

(2011) 03 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Criminal Appeal No. 353 of 2000

State of Himachal Pradesh

APPELLANT

Vs

Suresh Chand Katoch and Another

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 207, 313
Penal Code, 1860 (IPC) — Section 120B, 409, 420, 465, 467
Prevention of Corruption Act, 1947 — Section 5(2)

Citation : (2011) 2 ShimLC 497

Hon'ble Judges : Surjit Singh, J;Kuldip Singh, J

Bench : Division Bench

Judgement

Surjit Singh, J.—State has appealed against the judgment dated 8th March, 2000 of learned Special Judge, whereby respondents Suresh Chand Katoch and Chet Ram, who were charged with and tried for offences, under Sections 465, 467, 471, 409 and 420, read with Section 120-B of the Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act, 1947, have been acquitted.

2. Respondent Suresh Chand Katoch was working as Junior Engineer in Irrigation & Public Health Department, Sub Division Barsar and respondent Chet Ram was working as Supervisor under him. Respondent Chet Ram submitted an undated handwritten complaint Ex. PW-14/A to Irrigation & Public Health Minister, Himachal Pradesh, in which several allegations were made against the higher officials of the Department. One of the allegations was that bogus Muster Rolls had been prepared and the amount mentioned in those Muster Rolls, shown to have been disbursed to the labourers named therein, had been pocketed by certain Engineers. Number of one of the Muster Rolls, mentioned in the complaint, was 1191, in which ten persons were shown to have been employed, during the period 1st February, 1985 to 28th February, 1985. Matter was inquired into. Initial report was that there was no substance in the allegation. A fresh inquiry was held and this time it was noticed that all the ten persons, named in Muster Roll No. 1191, were non-existent and that an amount of Rs. 2,020/-

shown to have been disbursed to them, had been criminally misappropriated.

3. On the basis of inquiry, case was registered. Investigation revealed that besides the present two respondents, who got executed and supervised the work, referred to in the aforesaid Muster Roll, which is Ex. PW-6/B, Assistant Engineer of the concerned Sub Division, namely Milap Chand Dhiman, was also involved in the bungling. During the course of investigation, persons named as labourers, in the aforesaid Muster Roll, were issued registered letters, but the same had been received back undelivered with the reports by Extra Departmental Delivery Agents (a sort of Postmen) that no persons, by such names and parentage, lived on the addresses or even in the villages. Secretaries of concerned Gram Panchayats told the Investigating Agency that the persons, with names and parentage, as mentioned in the Muster Roll, did not reside in the village, as per Panchayat record. One Patwari, namely Dharamvir (PW-10) told the Investigating Officer that, as per revenue record, there were no persons, by the names of Onkar Chand and Karam Chand, with the parentage, as shown in the Muster Roll, in the village they were shown residents of in the Muster Roll.

4. Muster Roll, in question, which is Ex. PW-6/B bears the thumb impressions of some of the alleged labourers, named in it. Specimen fingerprints of the respondents and the Assistant Engineer, namely Milap Chand Dhiman, who was also suspected to be an accused, were taken by PW-16 Amar Nath. Those fingerprints were sent to the Fingerprint Bureau, Phillaur, for comparison with the purported thumb impressions of the labourers, on Muster Roll Ex. PW-6/B. Director of the Fingerprint Bureau, vide report Ex. PA, opined that fingerprints Marked 2, 3, 6, 8, 9 and 10, on Muster Roll Ex. PW-6/B, matched with right thumb impression Marked-I and left thumb impression Marked-II of respondent Chet Ram, appearing on paper-sheet Ex. PW-16/A.

5. On completion of investigation, report, u/s 173 of the Code of Criminal Procedure, was drawn and filed in the Court of learned Special Judge, alongwith the relevant papers. After complying with the requirement of Section 207 of the Code of Criminal Procedure, and hearing learned Public Prosecutor and learned defence Counsel, trial Court felt that a prima facie case was made out against both the respondents. They were charged with offences, under Sections 465, 467, 471, 409 and 420, read with Section 120-B of the Indian Penal Code, and Section 5(2) of the Prevention of Corruption Act, 1947. They pleaded not guilty to the charge and were, therefore, put on trial.

6. We may notice here that though Milap Chand Dhiman, Assistant Engineer, had not been challaned by the Investigating Agency, he was named in Column No. 2 of report, u/s 173 of the Code of Criminal Procedure. Trial Court summoned him as an accused, but ultimately discharged him, on account of there being no sanction for his prosecution, u/s 5(2) of the Prevention of Corruption Act, 1947. Liberty was reserved to the State to file supplementary challan against him, after obtaining sanction for his prosecution. However, the State, for the reasons best known to its concerned functionaries, did not even apply for sanction to

prosecute said Milap Chand Dhiman, despite learned Special Judge having observed that the State was free to file supplementary challan against him, after obtaining sanction from the concerned authorities.

7. Prosecution examined five Extra Departmental Delivery Agents, namely PW-1 Puran Chand, PW-2 Pritam Singh, PW-3 Suresh Kumar, PW-23 Roshan Lal and PW-28 Swaran Singh, who had been entrusted with the registered covers, addressed to ten persons, named in Muster Roll Ex. PW-6/B, for delivering the same on the addresses, as written on those covers. The witnesses testified that no persons, with such names and parentage, were available, on the addresses mentioned on the covers. Names and addresses on the covers are the same as appearing in the Muster Roll, in question.

8. Prosecution also examined three Panchayat Secretaries and one Patwari to prove the fact that the labourers, named in the Muster Roll, were nonexistent. These witnesses are PW-9 Dalip Singh, PW-10 Dharamvir Singh (Patwari) and PW-11 Ram Asra. Prosecution also tendered in evidence opinion of Fingerprint Expert and also proved specimen thumb impressions of respondent Chet Ram, by examining PW-16 Amar Nath and PW-21 Munshi Ram. It also examined Milap Chand Dhiman, who was named as an accused in Column No. 2 of report, u/s 173 of the Code of Criminal Procedure, who testified that he had given the money to respondent Suresh Chand Katoch, Junior Engineer, for disbursement to the labourers, against receipt Ex. PW-6/J.

9. Respondents, in their statements, u/s 313 of the Code of Criminal Procedure, denied having committed any crime. Learned trial Court concluded that the case of the prosecution did not stand established, beyond reasonable doubt. Hence, it acquitted both the respondents.

10. We have heard learned Assistant Advocate General as also learned Counsel representing the two respondents and Milap Chand Dhiman, Assistant Engineer, whom we had issued a show cause notice, vide order dated 20th October, 2010, calling upon him to explain why he should not be prosecuted alongwith the present respondents.

11. When order dated 20th October, 2010 was passed, we were not aware that Milap Chand Dhiman had been discharged by the trial Court, after being summoned as an accused, for want of sanction for his prosecution, for offence, u/s 5(2) of the Prevention of Corruption Act, 1947. Therefore, notice issued to him is discharged.

12. As regards the respondents, we notice, from the judgment of the trial Court that it has not even taken notice of the evidence of Fingerprint Expert, which conclusively proves that thumb impressions against six persons, named as labourers in Muster Roll Ex. PW-6/B, are of respondent Chet Ram, as per opinion Ex. PA of Fingerprint Expert. It is this evidence, which is very vital and unambiguously proves involvement of the respondents.

13. Fingerprints Marked I and II, on Ex. PW-16/A, are proved to be of respondent Chet Ram, by PW-16 Amar Nath, the proficient, who obtained these prints. The witness stated that the person had been identified by PW-21 Munshi Ram, the Investigating Officer of the case.

14. Munshi Ram, who appeared as PW-21, stated that during the course of preliminary inquiry into the matter, with the consent of respondent Chet Ram, he obtained his (Chet Ram's) fingerprints, on Ex PW-16/A and identified him to proficient Amar Nath PW-16. He stated that though respondent Chet Ram was not known to him from before, he became acquainted with him during the course of preliminary inquiry. The evidence, thus, proves, beyond any pale of doubt, that specimen fingerprints on Ex. PW-16/A, containing among others, right thumb impression Marked-I and left thumb impression Marked-II, with which the aforesaid six thumb impressions on Muster Roll Ex. PW-6/B, have been opined to match, are of respondent Chet Ram.

15. Non-consideration of the aforesaid vital evidence by the trial Court brings the trial Court's judgment into the category of perverse judgments and, therefore, it cannot be sustained.

16. Apart from the aforesaid evidence, we find that respondent Chet Ram also put his initials below every purported signature or thumb impression of the labourers.

17. The very fact that the purported thumb impressions of six of the persons, named as labourers in Muster Roll Ex. PW-6/B, are forged by respondent Chet Ram, proves that he was a party to the conspiracy for misappropriation of Government money and in pursuance of that conspiracy he forged Muster Roll Ex. PW-6/B and, thus, committed offences, punishable under Sections 120-B and 467 of the Indian Penal Code.

18. As regards respondent Suresh Chand Katoch, Muster Roll Ex. PW-6/B bears an endorsement of verification, written and signed by him, in the capacity of Junior Engineer, Incharge of the work, in question. He very categorically admitted, in reply to Question No. 25 of his statement, u/s 313 of the Code of Criminal Procedure, that he verified the payment of the entire amount of the Muster Roll, by making endorsement Ex. PW-6/N, on Muster Roll Ex. PW-6/B. His verifying payment of Rs. 2,020/-, on the Muster Roll, which is proved to bear six forged thumb impressions of six persons, named as labourers, itself, is enough to conclude that he was party to the conspiracy, otherwise why should have he verified the payment, when thumb impressions against the names of atleast six persons are proved to be of respondent Chet Ram, who was working as Supervisor under him, on that work. Also, the fact of his verifying the payment amounts to offence of using a forged document, as genuine, punishable u/s 471 of the Indian Penal Code.

19. However, the evidence does not prove, beyond reasonable doubt, whether the money had been misappropriated by the respondents or by Assistant

Engineer, Milap Chand Dhiman, whom the State has not prosecuted. We have observed so, for the reason that receipt Ex. PW-6/J, against which said Milap Chand Dhiman, while appearing as PW-17, testified to have paid an amount of Rs. 40,000/- to respondent Suresh Chand Katoch (Junior Engineer), for disbursement to the labourers, is a suspect document. Reasons are that this document saw the light of the day only when PW-17 Milap Chand Dhiman appeared in the Court, as a witness, and secondly the receipt appears on a small slip of paper of the size of 4" X 3", approximately. Signature of respondent Suresh Chand Katoch appears almost on the top and the receipt has been written in very small letters, in two lines, starting from the edge of the top of the slip and one of the words is written over a portion of the signature of respondent Suresh Chand Katoch.

20. For the foregoing reasons, we partly allow the appeal. Judgment of the trial Court, acquitting the respondents of offences, under Sections 120-B, 467 and 471 of the Indian Penal Code, is set aside and the judgment of the trial Court acquitting them of rest of the offences is upheld. Respondent Chet Ram is convicted of offences, under Sections 120-B and 467 of the Indian Penal Code and respondent Suresh Chand Katoch is convicted of offences, under Sections 120-B and 471 of the Indian Penal Code.

Respondents be produced in the Court, on 20th April, 2011, for being heard on the quantum of sentence. Non-bailable warrants of arrest be issued against both the respondents-convicts, immediately.