

(2011) 07 KAR CK 0130
In the Karnataka High Court
Case No : Criminal Appeal No. 424 of 2006

State of Karnataka

APPELLANT

Vs

H.T. Tata Murthy, P. Govinda Bhat and Jayappa

RESPONDENT

Date of Decision : 07-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 409, 420, 468, 477 A

Citation : (2011) 07 KAR CK 0130

Hon'ble Judges : V. Suri Appa Rao, J;N. Ananda, J

Bench : Division Bench

Advocate : G. Bhavani Singh, SPP, for the Appellant; Prince Isaac, for Krishnamoorthy D., for R1 and R2, Subba Rao and Co., for R3, for the Respondent

Final Decision : Dismissed

Judgement

N. Ananda, J.—The State has filed this appeal against acquittal of Respondents 1 and 3 (hereinafter referred to as "accused 1 and 3") for offences punishable under Sections 468, 420 and 409 r/w 34 IPC and acquittal of Respondent No. 2 (hereinafter referred to as "accused No. 2") for an offence punishable u/s 468 IPC in C.C. No. 1073/1997, on the file of Civil Judge (Jr. Dn.) and JMFC at Sullia. The learned trial Judge convicted accused No. 2 for offences punishable under Sections 420 and 409 IPC. Accused No. 2 challenged the judgment of conviction in Criminal Appeal No. 371/2005. The learned Judge of I-appellate court accepted the appeal and acquitted accused No. 2 for offences punishable under Sections 409 and 420 IPC.

2. Sri G. Bhavani Singh, learned State Public Prosecutor has filed a memo to the effect that the State has not challenged acquittal of accused No. 2 made in Criminal Appeal No. 371/2005 for offences punishable under Sections 409 and 420 IPC.

3. It is in this background, we have to consider the appeal filed by the State against acquittal of accused 1 and 3 for offences punishable under Sections 468,

420 and 409 IPC and also acquittal of accused No. 2 for an offence punishable u/s 468 IPC.

4. In brief, the case of prosecution is as follows:

During the year 1993-94, the Government of Karnataka through Agriculture and Soil Conservation Departments took up construction of check/vented dam across streams under scheme called "Million Wells Scheme". The purpose of constructing check/vented dam across the streams was to impound water and make available water to the farmers of adjacent lands during summer season and also to recharge ground water level.

5. It is the case of prosecution that accused No. 1 was working as an Agricultural Assistant in Sullia Taluk, accused No. 2 was working as Assistant Agricultural Officer in Sullia Taluk and accused No. 3 was working as Agricultural Officer in the office of Assistant Director of Agriculture at Mangalore. Accused 1 to 3 fabricated documents to show that they had constructed check/vented dam in survey No. 240 at a place called Bengatha Male of Mande Kolu Village in Sullia Taluk during period between 01.02.1994 and 15.03.1994 and presented the bills and drawn the amount and appropriated the same.

6. On behalf of prosecution, PW1 to PW12 were examined and documents as per Ex P. 1 to Ex.P.30 were marked. The documents filed by accused 1 to 3 were marked as Ex.D. 1 to Ex.D.9.

7. As already stated, the learned trial Judge acquitted accused 1 and 3 for offences punishable under Sections 468, 420, 409 r/w 34 IPC and acquitted accused No. 2 for an offence punishable u/s 468 IPC, however convicted accused No. 2 for offences punishable under Sections 409 and 420 IPC. The I-appellate court set aside conviction of accused No. 2 for offences punishable under Sections 409 and 420 IPC in Criminal Appeal No. 371/2005 dated 26.02.2010.

8. Therefore, the points that would arise for determination are:

1. Whether prosecution has proved that accused 1 and 3 fabricated and forged documents with dishonest intention to misappropriate a sum of Rs. 24,587/-, thereby accused 1 and 3 committed offences punishable under Sections 468, 420 and 409 IPC?

2. Whether accused No. 2 has fabricated and forged documents in relation to construction of check/vented dam at a place called Bengatha Male of Mande Kolu Village in Sullia Taluk and thereby committed an offence punishable u/s 468 IPC?

3. What order?

9. The Government had issued a circular relating to entrustment of work and also demarcation work by the officers of Agriculture Department. As per the circular, accused No. 1, who was Agricultural Assistant, was entrusted with the work of construction of check/vented dam as per specifications and as per instructions of accused No. 2. The amount towards payment of expenses incurred had to be

drawn by accused No. 2 by placing requisition/indent before the Agricultural Officer (accused No. 3). Accused No. 2 had to present the bill to encash from the treasury. Accused No. 2 had to pay the amount to head mazdur personally. Accused No. 1 had to record statement to the said effect in the measurement book. Accused No. 1 has to satisfy himself that the work has been executed as per sanction/plan estimate. Accused No. 3 had to verify the work after payment during post-payment check. Accused No. 3 was not required to verify/check the work before payment was made. After presentation of bill, he was required to arithmetically check the bill before passing the same. Therefore, entire responsibility was on accused No. 2. He had to execute the work, withdraw the amount and disburse the amount. Accused No. 1 had to execute the work as per instructions given by accused No. 2.

10. PW1-K. Shyam Prakash who at the relevant, time working as the Assistant Director in Agriculture Department has admitted that the Assistant Agricultural Officer would receive the amount either by encashing cheque after being satisfied of the execution of work. However, Agricultural Officer had financial accountability, if he had certified the execution of work in the measurement book and the bills. As already stated accused No. 1 had to execute work as per the instructions given by accused No. 2-Assistant Agricultural Officer.

FW1 to PW4 have not deposed that accused 1 and 3 had made any entries in the bills marked as Ex.P.24 to Ex.P.28. Therefore, it can safely be concluded that accused No. 2 was alone responsible for execution of work, preparation of bills, after satisfying himself about execution of work as per specifications. Accused No. 2 was also responsible for drawing money from treasury and disbursing money to head mazdur towards labour charges.

In Criminal Appeal No. 371/2005, the learned trial Judge acquitted accused No. 2 for offences punishable under Sections 420 and 409 IPC. This judgment having not been challenged by the State has attained finality. In the circumstances, it is not permissible for this Court to consider whether accused No. 2 has committed offences punishable under Sections 420 and 409 IPC. Therefore, what remains to be considered in this appeal is whether accused No. 2 has committed an offence punishable u/s 468 IPC? It is not the case of prosecution that accused No. 2 had committed forgery of bills. On the other hand, it is the case of prosecution that accused No. 2 had falsified entries in the documents marked as Ex.P.24 to Ex.P.28 and presented the same before accused No. 3. Accused No. 2 after withdrawing cheques, money and appropriated the same. Even if the acts alleged against accused No. 2 are accepted, they may attract an offence punishable u/s 477A IPC, which deals with falsification of accounts. Accused No. 2 was not charged with an offence punishable u/s 477A IPC. The evidence on record does not pinpoint accounts, which had been falsified by accused No. 2. Therefore, in the absence of charge for an offence punishable u/s 477A IPC and in the absence of evidence in proof of the same, accused No. 2 cannot be held guilty of an offence punishable u/s 477A IPC. In the discussion made supra, we have

narrated the duties entrusted to accused Nos. 1 and 3. Therefore, accused 1 and 3 cannot be held guilty of offences punishable under Sections 468, 420 and 409 IPC. Accused No. 2 cannot be held guilty of an offence punishable u/s 468 IPC.

11. Therefore, we pass the following:

ORDER

The appeal is dismissed.