

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: January 08, 2014
Judgment Pronounced on: January 27, 2014

+ **CRL.Appeal No.358/2002**

HARI DUTT PANDEY (NOW DECEASED)
THROUGH LR.s

.....Appellant

Through: Mr. J.P. Tiwari, Advocate

Versus

C.B.I.

....Respondent

Through: Mr. R.V. Sinha, Standing Counsel
for CBI & Mr. A.S. Singh,
Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**

1. In the year 1992, appellant was Cashier in Tihar Jail, New Delhi and on the allegations of appellant misappropriating ₹2,545/-, he was tried in this case and vide impugned judgment of 11th April, 2002, he has been convicted for the offences under Sections 409/467/471/477A of *IPC* and under Section 13(2) of *Prevention of Corruption Act, 1988* and vide impugned order of 12 April, 2002, he has been sentenced to rigorous imprisonment for four years with fine, which is under challenge in this appeal. The substantive sentence awarded to appellant was suspended while entertaining this appeal.

2. The facts of this case, as noted in the impugned judgment, are as under:-

"The allegations against the accused H.D. Pandey (accused hereinafter) inter alia related to four particular bills i.e. bill no.743/D.A.; bill no.759/D.A.; bill no.828/Bonus and bill no.559/pay. It was found during investigation that an amount of Rs.240/- pertaining to payment on account of D.A. arrears of one Hawa Singh Warder (PW3) had been drawn alongwith D.A. Arrears of other employees against bill no.743/D.A. Similarly, an amount of Rs.228/- on account of D.A. Arrears of one Desh Raj, Warder (PW2) had also been drawn alongwith D.A. Arrears of certain other employees of the jail administration against bill no.759/D.A. Bill no.828/Bonus pertains to the bonus payable to a number of employees of jail including an amount of Rs.1186/- payable to P.W.2 Desh Raj. Bill no.559/Pay pertains to the salary and allowances to jail staff in the month of August, 1991 and included pay and allowances of Rs.891/- of P.W.2 Desh Raj. The investigating agency had found evidence indicating that the aforesaid four amounts, total Rs.2545/-, received alongwith other payment against the said four bills, were not disbursed but misappropriated by the accused. It is alleged that the accused tried to cover up and conceal the misappropriation of the said amounts by making false entries or by cuttings/manipulation in the entries in the cash book, in the acquittance roll and in the treasury challan."

3. Prosecution has relied upon evidence of 11 witnesses to prove its case and the deposition of material witnesses which was referred to at the time of hearing of this appeal is that of *Desh Raj (PW-2)*, *Hawa Singh (PW-3)*, *Handwriting Expert (PW-10)* and *Investigating Officer (PW-11)*. The stand taken on behalf of appellant as noticed in the impugned judgment is as under: -

"As per accused, he used to hand over the payment and the acquittance roll to the line officers, who used to disburse the payments to the employees and would return the acquittance roll after obtaining signatures, in token of receipt of payment. He claimed that the amounts in question had been deposited in the treasury, denying the evidence that he had manipulated the records so as to falsely reflect such deposit of the said amount in treasury. He did not dispute the evidence about his specific writing have been taken and also about the opinions given by PW10 M.L. Sharma, Deputy Govt. Examiner of questioned documents. Shimla about the incriminating documents being in his hand. He claimed to be innocent and falsely implicated stating he was not acquainted with the handwriting of the employees."

4. While discarding the afore-noted stand taken on behalf of appellant-accused, trial court had relied upon prosecution evidence to convict appellant herein.

5. At the hearing, learned counsel for appellant had drawn attention of this Court to deposition of *Desh Raj (PW-2)* and *Hawa Singh (PW-3)* to point out that when they did not get their dues, they contacted Sh. J.P. Sehrawat, Line-Officer, who used to disburse the payments to the staff after obtaining their signatures against respective entries. It was asserted by learned counsel for appellant that *Hawa Singh (PW-3)* had not deposed against appellant and trial court had gravely erred in relying upon their evidence to hold appellant guilty. Lastly, it was submitted that the evidence of *Handwriting Expert (PW-10)* does not connect appellant with the offence in question and the deposition of *Investigating Officer (PW-11)* clearly shows that the actual disbursement of salary, etc., used

to be made by individual Warder/Line-man and this vital aspect has been overlooked by the trial court which renders the impugned judgment unsustainable.

6. Learned Standing Counsel for respondent-CBI had supported the impugned judgment and had submitted that the entries in the *Acquittance Roll, Cash-book*, etc. are in the hand of appellant and thus, the offence of misappropriation etc., stands duly proved and there is no substance in this appeal.

7. Upon hearing both the sides and on careful perusal of the impugned judgment and the evidence on record, I find that from the evidence of material witnesses (PW-2 & 3) as well as from the evidence of *Investigating Officer (PW-11)*, it stands proved that the actual disbursement of the dues was made by individual Warder /Line-man and this aspect has been illegally ignored by trial court while holding appellant guilty. When the actual disbursement of dues was not by appellant, then to rely upon the documentary evidence i.e. *Acquittance Roll, Cash-book*, etc. would not be justified particularly in the face of the following observations made in the impugned judgment:-

"It is true that the handwriting expert had not been able to connect the signatures of Ex. P.W.2/1 with the writing of the accused, but this will not create any doubts.

8. It needs no reiteration that in a criminal trial prosecution has to prove its case beyond reasonable doubt. On this aspect, the pertinent observations of Apex Court in *Raj Kumar Singh v. State of Rajasthan*, (2013) 5 SCC 722 are as under: -

“21. Suspicion, however grave it may be, cannot take the place of proof, and there is a large difference between something that “may be” proved and “will be proved”. In a criminal trial, suspicion no matter how strong, cannot and must not be permitted to take place of proof. This is for the reason that the mental distance between “may be” and “must be” is quite large and divides vague conjectures from sure conclusions. In a criminal case, the court has a duty to ensure that mere conjectures or suspicion do not take the place of legal proof. The large distance between “may be” true and “must be” true, must be covered by way of clear, cogent and unimpeachable evidence produced by the prosecution, before an accused is condemned as a convict, and the basic and golden rule must be applied. In such cases, while keeping in mind the distance between “may be” true and “must be” true, the court must maintain the vital distance between conjectures and sure conclusions to be arrived at, on the touchstone of dispassionate judicial scrutiny based upon a complete and comprehensive appreciation of all features of the case, as well as the quality and credibility of the evidence brought on record. The court must ensure that miscarriage of justice is avoided and if the facts and circumstances of a case so demand, then the benefit of doubt must be given to the accused, keeping in mind that a reasonable doubt is not an imaginary, trivial or a merely probable doubt, but a fair doubt that is based upon reason and common sense.”

9. In the face of the afore-referred observations in the impugned judgment and the fact that actual disbursement of dues was not made by appellant, the charges of criminal misappropriation, etc., against appellant are not firmly established. Thus, finding the impugned

judgment to be unsustainable, I extend benefit of doubt to appellant-accused and acquit him of the charges framed against him.

10. This appeal is accordingly allowed.

(SUNIL GAUR)
JUDGE

JANUARY 27, 2014

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