

(2015) 05 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 500 of 2011-C

State of Himachal Pradesh

APPELLANT

Vs

Sher Singh and Others

RESPONDENT

Date of Decision : 02-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 313
Penal Code, 1860 (IPC) — Section 120-B, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2), 13(i)

Citation : (2015) 05 SHI CK 0005

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : P.M. Negi, Dy. A.G., for the Appellant; Shashi Kiran, Advocate vice Rupinder Singh, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sureshwar Thakur, J.

1. The instant appeal is directed against the judgment, rendered on 7.7.2011 by the learned Special Judge, Kullu, H.P., in Sessions trial No. 2 of 2003, whereby, the learned trial Court acquitted the accused/respondents of the offences for which they came to be charged and tried by it.

2. Briefly stated the facts of the case are that on 22.11.995 Inspector Lal Singh along with C. Kushal Singh were on patrolling duty at Chhanikhor, District Kullu, H.P. A secret information was received that one Sudhir Malik, President of M/s Palvi Gram Udyog, Chhanikhor obtained ten biswas of land, situated in Village Chhanikhor from one Kehar Singh for a sum of Rs. 6000/- at the rate of Rs. 10/- per month for a period of fifty years. Inspector Lal Singh also came to know about the fact that Reader Rajinder Kumar also connived with accused Sudhir Malik and they prepared the forged documents and on the basis of those forged documents they were able to obtain loan of Rs. 7 lacs from Khadi Gram Udyog, Shimla. Upon this FIR under Sections 420, 467, 468, 471 and 120-B, IPC read

with Section 13(2) of the Prevention of Corruption Act was registered at Police Station (Enforcement) North Zone at Dharamshala.

3. During the investigation the relevant record was taken into possession. The signatures were sent for comparison to Govt. Examiner of Questioned Documents. As per the prosecution, from the record it transpired that Sudhir Malik son of Shri Ilam Singh got registered a society under the name and style of M/s Palvi Gram Udyog Santha. The said society was registered with the Registrar of Societies at serial No. 3035 in the year 1991-92. It was also transpired during the investigation that two Himachalies were also found to be the members of the said society and their names were ascertained as Ram Lal and Punam but during the investigation their addresses were not ascertained. It is further the case of the prosecution that Sudhir Malik did not get registered the said society with Himachal Pradesh nor he obtained permission of the H.P. Government for obtaining the land on lease. The lease deed of ten biswas of land was registered by Sher Singh accused the then Naib Tehsildar, Kullu, whereas as per the law the said lease deed could not have been registered. The agriculturist certificate was not found attached with the lease deed nor any permission from H.P. Government was attached. The lease deed was registered without any Society Registration Certificate as Palvi Gram Udyog was registered out side Himachal Pradesh.

4. According to the prosecution, the Tehsildar could have registered the document and the same was registered by ignoring the legal provisions. The mutation of the same was entered but was not sanctioned. The then Revenue Officer Shri Chet Ram Kaundal demanded agriculturist certificate and registration certificate including the permission of the H.P. Government which were not supplied to him despite requests. It is further the case of the prosecution that accused Sudhir Malik moved an application before the Tehsildar, Kullu for making an entry regarding equitable mortgage in favour of the society. At that time Sudhir Malik concealed the fact that the mutation of the same has not been entered in the revenue record. The said letter was dealt with by Reader Rajinder Kumar Sood, who forged dispatch number and sent the same for registration to the Patwari, Patwar Halqua Chong with a permission to make entry regarding equitable mortgage in favour of Khadi Gram Udyog, Shimla. During the investigation said handwriting was found to be of Rajinder Kumar.

5. It is further the case of the prosecution that accused Rajinder Kumar misused his powers and position and he either himself put the signature of Tehsildar or got the letter signed from some one else and directed Halqa Patwari to enter the mutation regarding equitable mortgage ignoring the fact that mutation could not have been sanctioned and no entry regarding equitable mortgage could be made in the revenue record. It is further the case for the prosecution that the Patwari, Patwari Halqa Chong violated the departmental instructions qua the fact that till the mutation is not sanctioned, no entry could have been made in the revenue record. As per the prosecution, the society whose President/Secretary is Sudhir

Malik got sanctioned loan of fifteen lacs from Khadi and Gram Udyog Board, Shimla. According to the prosecution, he hatched a criminal conspiracy with the government officials/officer and got sanctioned the loan for a sum of Rs. 15 lacs and he received a sum of Rs. 6,56,000/- from Khadi Gram Udyog for construction of building and purchasing of machinery etc. On the spot, the police found that Sudhir Malik had spent only Rs. 4,38,559/- for building works and no machinery of Rs. 1,76,000/- was found on the spot. According to the prosecution, the accused Sudhir Malik thus mis-used amount of Rs. 2,17,441/- which was received by him as loan.

6. On conclusion of the investigation, into the offences, allegedly committed by the accused, final report under Section 173 of the Code of Criminal Procedure was prepared and presented in the Court.

7. Accused Sher Singh and accused Nes Ram were charged for theirs having committed offences under Section 13(1)(d) of the Prevention of Corruption Act read with Section 120-B, IPC, accused Sudhir Malik was charged for his having committed offence punishable under Section 471 read with Section 120-B, IPC and accused Rajinder Kumar was charged for his having committed offences punishable under Section 13(i) of the Prevention of Corruption Act to which they pleaded not guilty and claimed trial.

8. In order to prove its case, the prosecution examined 30 witnesses. On closure of prosecution evidence, the statements of accused, under Section 313 of the Code of Criminal Procedure, were recorded, in, which they pleaded innocence and claimed false implication. In defence, the accused had examined one witness.

9. On appraisal of the evidence on record, the learned trial Court, returned findings of acquittal in favour of the accused.

10. The State of H.P. is aggrieved by the judgment of acquittal, recorded by the learned trial Court. The learned Deputy Advocate General appearing for the State has concertedly, and, vigorously contended, that, the findings of acquittal recorded by the learned trial Court, are, not based on a proper appreciation of evidence on record, rather, they are sequelled by gross mis-appreciation of the material on record. Hence, he, contends that the findings of acquittal, be, reversed by this Court, in, exercise of its appellate jurisdiction, and, be replaced by findings of conviction.

11. On the other hand, the learned counsel appearing for the appellants, have, with considerable force and vigour, contended that the findings of acquittal, recorded by the Court below, are, based on a mature and balanced appreciation of evidence on record, hence, do not necessitate interference, rather merit vindication.

12. This Court with the able assistance of the learned counsel on either side, has, with studied care and incision, evaluated the entire evidence on record.

13. Accused Sudhir Malik is canvassed by the prosecution to be a non

agriculturist. He was enjoined by law to possess an agriculturist certificate for empowering him to execute a lease deed with the lessor in his favour. However, even without accused Sudhir Malik possessing an agriculturist certificate and it not having produced before accused Sher Singh, the then Naib Tehsildar, the latter proceeded to hence unlawfully register the lease deed, Ex.PW1/A in favour of M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President. The society aforesaid was a society registered outside Himachal Pradesh. On the strength of Ex.PW1/A, accused Sudhir Malik, President of M/s Palvi Gram Udyog, Channikhor, in whose favour lease deed, Ex.PW1/A qua 10 biswas of land located in Village Chhanikhor was executed by one Kehar Singh for a sum of Rs. 6,000/- at the rate of Rs. 10/- per month for a period of 50 years, is alleged to have procured a loan in the sum of Rs. 7,00,000/- from Khadi Gram Udyog, Shimla. Consequently, it is alleged by the prosecution that a vitiated and fraudulent registered lease deed Ex.PW1/A was used as a security by accused Sudhir Malik for hence causing wrongful gain to himself and for causing wrongful loss to the Khadi Gram Udyog, Shimla, inasmuch as on its anvil a loan of Rs. 7 lacs was obtained by accused Sudhir Malik. However, the factum of Khadi Gram Udyog, Shimla having released or disbursed the loan amount to M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President, on the strength of Ex.PW1/A is falsified by the fact that the loan amount was sanctioned by it to be disbursed in favour of M/s Palvi Gram Udyog, Chhanikhor in the year 1992 whereas the lease deed was registered subsequently. Consequently, as a natural concomitant an inference which is warranted as tenably drawn by the learned trial Court, is that even if Ex.PW1/A was ingrained with an illegality arising out of the factum of it having come to be registered by accused Sher Singh, the then Naib Tehsildar without insisting upon accused Sudhir Malik to, before causing or effectuating its registration, produce an agriculturist certificate, the pre-eminent fact of its not being the material which was either considered or prevailed upon by M/s Khadi Udyog, Shimla for sanctioning or disbursing the loan amount in favour of M/s Palvi Gram Udyog, Chhanikhor, is concomitantly is of it neither having been used as a collateral security by the accused for seeking sanction of loan in his favour by Khadi Gram Udyog, Shimla nor hence in its purported illegal registration there was any nexus inter se such purported illegal registration of Ex.PW1/A and the sanction or disbursement of loan in favour of M/s Palvi Gram Udyog, Chhanikhor. Naturally, then it has to be held as aptly done by the learned trial Court that the purported unlawful registration of Ex.PW1/A has not caused any wrongful gain to M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President nor wrongful loss was caused to the financial institution which sanctioned and disbursed loan to M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President. Even if assuming that Ex.PW1/A was unlawfully registered by accused Sher Singh in favour of M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President by Kehar Singh, constituted in the face of accused Sher Singh registering it without production of an agriculturist certificate before him by accused Sudhir Malik, whose production in

the face of his being an agriculturist, would alone have rendered the registration of Ex.PW1/A by accused Sher Singh, the then Naib Tehsildar to be legitimized. Nonetheless when there exists an apposite provision in the Himachal Pradesh Tenancy and Land Reforms Act inasmuch as in Section 118, sub-section (3), whose provisions are extracted hereinbelow:-

"118(3). No Registrar or the Sub Registrar appointed under the Indian Registration Act, 1908 shall register any document pertaining to a transfer of land which is in contravention of sub-section (1) and such transfer shall be void ab-initio and the land involved in such transfer, if made in contravention of sub-section (1) shall together with structures, buildings and other attachments, if any, vest in the State government free from all encumbrances.

Provided that the Registrar or the Sub-Registrar may register any transfer-

- (i) where the lease is made in relation to a part or whole of a building, or
- (ii) where the mortgage is made for procuring the loans for construction or improvements over the land either from the Government or from any other financial institution constituted or established under any law for the time being in force or recognized by the State Government."

A reading whereof constrains an inference that when therein the Registrar or the Sub Registrar appointed under the Indian Registration Act, 1908 proceeds to in favour of a non agriculturist register a conveyance deed, it then empowers the appropriate government to initiate proceedings for vestment of land comprised in such unlawfully registered deed of conveyance along with structures, buildings and other attachments thereon. Consequently, when the provisions of special statute aforesaid prohibit or interdict the registration of a conveyance deed by a Registrar or a Sub Registrar under the Indian Registration Act, 1908 in favour of a non agriculturist, as also, contemplates therein the ensuing consequences, as a natural corollary then in face thereof when the penal consequences for infraction of the statutory prohibition prescribed therein have remained un contemplated the apt deduction is obviously that when under the special statute it is open for the appropriate government to initiate the warranted action as prescribed under Section 118(3) of the Himachal Pradesh Tenancy and Land Reforms Act against accused Sudhir Malik. As a corollary then, for lack of contemplation in and with no mandate existing in Section 118(3) of the Himachal Pradesh Tenancy and Land Reforms Act of penal action being warranted against either accused Sudhir Malik who executed PW-1/A qua 10 biswas of land located at Chhanikhori with Kehar Singh or against accused Sher Singh, the then Naib Tehsildar, who purportedly unlawfully registered Ex.PW1/A, as such, the initiation of investigation by the Investigating Officer qua the purported flouting of provisions of Section 118(3) of the Himachal Pradesh Tenancy and Land Reforms Act at the instance of accused Sudhir Malik and accused Sher Singh arising from their respective acts was uncalled for, besides obviously then the charge against the accused for theirs, hence, transgressing the mandate of Section 118(3) of the

Act and the offences for which they have come to be charged and tried was unwarranted and necessitated their acquittal as appropriately done by the learned trial Court.

14. Moreover, the factum that Ex.PW5/A-13, Ex.PW5/A-16 and Ex.PW5/A-18, which are the pay orders, are not proved by the prosecution to have been actually released in favour of the accused, consequently, it cannot be concluded that as a matter of fact the loan amount as sanctioned in favour of M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President, was actually disbursed or released to accused Sudhir Malik. Even if the said amount had come to be released in favour of M/s Palvi Gram Udyog, Chhanikhor, of which accused Sudhir Malik was the President, the factum that Ex.PW1/A was not used as collateral security for its sanction or approval by M/s Khadi Gram Udyog, Shimla, reiteratedly does not constitute any offence under Sections 420, 467, 468, 471, 120-B of the IPC against accused Sudhir Malik.

15. Moreover, the role attributed to accused Rajinder Sood is, of his while rendering duties as Reader to Tehsildar, his having connived with accused Sudhir Malik and forged endorsement No. 628 comprised in Ex.PW1/B. The forgery attributed to accused Rajinder Sood is of his having in Ex.PW1/B forged the signature of Tehsildar. However, the above role attributed to accused Rajinder Sood stands discountenanced by the factum existing in the deposition of PW-29 wherein he deposes that the specimen signatures of accused Rajinder Sood comprised or existing in Q-3, cannot be categorically or with definitiveness be opined to be similar or tallying with the purportedly forged signature of Tehsildar purportedly prepared by accused Rajinder Sood comprised in Ex.PW1/B, the purportedly forged endorsement made by accused Rajinder Sood. Consequently, with no categorical or definite opinion ensuing from the handwriting expert, who deposed as PW-29 qua Q-3, the specimen signatures of accused Rajinder Sood on their tallying or comparison by him with the purportedly forged endorsement comprised in Ex.PW1/B to be belonging to accused Rajinder Sood obviously, then it can be hence concluded that the role attributed to accused Rajinder Sood by the prosecution has not come to be convincingly proved.

16. Furthermore, the role attributed to accused Nes Ram, Patwari by the prosecution is of his having illegally entered rapat qua lease deed in the daily diary register of the Patwar Circle at serial No. 394 in favour of M/s Palvi Gram Udyog, Chhanikhor. Consequently, the entry in the daily diary register of Patwar Circle occurring at serial No. 394 is alleged to be forged. Assuming that hence accused Nes Ram, Patwari had entered rapat No. 394 in the daily diary qua lease deed executed and registered in favour of M/s Palvi Gram Udyog, Chhanikhor of which accused Sudhir Malik was the President, nonetheless in face of the fact that he proceeded to do so only in pursuance to his having received orders comprised in Ex.PW2/A, as such, when he was enjoined to obey the orders comprised in Ex.PW2/A, no criminal liability hence can come to be attributed to accused Nes Ram in his having come to in consonance therewith record a rapat

qua the lease deed in the daily diary register in the Patwar Circle concerned. Besides, even if assuming that Ex.PW2/A which stood complied with, by accused Nes Ram constituted by his act of recording in consonance thereto a rapat at serial No. 394 of the daily diary register of Patwar Circle concerned was forged inasmuch as it was not signed by PW-2, nonetheless in the face of the prosecution omitting to, beside collecting the specimen writings of PW-2, as also, omitting to get them compared with the admitted signatures of PW-2 by their dispatch to the Handwriting Expert, renders such omission to constrain a conclusion that there has been lack of or want of a sound investigation on the part of the Investigating Officer for enabling this Court to record a finding that the purported forged signatures of PW-2 as existing on Ex.PW2/A and purportedly forged by accused Nes Ram, did not belong to PW-2. In aftermath and for reiteration, it can be convincingly concluded that there is lack of or want of evidence that Ex.PW2/A was forged by accused Nes Ram and hence, it was unlawfully relied upon by him to record rapat No. 394 in the daily diary register of the Patwar Circle concerned with a dishonest intention to aid or facilitate accused Sudhir Malik to get an entry in the apposite record.

17. A wholesome analysis of the evidence on record portrays that the appreciation of evidence as done by the learned trial Court does not suffer from any perversity and absurdity nor it can be said that the learned trial Court in recording findings of acquittal has committed any legal misdemeanor, in as much, as, it having mis-appreciated the evidence on record or omitted to appreciate relevant and admissible evidence. In aftermath this Court does not deem it fit and appropriate that the findings of acquittal recorded by the learned trial Court merit interference.

18. In view of the above discussion, we find no merit in this appeal, which is accordingly dismissed, and, the judgment of the learned trial Court is maintained and affirmed. Record of the learned trial Court be sent back forthwith.