

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.213 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Trishul Dhari Singh, Son of Late Brajnath Singh, Resident of Railway Quarter No. 543A, Loco Colony, Police Station – Delha, District – Gaya.

.... Appellant/s

Versus

Union of India Thru.C.B.I.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 215 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- PATNA

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Mantoo Lal Gupta, Son of Late Laxmi Narayan, Resident of Railway Quarter No. 433A, Station Road, P.S. Kotwali, Dist – Gaya.

.... Appellant/s

Versus

State of Bihar Thru.C.B.I.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No. 213 of 2002)

For the Appellant/s : Mr. Yogesh Chandra Verma
Ms. Fauzia Shakil

For the Respondent/s : Mr. Bipin Kumar Sinha (SC, CBI)

(In CR. APP (SJ) No. 215 of 2002)

For the Appellant/s : Mr. Ajay Kumar Thakur

For the Respondent/s : Mr. Sanjay Kumar, (SC, CBI)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

C.A.V. JUDGMENT

Date: 19-04-2017

Appellants in both the above mentioned appeals have challenged the Judgment and order dated 19.04.2002 passed by Sri B.N. Sahay, Special Judge, Central Bureau of Investigation (hereinafter referred to as “CBI”), South Bihar, in Special Case No. 9/1988, R.C. 46/87 and RC 45/87 by which the appellants, namely, Trishuldhari Singh and Manto Lal Gupta, have been convicted under Section 420, 467,471 read with Section 467 Indian Penal Code and also under Section 5 (2) read with Section 5(1)(c) and 5(1)(d) of the



Prevention of Corruption Act, 1947 (hereinafter referred to as “P.C. Act”) and they have been sentenced to undergo Rigorous Imprisonment (hereinafter referred to as “R.I.”) of two years under each Section i.e. under Sections 420, 467 and 471 read with Section 467 Indian Penal Code. They have also been sentenced to undergo R.I. for two years under Section 5(2) read with Section 5(1)(c) and 5(1)(d) of P.C. Act. The above sentences were directed to run concurrently

2. Facts indispensable for adjudication of present appeals are that the CBI registered R.C. 45/87 and R.C. 46/87 under Section 120B read with Section 420 Indian Penal Code and Section 467, 468 and 471 Indian Penal Code and also Section 5(2) read with Section 5(1)(d) of Prevention of Corruption Act alleging inter alia that the accused persons including appellants with some unknown persons entered into criminal conspiracy and in pursuance thereof presented fake and forged railway warrants No. 1340 and 1343 at Gaya Railway Junction on 21.11.1986, which were purported to have been issued by Central Reserved Police Force (hereinafter referred to as “CRPF”) units for journey of its 40 and 13 staffs in second class Ex. Gaya to Varanasi and from Gaya to New Delhi Junction, respectively. Booking clerks of Gaya Junction issued tickets for 40 and 13 persons for the above destination. Further allegation is that they misappropriated the proceeds of forged and fake railway warrants.

3. The CBI after investigation submitted charge-sheet against the



appellants and other accused persons and the same was transmitted to Special Judge, CBI, South Bihar, Patna, who vide impugned judgment and order convicted and sentenced, the appellants as stated above and acquitted all other accused persons.

4. In the present case charges were framed against the accused Trisuldhari Singh that firstly; he during the period from June 1986 to December 1986 at Gaya, while functioning as Relieving Commercial Clerk, Gaya Junction Railway Station cheated the Railway Admn., CRPF and traveling passengers by falsely showing issue of the railway printed card tickets against the seven forged railway warrants and fraudulently and dishonestly induced them to deliver Rs. 3,202/- to him as railway fare in concerning to those tickets and thereby committed an offence punishable under Section 420 of Indian Penal Code.

5. Secondly; that he during the aforesaid period at Gaya being public servant employed as relieving commercial clerk in the eastern railway, Gaya Junction by corrupt and illegal means or by otherwise abusing his position as such public servant obtained Rs. 3,202/- for himself and others fro the traveling passengers by falsely showing issue of railway printed card tickets against the seven forged police railway warrants and thereby committed criminal misconduct and the said offence is specified in Section 5(1)(d) of P.C. Act, 1947 punishable under Section 5(2) of that Act.

6. Thirdly; he being a public servant employed in the aforesaid



capacity during the aforesaid period and at the aforesaid place dishonestly and fraudulently misappropriated the amount of Rs. 3,202/- entrusted to him by the traveling passengers towards railway fares for tickets for different destinations and also criminally misappropriated the railway tickets under his charge and control as such public servant or allowed other to do so and thereby committed criminal misconduct for which the offences specified in Section 5(1)(C) of the P.C. Act., 1947, and punishable under Section 5(2) of the said Act.

7. Fourthly; he during the aforesaid period and at the aforesaid place while functioning in the aforesaid capacity forged seven railway warrants Nos. (i) 1362 dt. Nil (ii) 1364 dt. 19.11.86(iii) 1368 dt. 4.12.86 (iv) 1584 dt. 28.09.86 (v) 1586 dt. 28.09.86 (vi) 1355 dt. 08.10.86 and (vii) 1585 dt. 28.09.86 to receive the amount of Rs. 3,202/- of railway printed card tickets from the railway fraudulently and dishonestly and thereby committed an offence punishable under Section 467 of Indian Penal Code.

8. Fifthly; he during the aforesaid period and at the aforesaid place, while functioning in the aforesaid capacity fraudulently and dishonestly used as certain documents to wit railway warrants Nos. (i) 1362 dt. Nil (ii) 1364 dt. 19.11.86(iii) 1368 dt. 4.12.86 (iv) 1584 dt. 28.09.86 (v) 1586 dt. 28.09.86 (vi) 1355 dt. 08.10.86 and (vii) 1585 dt. 28.09.86, which he knew or had reasons to believe that at the time he used them to be forged documents and thereby committed an



offence punishable under Section 471 read with Section 467 of Indian Penal Code.

9. Further the charges made against other appellant, namely Mantoo Lal Gupta are:

10. That firstly; he during the period from June 1986 to December 1986 at Gaya, while functioning as Asst. Booking Clerk, Gaya Junction Railway Station cheated the Railway Admn., CRPF and traveling passengers by falsely showing issue of the railway printed card tickets against the fifteen forged railway warrants and fraudulently and dishonestly induced them to deliver Rs. 7,797/- to him as railway fare in concerning to those tickets and thereby committed an offence punishable under Section 420 of Indian Penal Code.

11. Secondly; that he during the aforesaid period at Gaya being public servant employed as Asst. Booking Clerk in the eastern railway, Gaya Junction by corrupt and illegal means or by otherwise abusing his position as such public servant undue pecuniary advantage to the extent of Rs. 7, 797/- for himself and others from the traveling passengers by falsely showing issue of Railway Printed Card Tickets against the fifteen forged police, Railway Warrants, and thereby he committed criminal misconduct and the said offence is specified in Section 5(1)(d) of P.C. Act, 1947 punishable under Section 5(2) of that Act.

12. Thirdly; he being a public servant employed in the aforesaid



capacity during the aforesaid period and at the aforesaid place dishonestly and fraudulently misappropriated the amount of Rs. 7,797/- entrusted to him by the traveling passengers towards railway fares for tickets for different destinations and also criminally misappropriated the railway tickets under his charge and control as such public servant or allowed other to do so and thereby he committed criminal misconduct, for which the offences specified in Section 5(1)(C) of the P.C. Act., 1947, and punishable under Section 5(2) of the said Act.

13. Fourthly; he during the aforesaid period and at the aforesaid place while functioning in the aforesaid capacity forged fifteen railway warrants Nos. (i) 1340 dt. 06.11.86 (ii) 1341 dt. 11.11.86 (iii) 1342 dt. 28.11.86 (iv) 1343 dt. 20.11.86 (v) 1352 dt. 07.10.86 (vi) 1353 dt. 09.10.86 (vii) 1354 dt. 09.10.86 (viii) 1356 dt. 11.10.86 (ix) 1359 dt. 10.10.86 (x) 1360 dt. 15.10.86 (xi) 1375 dt. 20.11.86 (xii) 1345 dt. 04.10.86 (xiii) 1346 dt. 04.10.86 (xiv) 1365 dt. 05.10.86 and (xv) 1386 dt. 05.10.86 to receive the amount of Rs. 7,797/- of railway printed card tickets from the railway fraudulently and dishonestly and thereby committed an offence punishable under Section 467 of Indian Penal Code.

14. Fifthly; he during the aforesaid period and at the aforesaid place, while functioning in the aforesaid capacity fraudulently and dishonestly used as certain documents to wit fifteen railway warrants Nos. (i) 1340 dt. 06.11.86 (ii) 1341 dt. 11.11.86 (iii) 1342 dt. 28.11.86



(iv) 1343 dt. 20.11.86 (v) 1352 dt. 07.10.86 (vi) 1353 dt. 09.10.86
(vii) 1354 dt. 09.10.86 (viii) 1356 dt. 11.10.86 (ix) 1359 dt. 10.10.86
(x) 1360 dt. 15.10.86 (xi) 1375 dt. 20.11.86 (xii) 1345 dt. 04.10.86
(xiii) 1346 dt. 04.10.86 (xiv) 1365 dt. 05.10.86 and (xv) 1386 dt.
05.10.86 which he knew or had reasons to believe that at the time he
used them to be forged documents and thereby committed an offence
punishable under Section 471 read with Section 467 of Indian Penal
Code.

15. In support of its case, prosecution has examined -12 witnesses
and they are : Rajni Ranjan Sahay P.W. 1, Mohan Singh P.W. 2,
Raghubansh Singh P.W. 3, Awadhesh Singh P.W. 4, H.N. Ram P.W.
5, Tulsi Dutta P.W. 6, Vijay Bahadur Singh P.W. 7, Shailendra Jha,
P.W. 8, Ganesh Prasad Gupta P.W. 9, Raghubir Singh P.W. 10,
Rajendra Prasad Rai, P.W. 11 and V.G.S. Bhatnagar P.W. 12.

16. Apart from above, following Exhibits are brought on record by
the prosecution:- Exhibit. 1, F.I.R. RC 45/87 Exhibit 1/A, F.I.R. RC
46/87, Exhibit. 2, Admitted writing and signature of co-accused,
Shashi Dhawan (A/21 to A/26) Exhibit. 3, Admitted writing and
signature of Trishuldhari Singh (A/32 to A/36) Exhibit. 4, writing and
signature of accused Mantoo Lal Gupta (A/1 to A/6) Exhibit 5 to
Exhibit 5/d, writing and signature of Trishuldhari Singh on leave
applications (A/31 to A/41) Exhibit. Exhibit 6 to 6/d writing and
signature of co-accused Shashi Dhawan (A/27 to A/31), Exhibit. 7 to
7/M, writing and signature of accused Mantoo Lal Gupta on fourteen



applications (A/7 to A/20), Exhibit. 8, Seizure Memo, Exhibit. 9. specimen signature of accused Mantoo Lal Gupta in twenty sheets collectively. Exhibit. 9/A, specimen signature of Trishuldhari Singh in fourteen sheets on S/42 to S/55, Exhibit 9/B, Specimen writing and signature of accused Shashi Dhawan in 20 sheets, Exhibit. 10 to 10I, ten Railway Warrants, Exhibit 10J to 10/M, four Railway Warrants, Exhibit. 11, Sanction order, Exhibit 12, signature of Sri. Rajendra Pd. Rai on seizure memo, Exhibit 12/1 Signature of Sri Jakaria on seizure memo, Exhibit. 13 to Exhibit. 17, Seizure Memos, Exhibit. 18, S.P. letter No. 3478/3/45 & 46/87, Pat dated 27.05.88, Exhibit. 19, Report of Examiner and Exhibit. 20, detailed reasons.

17. In the above background of submissions of learned counsel for the parties, let me now examine the testimony of Prosecution Witnesses.

18. P.W. 1, is an inspector of CBI, who has proved two FIR's as Exhibit. 1 and 1A as on his dictation they were typed and it bears his signature. It is the prosecution version that FIR has been lodged on source information but this witness, however, has stated that he cannot say which part of source information was oral or which part was written. He has further deposed in his cross-examination that that he did not take the signature of that source as on that basis no cognizable offence was made out.

19. The above evidence is vital for the prosecution and it has been argued on behalf of the learned counsel for the appellants that the



contents of the FIR has not been disclosed by the informant – P.W. 1, as such the said contents cannot be taken into evidence. However, this witness has clearly stated that on his dictation the contents were typed and it bears his signature as such to my opinion, there is no force in submission of learned counsel for the appellants.

20. P.W. 2 is the formal witness, he has proved the writing of appellant Trishul Dhari Singh on the service book (Exhibit A/32 to A/36) as Exhibit. 3 and admitted writing of appellant Mantoo Lal Gupta on his service book (Exhibit A/1 to A/6) as Exhibit. 4 and 4/A. He has further proved the leave application of appellants as Exhibit 5 and 5/B and 7 to 7/M. It appears that admitted writing of appellants were taken in order to get it compared by the expert with the writing on railway warrants, which according to prosecution is forged.

21. P.W. 3, has proved the specimen writing and signature of appellant Mantoo Lal Gupta in 20 pages as Exhibit. 9 and specimen writing and signature of appellant Trishul Dhari Singh in 14 pages as Exhibit. 9/A and as per this witness, the aforesaid specimen writing and signatures were taken in CBI, Office, Patna on 17.02.1988 before that he did not know the appellants.

22. Evidence of P.W. 4, does not relate to the appellants, hence it is of no avail for the purpose of deciding this appeal.

23. P.W. 5, is an important witness of prosecution and he has stated in his evidence that he was posted as Chief Booking Supervisor at Gaya Railway Station from October 1987 to November 1990. he



disclosed that on these ten railway warrants, date of validity, distance, number of person, number of tickets, issue date, amount and ticket numbers are in the writing and signature of appellant Mantoo Lal Gupta and the same have been marked as Exhibit. 10 to 10/I. Similarly, he has also proved four railway warrants in the writing and signature of appellant-Trishul Dhari Singh as Exhibit. 10/J to 10/M. He has further stated in his evidence in chief that on the basis of warrants tickets are issued and vouchers were deposited to Railway and Railway realize the amount on that basis. He was cross-examined at length. It appears from his cross-examination that this witness has identified the writing and signature of appellants as he was working with them at relevant point of time at Gaya Railway Station. In para - 5 of his cross-examination, he has stated that before 07.10.1987, he was never posted at Gaya and he cannot say the warrants are of which year and date. He has further stated that he cannot say from which department, Railway warrants were issued and at the same time, he has also stated that warrants do not bear issue date/delivery date and distance column are not filled up. Further on comparison of his evidence in cross-examination with the evidence in chief, it appears that his evidence in cross-examination is contrary to his evidence in chief. He has denied the suggestion put to him by the defence that Railway warrants are not in writing and signatures of appellants. He has further stated that Exhibit 10/M bears initial of appellant – Trishul Dhari Singh only, and its other columns are in the writing of whom,



he cannot say.

24. From the discussions made deposition of P.W. 5 is self contradictory, which creates a doubt on the testimony of this witness.

25. Testimony of P.W. 6 is of no avail as he was partly examined in his evidence in chief on 24.06.1993 and, thereafter, he never turned up for further examination.

26. P.W. 7, was the Nayak of CRPF and he has simply produced four rubber seals and warrant issue register from 03.06.1978 to 24.11.1993 in court and apart from that there is nothing important in his evidence.

27. P.W. 8, is the Deputy Chief Commercial Manager of Eastern Railway, who granted sanction for prosecution of appellants. He has stated in his evidence that he was posted at that time as Divisional Commercial Superintendent, Mughalsarai, and he proved the sanction order as Exhibit – 11. When he was confronted in cross-examination as to what document he has been perused while issuing sanction, he then stated that he did not remember about the same. Para -4 of his cross-examination also shows that he has denied the suggestion put to him by the defence that he has no authority to appoint or remove the railway booking clerks.

28. P.W. 9, was a retired Railway employee and he has come to court to state about the procedure to book a Railway ticket on a Railway warrant. He stated that Railway warrant is of three kinds i.e. jail warrant, police warrant and military warrant. The police warrant



come to the Rail ticket counter in two foils and booking clerk then has to examine it and after that he issues paper tickets and sometimes card tickets are also issued, one ticket and counter foil is returned to the persons, who produces the railway warrant and other foil remains with the booking clerk, who after mentioning ticket number and fare amount on it, deposit it to cashier and then cashier prepares list the sends the voucher to divisional cashier for clearance.

29. P.W. 10, was Dy. .S.P. in F Company 31, Battalion CRPF, New Delhi, during the relevant period and said to be the custodian of Railway warrants. He stated that he was the issuing authority of Railway warrants, which are issued in certain circumstances i.e. at the time of departmental training, from one battalion to other battalion, at the time of long leave etc. He further states in his deposition that at the time of his posting, there was no head constable by name R.P. Singh in my battalion and this Exhibit. 10 is in the name of one K. Singh and it is forged one. Evidence of this witness further discloses that papers of Railway warrants are not good and the seal of Commanding Officer on it is in small letters but in original it is in capital letters. He has further stated with regard to Exhibit 10/K on which there is signature of R.P.Singh, while there was no person of this name in his battalion. He has further stated that batch number of the railway warrant is in eight digits while it was actually of nine digits. This witness has been cross-examined vigorously and he has stated in his cross-examination that he knows 3F Battalion since July



1987. He further stated that Railway warrants i.e. Exhibit 10/J and 10M are of 06.11.1986 and 20.11.1986 and he was not the custodian of those warrants. He further stated that issuing register and receiving register are with him at present and he cannot say whether alleged Railway warrants have been issued from his office or not. He further states in his cross-examination that during investigation, I.O. did not collect from him, the proforma or original Railway warrant and also not collected the specimen of rubber seal. In para -6 of his cross-examination, he stated that he cannot say the name of all the officers of his Battalion at the relevant time. A suggestion has been given by the defence to this witness that P.N. Singh and R.K. Singh were officers of his Battalion and he has deliberately suppressed their names, to which this witness has denied the suggestion.

30. P.W. 11 is the I.O. of this case. He has stated that on 06.11.1986, he started investigation of the case and on 28.01.1988, he seized Railway warrants from M.T. Jakaria, S.I. Vigilance, CRPF, New Delhi and he has proved the seizure memo as Exhibit. 12 and 12/2. His evidence discloses that he had received some documents from Chief Commercial Supervisor under seizure memo Exhibit. 13. He has further stated that on 18.04.1988, he received some documents from Supervisor, Eastern Railway, Gaya through seizure memo (Exhibit. 13). He has also stated that on 18.04.1988, he received some documents from Supervisor Eastern Railway, Gaya, through a seizure memo (Exhibit. 14) and further seized some documents from Senior



Clerk, DRM Office, Mugalsarai, under seizure memos (Exhibit. 15) he has also proved other seizure memo as Exhibit. 16 and 17. He further stated that during the investigation, he has obtained the specimen writing and signatures of the appellants and after concluding investigation submitted charge-sheet against these appellants. This witness has been cross-examined at length and in para – 8 of his cross-examination, he has stated about the procedure of issuance of Railway warrants. He further stated that no specimen signature of issuing authority of Railway warrants is kept in the Rail Booking office. In para -9 of his cross-examination, he has stated that he does not know where the Railway warrant of CRPF are being printed and in para -11, he has stated that he does not remember whether during investigation, he visited Gaya Junction, which is the place of occurrence. Further in para -12, he has stated that he cannot say whether sanction order is correct or not. Para -14 of his cross-examination, shows that he collected the specimen of seal from CRPF, Office as also the format of Railway warrant but did not get the same compared by the expert.

31. P.W. 12, is the hand writing expert but his testimony in evidence in chief has been expunged as he did not turn up for his cross examination by defence.

32. On behalf of defence two witnesses have been examined they are D.W. 1, S.S.P. Singh, a booking clerk of Gaya Railway Station, posted from 1984 to 1989. He has categorically stated that Railway



warrants Exhibit 10/J to 10/M are not in the writing of appellants. In his cross-examination, he has stated that he has worked with the appellant from 1984 to 1989. Further this witness has denied the suggestion that he being a colleague of appellants, has deposed falsely.

33. D.W. 2 has come to say that appellants were appointed by General Manager, Eastern Railway and he has also stated alleged Railway warrants are not in the signature of appellants. Same suggestion was also given to this witness as was given to D.W. 1, but the said suggestion has also been denied by this witness as well.

34. It has been submitted on behalf of the appellants that onus is on the prosecution to prove that those Railway warrants were forged but no steps have been taken by the prosecution and even original warrants have not been brought on record to compare the same with alleged forged and fake Railway warrants and merely pointing out some discrepancies in the warrants without bringing on record any original document, it cannot be said that those documents were forged. It has also been argued that there is no evidence available on record to show that fare of the aforesaid ticket issued by the appellants on the basis of forged warrants were not deposited in the railway in cash and further there is no evidence that after issuance of tickets on forged warrants, sale proceeds were not deposited in the office. Submission of learned counsel for the appellants is that there is nothing available on record to show that the same has not been



deposited as per Railway procedure along with voucher in the office rather it has come in the evidence of P.W. 9 that after issuing the ticket, the counterfoil is to be returned to the person who purchased ticket and another counterfoil remains with the booking clerk, on which ticket number and amount is being mentioned, which is being handed over to the Cashier (Cash Incharge). It has also been argued by learned counsel for the appellants that thereafter, Cash Incharge, prepares the list and along with voucher, the same is being sent to Divisional Treasurer and, thereafter, it goes for clearance.

35. Further argument is that prosecution has not produced any issue register to show that no such warrant was ever issued and even there is no complain by the Cash Incharge or Divisional Treasurer that on the basis of aforesaid Railway warrants sold tickets were issued. Had it been there that sold ticket has been issued then cash would not have been deposited. It has also been argued by learned counsel for the appellants that prosecution has not produced any issue register to show that no such warrant was ever issued.

36. On the other hand argument of learned counsel for the CBI is that there is a presumption under Section 20 of P.C. Act, 1988 and that is equivalent to Section 6 of P.C. Act, 1947 and in this case prosecution has been able to prove that the Railway warrants were filled up in the handwritings of appellants and further it is proved that the Railway warrants were not genuine as the paper was not of good quality and batch number of the railway warrant was in eight digits



while it is actually of nine digits, further the seal of Commanding Officer was in small letters whereas in original, the seal is in Block letters. Further submission of learned counsel for CBI is that Exhibit - 10 series is the fake Railway warrants, which is established from the following facts as P.W. 5, in para – 2 of his evidence has deposed that in ten Railway warrants date of validity and distance, number of persons, number of ticket issued, rate amount, ticket number have been filled up by the appellant Mantoo Lal Gupta and he has also proved the handwriting and signature of appellant Mantoo Lal Gupta on these ten Railway warrants (Exhibit. 10 to 10/I). He has also proved the signature of appellant Trishuldhari Singh on filled up columns of four fake Railway warrants (Exhibit. 10/ J to 10/M). In his cross-examination in para – 10, he has stated that it is appellant Mantoo Lal Gupta, who has filled up column nos. 5, 6 and 7 and, therefore, it is apparent that appellants have filled up column nos. 5, 6 and 7 of Exhibit – 10 to 10M, though this was not required as in the warrant itself, it was instructed that the said columns is to be filled up by Station Master/Booking Clerk.

37. He further in his cross examination, deposed in paragraph 14 and 15 that appellants have filled up these columns and he has recognized their handwritings. Apart from that P.W. 5 has also deposed that column of date of issue and period of validity does not find mentioned in the Railway warrants nor it contains the column of distance from the place of journey to destination. It has further been



submitted that all the columns including above, has also been filled up by both the accused-appellants and there is no denial in their cross-examination. It has also been submitted by learned counsel for the CBI that Exhibit -10 series contains a fake seal and it is in small letters and the signature of R.K. Singh, Commanding Officer, is fake and there is no person by the name of said R.K. Singh in the Battalion, which has also come in the evidence of P.W 10. Further submission is that the ticket numbers, which finds mentioned in the Railway warrants had already been sold earlier. Moreover, in the cross-examination, no further specific questions were asked that these warrants were not in the handwriting and signatures of appellants and they have already sold tickets to other persons. Hence the circumstances are there to show that in spite of knowing that Railway warrants are forged and fake, they have used the Railway warrants and issued already sold tickets and as such caused monetary loss to the Railway.

38. It has also been argued on behalf of CBI that considering the above circumstances, there is presumption under Section 6 of Prevention of Corruption Act, 1947 (presently Section 20 of Prevention of Corruption Act, 1988). It has also been submitted that the aforesaid questions were put to appellants in their statement recorded under Section 313 of Code of Criminal Procedure, but both the appellants said that the warrants were not forged but they have not denied the fact that they were not issued by them.



39. I have already discussed above the charges framed against the appellants. Appellant Trishuldhari Singh has been charged that he being Relieving Commercial Clerks of Eastern Railway at Gaya Junction, issued card tickets against seven forged railway warrants, purportedly to be issued by the C.R.P.F., New Delhi and obtained undue pecuniary advantage of Rs.3202/-. He has also been charged that it was the appellant, who forged the railway warrants and used the same as genuine for the purpose of cheating. Similar is the allegations against appellant Manto Lal Gupta that he issued card tickets against 15 warrants and pocketed the amount of Rs.7797/-. The whole basis of prosecution case is the forged railway warrants alleged to be made by the appellants.

40. From the testimonies of the prosecution witnesses as discussed hereinabove, it appears that P.W.5 has proved the railway warrants. He has proved the railway warrants as Ext.10 to 10/I, which is said to be written and issued by the appellants Manto Lal Gupta and further proved four railway warrants as Ext.10/J to 10/M allegedly to be written and issued by the appellant Trishuldhari Singh, while appellant Manto Lal Gupta and Trishul Dhari Singh have been charged that they forged 15 and 7 railway warrants. It appears that this witness has identified the writings and signature of appellants in rail warrants as he claimed that he was posted at Gaya Railway Station and worked with appellants. As per charge framed, the warrants were forged during the period from June, 1986 to December, 1986. But this



witness has himself stated in his cross examination that before 7.10.1987 he was never remained posted at Gaya Junction nor he can say in which year and from which department warrants were issued. This witness has further disclosed in cross examination that date of issue and date of delivery are missing on alleged railway warrants and they also do not contain the column of distance from place of journey to destination. This witness has further stated in his cross examination that at Ext. 10/M only initial of the appellant Trishuldhari Singh was on that and the other columns are in writing of whom, he cannot say. These infirmities and discrepancies in evidence of P.W.5 are vital to prosecution and as such testimony of P.W.5 is not free from reasonable doubt. During the trial, prosecution produced one witness Tulsi Datta (P.W.6), who was posted in C.R.P.F. battalion. During the relevant period, he was custodian of railway warrants. He was an important witness to say whether the alleged warrants were issued by C.R.P.F. or not but he was examined in chief in part and his further examination was deferred at the instance of prosecution and thereafter he was never produced in the court. These lapses on the part of production appear to be vital one.

41. As noticed above, it is the specific case of defence that alleged railway warrants are not in the writing and signature of the appellant and the defence has examined two witnesses i.e. D.W.1 and D.W.2 like of that P.W.5 and they have deposed that they worked with the appellant at Gaya Railway Station and hence acquainted with the



writings and signature of the appellants. They have stated that the impugned warrants are not in the writing of the appellants.

42. Under the situation as stated above, it was incumbent upon the prosecution to adduce reliable, cogent and convincing evidence to prove the warrants, which is very basis of the case as discussed above.

43. The testimony of P.W.5 is not free from doubt. It also appears from the evidence that in course of the evidence, P.W.11- I.O. of the case collected specimen writing and got writing of warrants examined and compared with them by the government examiner of questioned document of F.S.L., Kolkata. One government examiner was also examined on behalf of the prosecution as P.W.12. This witness was examined-in-chief but the accused persons refused to examine him, however, this witness was later on recalled under Section 311 Cr.P.C. and defence deposited the cost also but despite summon issued to him, prosecution failed to produce him. Then on a petition of defence, with no objection endorsement of Spl. P.P. of C.B.I., the evidence in chief of P.W.12 was expunged. This infirmity goes to the root of the prosecution case.

44. As discussed above, the charges against the appellants is that they have cheated the railway administration by dishonestly and fraudulently inducing delivery of certain property and thereby committed offence under Section 420 of Cr.P.C.

Section 420 of the Indian Penal Code envisages :

“Whoever cheats and thereby dishonestly induces the person deceived (i) to deliver any property to any person, (ii) to make, alter or destroy the whole



or any part of a valuable security, (iii) anything which is signed or sealed, and which is capable of being converted into a valuable security.”

45. Therefore, it is the necessary ingredients of cheating which require to be proved before applying this Section. This charge of cheating has to be read with Section 468 and 471 of the Indian Penal Code, for which the appellants have been charged. It is alleged that the appellants have committed forgery for the purpose of cheating, unless forgery is proved, no offence under Section 468 of the Indian Penal Code can be said to be made out against the appellants.

46. In this case, it has vehemently been argued on behalf of the respondents that there shall be a presumption under Section 20 of the P.C. Act, 1988 as similarly contained in Section 6 of the P.C. Act, 1947 and there are circumstances against the appellants that they have used forged railway warrants and issued tickets, as such there shall be presumption against the appellants.

47. In this context, even if it is presumed that warrants were forged, prosecution has not laid any evidence to indicate that the appellants had knowledge that these warrants are forged and they utilized them for some wrongful gains to cause wrongful loss to the Railways. No doubt, a great stress has been made that the appellants were responsible for utilizing these warrants and for that purpose produced attendance register to compare hand writing of the appellants with the writing on warrants. In fact, prosecution has based its case on this aspect of the matter and there is no denial by the appellants as they



have utilized the warrants in question for the purpose of issuing tickets to the police personals. Further appellants have denied that they have committed any offence or cheated or have committed any sort of forgery in preparing the warrants. It has also been submitted that that the sold tickets were used against the warrants but I have scrutinized evidence closely and there is no evidence available on the record to show that the sold tickets have been used. In fact, prosecution has failed to lead any evidence that any loss was caused to Railway. Other circumstance that appellants committed forgery and cheating with the Railway by misappropriating the funds by using forged warrants, prosecution must have to establish that actual loss was incurred because of the appellants but as discussed above, the evidence is completely lacking in this aspect of the matter also.

48. In such a situation, there can not be presumption in favour of the prosecution only on the basis of evidence that there were some discrepancies in Railway warrants (Exhibit. 10 to 10/M)

49. So far decision as cited by the learned counsel for the C.B.I. is concerned, the facts and circumstances of the case in the above judgment is completely different from the facts and circumstances of the present case as that relates to a case in which there was allegation that the petitioners have taken gratification from the informant, and that relates to a trap case. As such I am not in agreement with the submission of the learned counsel for the appellant that there shall be presumption against the appellants.



50. Both the appellants have been charged under Section 420 IPC and also Section 468 IPC, which implies forgery for the purpose of cheating. They have been alleged that they issued card tickets on the basis of forged railway warrants. It has also been submitted that the sold tickets were used against the aforesaid warrants but I have scrutinized evidence closely and there is no evidence available on the record to show that the sold tickets have been used.

51. From the discussions as made above, as also materials available on the record, this court has no hesitation to show that the prosecution has wholly failed to prove the allegation of forgery and cheating levelled against the appellants and consequently charges under P.C. Act, also fails.

52. An argument has also been advanced on behalf of the appellants that sanction as required under Section 6 of P.C. Act, 1947, is not a proper sanction and P.W. 8, was not the competent authority to issue sanction. However, learned counsel for the CBI has submitted that Railway Establishment Code Vol. 1 part II (5) shows that General Manager was the competent authority to grant sanction under Section 6 of P.C. Act, 1947 and it further provides that he may authorize other officers for that purpose and in this case Deputy Chief Commercial Manager (P.W. 8) has come forward and deposed that he was posted at that time as Divisional Commercial Superintendent at Mughalsarai. His evidence also disclosed that he has the authority to appoint and order for removal of grade-C employees and appellants



are grade-C employees and as such, there is proper sanction. Apart from that, learned counsel for the CBI has referred a unreported Judgment passed in Criminal Miscellaneous No. 5254 of 1984 dated 16.03.1980 and argued that Prevention of Corruption Act, 1947, itself provides that any error, omission or irregularity in the sanction granted by the authority, shall not vitiate whole proceeding under the Prevention of Corruption Act, 1947.

53. Further P.W. 8 in his evidence had stated that he was the authority to appoint or remove the booking clerks and a suggestion was given to him by the defence that he has no authority to appoint or dismiss the booking clerks of Railway rather General Manager of Railway is the competent authority to do so, but he has denied the said suggestion. In a criminal case, it is the prosecution, who has to prove its case beyond all reasonable doubts and when the defence has disputed the grant of sanction by an appropriate /competent authority, the burden lies on the prosecution to clear the doubt but in the present case, there is nothing available on record except the oral evidence of P.W. 8, to show that he is the appointing authority of booking clerk and he can remove them from service and in support of this contention, nothing has been brought on record. Even as per the Railway Establishment Code, General Manager is the competent authority and he can delegate this power to appoint or remove Grade-C employees but prosecution as failed to bring any document to show that at that time Divisional Commercial Superintendent, Mughalsarai,



was delegated with the power as such by the General Manager Eastern Railway.

54. All the above circumstances go to indicate that prosecution has not been able to discharge its burden to establish the competency of sanctioning authority.

55. Considering the discussions as made above, this Court comes to a finding that prosecution has miserably failed to prove the charges against the appellants. Hence, Judgment and order dated 19.04.2002 passed by Sri. B.N. Sahay, Special Judge, CBI, South Bihar, in Special Case No. 9/1988, R.C. 46/87 and RC 45/87, is not sustainable in the eye of law.

56. Accordingly, these appeals are allowed. Appellants in both the cases are acquitted of the charges under Section 420, 467,471 read with Section 467 Indian Penal Code and also under Section 5 (2) read with Section 5(1)(c) and 5(1)(d) of the Prevention of Corruption Act, 1947. Conviction and sentence of the appellants in both the appeals are set aside.

57. As appellants are on bail, they are discharged from liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	29.03.2017
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