IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

SITTING AT LUCKNOW

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Neutral Citation No. - 2024:AHC-LKO:42301

RESERVED

Judgment reserved on 21.12.2023

Judgment delivered on 31.05.2024

Court No. - 19

Case :- CRIMINAL APPEAL No. - 2590 of 2022
Appellant :- Pradeep Kumar Verma
Respondent :- Union Of India Thru. C.B.I.
Counsel for Appellant :- Rajeev Kumar Srivastava
Counsel for Respondent :- Shiv P. Shukla

Along with

Case :- CRIMINAL APPEAL No. - 2716 of 2022
Appellant :- Amar Nath Agnihotri
Respondent :- State Of U.P. Thru. Superintendent Of Police, Cbi/ Acb, Lko
Counsel for Appellant :- Manish Bajpai
Counsel for Respondent :- Shiv P. Shukla

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Manish Bajpai, the learned counsel for the appellant in Criminal Appeal No.2716 of 2022, Sri Rajeev Kumar Srivastava, the learned counsel for the appellant in Criminal Appeal No.2590 of 2022 and Sri Shiv P. Shukla, the learned counsel for the respondent-Union of India.

2. Both the aforesaid appeals have been filed against the same judgment and order dated 03.09.2022, passed by the learned Special Judge, P.C. Act, C.B.I. Court No.4, Lucknow in Criminal Case No.03 of 2007: State through C.B.I. Vs. Pradeep Kumar Verma and another, which was instituted on the basis of F.I.R. bearing R.C. No.18 (A) of 2006 and, therefore, the same are being decided by a common judgment.

3. The facts relating to the aforesaid are that the Superintendent, Post Office, Fatehgarh Division, Farrukhabad had given a complaint dated 27.11.2006 to the Superintendent of Police, C.B.I./A.C.B. Lucknow stating that Pradeep Kumar Verma (the appellant in Criminal Appeal No.2590 of 2022 was posted as Postal Assistant, Amar Nath Agnihotri (the appellant in Criminal Appeal No.2716 of 2022) was posted as Assistant Postmaster and Alladin was posted as Postmaster in the Head Post Office, Fatehgarh, District Farrukhabad during the period April 2006. Pradeep Kumar Verma was assigned the duties of savings certificate discharge counter. He used to receive cash from the head post office and to make payments in respect of National Savings Certificate (NSC), Kisan Vikas Patra (KVP) and Indira Vikas Patra (IVP) and after fulfilling all the formalities Amar Nath Agnihotri, Assistant Postmaster used to examine the documents and Alladin, Post Master used to verify the transactions regarding NSC, KVP and IVP. In the month of April 2006, Pradeep Kumar Verma embezzled Rs.2,47,156/-. Amar Nath Agnihotri and Alladin did not check the receipt book, discharge journals and monthly returns etc. properly, made false entries in records, committed forgery in the documents and embezzled Rs.2,47,156/-. The offence was committed in connivance with Amar Nath Agnihotri and Alladin. The Superintendent of the Post Office had made a request for initiating legal proceedings against Pradeep Kumar Verma, Amar Nath Agnihotri and Alladin.

4. On the basis of the aforesaid complaint, an F.I.R. bearing RC No.18 (A) of 2006, under Sections 120-B, 409, 477-A I.P.C. and Section 13 (2) read with Section 13 (1) (c) (d) of Prevention of Corruption Act, 1988 was lodged in Police Station C.B.I./A.C.B. Lucknow, U.P. After investigation a charge-sheet dated 03.12.2006 for the offences under Sections 120-B, 409, 477-A I.P.C. and Section 13 (2) read with Section 13 (1) (c) (d) of Prevention of Corruption Act, 1988 was filed against Pradeep Kumar Verma and Amar Nath Agnihotri only and the learned trial court took cognizance of the offence on 30.12.2006 and they were tried in Criminal Case No.03 of 2007.

5. Both the accused persons were convicted and sentenced as follows: -

(i) three years simple imprisonment and Rs.20,000/- fine for the offence under Section 120-B I.P.C. read with Section 409, 477-A I.P.C. and simple imprisonment for an additional period of four months in case of failure to pay fine;

(ii) ten years simple imprisonment and Rs.25,000/- fine for the offence under Section 409 I.P.C. and simple imprisonment for an additional period of one year in case of failure to pay fine;

(iii) five years simple imprisonment and Rs.20,000/- fine for the offence under Section 477-A I.P.C. and simple imprisonment for an additional period of one year in case of failure to pay fine;

(iv) five years simple imprisonment and Rs.20,000/- fine for the offence under Section 120-B I.P.C. read with Section 13 (2) read with 13 (1) (c) (d) of Prevention of Corruption Act, 1988 and simple imprisonment for an additional period of five months in case of failure to pay fine;

(v) five years simple imprisonment and Rs.20,000/- fine for the offence under Sections 13 (2) read with 13 (1) (c) of Prevention of Corruption Act, 1988 and simple imprisonment for an additional period of five months in case of failure to pay fine; and

(vi) five years simple imprisonment and Rs.20,000/- fine for the offence under Sections 13 (2) read with 13 (1) (c) of Prevention of Corruption Act, 1988 and simple imprisonment for an additional period of five months in case of failure to pay fine.

6. A charge-sheet was submitted against both the appellants on 03.12.2006, under Sections 120-B read with 409 and 477-A I.P.C. 409 I.P.C., 477-A I.P.C. 120-B I.P.C. read with Section 13 (2) read with 13 (1) (c) (d) of Prevention of Corruption Act, 1988, Section 13 (2) read with 13 (1) (c) of Prevention of Corruption Act and Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act.

7. The prosecution examined nineteen witnesses besides submitting documentary evidences.

8. The appellant Pradeep Kumar Verma denied the allegations in his statement under Section 313 Cr.P.C. and stated that the prosecution sanction had been granted against the Rules. He had done all works relating to KVP, NSC and IVP and prepared discharge journals and hand-to-hand receipt books in his own hand writing as per the Rules, on the basis whereof the day-to-day account was countersigned by the Cashier, the Postmaster and APM-II. Had he committed any irregularities the Assistant Postmaster and the Postmaster would have made a complaint to the higher authorities. The Investigating Officer conducted the investigation properly and submitted a charge-sheet wrongly. The matter was initiated by an unsigned letter dated 09.10.2006 purportedly sent by some office bearer of the employees union. Pradeep Kumar Verma had been elected as a delegate in the elections of U.P. Postal Cooperative Society held in September 2006, due to which his rivals and some other persons had become jealous of him. A dispute had occurred with PW-3 Arun Yadav regarding checking of attendance register of Head Post Office relating to August, 2006. He had been falsely implicated due to these reasons.

9. The other appellant Amar Nath Agnihotri stated in his statement recorded under Section 313 Cr.P.C. that the prosecution sanction had been granted in a mechanical way without independent application of mind. The responsibility of supervision of daily work rests on the Postmaster. He stated that he had joined the Postal Department in July, 2004 after coming back from Army Postal Service. During this entire tenure he did not verify any document. No punishment was imposed upon him in the departmental proceedings, whereas some other employees had been punished.

10. A bare perusal of the impugned judgment and order passed by the learned trial court indicates a glaring flaw in its approach inasmuch as without referring to the prosecution evidence, the learned trial court has proceeded to refer to the defense evidence first.

11. DW-1 Pradeep Kumar Verma stated that he got appointed in Postal Department on 01.11.1983 as a Branch Assistant. He remained posted in various sub post offices. He had passed the savings bank eligibility

test in the year 1996. He was transferred to the post of Postal Assistant in Head Office, Fatehgarh on 16.06.2005. He was assigned the duties of savings bank section. He had been elected the Divisional Secretary of the departmental employees union in the year 1992. In the year 1997, he was elected as the Divisional Secretary of All India Postal Employees Union Class-III. In the year 2005 he had been elected as a delegate of U.P. Postal Cooperative Societies, Hazratganj, Lucknow. Dr. Arun Yadav, who was working as Complaint Inspector in the office of Postal Superintendent, Fatehgarh, had openly supported the appellant's rival candidate and he had pressurized the polling officials to get votes in favour of another candidate. A complaint in this regard was made to the Superintendent of Post Office, Farrukhabad, whereupon Dr. Arun Yadav had been removed from the polling centre. While Dr. Arun Yadav was holding the post of Complaint Inspector, he came at about 2.30 p.m. on some day in August, 2005 and checked the attendance register and he misbehaved with the employees who had not signed the attendance register, including a lady employee Smt. Sunita Yadav. The employees told Pradeep Kumar Verma about the ill treatment of Dr. Yadav and he had talked to Dr. Arun Yadav stating that a crowd gathers even before opening of the counters and in a haste of starting the work the employees could not have made their signatures. The complaint of this incident was also made to the Superintendent Post Office Farrukhabad, whereupon Dr. Arun Yadav had abused and threatened Pradeep Kumar Verma that he would not be able to continue his service.

12. Pradeep Kumar Verma further stated that Lajja Ram Dixit, who was working as an Assistant Post Master-II, has leveled a false allegation that the appellant had taken away the pending return vouchers. In the year 1999 several complaints regarding corruption were made against the Post Office Superintendent R. P. Tripathi. The Chief Post Master General, Lucknow had sent a letter dated 25.11.1999 to Pradeep Kumar Verma asking him to examine the correctness of the complaint. While the appellant was lodged in District Jail, Lucknow since April, 2007, on 25.09.2008 he was removed from service in

furtherance of an ex-parte enquiry, on some other charges, which are not related to the allegations of embezzlement involved in the present case.

13. Pradeep Kumar Verma also stated that no complaint of the alleged embezzlement had been made by any investor. An unsigned complaint was made at 10.00 a.m. on 09.10.2006 when the Superintendent of the Post office was on L.T.C. leave and without verifying its correctness, an enquiry team was constituted consisting of R.C. Verma and Sarvesh Kumar Mishra, Inspectors Post Office, Farrukhabad, Imran Khan, the Complaint Inspector, Farrukhabad and Dr. Arun Yadav, Inspector, Post Office, Chhibramau and it reached Head Post Office Farrukhabad within an hour at about 11.30 a.m.. The members of the enquiry team remained present in the Head Office till 4.00 p.m. on 09.10.2006. The returns of KVP, NSC, IVP for all pending months had already been prepared, been signed by the Assistant Postmaster-II, Amar Nath Agnihotri and had been handed over to Postmaster, Fatehgarh even before 09.10.2006 for physical verification of return vouchers. The return of the Head Post Office and 63 other Sub Post Offices had already been submitted for certification of the cash-books by Assistant Postmasters Accounts/Postmasters.

14. Pradeep Kumar Verma further stated that while the enquiry team was present in the Head Office on 09.01.2006, three bags containing KVP of the months March, 2006, July, 2006 and September 2006 had been booked in parcel at 01.53 hrs. which bags had been handed over by Banking Clerk Rajesh Shakya to Smt. Sunita Yadav on the dispatch counter. In her examination, the Dispatch Clerk Sunita Yadav admitted having received three parcels and having sent the same to RMS, Kanpur. On 10.10.2006 the Postmaster Fatehgarh, Alladin had given information of booking of return parcel to the Assistant Superintendent and the officer in-charge of the enquiry team, where upon all the three booked parcels were intercepted midway and received by the Assistant Superintendent Headquarter at his office on 11.10.2006, whereas as per the departmental Rules, any registered post/parcel can be returned only on the request of the sender. The

parcels in question had been sent by the Postmaster, Head Post Office, Fatehgarh and he had not made any request for getting return of the already sent parcels. All the three parcels were opened without any order of Superintendent, Post Office, Farrukhabad and a list/inventory was prepared. The discharge journal, hand-to-hand receipt book and payment register etc. used to be given to the Cashier and the Cashier used to prepare HO summary, payment journal, vouchers and payment register on daily basis. When the account tallied, the Assistant Postmaster-Accounts used to make entries in the cash-book. After the account was tallied, the original vouchers and journal returns used to be kept in the custody of the Assistant Postmaster-II. The number of KVP, NSC and IVP, in respect of which payment was made on daily basis, was shown in the monthly statistics register which was signed by the Postmaster on daily basis.

15. After referring to the evidence of accused-appellant Pradeep Kumar Verma the learned trial court has referred to the submissions advanced on behalf of the accused Pradeep Kumar Verma in order to establish that he is innocent. This approach of the learned trial court is also patently erroneous and against the well established principles of trial of criminal cases in which the prosecution is required to make out a case and it is only thereafter that an accused person is called upon to defend himself. Therefore, the trial courts first deal with the prosecution evidence and submissions made by the prosecutor and the defence is considered only later on but a contrary approach has been adopted by the learned trial court in the present case.

16. It was argued on behalf of the prosecution that while working on the post of Postal Assistant in the Head Office, Fatehgarh, District Farrukhabad in the month of April 2006 on 05.04.2006 and 22.04.006, the appellant Pradeep Kumar Verma, acting under a criminal conspiracy with the other appellant Amar Nath Agnihotri, showed payment of excess amount in the government documents e.g. hand-to-hand receipt books, discharge journals and monthly returns etc. and he dishonestly made payments of KVP of lesser value. By committing forgery and making false entries in the documents, he misappropriated

Rs.1,69,778/- and thereby caused wrongful gain to himself and to the co-accused Amar Nath Agnihotri and he caused wrongful loss of the aforesaid amount to the postal department.

17. The trial Court referred to the examination-in-chief of PW-1 Awdhesh Kumar Srivastava, who was posted as Superintendent, Post Office Fatehgarh in the month of February 2007 and he had granted sanction for prosecution of the appellants. He stated that he was the competent authority to remove both the appellants from their posts.

18. The learned trial court held that the prosecution sanction was granted by PW-1 after applying his independent mind and it was legal and valid. It is relevant to note that only an authority competent to remove an official from service is competent to give sanction for prosecution of the employee but the Prosecution did not adduce any documentary evidence before the trial Court to prove as to who was the authority competent to remove a Postal Assistant and an Assistant Post Master from service.

19. P.W.2 Ved Prakash Mishra was performing the duties of Assistant Director Shri K.K. Nigam, who was on leave from September 2006 to August 2007. He had received a draft complaint in November 2006 concerning a fraudulent NSC payment of Rs. 2,47,156/- made in April 2006. This discrepancy was reported to Mr. Kamlesh Chandra, the Post Master General, Kanpur. Upon enquiry made by a team headed by Assistant Superintendent Mr. R.C. Verma and consisting of Mr. Arun Yadav, Mr. S.K. Mishra, Mr. Imran Khan, and Mr. R.P. Singh as its memnbers, it was found that the accused Pradeep Kumar Verma had misappropriated funds. Mr. P. R. Pal, another Assistant Superintendent, also conducted an enquiry and forwarded a complaint to the Superintendent of Police, CBI, Lucknow. Based on these findings, PW-2 had concluded that the fraudulent payment indeed occurred, and negligence by the Assistant Postmaster and Postmaster of Fatehgarh exacerbated the situation. The complaint was approved by the PMG, Kanpur, and signed by PW-2.

20. PW-3 Ramesh Chandra Verma was an Assistant Superintendent, Head Post Office, Fatehgarh Sub Division, Farrukhabad from January 2005

to January 2007. He proved various documents, including seizure memos and receipt books. Specifically, embezzlements totaling Rs. 1,69,778/- were identified on 05.04.2006 and 22.04.2006. The Cashier's Cash Book and NSC payment records were relied upon by PW-3 to prove the prosecution case.

21. PW-4 Mr. Pradeep Yadav had worked as a Postal Assistant in the Head Post Office, Fatehgarh on 24.10.2006. His duties involved reconciling paid and issued vouchers of NSC and KVP. An enquiry made by a team revealed discrepancies on certain dates i.e. on 05.04.2006, a shortfall of Rs. 57,036/- was found based on available vouchers, on 22.04.2006 and a deficiency of Rs. 1,12,742/- was found. Payments of a tital amount of Rs.20,000/- were made on 29.04.2006 without accompanying vouchers, resulting in a discrepancy of Rs. 76,048/-.

22. PW 13 Upendra Kumar stated that he was appointed as a Postal Assistant at the Head Post Office, Fatehgarh, on 08.10.1996. In April 2006, he was working at the S/B counter, while accused Pradeep Kumar Verma worked at the NSC, KVP, and IVP discharge counter. Certain discrepancies were found in the Hand-to-Hand Receipt Book of the dates 05.04.2006 and 22.04.2006.

23. PW-15 Collector Singh stated that he was working as cashier in Head Post Office Fatehgarh from October 2003 to July 2007. His responsibilities included managing cash transactions, reconciling daily receipts and overseeing the treasury at the post office. He managed cash receipts and deposits into the treasury and he used to oversee all cash related operations. He ensured that funds were distributed to counter clerks as needed and reconciled at the end of each day. It was recorded in the Cash-Book for April 2006 that on 05.04.2006 Pradeep Kumar Verma had received Rs. 55,600/- from the SB counter and Rs. 19,500/- from the NSC issue counter, totaling to Rs. 75,100/-. Only Pradeep Kumar Verma had acknowledged a discrepancy of Rs.4/- in his hand-to-hand receipt book. On 22.04.2006, Pradeep Kumar Verma had received Rs.92,000/- from the treasury and additional sums from various counters, totaling Rs.1,56,500/-. He recorded Rs.1,56,137/-

under NSC/KVP/IVP discharge in his hand-to-hand receipt book. Collector Singh had prepared the HO summary for 05.04.2006 and 22.04. 2006. A check for Rs.76,048/- was issued on 29.04.2006, from the treasury to the NSC/KVP/IVP discharge counter. On 29.04.2006, Rs.3,26,623/- were received at the NSC/KVP/IVP discharge counter, with Rs.95,343/- allocated for discharge liabilities and Rs.2,31,280/-.

24. PW-16 Sunita Yadav had worked as a Postal Assistant in the Dispatch Section at Head Post Office Fatehgarh in the year 2006. She proved photocopies of some original documents. PW-16 had prepared the list of parcels which were supposed to be sent to Kanpur RMS. However, these parcels were not received by Sunita Yadav. Upon enquiry, it was revealed that Sunita Yadav had left the office after handing over the parcel to Pradeep Kumar Verma and instructing him to deliver them to the dispatcher of the mail branch.

25. PW-18 Sri Surendra Rai stated was an Inspector in the CBI/ACB branch, Lucknow and he was the Investigating Officer who had submitted the charge-sheet.

26. The learned trial court mentioned the submissions advanced on behalf of the accused Pradeep Kumar Verma that he was progressing in the departmental position in a very impressive manner and, therefore, the officers of the post office hatched a conspiracy and got him entangled in it and charges had been prepared against him only on the basis of findings of the enquiry report.

27. The learned trial court concluded that the accused persons took advantage of the shortcomings in the rules of the post office and made embezzlement and were successful in concealing the same for a long period of time. Had Amar Nath Agnihotri performed his duties in a proper manner, embezzlement would have come to light immediately and action would have been taken. Amar Nath Agnihotri knowingly committed negligence in performance of his duties. He did not supervise the work of Pradeep Kumar Verma. He continued to verify the entries made by Pradeep Kumar Verma, thereby assisting in commission of his criminal acts. This establishes the criminal intent of Amar Nath Agnihotri. The learned trial court referred to the principle

of law that a person seeking equity must approach with clean hands. The court held that the members of the enquiry team have given evidence which establishes complicity of the accused persons in the commission of offence in connivance with each other and the submissions advanced on behalf of the accused person that they have been entangled by hatching a conspiracy because of animosity, is fictitious and fabricated, as the accused persons could not give any evidence in support of this contention.

28. The learned trial court further held that Amar Nath Agnihotri used to supervise the work of Pradeep Kumar Verma and verify the entries made by Pradeep Kumar Verma in hand-to-hand receipt books. He committed negligence in performance of his duty and verified the entries without tallying the same with other related documents and thus he assisted in criminal activities of Pradeep Kumar Verma. If such act is committed repetitively, the same cannot be done without predetermination and criminal conspiracy.

29. The learned trial court found that the prosecution witnesses have clearly proved that Pradeep Kumar Verma has shown false and forged payment in hand-to-hand receipt books. Amar Nath Agnihotri, APM SB-II verified the fake entries of payments in hand-to-hand books under a criminal conspiracy with Pradeep Kumar Verma, whereas he was responsible to verify the entries in hand-to-hand receipt books by original discharged vouchers, which he failed to do. Thus both the accused persons cheated the postal department and caused financial loss to it.

30. The learned trial court found that the prosecution has been successful in proving that while working on the post of Postal Assistant in Head Post Office, Fatehgarh, District Farrukhabad in the month of April, 2006 on 05.04.2006 and 22.04.2006 acting under a criminal conspiracy with the co-accused Amar Nath Agnihotri, Assistant Postmaster. He showed excess payment in hand-to-hand receipt books, discharge journals and monthly returns etc. whereas he deceitfully made payments of lessor amounts towards Kisan Vikas

Patra and by making forgery of documents and false entries he embezzled Rs.1,69,778/-. The payment vouchers of the aforesaid excess amounts could not be found during enquiry, whereas Pradeep Kumar Verma had obtained the amounts from the treasury and it is established from the cash summary and hand-to-hand receipt books of the Head Post Office. The learned trial court found that witness has proved the attendance register of Head Post Office for the period on 05.04.2006 and 22.04.2006 to show that the accused persons were present on duty on the aforesaid dates.

31. After recording the aforesaid finding, the learned trial court proceeded to record that the accused persons have not proved the documents submitted in their defence by producing any independent witness. The defense documents produced by Amar Nath Agnihotri were photocopies, which had not been proved by any independent defense witness. Pradeep Kumar Verma had produced photocopies of termination order dated 25.09.2008, F.I.R. No.535/99 dated 02.11.1999, under Sections 409, 420 I.P.C. and the final report submitted by the Investigating Officer. Pradeep Kumar Verma had also produced photocopy of a complaint sent by him to the then Minister of Communication, Government of India regarding the misdeeds committed by Sri Ram Prasad Tripathi, the then Superintendent, Post office, Farrukhabad and Sri K.P. Pandey, the then Postmaster, Fatehgarh and another complaint submitted to the Director General, Post against Ram Prasad Tripathi the then Superintendent, Post Office Fatehgarh but these had also not been proved by any independent witness. The complaint did not bear any date and, therefore, the same was suspicious. The learned trial court held that the aforesaid complaint did not diminish the effect of charges leveled against the accused persons and the merits of the case.

32. After recording finding of guilt of the accused persons, the learned trial court proceeded to examine the submissions advanced by the accused Amar Nath Agnihotri that the prosecution sanction had been granted in a mechanical manner; that the postmaster was responsible for supervision and verification of day to day work of post office and

that no punishment was inflicted upon him in the departmental enquiry (in respect of the same allegation), whereas some other employees had been punished. It was also submitted on behalf of Amar Nath Agnihotri that he was absent on some of the dates.

33. This approach of the learned trial court in holding the accused persons guilty even before proceeding to examine their defence indicates that the trial court was predetermined to convict the accused persons even before examining their defence.

34. The learned trial court rejected all the submissions made in defence and held that non-infliction of any penalty in departmental enquiry would not absolve him to his responsibilities. The absence of Amar Nath Agnihori on some of the dates would not absolve him of his negligence towards performance of his duties on other dates on which he was present, particularly when the offence was committed as a series of acts.

35. While assailing the validity of the aforesaid order the learned counsel for the appellant Pradeep Kumar Verma has submitted that as per the statement of the prosecution witnesses, Pradeep Kumar Verma has been held to be guilty of committing embezzlement for the sole reason that some discharge vouchers were not produced before the enquiry team. No evidence had been led to establish that any embezzlement had actually been committed. Pradeep Kumar Verma cannot be held guilty of any embezzlement merely on the basis that some discharge journals were not made available to the enquiry team, in absence of any proof of actual embezzlement.

36. The learned counsel for the appellant Amar Nath Agnihotri has submitted that the Investigating Officer did not carry out any investigation and he has submitted the charge-sheet merely on the basis of the departmental enquiry conducted by the enquiry team. When Amar Nath Agnihotri has been exonerated in departmental enquiry, submission of charge-sheet and conviction in furtherance of the same on the basis of a departmental enquiry alone, is unsustainable in law.

37. While deciding the question of sentence the learned trial court took into consideration the submissions made on behalf of Pradeep Kumar Verma that he has been terminated from service in another matter and Rs.14,00,000/- have been recovered from him.

38. On behalf of the appellant Amar Nath Agnihotri, it was submitted that he was aged 71 years (at the time of conviction order) and had spent 2 years 7 months in jail and 20% of his pension had been deducted for a period of three years. Nothing has been recovered from him from his home.

39. It is relevant to note that the F.I.R. was lodged by Awadhesh Kumar Srivastava who did not prove the same before the trial court. The F.I.R. has been proved by another witness, who had not lodged the F.I.R. himself. Although, the enquiry team had found that Suresh Chandra Gupta had performed the duties of Assistant Postmaster on some dates, on which dates also some vouchers were not found and it was found that payments had been made without any vouchers, Suresh Chandra Gupta was not made an accused in the case. Although, it is correct that an accused can be convicted if the charges against him are proved and mere non-involvement of any other person involved in the commission of offence as an accused in the case in itself will not be fatal to the prosecution case, this fact is relevant for consideration of the plea of the accused persons that they were entangled under a conspiracy by some other officers of the department in a vindictive manner. The conduct of the officers in not including Suresh Chandra Gupta, who had worked as Assistant Postmaster on some dates, on which dates also some discrepancies were found in the account, supports this contention of the accused person.

40. In his cross-examination, PW-2 Ved Prakash Mishra stated that in this case, either the discharge journals were not prepared, or they were prepared for a lesser amount. He stated that the discharge journals had been signed by the Assistant Post-master but he had not seen the discharge journals. He also mentioned that the F.I.R. was lodged based on the departmental enquiry report.

41. PW-3 Ramesh Chandra Verma stated in his cross-examination that the document D-4 does not bear signatures of Amar Nath Agnihotri on any of the pages. He further stated that Exhibit A-11 also did not contain Amar Nath Agnihotri's signatures on any of its pages. Similarly, the document D-10 and D-11 also did not bear the signatures of Amar Nath Agnihotri on every page.

42. PW-4 Pradeep Yadav stated in his cross-examination that the enquiry team had seen only those discharge journals and purchase applications which were made available to it.

43. PW-13 Upendra Kumar stated in his cross-examination that all hand-to-hand receipt books from all the counters were in the custody of the Cashier. These were kept in custody overnight and received from the treasury the next day upon office opening, and deposited back into the treasury after evening working hours.

44. PW-15 Collector Singh stated in his cross-examination that the appellant Amar Nath Agnihotri was posted as APM-IV (Mail) and Suresh Chandra Gupta was APM-II S/B. He also stated that at the time of incident Lajja Ram Dixit was also posted as APM S/B-II and Karan Singh was also posted as APM SB-II from 12.05.2006 to 02.06.2006. The main duty of appellant Amar Nath Agnihotri was on APM-IV (Mail).

45. PW-16 Sunita Yadav stated in her cross-examination that at the time of the incident, Lajja Ram Dixit was serving as APM S/B-II, while appellant Amar Nath Agnihotri was posted as APM-IV (Mail). She also mentioned that Suresh Chandra Gupta held the position of Assistant Post Master S/B-II at that time.

46. PW-18 Surendra Rai stated in his cross-examination that the complaint does not bear the complainant's signature. He stated that he did not attempt to investigate into which account the embezzled money had been transferred. During the investigation, he did not scrutinize the accounts of any employee or the accused persons. He did not even visit the Head Post Office for investigation. He did not

conduct any investigation regarding the number of APMs, clerks, postmasters, and assistant postmasters working at the time of the incident, nor did he investigate who was assigned what duties.

47. From the aforesaid statements of the Prosecution witnesses, it is established that the prosecution could not adduce any evidence to prove that the appellants had committed any offence.

48. The delegation of duties in post offices is provided in Rule 2 of Post Office Savings Bank Manual Volume-II, which has been issued under the authority of Director General of Posts, India and Secretary to the Government of India, Department of Posts, Ministry of Communication inter alia and it provides as under: -

> *"2.(i) All the duties of the Postmaster in connection with the Savings Certificates may, under the orders of the Head of the Circle, be performed by the Deputy Postmaster, Assistant Postmaster or Supervisor, such delegation being specifically mentioned in the memorandum of distribution of work, except the following which shall be the personal responsibility of the Head Postmaster:-*
> *(a) Deciding claims in respect of Savings Certificates of deceased holders which lie within his power of decision and the safe custody of records relating to such claims.*
> *(b) Signing and submission of savings certificates returns to the Postal Accounts Office in offices where there is no separate Selection Grade Official In charge of the Savings Certificate branch.*
> *(c) Sanctioning the transfer of savings certificates from one person to another. (d) Endorsing the remarks "Checked" and "duplicate on record" on the original invoice to be sent to Postal Accounts Office.*
> *(ii)* ***The Postmaster will, however, remain personally responsible for the general functioning of the Savings Certificates branch and in particular, the regular submission of the Savings Certificates returns on the due dates.****"*

49. The procedure for encashment of savings certificates is provided in Rule 13 of Post Office Savings Bank Manual, which inter alia provides that the certificates will be placed before the Postmaster, who will satisfy himself about the authenticity of the certificate and the tile of the holder. He will also ensure that the examination of the certificate has been carried out in the manner prescribed and that the amount payable as noted on the certificate is correct. He will then pass

order pay under his signature at a suitable place above the place for the holder's signature to authorize payment. The payments will then be made by the counter assistant.

Rule 33 (4) of the Post Office Savings Bank Manual Volume-II provides as follows: -

> *"33 (4) In Head Offices,* ***the discharged certificates along with the respective identity slips, if any, and vouchers on account of payment of annual/six monthly interest should remain in the custody of the Postmaster*** *until the time of their dispatch to the Postal Accounts Office when they should be dispatched in his presence."*

50. Rule 52 of the Post Office Savings Bank Manual Volume-II provides that the certificate documents and vouchers for dispatch to the Postal Accounts Office should be entered in the voucher list Form NC-31(A). These lists should be signed by the Head Postmaster and dispatched with the documents and vouchers attached under the same cover as the Post Office Certificate journal. Copies of the voucher lists prepared by means of carbonic paper should be kept on record.

51. The Postal Financial Hand Book Volume-II contains financial rules and instructions. Rule 47 provides for maintaining head office summary and it provides that the head office summary must be kept by the Cashier himself. The several items of the head office summary will be written up from various subsidiary journals, registers and accounts, which include savings bank and post office certificate. The balance shown in the head office summary has to be verified by the head post master in the presence of the Cashier and the assistant treasuer and the head office summary must be signed by both the head post master and the Cashier before the close of office each day.

52. A perusal of the aforesaid rules makes it clear that the Postmaster is personally responsible for the general functioning of the Savings Certificates branch and in particular, the regular submission of the Savings Certificates returns on the due dates. The payment of savings certificates has to be made only when authorized by the post master. The post master is responsible to keep the discharged certificates and vouchers in his custody. One of the prosecution witness had categorically stated that the Postmaster is responsible for

the entries made in the Head Office summary. Yet the responsibility for the lapses committed by the post master has been imposed upon the postal assistant and assistant post master in violation of the rules.

53. The appellants have been convicted and sentenced for the offence under Section 477-A I.P.C., i.e. falsification of accounts, which provides as follows: -

> ***"Section 477A. Falsification of accounts.—***
>
> *Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully, and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully, and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in, any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.*
>
> *Explanation.— It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded or specifying any particular sum of money intended to be the subject of the fraud, or any particular day on which the offence was committed."*

54. There is no proof of any falsification of account committed by the appellant Amar Nath Agnihotri and he has been held to be guilty of falsification of accounts merely for the reason that some discharge vouchers were not provided to the enquiry team and the amount of those discharge vouchers was presumed to have been embezzled.

55. Section 13 (1) (c) of Prevention of Corruption Act makes a person guilty of criminal misconduct, if he dishonestly or fraudulently misappropriates or otherwise converts **<u>for his own use</u>** any property entrusted to him or any property under his control as a public servant or allows any other person so to do. Neither any property has been recovered from any of the appellants which had been dishonestly or fraudulently misappropriated by them, nor is there any proof of any such property having come to the hands of the appellants. Therefore,

there is nothing to support conviction of the appellants for the offence under Section 13 (1) (c) of Prevention of Corruption Act.

56. There is no proof that any of the appellants had obtained any valuable thing or pecuniary advantage or that they intentional enriched themselves illicitly during the period of their office. None of the accused persons have been found to be in possession of or at any time during the period of their office, been in possession of pecuniary resources or property disproportionate to their known sources of income. Therefore, the charges under Section 13 (1) (c) and 13 (1) (d) of Prevention of Corruption Act also were not proved and the learned trial court convicted the accused persons for the aforesaid offences without there being absolutely any evidence to prove the aforesaid charges.

57. The learned trial court referred to the judgment of Hon'ble Supreme Court in the case of ***Manzoor Ali Khan Vs. Union of India and others: (2015) 2 SCC 33***, wherein the Hon'ble Supreme Court has held that *"Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of the Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our Preambular vision. Therefore, the duty of the court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."*

58. While relying upon a precedent, the observation of the Courts have to be read in light of the factual background of the case and the issue that was being decided. **Manzoor Ali Khan** (Supra) was a Writ Petition

filed in public interest, seeking a direction to declare Section 19 of the Prevention of Corruption Act, 1988 unconstitutional and to direct prosecution of all cases registered and investigated under the provisions of the PC Act against the politicians, MLAs, MPs and government officials, without sanction as required under Section 19 of the PC Act.The Hon'ble Supreme Court held that it is not possible to hold that the requirement of sanction is unconstitutional, but the competent authority has to take a decision on the issue of sanction expeditiously. A fine balance has to be maintained between need to protect a public servant against mala fide prosecution on the one hand and the object of upholding the probity in public life in prosecuting the public servant against whom prima facie material in support of allegation of corruption exists, on the other hand.

59. The decision in **Manzoor Ali Khan** (Supra) does not lay down that a person accused of corruption has to be punished even in absence of any evidence.

60. No accused person can be convicted on the basis of a mere presumption. The criminal justice system requires proof beyond reasonable doubt and persons cannot be convicted even on the basis of preponderance of probabilities, which is the basis of decision in the civil proceedings. The prosecution does not allege that any of the accused persons was responsible for custody of the discharge vouchers. The responsibility of providing the discharged vouchers to the enquiry team did not rest on the accused persons. The person who was responsible for custody of the discharged vouchers, has not been made an accused. Therefore, the finding of guilt of the accused persons, which has been recorded solely on the basis of discharged vouchers having not been provided to the enquiry team, is unsustainable in law.

61. While proceeding to hold the appellants guilty of commission of penal offences, the learned trial court referred to the principle of law that a person seeking equity must approach with clean hands. It indicates that the trial was acting under a patent misconception of law that an

accused facing a trial has himself approached the Court and he has to himself disclose the complete facts that may lead to his conviction. The trial Court's observation indicates its approach is that a failure to make a complete disclosure of incriminating facts, rather a failure to make a confession of guilt, will justify conviction of the accused persons. The accused persons had not approached the Court and there was no obligation on them to have approached the Court with clean hands, rather it was the prosecution which had approached the Court to get the accused persons punished and it was the duty of the prosecution to prove the guilt of the accused persons beyond any reasonable doubt. The approach of the trial Court was against the basic principle of criminal justice system that every person is presumed to be innocent, unless it is proved beyond any reasonable doubt that he is guilty and no accused person is bound to disclose facts which will ensure his conviction.

62. Article 20 (3) placed in Part III of the Constitution of India, which contains Fundamental Rights, provides that "*No person accused of any offence shall be compelled to be a witness against himself*." Non-disclosure of incriminating facts is a Fundamental Right of the accused. Equity can only supplement the law, it cannot supplant the law and in any case, the principles of equity will not override the Fundamental Rights guaranteed under the Constitution of India. Therefore, the observation of the trial Court indicates a lack of understanding of the difference of approach to be adopted while deciding a criminal trial as against a civil disputes reliance.

63. The learned trial court referred to Section 15 of the Evidence Act, which provides as under: -

> *"15. Facts bearing on question whether act was accidental or intentional.*
>
> *Where there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant.*

Illustrations ...”

64. Section 15 of the Evidence Act merely provides that where there is a question whether an act was accidental or intentional, or done with a particular knowledge or intention, the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant. This Section merely provides for relevance of a fact, but it does not provide that a series of acts would give rise to a presumption of guilt of the accused.

65. The learned trial court proceeded to decide as to whether there was any criminal conspiracy between the appellants Pradeep Kumar Verma and Amar Nath Agnihotri. The learned trial court has referred to a decision of the Hon’ble Supreme Court in the case of **Heera Lal Bhagwati Vs. CBI:** AIR 2003 SC 2545, wherein it was held that it is difficult to adduce direct evidence of criminal conspiracy. However, the difficulty in adducing direct evidence does not mean that the prosecution is not required to adduce any evidence of conspiracy and the Court will simply presume that the accused persons had entered into a conspiracy. In absence of direct evidence, conspiracy has to be proved by circumstantial evidence.

66. In **Esher Singh v. State of A.P.** (2004) 11 SCC 585, the Hon’ble Supreme Court held that: -

> *“38. ... the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means.* ***A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.”***
>
> *(emphasis in original)*

67. In the present case the witness stated that the embezzlement was done by Pradeep Kumar Verma. Amar Nath Agnihotri was responsible for supervising the work of Pradeep Kumar Verma and he did not supervise as per the departmental rules, due to which embezzlement was made and, therefore, Amar Nath Agnihotri is also responsible for the embezzlement. This statement merely makes out that the accused Amar Nath Agnihotri was negligent in performance of his duties, but it does not establish a criminal conspiracy between the two accused persons. So far as negligence is concerned, the statements of witnesses as well as the provisions contained in the relevant rules referred to above clearly demonstrate that it was the post master who was responsible for the overall working of the Post Office and maintenance of records and the Cashier was also responsible for the accounts. It appears that they have also been negligent in performance of their duties. The prosecution witness, who had headed the enquiry team, stated that the enquiry team had not made any enquiry regarding who was guilty for the embezzlement. In view of these facts, there was absolutely no evidence in the present case to establish existence of a criminal conspiracy between the accused persons.

68. The trial court held that the members of the enquiry team have given evidence which establishes complicity of the accused persons in the commission of offence in connivance with each other and the submissions advanced on behalf of the accused person that they have been entangled by hatching a conspiracy because of animosity, is fictitious and fabricated, as the accused persons could not give any evidence in support of this contention. The trial Court ignored the facts that the prosecution could not give any evidence of a conspiracy between the accused persons and the only evidence was that Amar Nath Agnihotri acted negligently in supervising the work of the other accused Pradeep Kumar Verma.

69. In this regard, it is relevant to note that prosecution witness clearly stated that the responsibility of maintenance of the records of the post office lied on the Postmaster. The witnesse had stated that the Cashier

Alladin was responsible for maintenance of the records of the Treasury and discrepancies were found therein also. In case a mere negligence in performance of duties can be sufficient to raise a presumption of a criminal conspiracy, the Cashier and the post master should also be treated to be a part of the conspiracy, but they have not been made accused in the case.

70. The accused persons cannot be held to be guilty merely because they could not prove his innocence. The evidence was to this effect also that the Cashier and the post master were also responsible for the works done, but they have not been made the accused.

71. The learned trial court has sentenced the accused persons separately for the offence of criminal conspiracy, criminal misappropriation and falsification of account, criminal conspiracy and falsification of account, criminal conspiracy and criminal misconduct under Sections 13 (2) read with Section 13 (1) (c) and (d) and they have been sentenced separately for the offence under Section 13 (2) read with Section 13 (1)(c) and 13 (2) read with 13 (1) (d) and separate amounts of fine have been imposed on them for all the aforesaid offences. This approach of the learned trial court in multiplying the alleged guilt of the accused persons manifold, appears to be vindictive and unjust and it cannot be appreciated.

72. In view of the aforesaid discussions, it is established that the members of the enquiry team have themselves stated that they did not visit the Head Post office, Farrukhabad, where the offence had allegedly been committed. Even the Investigating Officer did not state that he had visited the Head Post Office. The members of the enquiry team stated that they assumed the amount for which the discharge journals had not been made available to have been embezzled. No enquiry was conducted and no material was produced to establish that any embezzlement had in fact been committed. The members of the enquiry team categorically stated that no enquiry had been conducted regarding who as guilty for the alleged embezzlement. The witnesses have stated that the Postmaster was the over all in-charge for the day

to day work conducted in the post office but he has not been prosecuted. The Cashier was responsible for preparation of accounts. Although his name was included as an accused in the F.I.R. no charge-sheet was submitted against him. The Investigating Officer conducted the investigation by sitting in his office at Lucknow and he has not taken any steps in the investigation to ascertain as to whether any embezzlement had in fact been committed and if yes who was responsible for the same. He had conducted the investigation merely on the basis of the statements given by the witnesses by coming to his office and the documents produced by the witnesses to him while sitting in his office. It shows that no proper investigation has been carried out and in fact there is no material to establish that the appellants had committed any embezzlement. The prosecution has miserably failed to prove, what to say about proving beyond reasonable doubt that, the accused persons Pradeep Kumar Verma and Amar Nath Agnihotri have committed any embezzlement. As such, the judgment of conviction and sentence passed by the learned trial court in Case No.18 of 2007: State through C.B.I. Vs. Pradeep Kumar Verma an another appears to be unsustainable in law.

73. Accordingly the Criminal Appeal No. - 2590 of 2022 and Criminal Appeal No. - 2716 of 2022 are ***allowed***. The impugned judgment and order dated 03.09.2022, passed by the learned Special Judge, P.C. Act, C.B.I. Court No.4, Lucknow in Criminal Case No.03 of 2007, arising out of R.C. No.18 (A) of 2006, under Sections 120-B, 409, 477-A I.P.C. and Section 13 (2) read with 13 (1) (c) (d) of Prevention of Corruption Act, 1988, Police Station C.B.I./A.C.B. Lucknow is hereby set aside and the appellants are acquitted of all the charges for which they have been tried. The appellant Amar Nath Agnihotri has been released on bail but the other appellant Pradeep Kumar Verma is in jail. The personal bond and sureties filed by the appellant Amar Nath Agnihotri shall remain effective for a period of 30 days from today and within this period he shall file a fresh personal bond and two sureties under Section 437-A Cr.P.C. to the satisfaction of the trial Court for his appearance before the Hon'ble Supreme Court in

case any appeal or petition is filed against this order and the Hon'ble Supreme Court issues notice to him. The appellant Pradeep Kumar Verma is in jail and he shall be released from custody forthwith unless he is wanted in any other case, subject to the condition that he shall file a fresh personal bond and two sureties within a period of three weeks from the date of his release from custody, to the satisfaction of the trial Court under Section 437-A Cr.P.C.

74. Let a copy of this order/judgment and the original record of the lower court be transmitted to the trial court concerned forthwith for necessary information and compliance. The office is further directed to enter the judgment in compliance register maintained for the purpose of the Court.

(Subhash Vidyarthi, J.)

Order Date: 31.05.2024

Preeti/Ram.

Digitally signed by :-
PREETI GAUTAM
High Court of Judicature at Allahabad,
Lucknow Bench