

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

101

CRA-S-273-SB-2003
Date of decision: 14.05.2024

B.R. Malhotra Appellant

Versus

C.B.I. Punjab, Patiala Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Gautam Dutt, Advocate
for the petitioner.

Mr. Akashdeep Singh, Special Public Prosecutor
for the respondent-CBI.

MANJARI NEHRU KAUL, J.

1. The appellant-accused is challenging judgment of conviction and order of sentence both dated 16.01.2003 passed by learned Special Judge, C.B.I., Punjab, Patiala, whereby he was sentenced as under:-

Offence(s) u/s	Period of sentence(s)	Fine imposed	Period of sentence in default of payment of fine
120BN r/w 420 IPC	RI for 01 year	Rs.1,000/-	RI for 01 months
13(i)(d) r/w 13(2) of the PC Act, 1988	RI for 02 years	Rs.2,000/-	RI for 02 months

1(a). For the sake of convenience, the parties are referred to with their original status before the learned Trial Court.



The case of the prosecution, as per the allegations levelled in the FIR in question may be summed up as thus, co-accused V.K.Dhir while serving as Clerk/Cashier and appellant-B.R. Malhotra, the then Passing Officer of the State Bank of India, Main Branch, Moga, abused their official position and conspired with each other to defraud the Bank. They made fictitious entries in dormant savings accounts without preparing credit vouchers. Co-accused V.K. Dhir forged withdrawal forms and the signatures of account holders while appellant-B.R. Malhotra in his role as Passing Officer, approved 8 such forms without verifying the signatures against the specimen cards, allowing co-accused V.K. Dhir to withdraw funds fraudulently. They were charged on being sent up to face trial both the co-accused V.K. Dhir as well as appellant-B.R. Malhotra were charged under criminal conspiracy, cheating, forgery and misuse of official positions under Section 120-B, 420, 468, 471, 477-A of the IPC read with Section 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988. On being charged both the accused denied the charges levelled against them and claimed trial.

The prosecution in support of its case, examined as many as 26 witnesses including PW1- K.B Sharma, PW2-B.K. Chopra and PW-12 D.C Sharma, who verified the handwriting of co-accused V.K. Dhir on the relevant documents. PW-18 Balwinder Singh Rakhra testified about processing of various withdrawal forms by appellant-B.R. Malhotra. The appellant in support of his case examined one handwriting expert M.L. Sharma.

On the basis of the evidence led, the trial Court held co-accused V.K. Dhir guilty under Sections 120-B, 420, 468, 471, 477-A of the IPC and Section 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 while the appellant was convicted for offences under Sections 120-B and 420 of the IPC



and Sections Section 13(1) (d) and 13(2) of the Prevention of Corruption Act, 1988 They were sentenced as already detailed in the earlier part of this judgment.

Submissions on behalf of the counsel for the accused-appellant.

Learned counsel has contended that the prosecution failed to establish the guilt of the appellant beyond a reasonable doubt. The key arguments presented by the learned counsel are as follows:

- a). Despite examining 26 witnesses, the prosecution failed to present any convincing, much less cogent evidence to link the appellant to the fraudulent activities orchestrated by co-accused/prime accused V.K.Dhir. The primary accusation against the appellant was that he had approved 8 withdrawal forms without verifying signatures, lacked any substantive proof of criminal intent;
- b) That the prime accused V.K.Dhir, admitted to his fraudulent acts including in an extra judicial confession statement Ex.PW25/1 made to one Ms. Kalra, the then Manager, SBI, Moga. However, not even once did he implicate the appellant as being an accomplice in the alleged crime. The statements including the admission made by the prime accused V.K.Dhir, thus, did not suggest even remotely any collusion with the appellant;
- c). That the only allegation against the appellant was of negligence and dereliction of duty as a Passing Officer. However, this allegation fell far short to constitute a criminal offence. There was no evidence led whatsoever to suggest that the appellant acted with a malicious intent or had fraudulently passed the withdrawal forms. Furthermore, departmental proceedings were initiated against the appellant for failure to prevent and bring to the notice of the authorities concerned qua the misconduct of co-accused V.K.Dhir, however, therein also no allegations were leveled against the appellant of conspiring with

the co-accused. The absence of all these allegations against the appellant in the departmental proceedings further demolished the case of the prosecution as also weakened the accusations against him. The findings of the learned trial Court while passing the impugned judgment and order dated 16.01.2003 regarding the alleged conspiracy were based on conjectures and surmises;

(d) That there was no indication, even implicitly that the appellant forged documents or benefitted financially from the fraudulent activities of the co-accused V.K.Dhir. Criminal conspiracy, requires a demonstrable intent, and none of the actions of the appellant indicated this essential element. Thus, the trial Court gravely erred in holding the appellant criminally liable by convicting him based on speculations rather than on cogent evidence. Even in the worst-case scenario, two other employees also passed withdrawal forms-albeit fewer in number compared to the 08 passed by the appellant- yet they were exonerated. This selective prosecution rather left no manner of doubt qua the absence of a coherent case against the appellant which also required to be appreciated in the light of there being no convincing evidence produced that the petitioner was a beneficiary of the fraudulent activities more so, when the prosecution had not presented any evidence tracing the money back to him.

Hence, the trial Court had fallen into error in failing to appreciate that the allegations levelled against the appellant including the evidence led did not constitute any criminal offence.

Submissions made by the Standing counsel for CBI.

Learned Standing counsel for CBI while opposing the prayer and submissions made by the counsel for the appellant has at the outset argued that the conduct of the appellant was suggestive of active collusion with the prime



accused V.K.Dhir. The Standing counsel further made the following submissions:

(i) **Negligence and lack of Verification**

(1) The appellant approved 8 withdrawal forms Ex.PW5/4 & Ex.PW1/9 to Ex.PW1/15 without verifying signatures against specimen cards. For instance, in one specific case, the specimen signature Ex.PW8/1 was in Punjabi, while the corresponding withdrawal form Ex.PW1/9 bore signature in English. This blatant disregard for verifying signatures clearly indicated a possible conspiracy with co-accused V.K.Dhir. Furthermore, it was revealed that the withdrawals were made from dormant accounts by co-accused V.K.Dhir, without the production of the relevant savings bank pass books. This action alone pointed to a deliberate attempt to bypass the established banking protocols. It was contended by the Standing counsel that although it was true that two other employees who had also passed withdrawal forms in a similar negligent manner had not been proceeded against however, it was crucial to note that the appellant was involved in a significantly higher number of such withdrawal forms as compared to the other two employees. Since the appellant approved payments on 8 withdrawal forms, 7 of which were associated with dormant accounts, it did highlight a pattern of suspicious behavior.

(2) That no doubt there was no direct evidence linking the appellant to the money trail involving fraudulent withdrawals amounting to Rs.4,53,000/-, however, the nature of conspiracy, which typically involves covert actions planned behind closed doors, cannot be ignored thus, the absence of any direct evidence against the appellant would not negate the strong circumstantial



evidence indicating his involvement in the conspiracy with co-accused V.K.Dhir.

(ii) **Exoneration of other employees**

(1) Exoneration of two other employees S.K. Dua and Gurdip Singh who also passed withdrawal forms cannot be seen as a precedent for the exoneration of the appellant. The CBI had presented comprehensive and compelling evidence clearly implicating the appellant in a fraudulent scheme; the two other employees being exonerated would not thus, diminish the weight of the evidence against the appellant as the actions of the appellant when viewed in their entirety clearly demonstrate his role in the conspiracy to defraud the bank.

(2) The Standing counsel for CBI thus, submitted that the conduct of the appellant in approving multiple suspicious withdrawal forms without proper verification and the overall circumstantial evidence of a covert conspiracy left no manner of doubt that he was actively involved in the fraudulent activities orchestrated by co-accused V.K.Dhir.

I have heard learned counsel for the parties and perused the relevant material on record.

Findings of the Court

1. The appellant stands convicted under Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 420 of the IPC which read as under:

“Section 13(1)(d) of the PC Act:

"13. Criminal misconduct by a public servant.-



(1) XXX XXX XXX

(d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable or pecuniary advantage; or

ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

XXX XXX XXX

Section 420 of the IPC

"420. Cheating and dishonestly inducing delivery of property.-

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. "

2. Before proceeding further, it would be apposite to refer to the observations made by Hon'ble the Supreme Court in **M. Narayanan Nambiar v. State of Kerala, 1963 SCR Supl. (2) 724** wherein it observed that the abuse of position by a public servant must involve dishonest intent to cause wrongful loss or gain. Mere negligence or violation of departmental rules would not by itself suffice for criminal misconduct. This position was reiterated by Hon'ble the Apex Court in **S.P. Bhatnagar V. State of Maharashtra, (1979)1 SCC 535** wherein it emphasised the necessity of proving dishonest intention and pecuniary advantage gained by abusing one's position for establishing the offence under Section 13(1) (d) of the PC Act. It would, thus, be relevant to



reproduce the observations of the Hon'ble Supreme Court in **M. Narayanan Nambiar's case (supra)**

*"In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective. As we will presently show the case of the appellant on the facts found clearly falls not only within the words of clause (d) but also within its spirit. Indeed if his argument be accepted not only we will be doing violence to the language but also to the spirit of the enactment. First taking the phraseology used in the clause, the case of a public servant causing wrongful loss to the Government by benefiting a third party squarely falls within it. Let us look at the clause "by otherwise abusing the position of a public servant," for the argument mainly turns upon the said clause. The phraseology is very comprehensive. It covers act done "otherwise" than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this clause is, that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. "Abuse" means mis-use ie, using his position for something for which it is not intended. That abuse may be by corrupt or illegal means or otherwise than those means. The word 'otherwise' has wide connotation and if no limitation is placed on it, the words 'corrupt', 'illegal', and 'otherwise' mentioned in the clause become surplusage, for on that construction every abuse of position is gathered by the clause. So some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But in our view such innocuous acts will not be covered by the said clause. **The juxtaposition of the word 'otherwise' with the words 'corrupt or illegal means', and the dishonesty implicit in the word "abuse" indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word 'obtains' be sought in aid to limit the express words of the Section. Obtain' means acquire or get. If a corrupt officer by the said means obtains a valuable thing or a pecuniary advantage, he can certainly be***



said to obtain the said thing or a pecuniary advantage, but it is said that in clauses (a) and (c) the same word is used and in the context of those clauses it can only mean getting from a third party other than the Government and therefore the same meaning must be given to the said word in clause (d) 'Obtains' in clauses (a) and (6) in the context of those provisions may mean taking a bribe from a third party, but there is no reason why the same meaning shall be given to that word used in a different context when that word is comprehensive enough to fit in the scheme of that provision. Nor can we agree that as dishonest misappropriation has been provided for in clause (c), the other cases of wrongful loss caused to the Government by the deceit practiced by a public officer should fall outside the Section. There is no reason why when a comprehensive Statute was passed to prevent corruption this particular category of corruption should have been excluded therefrom because the consequences of such acts are equally harmful to the public as acts of bribery. On a plain reading of the express words used in the clause, we have no doubt that every benefit obtained by a public servant for himself or for any other person by abusing his position as a public servant falls within the mischief of the said clause."

XXXX XXXX XXXX XXXX

"21. Following the decision in *M. Narayanan Nambiar v. State of Kerala* (supra), it was held by this Court in *S. K. Kale v. State of Maharashtra* (supra) **that the abuse of position in order to come within the mischief of the section must necessarily be dishonest so that it may be proved that the accused caused deliberate loss to the department.** It was further held in this case that it is for the prosecution to prove affirmatively that the accused by corrupt or illegal means or by abusing his position obtained any pecuniary advantage for some other person. It would, therefore, be necessary to find out in this case as to whether the accused abused their position and acted dishonestly or with a corrupt or oblique motive in having the contract in question entrusted to A-4."

3. Upon examining the facts of the present case and the evidence led as also the ratio of law laid down by the Supreme Court, it is clear that in order to prove charges against a public servant accused of offences under Section



13(1) (d) of the P.C. Act as well as Section 420 IPC it is imperative to prove dishonest intention on his part to cause deliberate losses to the department.

4. In the present case, however, on meticulous examination of the evidence led there is a clear cut absence of *mens rea*. No evidence has been led to prove that the appellant had a dishonest intention to cause losses to the bank or gain any pecuniary advantage. The mere passing of withdrawal forms without signature verification, no doubt amounts to negligence, however, it would not constitute criminal misconduct under Section 13(1)(d) of the P.C. Act.

5. Furthermore, the prosecution failed to present any direct evidence of conspiracy or collusion between the appellant and accused V.K.Dhir as not disputed by the CBI also, no trail of money was found leading to the appellant. Moreover, even as per the various statements made by accused V.K.Dhir including his extra judicial confession statement, he did not implicate the appellant as being either a conspirator or in any manner having colluded with him.

6. Strangely two other employees who too had similarly passed withdrawal forms and had apparently being negligent in the discharge of their official duties like the appellant were not prosecuted. The contention of the counsel for the CBI that they had not been prosecuted as they had passed only 2 withdrawal forms as compared to 8 withdrawal forms passed by the appellant, is clearly indicative of selective prosecution. The number of withdrawal forms passed by the appellant cannot be made the sole basis for his conviction without any cogent and convincing evidence of criminal intent against him. It needs to be emphasized that to attract an offence under the P.C. Act, the prosecution has to prove beyond reasonable doubt that the accused by resorting to corrupt or



illegal means and by abusing his official position had gained some financial advantage. However, in the present case, the prosecution has not been able to prove the case of the petitioner beyond reasonable doubt. The allegations of negligence and dereliction of duty certainly do not meet the threshold of criminal misconduct under the P.C. Act or cheating under Section 420 IPC and therefore, considering the absence of cogent evidence and proof of dishonest intent, the appellant deserves to be given the benefit of doubt and acquitted of the charges framed against him.

7. As a sequel to the above discussion, the present appeal is allowed.

May 14, 2024

ps

(MANJARI NEHRU KAUL)
JUDGE

Whether speaking/ reasoned : Yes/No
Whether reportable : Yes/No