

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRA-S-1706-SB of 2009
Date of decision: 13.05.2016**

Om Parkash **...Appellant**

Vs.

State of Punjab **...Respondent**

CRA-S-1768-SB of 2009

Satnam Singh **...Appellant**

Vs.

State of Punjab **...Respondent**

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Gaurav Mohunta, Advocate for the appellant.
(in CRA-S-1706-SB of 2009).

Mr. D.S. Sewak, Advocate for the appellant
(in CRA-S-1768-SB of 2009).

Mr. A.S. Randhawa, Additional A.G., Punjab.

A.B. CHAUDHARI. J.

This order shall dispose of CRA-S-1706-SB and CRA-S-1768-SB of 2009 arising out of the common impugned judgment and order dated 7.7.2009.

The appellants/original accused have put to challenge the judgment and order dated 07.07.2009 in Sessions Case No. RT 1 dated 04.03.1999/26.05.2009 by which the appellants were convicted for the offences under Section 120-B IPC, 467 IPC read

with Section 120-B IPC, 468 read with Section 120-B IPC, 471 read with Section 120-B IPC and were sentenced to undergo R.I. for 2 years for offence under Section 120-B IPC and fine, R.I. for 3 years for offence under Section 467 read with 120-B IPC with fine, R.I. for 3 years for offence under Section 468 read with 120-B IPC with fine, R.I. for 2 years for offence under Section 471 read with 120-B IPC and fine.

FACTS:

In brief the case of the prosecution was that FIR No. 1 dated 27.03.1996 was registered with Vigilance Bureau, Phase 1, Mohali for offences under Sections 467, 468, 471 and 120-B IPC so also under Section 13 (1) (c) and 13(2) of The Prevention of Corruption Act, 1988 against four accused persons namely accused No. 1-Om Parkash, accused No. 2-Satnam Singh, accused No. 3- Brij Kumar and accused No. 4-Pritam Dass. Accused No. 3 and 4 died during trial and thus accused No. 1 and 2 were convicted as above. The case of the prosecution was that accused persons were then posted in the office of Director Agriculture Department, Punjab Government at Chandigarh. They had prepared forged and fake medical bills of the employees working under the department and misappropriated huge Government money to the tune of ₹ 8,48,417/-. They had prepared forged and fabricated bogus medical bills like cash memos essentiality certificates outdoor chits etc., and thus made the misappropriation. Investigation was made by the investigating officer and final report was filed against them. After committal of the case to the

Special Judge, the same was taken up for trial by the learned Special Judge. The prosecution examined number of witnesses who were particularly the employees on whose names the medical bills were raised and collected by the accused persons. The prosecution after having examined several witnesses closed its evidence. Thereafter the statement of the surviving accused persons Om Parkash and Satnam Singh under Section 313 Cr.P.C. were recorded. The accused persons examined the defence witnesses six in number and closed the defence evidence. The learned Trial Judge convicted them under Sections 467, 468, 471 and 120-B IPC but acquitted them from the charge under Section 13(1) (c) and 13(2) of The Prevention of Corruption Act, 1988. Hence these two appeals separately filed by Om Parkash and Satnam Singh.

In support of the appeals, the respective learned counsel for the appellant in these two appeals assailed the finding of the conviction recorded by the trial Judge and submitted that the prosecution did not even collect the original payment registers on which the signatures of the beneficiaries/employees who were given medical bill payments were allegedly forged by the accused persons. The counsel submitted that the prosecution did not make any attempt to get expert evidence of the hand-writing expert in order to prove that signatures were forged by these appellants/accused persons and none else. The counsel then contended that none deposed about any of the original four accused actually forging any signature or any record or any

papers or actually collecting the payment in the name of the beneficiary though the prosecution led the evidence of several witnesses employees. None of the witness examined deposed that the witness/s saw any of the accused either forging the signature or any papers or claiming to know the hand-writing of any of the accused persons. The evidence tendered by the prosecution is thus wholly vague and the prosecution did not prove anything muchless any offence against any of the accused. The original documents were not seized or brought before the Court by the prosecution nor the witnesses were asked to identify the signatures on the registers or the documents as allegedly made by any of the accused persons. According to the learned counsel for the appellants, the trial Judge relied on the vague evidence that the accused persons had forged the signatures and collected the money in the absence of any clear cut evidence. The counsel for the appellant, therefore, prayed for setting aside the impugned judgment and order.

Per contra the learned counsel for the State-Additional Advocate General, Punjab, supported the impugned judgment and order of conviction and sentence. He submitted that the witnesses have admitted that the prosecution examined large number of witnesses about the forgery of their signatures on the payment Registers and receipt of the payment by the accused persons. He then contended that accused persons were in the custody of the records relating to the preparation of the medical bills disbursement and payment registers. Admittedly accused

persons being in custody of the record, it was for them to prove to the contrary. The appellants did not explain as to how the record in their custody was forged and, therefore, the trial Judge rightly convicted them for the offences in question. He, therefore, submitted that the offence of misappropriation of Government money being a serious offence no interference should be made in the impugned judgment and order. Finally he prayed for dismissal of both these appeals.

I have heard learned counsel for the rival parties at length. I have seen entire evidence of prosecution witnesses who were examined before the trial Court. I have seen the impugned judgment and order so also the reasons recorded by the learned trial Judge for recording conviction against the accused persons.

I have perused the entire record with the assistance of the learned counsel for the rival parties. The evidence of the prosecution witnesses who were examined is almost of the same nature. To be precise the witnesses have deposed in alike manner. The prosecution examined large number of witnesses and to name them: PW1-Jang Singh, PW2-Sewa Singh, PW3-Ram Lubhaya, PW6-Charan Singh, PW10-Bhupinder Kaur, PW11- Surinder Mohan Sharma, PW12-Pushpinder Kumar, PW13, Siraj Rani, PW14-Jaspal Singh, PW15- Veena Rani, PW16-Raj Dulari, PW17-Dalip Singh, PW18-Shanti Devi, PW19-Karamjit Singh, PW20-Ram Singh, PW21-Amrik Singh, PW23-Amarjit Singh, PW28-Bhupinder Singh, PW29-Pelu Ram, PW30-Dalbir Singh, PW31-Ajaib Singh, PW34-Gopal Singh, PW35-Kartar Singh, PW36-Bhag Singh, PW37-Gurmit Singh,

PW38-Tarsem Lal, PW39-Pawan Kumar, PW40-Amrit Lal, PW41-Sarup Singh, PW42-Pal Singh, PW44-Nirmla Devi, PW45-Ram Narayan, PW46-Surinder Kaur, PW47-Baljinder Singh, PW48-Dr. U.S. Bansal, PW49-Dr. Harjit Kaur, PW50-Dr. Devinder Kumar Tayal, PW51-Dr. Ranjit Kaur, PW52-Dr. Vijay Kumar Sharma, PW53-Jita Ram, PW54-Dr. Jawahar Lal and PW55-Sudesh Verma. The defence examined six witnesses.

Perusal of the evidence of these witnesses in entirety to my mind shows that the prosecution was able to prove that there was forgery of the documents and forged signatures were made on the documents but then that was only through the oral evidence. It is surprising that the prosecution did not bring any documentary proof before the Court i.e. the original Registers or Cash Books or Payment Registers for being proved. The prosecution merely choose to rely on oral evidence of witnesses examined by it. When the documentry evidence was available which could be seized and produced before the Court to prove its case the prosecution could not afford to remain satisfied with the oral evidence of the witnesses. It is well settled legal position that when documentry evidence is available the oral evidence cannot be preferred that too in such cases where there is charge of embezzlement of Government money.

The perusal of the reasons recorded by the learned Trial Judge shows that merely because the appellants were the custodian of the Government records they have been held responsible for preparation of medical bills and sanction thereof

so also the disbursement to the concerned employees. Such a drastic inference cannot be drawn. I have perused the evidence of the witnesses which shows that witnesses have stated before the Court that the signatures on the payment registers were not made by them for receiving the payments nor they have received the payments. These witnesses have stated that the signatures were forged by the accused. None of the witnesses clearly stated as to out of four which accused forged the signatures, when and in whose presence and whether the witnesses were eye-witnesses when the alleged signatures were forged. None of the witness claim to have actually seen in any person forging the signature or taking away the money towards medical bills of the employees. Even that could not be so. In all they were four accused persons and therefore, it was the duty on the part of the prosecution to prove which particular accused had forged whose signatures and which particular accused had collected the payment. That is blissfully absent in the instant case. The trial Judge has gone by the figment of imagination that because the accused persons were the custodian of records and were drawing and disbursing authorities and because the employees beneficiaries claimed that they did not receive the payments of the medical bills, the accused as custodians of the records must have misappropriated the monies. In my opinion drawing of such an inference would be clearly a perversity. The prosecution cannot claim conviction on the basis of such a vague evidence and by asking the accused to prove the contrary, merely because they were custodian of the records. It

was for the prosecution to prove by affirmative evidence that a particular accused had forged the particular signature; and for which the prosecution should have obtained the specimen signatures of the accused persons and should have got the handwriting expert's report to prove that it was the particular accused who had forged the particular signature of the particular person on a particular register or on a document. By mere parol evidence of the witnesses without specifying as to which particular accused had forged particular signature and on which particular document/register, the prosecution cannot claim to have discharged its initial burden of proof. In my opinion such a vague evidence should not have relied upon by the learned trial Judge for holding the appellants guilty of the serious offences.

It is then pertinent to note that none of the witnesses examined by the prosecution ever stated that any of them after having submitted the medical bills for reimbursement having not received the payment, had made any complaint or grievance at any point of time either with the accused persons or the higher officers. This conduct on the part of the prosecution witnesses is wholly inconsistent with the guilt of the accused persons. This is a very important aspect which the learned trial Judge did not look into.

To conclude, the prosecution miserably failed to prove its case for the charge levelled against the appellants/ accused persons. The judgment and order of sentence impugned will have to be set aside. In the result, I make the following order :-

Order

- (i) CRA-S-1706-SB of 2009 and CRA-S-1768-SB of 2009 both are allowed.
- (ii) Impugned common judgment and order dated 07.07.2009 is set aside.
- (iii) The appellant-Om Parkash in CRA-S-1706-SB of 2009 and appellant-Satnam Singh in CRA-S-1768-SB of 2009, convicted for the offences under Sections 467, 468, 471 and 120-B IPC are acquitted.
- (iv) Their bail bonds stand cancelled.

May 13, 2016
Poonam (II)

(A.B.CHAUDHARI)
JUDGE