IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.408 of 2002

Arising Out of PS.Case No. -17 (7) Year- 1977 Thana -Begusarai District- BEGUSARAI

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Ramadhar Sharma, S/o Late Raghubansh Singh, R/o Village-Okri, Police Station-Ghosi, District-Jehanabad

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Suresh Roy,
Mr. Abhay Kumar Roy

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 21-09-2017

1. This appeal has been filed against the judgment and order of conviction dated 25.07.2002 and order of sentence dated 26.07.2002 passed by the Presiding Officer, Additional Court-I, F.T.C., Begusarai in Sessions Trial No.62/82, whereby the learned trial Court has convicted the accused Ramadhar Sharma under Section 420, 468, 477-A and 409 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for three years for the offence punishable under Section 420 of the Indian Penal Code, three years for the offence punishable under Section 468 of the Indian Penal Code, three years for the offence punishable under Section 477 A of the Indian Penal Code and four years for the offence punishable under Section 409 of the Indian Penal Code. All the sentences were directed to run concurrently.

2. The factual matrix of the case is that one Bansh

Bihari Prasad Singh, Secretary, Bihar State Co-operative Marketing Union Limited (hereinafter in short referred to as 'BISCOMAUN), Patna lodged a written report on 10.08.1977 before the Officer-in-Charge of Begusarai Police Station with the allegation in succinct that Ramadhar Sharma was appointed as Depot Manager in the year 1965. On a tip off he along with the Administrator of the BISCOMAUN visited the Co-operative Credit Agricole Depot, Begusarai on 06.07.1977 and examined the records of Sales Depot. Accused Ramadhar Sharm was the Manager of the said Deport from 08.11.1973 to 18.05.1975. He proceeded on leave on 18.05.1975 and made over partial charge to the Sales Man, Sri Gopal Kesri of the said depot but he did not make over the charge of cash in hand, cash book, party ledger, cash book and general ledger to the said Gopal Keshari. In the meantime, Ramadhar Sharma was transferred to Maharajganj Depot where he joined on 17.06.1975. Thereafter, Sri Bindeshwari Prasad joined as Depot Manager at Begusarai on 04.08.1975. Accused Ramadhar Sharma handed over cash to the tune of Rs.7189.76, cash book and stock book etc. to Sri Bindeshwari Prasad on 01.06.1977 and charge of party ledger was handed over by him to his successor on 02.07.1977. Further allegation is that from the ledger book it transpired that the accused collected money from the sales agent against supply of fertilizer but he did not enter the same in the cash book or sent the sale proceed to the tune of Rs.1,55,540.70/- to the Head Office. Thus, he committed breach of trust. The further allegation is that expenses disclosed in the cash book for purchase of gunny bags, on payment of carriage or labour expenses were defalcated by him as no actual payment was made by him. It is also alleged that the accused received granular fertilizer from granular fertilizer society at Tilrath, but the same was neither entered in the stock register nor its sale proceed to the tune of Rs.1,13,014.35/- was sent to the Head Office and has defalcated the said amount. Thus, he has defalcated and misappropriated total amount to the tune of Rs.6,27,938.85/-.

3. On the basis of the aforesaid report, the Officer-in-Charge of the Begusarai Police Station registered a case bearing Begusarai P.S. Case No.17 (7) of 1977 against the Ramadhar Sharma. The aforesaid case was investigated by the police and on conclusion of the investigation and finding the case true, the Investigating Officer (I.O.) submitted chargesheet against the accused under Section 466, 467, 468, 477 A, 409 and 409/511 of the Indian Penal Code.

4. On receiving chargesheet and case diary and perusing the same, learned Magistrate took cognizance of the offence against the accused Ramadhar Sharma and as the alleged amount of defalcation exceeded Rs.6 lacs, the learned Magistrate committed the case to the Court of Sessions. After commitment and transfer, finally the case came in *seisin* of 1stAdditional Court, F.T.C., Begusarai for trial.

5. Charge against the accused Ramadhar Sharma was framed under Section 466, 467, 468, 477 A, 409 and 409/511 of the Indian Penal Code. The charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

6. The statement of the accused was recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence claiming himself to be quite innocent.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether 14 prosecution witnesses, namely, Sitaram Sardar as P.W.1, Rabinder Prasad Sinha as P.W.2, Surendra Kumar as P.W.3, Rampratap Sao as P.W.4, Ramsnehi Prasad Singh as P.W.5, Rajnath Prasad as P.W.6, Dinesh Prasad as P.W.7, Jageshwar Choudhary as P.W.8, Bhola Tiwary as P.W.9, Balkrishna Gupta as P.W.10, Dwarika Prasad Agarwal as P.W.11, Bando Mahto as P.W. 12, Bindeshwari Prasad as P.W.13 and Tanik Prasad Sinha as P.W.14 In documentary evidence it has filed and proved several documents. The accused in ocular evidence examined one witness only namely, Ramdeo Prasad as DW-1 and in documentary evidence it has filed photocopy of enquiry report, marked as Ext.1 and photocopy of the resolution of the Bihar State Co-operative Purchase and Sale Limited, Patna dated 12.06.1987, marked as Ext-B.

8. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment and order of conviction and sentence, as detailed in the earlier paragraph.

9. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence the convict has preferred the present appeal.

10. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

11. It is submitted by learned counsel for the appellant that the appellant was not given opportunity to explain the alleged discrepancy in the register. He has not issued any receipt in respect of any money allegedly collected from selling agent. Expenses of gunny bags, carriage charges were made as per the office circular. The fertilizer was directly allotted by the head office to the co-operative societies and appellant has no role in the same. It is further submitted by the appellant that the F.I.R. was lodged in the year 1977 and the matter was pending for several years. In the year 1976 he filed petition before the Chairman, BISCOMAUN for reassessment/re-examination of the accounts for the period 08.11.1973 to 18.05.1975 and the matter was thoroughly examined by the department and he was exonerated. In the enquiry it was found that all the irregularities which had taken place are either before joining of the appellant or after his transfer. Further submission of the appellant is that neither the informant nor the Gopal Kesri who took preliminary charge from the appellant has been examined by the prosecution as the aforesaid two persons had died during the course of trial. I.O. of the case has also not been examined by the prosecution. It is further submitted that P.W.13 has admitted in his deposition that the appellant has furnished him all the documents etc. of the department and nothing is due to him so he has not written to the department for audit and he has never written to the department for taking account of the period of the appellant. As per the account of P.W.13, he has made over charge of the articles, cash book and document etc. to him thrice, but the delay in handing over the same was due to his frequent transfer from Begusarai to Maharajganj and then from Maharajganj to Patna City in short span of time and he was awfully busy to complete the formalities of making over and taking over the charge, so he could not collect the articles and documents from the Sale Centres lying there and hand over the same to his successor in time and for his aforesaid dereliction in handing over the charge to his successor, he faced departmental enquiry and was exonerated and, later on, he was reinstated by the department. It is further submitted by the appellant that as per statement of P.W.13 itself, he had no authority to purchase the articles barring the stationary for Rs.3500.00 and there is nothing on the record that any article was supplied to him by the head office, so for want of the articles how he could have supplied the same to the Sale Centres in turn as stated by Sale Incharge of the Sale Centres in their examination in this case. It is further submitted by appellant that several witnesses have stated in their respective testimony that they had deposed before the I.O. but the I.O. of the case has not been examined by the prosecution, causing great prejudice to him. Hence, the impugned judgment and order of conviction and sentence is not sustainable and is liable to be set aside.

12. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence, submitted that the witnesses examined by the prosecution have fully supported the prosecution case and the ocular evidence also stand corroborated by the medical evidence and rightly appreciating the facts and evidence on record, the learned lower court has passed the impugned Judgment and Order of conviction and sentence, and the same is liable to be sustained and this appeal has no substance in it and is liable to be dismissed.

13. From perusal of the testimony of the PW-2 (Rabindra Prasad Sinha) who happens to be in-charge Sales Centre Tarmanna, PW-3 (Surnedra Kumar) who happens to be sales man in-charge Begusarai depot, PW-5 (Ramsanehi Prasad Singh) who happens to be in-charge sale centre, Bhagwanpur, PW-6 (Rajnath Prasad) who happens to be in-charge of sale centre Majhaul and PW-7 (Dinesh Prasad) who happens to be in-charge Matihani sale centre, it appears that the said witnesses in their respective examination-in-chief have stated that the appellant did not accord any money to them for construction or repair of hut or supplied any tarpaulin, corrugated sheet, denage, mats etc. to their Sales Centre. PW-6 (Rajnath Prasad) in-charge Sale Centre Majhaul has stated in his examination-in-chief that no weight, weighing machine etc. were provided to the sales centre. PW-2 (Rabindra Prasad Sinha) and PW-3 (Surendra Kumar) have stated in their respective examination-in-chief that the stock book register is maintained regarding providing the articles to the said sales centre. They have further stated that stock book register must be kept at the sale centre, but no such register has been brought on record by the prosecution to indicate that the aforesaid articles were not provided by the appellant to the said Sales Centre.

14. Though, PW-7 (Dinesh Prasad) has stated in his examination-in-chief that no tarpaulin, corrugated sheet denage, mats etc. were provided to the sales centre by the appellant, but in the said examination-in-chief he has also stated that earlier Surnedra Singh was the in-charge of the Sale Centre and he has not handed over the charge of the said articles to him. But said Surendra Singh has not been examined by the prosecution to prove that the aforesaid articles were not supplied by the appellant to the Sales Centre. PW-5 (Ramsanehi Prasad Singh) in-charge Sale Centre, Bhagwanpur in paragraph 2 of his cross-examination has stated that his controlling officer is the range officer, Munger and he had no concern with the Begusarai depot. On perusal of the testimony of the PW-14 (Tanik

Prasad Sinha) who happens to be officer-in-charge Storage BISCOMAUN Munger, it appears that there were nine depots under the Munger range including, Munger, Lakhisharai, Begusarai, Shekhpura, Jamui and Khagaria depot. The aforesaid statement of PW-5 and PW-14 cumulatively indicate that the aforesaid depots were under direct control of range officer, Munger who was their controlling officer. So the aforesaid Sale Centres must have no concern with the Begusarai depot and no question of supplying the aforesaid articles by the appellant who happened to be Manager, Begusarai depot to the said Sale Centres arises. PW-1 (Sitaram Sardar) who happens to be the leader of the labour has stated in paragraph 1 of his examination-in-chief that in any godown of BISCOMAUN, there was no furniture, mat, denage, tarpaulin, corrugated sheet etc. The aforesaid statement of the said witness also goes to indicate that as the aforesaid articles were not supplied in godown of the BISCOMAUN, then how the appellant who happened to be the depot Manager of the Begusarai would have provided the aforesaid articles to different Sales Centre. PW-1 has further stated in his examination-in-chief that he used to receive 300-400 as labour charge in 2-3 days and he was never given Rs. 2000/-, 4000/- or 8000/- as labour charge. Witnessing the six vouchers marked as X for identification, he stated that the same do not bear his signature, but in paragraph 2 and 3 of his cross-examination, he has further stated that he used to put his signature after preparation of the receipt and sales man used to prepare the said receipt. One of the said sales men in the tenure of Ramadhar Sharma was Kesri. Money used to be given by the person who prepared the receipt. The aforesaid statement of PW-1 indicates that the receipt used to be given by the sales man on payment of money, but no sales man has been examined by the prosecution to prove giving of aforesaid six vouchers on payment of money. The aforesaid six receipts filed by the prosecution have been marked as X for identification. As the aforesaid vouchers/receipts have not been exhibited, the same cannot be said to have been legally brought on record and cannot be considered in evidence of the prosecution. PW-2 has stated in paragraph 2 of his cross-examination that in case of providing any article to his sale centre by Begusarai depot, it used to be entered in the register and that register must be present. PW-5 and PW-6 have stated in paragraph 2 of their cross-examination that whatever article used to be provided to the sales center was mentioned in the register and that register must be kept in the Sale Centre, but no such register has been brought on record by the prosecution to prove as to whether the aforesaid articles were provided to the said sales centre by the appellant. Hence, the adverse inference is drawn against the prosecution.

15. Though PW-8 (Jageshwar Choudhary) who happens to be the owner of the house where sales center Khodaanpur was stationed. PW-10 (Balkrishna Gupta) who happens to be the owner of the house where BISCOUMAUN office was stationed in 1972-1975 have stated that no hut or any repair was made in the sales centre and no money was provided to them to carry out the aforesaid work by the appellant (Ramadhar Sharma). But the prosecution has failed to substantiate by adducing ocular and documentary evidence that the appellant was authorized to give money to the owner of the Sales Centre/Sales Man of the Centre to construct hut or carry out any repair in the Sales Centre.

16. Though, PW-4 (Rampratap Sao) has denied supplying any gunny bag to the appellant by him or by his father and has also denied his signature on any of the vouchers given to the appellant. PW-12 (Bando Mahto) who happens to be cart man and used to transport articles to different sales centre of BISCOMAUN has failed to identify his signature on the vouchers shown to him. In paragraph 4 of his cross-examination, he has stated that whenever he used to get money for transporting articles, the voucher of the same was prepared and he used to put his signature on the same. PW-11 (Dwarika Prasad Agarwal) who happens to be proprietor of Bihar Fancy Store located in Begusarai and dealer of tarpaulin has denied working of any sales man namely, Dinanath Sao in his shop and any person in the same name indulged in dealing of tarpaulin in Begusarai. He has further stated that he knows all the owner of the shop who vend tarpaulin in Begusarai. The aforesaid witnesses have been examined by the prosecution to deny the issuance of any vouchers by them in favour of the appellant. PW-13 (Bindeshwari Prasad) who happens to be the Manager of BISCOUMAN depot and who has joined the said depot on 4.8.1975 has exhibited six vouchers regarding purchasing of gunny bags, weight and measure, money spent on repairs, erecting of hut and purchasing of tarpaulin, corrugated sheet mats etc. marked as Ext-7 series. But on perusal of the aforesaid vouchers, it appears that the same have not been written by the appellant. The person preparing and issuing the said vouchers has not been examined by the prosecution and the hand writing and signature of the executant of said vouchers and of person certifying the payment thereon have not been examined and proved by the handwriting expert and for the aforesaid reason, the aforesaid vouchers have no evidentiary value in the eye of law and the same cannot be considered against the appellant.

17. PW-13 (Bindeshwari Prasad) who happens to be the Manager of Begusarai depot (BISCOMAUN) and has taken charge of the said depot on 4.08.1975 in place of appellant (Ramadhar Sharma) has stated in his examination-in-chief that Gopal Kesri was the in-charge of the sale centre and Ramadhar Sharma proceeded on leave earlier after giving charge to Gopal Kesri. But said Gopal Kesri to whom the appellant had given the charge of the aforesaid depot while proceeding on leave has not been examined by the prosecution as he had passed away by that time. The said charge report regarding making over charge of the documents, cash etc. by the appellant to Gopal Kesri has also not been brought on record. Thus, the prosecution has failed to prove that the records and cash which is said to have not been handed over by the appellant was actually handed over by him to Gopal Kesri or not. Hence, the prosecution has failed to substantiate its case that the appellant has not made over the charge of the cash and other registers to Gopal Kesri at that time. The informant Bansh Bihari Pratap Singh has also not been examined by the prosecution as he has passed away and the first information report has also not been brought on record by the prosecution.

18. As per prosecution case, the appellant had made over partial charge to Gopal Kesri and finally on giving certain letters to him, he made over the final charge of the several documents to the PW-13 (Bindeshwari Prasad). The prosecution has filed inventory of the record of the Begusarai depot containing register and receipt of the money marked as Ext.5. and inventory list of vouchers relating to the period of appellant (1974-75) marked as Ext-3 and undertaking for making over the complete charge of the above documents to his successor marked as Ext-3/1 allegedly in the handwriting and signature of the appellant in substantiation of its case that the appellant has made over the final charge of the certain registers and money to the tune of Rs. 7189.78/- on 6.7.1977 to PW-13. But, from perusal of the said Ext.-5, it appears that it does not bear the signature of the appellant. Moreover, handwriting of the said inventory, writing and signature of the endorsement has also not got examined and proved by the handwriting expert. Hence, the case of the prosecution that appellant made over the final charge to the PW-13 (Bindeshwari Prasad) giving after several letters marked as Ext-2 series does not stand substantiated.

19. Moreover, PW-13 (Bindeshwari Prasad) in paragraph 19 of his cross-examination has stated that on 18.5.1975, he was posted at Barbigha and was not present in Begusarai on that day. Ramadhar Sharma had not made over charge to Gopal Kesri before him, so that he cannot say as to what was made over by Ramadhar Sharma to Gopal Kesri. He has taken charge from Gopal Kesri and charge report was prepared at that time and what was handed over to him in the charge is mentioned in the charge report, but he does not know as to whether the said charge report has been filed in the case or not. The aforesaid statement of PW-13 (Bindeshwari Prasad) indicates that he is not certain as to what document etc. was handed over to Gopal Kesri by the appellant Ramadhar Sharma at the time of giving charge and the prosecution has also failed to furnish the charge report executed by the Gopal Kesri to PW-13 (Bindeshwari Prasad) to substantiate as to what articles and documents was handed over by Gopal Kesri to the PW-13 (Bindeshwari Prasad). Hence, the aforesaid aspect of the case also goes to create doubt about the prosecution case regarding not handing over several registers and aforesaid money by the appellant to the Gopal Kesri and not handing over of the same by Gopal Kesri to PW-13 in turn. PW-13 (Bindeshwari Prasad) in paragraph 20 of his cross-examination has stated that after taking charge till his stay at Begusarai depot as in-charge, no dues was detected against Ramadhar Sharma and he never written to the department for making audit of the account of the period of Ramadhar Sharma. The aforesaid statement of PW-13 itself candidly indicates that nothing is due against the appellant as the same was not detected by the PW-13 and so the same was not reported to the department for making audit of the account of the Begusarai depot of the period of Ramadhar Sharma.

20. From perusal of the Ext-A, which is the Xerox copy of the inquiry report filed by the appellant, it appears that inquiry was made against the irregularity and dereliction of duty made by the appellant during his tenure in the Begusarai depot as Manager and after holding the inquiry, the inquiry officer has not found charge levelled against him to be true and he was exonerated from perusal of Ext-B which is the resolution of the Bihar State Co-operative Purchase and Sale Ltd. Dated 12.06.1987, it appears that the appellant Ramadhar Sharma was reinstated in the service as the depot Manager.

21. On perusal of the impugned judgment, it appears that learned lower court has acquitted the appellant from the charges under Sections 466 and 467 of the Indian Penal Code finding no evidence to show that he forged any document or made alteration in the register and the documents, but has convicted the appellant under Sections 468, 409, 420 and 477-A of the Indian Penal Code finding that he had prepared forged vouchers and documents for purchase of different articles without paying any money and made false entry in the register with intention to cheat BISCOMAUN and misappropriated the said money for his personal use. The aforesaid finding of learned lower court appears to be quite contradictory inter se.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and wroth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned lower court is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is on bail, he is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

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