
(2011) 07 SHI CK 0196
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 386 of 2005

State of H.P.

APPELLANT

Vs

Suraj Parkash Kapoor and Others

RESPONDENT

Date of Decision : 25-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 207

Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 — Section 4, 5, 6

Penal Code, 1860 (IPC) — Section 120B, 218, 420, 465, 467

Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2011) 07 SHI CK 0196

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 28.3.2005, of learned Special Judge (Forests), Shimla, whereby Respondents Suraj Parkash Kapoor and others, hereinafter called accused, have been acquitted of offences, u/s 13(2) of the Prevention of Corruption Act, 1988, Sections 4, 5 and 6 of Himachal Pradesh Prevention of Specific Corrupt Practices Act, 1983 and Sections 218, 420, 467, 468, 47, 465 and 120-B IPC, with which they were charged.

2. Accusation, which led to the trial of the Respondents-accused, may be stated. Nathpa Jhakri Power Corporation, a public undertaking, was allotted a site by the side of Satluj River in Rampur Sub Division of Shimla District, for setting up a Hydro Power Project. In connection with the said project, the Corporation wanted to execute various civil works, which it thought of executing, by engaging various contractors. One such work was construction of Culvert No. 7 at RD 2670, with supporting retaining and parapet walls at RD 2663.70 to 2668.70 meters and 2671.30 to 2676.30 metres. This work was assigned to Respondents Ranjit Thakur and Rakesh Gupta, who were contractors. Respondent J.S. Parihar was Executive Engineer, working with the said Corporation. He was assisted by

Respondent Suraj Parkash, Junior Engineer.

3. Allegations against the accused are that as per schedules of CPWD, the estimated cost of the work assigned to Respondents Ranjit Thakur and Raksh Gupta was supposed to be Rs. 30,830/-, but it was awarded for Rs. 45,773/-, with a view to causing wrongful gain to accused Ranjit Thakur and Raksh Gupta, by the rest of the accused. Finally, a sum of Rs. 45,519/- was paid to the contractors, namely accused Ranjit Thakur Rakesh Gupta, on account of the cost of the aforesaid work, as per record maintained by the other Respondents.

4. Another allegation against the Respondents is that in fact the entire allotted work had not been executed. In place of 10 metres high retaining wall, which was required to be constructed, height of the wall was raised only upto 7.5 metres and parapet wall had not been constructed. Also, the length of hume pipe was found to be deficient. Instead of 10 metres, it was found to be 7.5 metres, on the spot.

5. Matter came to be reported to the Enforcement Department of the State. Case was formally registered against the Respondents-accused, vide FIR Ext. PA. During the course of investigation, a team of some officers from H.P. State Electricity Board, comprising, inter alia, of PW-2 K.R. Verma, Dy. Chief Accounts Officer and PW-11 G.P. Saroch, Executive Engineer, was constituted. The team visited the spot and found that retaining wall, which was there on the spot, measured only 7.5 metres in length and no parapet wall had been constructed on the spot. Also, the length of hume pipe was found 7.5 metres in place of 10 metres. Enforcement Department felt that it was a case of criminal conspiracy among the accused and in furtherance of that conspiracy, offence of criminal misconduct was committed by those of the Respondents-accused, who were servants of Nathpa Jhakri Power Corporation and the records were forged and falsified and offences, under Himachal Pradesh Prevention of Specific Corrupt Practices Act, were committed.

6. On completion of investigation, report u/s 173 Code of Criminal Procedure, alongwith record, was submitted in the Court of Special Judge (Forests). After complying with the requirement of Section 207 Code of Criminal Procedure, trial Court felt that a prima-facie case, under the aforesaid penal provisions of law, was made out against all the aforesaid accused. They were charged accordingly. They pleaded not guilty to the charge and were, therefore, put on trial.

7. Prosecution mainly relied upon the testimony of above named two members of the Inspecting Team, namely PW-2 K.R. Verma, Deputy Chief Accounts Officer and PW-11 G.P. Saroch, Executive Engineer.

8. Respondents took the plea that due to heavy rains, land slides occurred in the area and the retaining wall/parapet wall got buried under the slush of land slide. As regards the deficiency in the length of hume pipe, they pleaded that when dozer was pressed into service to clear the slip, a portion of the pipe got damaged and a piece of 2.5 metres long fume pipe was lying on the spot. Trial

Court accepted this defence plea and consequently acquitted the Respondents.

9. We have heard learned Assistant Advocate General as also learned Counsel for the Respondents and perused the record.

10. PW-2 K.R. Verma, Dy. Chief Accounts Officer and PW-11 G.P. Saroch, Executive Engineer, the star witnesses of the prosecution, categorically admitted in their cross-examination, that piece of hume pipe, measuring 2.5 metres, was lying on the spot. Also, they admitted that no digging was done on the spot to find out as to how much portion of the retaining wall and parapet wall (height-wise) was under the apparent surface.

11. As regards the other allegation that as per CPWD schedules, estimated cost of the work was supposed to be Rs. 30,830/- but the work was allotted for Rs. 45,773/, there is no evidence on record that the rates of CPWD were applicable at the relevant time. Rather, the evidence shows that the schedules of the CPWD were made applicable to the works of H.P. State Electricity Board, much later, partly in the year 1997 and partly in 2000.

12. As a result of above discussion, we see no reason to interfere with the judgment of acquittal, passed by the trial Court. Hence, the appeal is dismissed.