IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-1722-MA-2015 (O&M)

State of Haryana

... **Appellant**

v.

Madu Ram

... **Respondent**

Date of decision: November 17, 2015.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters? yes
3. Whether the judgment should be reported in the Digest?

CORAM: **HON'BLE MR. JUSTICE HEMANT GUPTA**
HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Argued by: Shri Vivek Saini, Assistant AG, Haryana
for the appellant-State.

Raj Rahul Garg, J.

State of Haryana has filed the application for grant of leave to appeal against the judgment of acquittal dated 8.4.2015 rendered by the learned Additional Sessions Judge, Gurgaon.

Vide the aforesaid judgment, the learned trial court acquitted accused Madu Ram son of Mehar Chand by giving benefit of doubt for the offences under Sections 420, 467, 468, 471, 120-B IPC and under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

Brief facts of the case are like this that Madu Ram was working as DHBVNL (Nigam), Sub Division Pataudi, District Gurgoan. On the basis of assessment report and investigation carried out by Shri Hukam Singh, Inspector, Vigilance Bureau, Gurgaon, the FIR of this case was registered. The allegations of bungling in preparing the false assessment reports for the release of electricity connections as a result of which loss was caused to the Government were levelled against the accused and three others.

Inspector of Police Station State Vigilance Bureau, Gurgaon gave a written complaint Ex.PA to the SHO of State Vigilance Bureau, Gurgaon on 11.2.2002 to the effect that as per Government circular No.14/2000 dated 2.5.2002 for the cable connection of electricity upto distance of 20 meters,the charges were Rs.10,000/- and upto 20 meters, the amount to be deposited for one pole was Rs.20,000/- but on inquiry it was transpired that 27 tubewell connections to various consumers were released after charging Rs.10,000/- each whereas as per aforesaid circular, the distance was more than 20 meters. As such, wrong assessment report was prepared and loss to the tune of Rs.2,70,000/- was caused to the Government.

It was also the allegation that 13 connections were released under 'Tatkal' Scheme in favour of 27 consumers (names mentioned in the complaint) which should not have been issued. It was asserted in the complaint that the aforesaid amount be recovered from Madu Ram JE (accused), the then SDE Avtar Singh Jaiswal, DHBVNL (Nigam), Shri Vinod Kumar Aggarwal, AE, Bhora Kalan, Pataudi and Nardeep Kumar, SDO, DHBVNL (Nigam). As per the investigating agency, the aforesaid officials conspired and misused their official position by flouting the aforesaid circular, as such they are liable to be punished for offences under

Sections 420, 467, 468, 469, 471 and 120-B IPC and under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

After completion of necessary investigation, challan was filed against accused Madu Ram and Avtar Singh Jaiswal by keeping names of Vinod Kumar Aggarwal, SDO and Nardeep Kumar SDO in column No.2. Their names were so kept in column No.2 as during the investigation, Vinod Kumar Aggarwal was found innocent whereas sanction to prosecute Nardeep Kumar was declined by the competent authority.

Madu Ram and Avtar Singh Jaiswal were charge sheeted for commission of offences punishable under Sections 420, 467, 468, 471, 120-B IPC besides offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988.

Thereafter, this Court vide order dated 24.9.2013 quashed the sanction granted by the competent authority to prosecute Avtar Singh Jaiswal, as such proceedings against him were dropped by the trial court vide order dated 13.1.2014.

After taking entire prosecution evidence, statement of accused under Section 313 Cr.P.C. was recorded wherein accused denied each prosecution allegation and pleaded his false implication.

After hearing both the counsel for the parties and going through the entire evidence and material on record, the learned trial court held that since a sufficient doubt has been created in the mind of the court regarding complicity of the accused with the offence, therefore giving benefit of doubt to the accused, he was acquitted of the charge framed against him.

The aforesaid judgment of acquittal dated 8.4.2012 was assailed by the State of Haryana before this Court by seeking leave to appeal.

We have heard Shri Vivek Saini, learned Assistant Advocate General, Haryana and have also appraised entire material coming on record.

In an appeal against acquittal, the matter has to be examined in the light of the observations of the the Hon'ble Supreme Court in <u>Ashok Kumar. v. State of Rajasthan</u>, 1991(1) SCC 166 which are that interference in an appeal against acquittal would be called for only if the judgment under appeal was perverse or based on misreading of the evidence and merely because the appellate court was inclined to take a different view, could not be a reason calling for interference.

Learned Counsel for the appellant State contended that the learned trial court has failed to appreciate the oral as well as documentary evidence available on the file. Accused Madu Ram JE, incorrectly and fraudulently prepared the estimates of costs of laying poles; and mala fidely and dishonesty calculated the distance of poles from the *kothra* tubewell thereby causing huge financial loss to the Government exchequer to the tune of Rs.2,70,000/-. It was also contended by the learned Counsel for the State that the learned trial court has not taken into consideration the statements of PW4 Suresh Mohan retired SDO, PW15 Hukam Singh retired DSP and their inquiry report Ex.PW15/A in true perspective.

What to speak of fault in appraisal of oral as well as documentary evidence available on the file, even if we take the same into consideration as it is, no criminal offence is said to be proved against the accused beyond reasonable doubt. In fact, the learned trial court has dealt with the matter in question minutely discussing each and every point threadbare.

We find no illegality in the findings of the learned trial court when it says that there is not even a single allegation or statement of witness against the accused that he ever received bribe money from any of the consumers, before issuing the connections or at any point of time. Thus, when no bribe was taken by the accused, the offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988 can be said to be not made out.

Of course, there is evidence on the file that the accused had prepared false assessment reports regarding release of electricity connections in connivance with Avtar Singh Jaiswal, Vinod Kumar Aggarwal and Nardeep Singh SDOs; yet the sanction to prosecute Nardeep Singh SDO was not granted by the competent authority, though sanction to prosecute Avtar Singh Jiaswal, SDO was granted but the same was quashed by this Court vide order dated 24.9.2013 and Vinod Kumar Aggarwal was found innocent. Thus Avtar Singh Jaiswal and Nardeep Singh SDOs who were part of the team and who prepared the estimates and under whose supervision the aforementioned assessment report was prepared, are the ones with whose connivance accused Madu Ram is stated to have committed this crime.

As per condition No.6 of circular No.14/2000, before releasing a connection, it was the duty of SDO/in-charge to record a certificate on the consumer case after personally verifying from the site that the connections released to the consumer are within the limits of such paramters, as are envisaged for the release of such connections on out of turn basis and further it is to be ensured that the load connected to the transformer does not exceed its safe loading and capacity with the release of instant connections. Thus, when Avtar Singh Jaiswal, SDO and Nardeep Singh SDO were supervisory officers and whose connivance has not been found in any way with the accused, it becomes highly doubtful as to how accused Madu Ram can be said to have fabricated the record. Not only this, even it was found by the trial court that PW2 Malkhan Singh, PW3 Rajinder Singh, PW5 Rakesh Kumar, PW6 Rajwati and PW9 Naresh Kumar deposed that they initially deposed a particular amount for the release of electricity connections under "Tatkal" scheme and subsequently further demand was raised by the Nigam for depositing extra amount and the same was done. As such it becomes highly doubtful as to how accused can be held responsible for any lapse on his part on that account. We find no illegality in this finding of the learned trial court.

Under the above discussed circumstances, *mens rea* of the accused is not established on the file to fabricate the record or to cause loss to the State Exchequer. The findings recorded by the trial court that, "there is no guilty intention on the part of the accused in preparing the estimates of electricity connections, whereby less amount was initially charged from the consumers but later on deficit amount was realised from the consumers. Therefore, no criminality can be attributed to the accused", cannot be said to be perverse or in any way misreading of evidence warranting interference of this Court.

For the reasons recorded above, finding no merit in this appeal, leave to appeal sought for by the State is declined.

	[**Raj Rahul Garg**]	[**Hemant Gupta**]
November 17, 2015.	**Judge**	**Judge**

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