually no evidence against him and there was nothing whatsoever to suggest that he had conspired with any one of the other accused. At best it was a case of negligence of his duties, but no criminal offence was made out. Sada Nand was convicted for having committed certain offences.

10. The State filed the present appeal challenging the acquittal of Diwakar Dutt and Prem Singh. Sada Nand filed an appeal challenging his conviction before the learned Sessions Judge, Solan. This appeal was transferred for hearing to the

Court of learned Additional Sessions Judge, Fast Track Court, Solan, and the said Court vide its judgment dated 16.7.2004 acquitted accused Sada Nand. We have perused the said judgment. Sada Nand was the main accused. There is no doubt that it was he who had presented the cheques to the bank and it was he who had withdrawn the money. It is not disputed that this judgment has attained finality and has not been challenged by the State.

11. The President was impleaded as an accused on the basis of two receipts, which as rightly found by the learned trial Court, may have been signed by him on blank papers as were admitted by PW-1. As far as Cashier Prem Singh is concerned, there is no evidence against him. Once the main accused Sada Nand stands acquitted, there is no evidence against the other two accused persons.

12. In view of the above discussion, we hold that there is no merit in the appeal filed by the appellant, which is dismissed. The bail bonds furnished by the respondents shall stand discharged.