
(2018) 05 RAJ CK 0114

In the Rajasthan High Court

Case No : Criminal Leave To Appeal No. 220 of 2014

State of Rajasthan @APPELLANT@Hash Om Prakash Purohit

Date of Decision : 10-05-2018

Acts Referred:

Prevention of Corruption Act, 1988 — Section 8, 10, 13(1)(D), 13(2)
Indian Penal Code, 1860 — Section 120, 120B, 313, 409, 420

Citation : (2018) 05 RAJ CK 0114

Hon'ble Judges : RAMCHANDRA SINGH JHALA, J

Bench : Single Bench

Advocate : O.P. Rathi, Sabir Khan, Vineet Jain, Suresh Charan, Harish Purohit

Final Decision : Dismissed

Judgement

“

This criminal leave to appeal has been filed by the State of Rajasthan against the judgment dated 23.6.2014 passed by learned Special Judge, Session",,,

Court (Prevention of corruption Act), Udaipur in Regular Criminal Case No.27/05, whereby he has acquitted the accused-respondents for the",,,

offences under Sections 8, 10 and 13(1)(D) read with Section 13(2) of Prevention of Corruption Act, 1988 and Section 409, 420 and 120B I.P.C.",,,

Brief facts of the case are that Suiting Private Ltd., Bhilwara is a registered company managed by the Accused Om Prakash and Smt. Kanta.Â",,,

Earlier the said company was known as Shiva Textile and was a Sick unit and loan of Rs.15,83,000/- Â is outstanding from the above firm.Â An",,,

application for sanction of letter of credit of Rs.15 lacs and 10 lacs as term loan was submitted by the said firm before the Central Sahakari Bank",,,

Bhilwara and the accused Mohan Lal (deceased) recommended to grant of Rs.25 lacs as hypothecation and Rs.15 lacs as letter of credit and sent the",,,

same to main branch of the Bank, therefore, the accused Vinod Kumar

recommended to grant of Rs.10 lacs as term loan, 25 lacs as hypothecation",,,
and 12 lacs as letter of credit. It is further submitted that the accused Om Prakash also recommended to grant loan and matter sent to the,,
Administrator, the District Collector, Bhilwara which was approved by him on 1.12.1995 and the sanction was issued on the basis of approval of the",,,
District Collector, Bhilwara.",,,
The accused persons while misusing official position, sanctioned the term loan in favour of the said firm and said amount was not paid to the bank by",,,
the accused-respondents. The amount outstanding from the accused upto 31.3.2000 is Rs.19,10,719.Â The accused-respondents Nos.1, 2, 3 and 7",,,
hatched criminal conspiracy with accused-respondents No.4, 5 and 6 and caused loss to the public exchequer which is punishable under the provisions",,,
of Section 8, 10 and 13(1)(D)Â read with Section 13(2) of the Prevention of Corruption Act, therefore, a case bearing No.308/200 was registered",,,
and after investigation, a charge sheet was filed before the Court.Â During the course of trial, the accused Mohan Lal expired, therefore, proceeding",,,
against him was dropped.,,,
After hearing the arguments of both the parties, the learned trial court discharged the accused Om Prakash Purohit, Vinod Kumar, Om Prakash",,,
Mundra, Smt. Kanta Mundra and Dinesh Mundra from the offence under Sections 8, 10 of the P.C. Act and Section 409, 420 of I.P.C. and framed",,,
the charges against the accused Om Prakash Purohit and Vinod Kumar for the offences under Section 13(1)(D) read with Section 13(2) of P.C. Act,,
and Sec.120 of I.P.C. and against the accused Om Prakash Mundra, Dinesh Mundra and Smt. Kanta Mundra for the offence under Section 120B",,,
I.P.C. and explained them which was denied by them and claimed for trial.,,,
The prosecution submitted second charge sheet against the accused Mr. P.R. Amariya, therefore, the trial court framed charges against him for the",,,
offences under Sections 8, 10, 13(1) (D) read with Section 13(2) of P.C. Act and Sec.409, 420 and 120 of I.P.C. and explained him which he denied",,,
and claimed for trial.,,,
The prosecution produced as many as 14 witnesses and exhibited the documentary evidence Ex.P/1 to P/9.Â The Statements of the accused-,,,
respondents were recorded under Section 313 I.P.C. in which they told the prosecution story false and claimed themselves innocent.,,,

The learned trial court after hearing both the parties acquitted the accused-respondents vide judgment dated 23.6.2014 for the offences charged,,

against them,Â against which the appellant-State of Rajasthan has preferred the instant leave to appeal.",,

Heard learned counsel for the parties.,,

Learned Public Prosecutor appearing for the State of Rajasthan has contended that the trial court has erred in law as well as facts while acquitting the,,

accused respondents named above for the charges levelled against them.Â The learned trial court has also erred in disbelieving the statements of the,,

prosecution witnesses, whereas from the statements of prosecution witness, the offences committed by the accused respondents are well proved and",,,

established.Â The prosecution has proved its case beyond reasonable doubt.Â As per the provisions of loan policy, there is no provision for",,,

sanctioning the term loan for the purpose of re-payment of loan.Â,,

It is further contended that by the cogent documentary evidence, it was proved that the accused-Mohan Lal (deceased) had recommended for grant",,,

of Rs.25 lacs as hypothecation and Rs.15 lacs as letter of credit and sent the same to main branch of the bank, thereafter, the accused Vinod Kumar",,,

recommended to grant of Rs.10 lacs as term loan 25 lacs as hypothecation and 12 lacs as letter of credit and accused Om Prakash also recommended,,

to grant loan and the matter sent to the,,

Administrator, the District Collector, Bhilwara which was approved by him on 1.12.1995 and sanction was issued on the basis of approval of the",,,

District Collector, Bhilwara.",,

In view of above arguments, the learned counsel for the appellant has prayed that this criminal leave to appeal may kindly be granted.",,

Learned counsels for the respondents vehemently opposed the contentions of learned Public Prosecutor and strongly supported the impugned,,

judgment of acquittal.Â It is contended that no error has been committed by the learned trial court while acquitting the accused-respondents from the,,

charges levelled against them.Â The judgment of acquittal has been passed after appreciation of evidence and material available on record.,,

I have heard the arguments advanced by learned Public Prosecutor as well as learned counsel for the accused-respondent and have gone through the,,

impugned judgment and material available on record.,,

The learned trial court while acquitting the accused- respondent has given the following finding :-,,

^^60- bl izdkj tc iznâ??kZ Mh&5 o ekdZ&1 ds tfj, lgdkjh foHkx }kjk /kkjk 74 vf/kfu;e ds v/khu ifjoknh Jh ih-,y-oekZ Â¼vfHk-lk-11Â½ dh fjiksVZ",,,

varxZr /kkjk 70 ds vk/kkj ij dksbZ dk;Zokgh ugha djus dk fu.kZ; ys fy;k x;k] rks ,slh fLFkfr esa orZeku nkf.Md dk;Zokgh lafLFkr djus dk dksbZ",,,

U;k;ksfpr vk/kkj ugha jg tkrk gSA bl izdkj vkjksi i= izLrqr gksus ls iwoZ gh tc Lo;a lgdkjh foHkx] jktLFkku ljdkj] t;iqj }kjk ifjoknhÂ Jh ih-,y-oekZ",,,

Â¼vfHk-lk-11Â½ dh mDr fjiksVZ ds vk/kkj ij dksbZ dk;Zokgh ugha dj izdj.k lekIr djus dk fu.kZ; ys fy;k x;k Fkk] rks fQj vkjksi i= izLrqr djus dk,,

vkSfpR; gh ugha jg tkrk gSA,,

61- bl izdkj mi;qZDr lexz foospu ds ifj.kkeLo:i ;g Li""V gS fd mi;qZDr ijhf{kr lkf{k;ksa esa fdLH Hkh us mi;qZDr vkjksiksa esa of.kZr fofâ??kf""V;ksa",,,

ds laca/k esa vfHk;qDrx.k ds fo:) dksbZ ysl ek= Hkh lk{; ugha nh gSA lkf{k;ksa us vius mDr eksf[kd dFkuksa esa Hkh vfHk;qDrx.k dks izâ?uxr,,

Â vijk/kksa ls lEc) ugha fd;k gSAÂ,,

62- tgkWa rd nLrkosth lk{; dk izâ??u gS] iznâ??kZ ih&1 fof/kd jk;] iznâ??kZ ih&2 vfHk;kstu Lohd`fr fo:) vfHk;qDrx.k loZJh vkseizdkâ??k,,

iqjksfgr ,oa fouksn dqekj yksiznâ??kZ ih&6 tkWp fjiksVZ] iznâ??kZ ih&7 vxzs""k.k i=] iznâ??kZ ih&8 vads{k.k fjiksVZ ,oa iznâ??kZ ih&9 vfHk;kstu Lohd`fr fo:) vfHk;qDr",,,

Jh ih-vkj-vkesfj;k gSa] ysfd u buesa ,slk dksbZ Hkh nLrkosth lcwr izLrqr dj lkfr ugha djok;k x;k gS] ftlls ;g lkfr gks fd vfHk;qDrx.k cSZad",,,

izkf/kdkfj;ksa }kjk vewd fu;e vFkok fnâ??kk funsZâ??k bR;kfn dk mYya?ku djrs gq, _.k Lohd`r dj izâ?uxr Â QeZ@dEiuh dks fn;k x;k gksA",,,

oLrqr% orZeku ekeyk 'kwU; lk{; dk gSA,,

63- blds foijhr izfrj{kk i{k }kjk nLrkosth lk{; esa fofHkUu nLrkostkr izLrqr dj iznfâ??kZr djok, x, gSa] ftudk ;gkW laf{kIr% foospu fd;k tk jgk gSA",,,

iznâ??kZ Mh&1 izk:i vfHk;kstu Lohd`fr gS] ftlds ckjs esa Ã...ij foospu fd;k tk pqdk gSA iznâ??kZ Mh&2 y?kq m|ksx :X.k bdkbZ lacaf/kr,,

C;wjks dh fjiksVZ,"izca/k funsâ??kd] visDI xfBr

desVh dh

Â cSad dh Vhi",xfBr desVh dh Vhi

1- tks _.k Lohd`r fd;k x;k Fkk

mlls MslsD;qfjVh yh tkuh pkfg, Fkh] tks
djhc yk[k :i, curh gS] tks ugha yh
xbZ", "lkekU; cSafdx vuqâ??kklu ds
varxZr __.k Lohd` fr ls iwoZ
vU;foRrnkrk laLFkk@ iwoZorhZ
foRrnkrk dk __.k cdk;k gksus ij
laca/k laLFkk ls vukifr izek.k i=
izkIr djus ds iâ??pkr gh uohu __.k
Lohd` fr ij fopkj fd;k tkrk gS ijarq
tgka rd Jh vkesfj;k ds fo:) mDr
izdj.k dk izâ??u gS] ds ckjsa esa
â??kh""kZ cSad ds Lrj ij miyC/k
tkudkj dh ds vuqlkj Jh vkesfj;k }kjk
Jheku~ lqfVXI uked bdkbZ dks
__.k Lohd` r fd;k x;k Fkk] tks fd
oLrq% uohu __.k ugha Fkk cfYd
vkj-,Q-lhls __.k VsdvkWoj dk
ekeyk FkkA mDr fLFkfr esa
gekjh jk; esa vukifRr izek.k i=
ysus dh vkoâ??;drk ugha Fkh]
D;ksafd ;g dk;Z nksuksa
foRrnkrk laLFkkvksa dh vkilh
lgefr ls gh fÃ?;kfUor fd;k tkrk
gSA", "Lohd` r jkfâ?k dEiksftV __.k ds :i
esa FkhA dEiksftV __.kksa esa 1-
5 xq.kk lsD;qfjVh dk izko/kku
ugh gS ,oa lsD;qfjVh cSad dh
larqf""V ds vk/kkj ij gksuk vko';d
gS] tks lsD;qfjVh ds laca/k esa
ijh{k.k dk QsDVÂªh dk dPpk eky

,oa rS;kj eky Hkh
gkbZiksfFkdsâ??ku esa jgsxk] ;g
Hkh /;ku esa j[kus ;ksX; gS] tks
/;ku esa j[kk x;k gSA ,slh fLFkfr
esa cSad o cSad vf/kdkfj;ksa ij
vkjksi izekf.kr ugha gksrk gSA
2 bl izdj.k esa VeZ yksu Hkh
Lohd`r fd;k x;k gS] tks cSad dh
_.k uhfr ds vuqlkj Lohd`r fd, tkus
;ksX; ugha Fkka",,"Lohd`r _.k dks ,u-,Q-lh- ds varxZr
ekuk x;k gS] tcfd dsâ??k
Ã?sfMV fyfeV ds vUrxZr
O;kikjh dks 5 yk[k :i, rd gh vf/kdre
_.k Lohd`r fd;k tk ldrk gSA vr%
mRiknd dks Lohd`r lkof/k _.k uhfr
dk mYya?ku ugha Fkka vr%
VeZ _.k Lohdkj djuk _.k uhfr ds
vuqlkj lgh Fkk
3- Jheku~ lqfVXI dEiuh dks _.k
nsus ls iwoZ dk;Zâ??khy iwath
vkSj ysVj vkWQ Ã?sfMV dh
tkap ugha dh xbZA ;g vfu;ferrk bl
izdj.k esa jgh gSA",vkoâ??;d,"cSad dh uksvâ??khV ls fl) gS fd
cSad us pkyq iawath rFkk ysVj
vkWQ Ã?sfMV fyfeV dh ekax
dk vkadyu fd;k Fkka vr%
vfu;ferrk dk vkjksi lgha ugh gSA
4- bl QeZ dk _.k igys gh vkj-,Q-lh
}kjk Lohd`r Fkk vkSj ;g QeZ vkj-
,Q-lh- dks _.k pqdkus gsrq vleFkZ

FkhA bl izdkj detksj foRrh; fLFkfr
dks QeZ dks __.k nsus ls iwoZ
tkap ugha dh xbZ fd vkj-,Q-lh- dk
__.k Hkqxrku djuk cdk;k Fkk vkSj
QeZ vkj-,Qlh- dks Hkqxrku djus
gsrq D;ksa vleFkZ FkhA",,"izdj.k dk ijh{k.k cSad Lrj ij fy;k
tkdj cdSa ds fu;ekuqlkj dk;Zokgh
dh xbZ Fkh] tks lgh FkhA
5- tks __.k Lohd`r fd;k x;k Fkk] og
,d lFk Lohd`r dj Hkqxrku dj fn;k
x;k] tcfd Hkqxrku 2&3 fdLrks
esa djuk pkfg, Fkka",,"__.k dk Hkqxrku ,d fdLr esa ugha
fd;k x;kA vr% vkjksi fujk/kkj gSA
6- vkj-,Q-lh- dks __.k dks pqdkus
gsrq cSad }kjk __.k Lohd`r fd;k
x;k] tks lgdkfjrk dh Hkkouk ds
foijhr ,ao cSad dh __.k uhfr ds fo:)
Fkka",,"__.k uhfr esa bl izdkj ds __.kksa ij
izfrca/k ugha gS rFkk lgdkfjrk dh
Hkkouk dk guu ugha gqv kS
cfYd cSad __.k uhfr ds vuq:i
fu;ekuqlkj dk;Zokgh dh xbZ gSA