
(2012) 12 PAT CK 0044
In the Patna High Court
Case No : Govt. Appeal (SJ) No. 9 of 2001

The State of Bihar

APPELLANT

Vs

Badri Narayan Mahato

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Citation : (2012) 12 PAT CK 0044

Hon'ble Judges : Mandhata Singh, J

Bench : Single Bench

Advocate : S.N. Prasad, app, for the Appellant; B.N.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mandhata Singh, J.—Heard learned counsel for the petitioner and learned counsel for the State. This Government Appeal is filed against the Judgment dated 04.01.2001 passed by learned Sub-divisional Judicial Magistrate, Madhubani in T.R. No. 269 of 2000/G.R. No. 1956 of 1986.

2. Prosecution case, in brief, is that accused-respondent, Badri Narayan Mahto, the then Junior Engineer, District Board, Madhubani was entrusted 6,253 cubic feet stone chips for construction of road no. 34, Pandaul Taar Sarai. K.A. Kuttan, Assistant Engineer and Dhanbir Jha, Junior Engineer measured the chips stone kept in side of the road and found it 1,204 cubic feet, its price Rs. 45,747/- is shown misappropriated. Again he was given Rs. 6,05,237/- as advance towards four schemes. Bills were verified and work was found done for Rs. 5,61,130/-. Again he was given Rs. 4,05,406/- for construction of damaged road and 489.8 quintal wheat was also given in advance. No bill or vouture was submitted for the same. He was again entrusted to bid of several sairats in the year 1983-1984 but no account was given. It is alleged that the balance money was misappropriated by him.

3. After concluding the trial, accused-respondent has been acquitted of the charges leveled against him. In all, five witnesses are examined to substantiate

the charges. They are P.W.1 Indrakant Jha, P.W.2 K.A. Kuttan, P.W.3 Dhanbir Jha, P.W.4 Abdul Kudus and P.W.5 Bishwanath Thakur, District Engineer.

4. P.W.1 is not stating a single word on the relevant point. P.Ws. 2 and 3 are witnesses that they measured the stone chips which was 1204 cubic feet. P.W.5 in para-21 states about use of 17356 cubic feet stone chips and remaining of rest in side of road which only was measured.

5. Before making any observation, it is pertinent to mention here that grounds in details are given by the trial Court for disbelieving the prosecution case. Something is left by it which is added here. It is the prosecution case itself that the stone chips was kept in side the road. How it was protected is enquired by the Court itself in Court question, is replied that for sometimes stone chips are kept elsewhere for its safety, so it easily can be concluded that if there was none to watch the chips, it cannot be said that the same was misappropriated, in absence of evidence, that the same was taken away by the accused-respondent or by some person under his instruction.

6. Bills are submitted by the accused-respondent for the work done on his behalf for the total advance amount through exhibit-4 series. Only after certain deduction, amount is shown lesser utilized. Main thing was that what work was to be done and what is done before giving detail of the same no deduction is possible. In course of investigation or trial also, no care has been taken to establish the work to be done by entrusted advance amount and what really is done, rather investigating officer of the case even has not been examined which prejudices the interest of accused respondent.

7. Hence, I find no mistake committed by the learned Magistrate in acquitting the accused-respondent. Accordingly, the Government Appeal is dismissed.