

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

CRA-S-No.544-SB OF 2003
DATE OF DECISION : 17th AUGUST, 2017

Nachattar Singh

.... Appellant

Versus

State of Punjab

.... Respondent

CRA-S-No.580-SB OF 2003

J. C. Pankaj

.... Appellant

Versus

State of Punjab

.... Respondent

CRA-S-No.570-SB OF 2003

Ashok Kumar

.... Appellant

Versus

State of Punjab

.... Respondent

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

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Present : Mr. A.P.S. Deol, Senior Advocate with
 Mr. Vishal Rattan Lamba, Advocate for the appellants
 in CRA-S-544-SB-2003 and CRA-S-580-SB-2003.

Mr. Subhash Godara, Legla Aid Counsel
for the appellant in CRA-S-570-SB-2003.

Ms. Samina Dhir, D.A.G. Punjab.

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A. B. CHAUDHARI, J.

1. These three appeals are directed against the common

judgment and order dated 28.02.2003 passed by Special Judge, Bathinda

in file No.18 of 14.11.1998 by which all the three appellants in these

appeals namely Nachattar Singh, J. C. Pankaj and Ashok Kumar were convicted for offences punishable under Sections 409, 467, 468 all read with Section 120-B Indian Penal Code (IPC). The appellants J. C. Pankaj and Ashok Kumar were convicted in addition under Section 13(2) of the Prevention of Corruption Act and were sentenced to undergo RI for 2 years etc. on several counts. Hence, criminal appeals CRA-S-No.544-SB of 2003, CRA-S-No.580-SB of 2003 and CRA-S-No.570-SB of 2003 have been filed by the appellants.

Submissions/Arguments

2. In support of the appeals Mr. A.P.S. Deol, Senior Advocate for the appellants Nachattar Singh and J. C. Pankaj, while Mr. Subhash Godara, Advocate, appointed by legal aid for Ashok Kumar, made the following submissions:

3. That the trial court committed an error in convicting all the three appellants for the offences for which they have been charged in the absence of any cogent and convincing prosecution evidence. The prosecution did not prove, much less beyond reasonable doubt that the appellant Ashok Kumar had at all forged any gate pass and entry passes in respect of the godowns from which it was stated that shortage of huge quantity of the fertilizers was found. The appellant Ashok Kumar though was incharge of the godown or Depot, he could not be held guilty only on the ground that he had been responsible for looking after the affairs of the godown. The defence of Ashok Kumar that he was not at all incharge of

the Depot in question, has been casually ignored by the trial Court and, therefore, the conviction of Ashok Kumar is clearly illegal, since there was no evidence to show that he was incharge of the Depot for the relevant period when the incident had taken place namely from 20.10.1995 to 31.10.1995. Learned counsel therefore, prayed for acquittal of Ashok Kumar.

4. In support of appeals filed by Nachattar Singh and J. C. Pankaj, learned Senior Advocate Mr. Deol contended that the appellant J. C. Pankaj was admittedly on leave from 21.10.1995 to 31.10.1995 and was not even near the godown in question, during which period the shortage of 2543 bags of D.A.P. worth ₹18,00,000/- (Rupees eighteen lacs), was found.

5. The prosecution miserably failed to prove any case against the appellant Nachattar Singh and J. C. Pankaj, much less of conspiracy. He further submitted that the prosecution did not lead any evidence regarding conspiracy of the transport contractor Nachattar Singh with either Ashok Kumar and J. C. Pankaj and the trial Court only drew inference to convict them for the alleged conspiracy under Section 120-B IPC. He then submitted that there is absolutely no evidence against both of them on any count whatsoever and, therefore, the trial Court committed error in convicting them.

6. *Per contra*, the learned State counsel opposed these appeals and submitted that the trial court has recorded its findings which are

based on evidence. According to learned counsel for the respondent the appellant J. C. Pankaj was admittedly incharge of the entire depot in which the fertilizer was stored while Ashok Kumar was directly incharge thereof. Nevertheless, the prosecution has brought before the Court enough evidence for conviction of J.C. Pankaj. Ms. Samina Dhir, DAG, Punjab then contended that Nachattar Singh was a transport contractor who was in league with Ashok Kumar and J.C. Pankaj and as a result of conspiracy there was shortage of fertilizer (DAP) in huge quantity and obviously they took away the goods and disposed of the same in the open market for wrongful gain, causing loss of ₹18,00,000/- (Rupees eighteen lacks) to the Government. She, therefore, prayed for dismissal of all the appeals.

Consideration

7. Heard learned counsel for the rival parties at length. Perused the entire evidence and record with their assistance.

8. Taking up the appeal filed by Ashok Kumar, I find that the plea taken by Ashok Kumar that he had not been in charge of the depot at the relevant period during which the alleged pilferage took place stood negatived by trial Court on examination of evidence. I have checked up the evidence. The finding is based on evidence. I quote the finding from para 15 of the judgment which reads thus:

“15. Admittedly, letter Ex.DE reveals that accused

Ashok Kumar handed over the charge of C.W.

Mansa to J. C. Pankaj, who was over all incharge

but it is not his case that he handed over the charge on his transfer from there. Rather, he remained posted as Junior Superintendent even after 26.4.95 and was holding the charge of Godowns No.4-A, 4-B and platform stock as is evident from the sanction order, Ex.PO, discrepancies report, Ex.PR, and the report Ex.PT, which was made the basis of the instant F.I.R. Moreover, no such defence was taken by accused Ashok Kumar in his statement recorded under section 313 of the Code of Criminal Procedure. As per the case of the prosecution the trucks were also got loaded from Godowns No.4-A and 4-B. At that time, accused Ashok Kumar was acting as Manager of the Godown as per the version of Drubagiri PW 8. So, this submission of the learned defence counsel carried no evidentiary value.”

9. Upon comparing the evidence on record, I find that the aforesaid finding is legal correct and proper. Insofar as the guilt of Ashok Kumar is concerned, I find that prosecution has successfully proved that Ashok Kumar was directly incharge of the godown and was also on duty during the relevant period under which the pilferage has taken place. There is voluminous evidence against Ashok Kumar. It has also been discussed by the trial Court in respect of commission of the

offence for which he was charged. Instead of repeating the reasons I quote para 9 from the judgment of the trial court:

“9 xxx... xxx... xxx... It is an undisputed fact and has also been proved by documentary evidence that accused J. C. Pankaj was posted as manager and over all Incharge of the Godown whereas Ashok Kumar accused was posted as Junior Superintendent in the month of October 1995, during which the misappropriation of Fertilizer as well as forgery of Gate Passes etc. has been made. PW 2 Davinder Pal was the Incharge of the Godowns No.2-A, 2-B, 2-C and 2-D and has categorically deposed that Truck No.DL-1G-1715 was loaded with 200 bags DAP PPL and the delivery order in respect of the said truck of Fertilizer was signed by the Manager of Warehouse and the Gate Pass was issued by Ashok Kumar, the carbon copy of which is, Ex.PA, placed on the file. He has also identified the signatures of Ashok Kumar on the said Gate Pass. But thereafter he did not toe the line of the prosecution and was declared hostile. Thereafter when subjected to cross examination by the learned Addl. Public Prosecutor, he has admitted the contents of his statements,

Ex.P.B. made by him to the police according to which Ahok Kumar, Junior Superintendent, gave forged Gate Passes initially to the driver and they further gave the same to Bhupinder Singh and has also categorically state that Ashok Kumar along with others have misappropriated the Fertilizer. The statement of this witness cannot be completely ignored for the simple reason that he has been declared hostile especially when he has accepted the contents of his statement, Ex.PB, during his cross examination by the learned Additional Public Prosecutor, According to him four trucks bearing No.DL-1G-1715, DL-1G-1716, DL-1G-0003 and PAT 2581 were brought in the Godown by Nachattar Singh accused and Ashok Kumar got loaded the same. The gate Passes and the entries in the Register have been proved by PW 18 Mohan Singh, Senior Assistant Manager Central Warehouse Corporation, New Delhi, which are Ex.PY and PY/1 to Ex.PY/4 and Ex.PA. Similarly the entries at Page No.182 of the Register pertaining to the Gate Pass figuring at Sr. No.37 to 40 have been exhibited as Ex.PX/1 to Ex.PX/7. It has also been categorically deposed by

Mohan Singh PW 18 that these entries are in the hands of accused Ashok Kumar. One of these trucks has been entered to have returned the Godown without delivery of goods whereas the other trucks did not reach at the destination nor the Fertilizer was delivered. The matter did not end here. The verification of the stocks were conducted by a team of Vigilance Officials of the Ware House Corporation which detected the paucity of Fertilizer, the value of which is about Rs.18 lacs. The said report Ex.PT has been proved by PW 16 M.Dass Gupta, who is the then Secretary of Central Warehouse Corporation, New Delhi. PW 15 P.Ishwar Prasad, Regional Manager also checked the stocks and prepared the report, Ex.PR, in respect of the discrepancies discovered by him, Apart from it, a brief history of misappropriation with regard to the Fertilizer from the Godowns of the Warehouse Corporation Mansa during the month of October 1995 was also prepared by him which is Ex.PS. According to the said discrepancies and abovesaid report a shortage of 2543 bags of Fertilizer was found. The record was also not maintained by Ashok

Kumar properly so that the loss may not be pin pointed.

10. In my considered view, the trial Court did not commit any error in recording order of conviction against Ashok Kumar. To sum up, the appeal filed by the Ashok Kumar will have to be dismissed.

11. Now taking up the appeals filed by Nachattar Singh and J. C. Pankaj, I find in the first place that J. C. Pakaj was working as a superior officer to Ashok Kumar at the relevant time. However, it has come on record that he was on leave during the relevant period during which the pilferage is said to have taken place. The trial court, however, convicted him on finding, which I quote hereunder:

“Similarly J.C. Pankaj being the over all Incharge of Manager of the Godowns can be said to have joined hand with Ashok Kumar in not reporting the matter to his Senior Officers with regard to the shortage etc. or the withdrawal of fertilizer from the godowns by Ashok Kumar in connivance with Nachattar Singh accused, who was admittedly H & T Contractor during the days of incident without the proper delivery orders on the basis of the forged Gate Passes.”

12. There is no other evidence against appellant-J. C. Pankaj for holding him guilty of criminal offence charged against him. Merely being over all incharge or Manager of the godowns, would not lead to the inference that he had joined hands with Ashok Kumar as a senior officer

and therefore he had not reported to the senior officers. The prosecution ought to have lead evidence to prove the conspiracy or that he had joined hands with the Ashok Kumar. Merely because the appellant J.C. Pankaj was over all incharge as Manager of the godowns that would not lead to any influence that he participated in the crime. At the most, it can be inferred that he failed to exercise supervisory duty and neglected his duties for which he could be punished departmentally. But in the absence of any evidence that he must have joined hands with Ashok Kumar and therefore had committed offence in question, would not be legal and correct. I have gone through the entire evidence and I do not find any conspiracy by him and Nachattar Singh transport contractor. The fact that he was on leave during the period the pilferage has taken place, is not in dispute and rather a finding in his favour has been recorded by the trial Court, the relevant portion of which reads thus:

“22. ... xxx ... xxx... No doubt, it is proved on record that J. C. Pankaj proceeded on leave on 21.10.1995 in the evening and the charge of the godown was handed over to the accused Ashok Kumar. Goods receipts Ex.PM/1 to Ex PM/8 shows that J. C. Pankaj directed the Railway Authorities to deliver the goods to Nachattar Singh, H & T Contractor on 13.10.1995 and vide delivery book maintained by the Railway Department, the photo copies of which is Ex. PM/9 J. C. Pankaj signed the same on behalf of the consignee. But this entire stock appears to have not been received in the

godown. The acknowledgements, Ex.PC and Ex. PD are under the signatures of J. C. Pankaj. A note was given with regard to the receipt of 800 bags of fertilizer less in the register maintained in the godown, the photo copy of which is Ex. PX/4. It was the duty of the J. C. Pankaj who received the delivery of fertilizer at the railway station and deputed Nachattar Singh, H & T Contractor for transporting the same from railway godown to C.W. godown Mansa to inquire as to from where, 800 bags have disappeared.

13. The observations made by the trial Court about J. C. Pankaj giving direction to deliver the goods to Nachattar Singh on 13.10.1995 would not be relevant because admittedly the goods were received in the godown pursuant to the said order dated 13.10.1995 for which there is no allegation against anybody including Ashok Kumar and J. C. Pankaj. The prosecution evidence is there that thereafter during the period from 21.10.1995 to 31.10.1995 when J. C. Pankaj was on leave, the pilferage has taken place when Ashok Kumar was incharge of the godown and had prepared forged gate passes.

14. Similar is the case with Nachattar Singh, the transport contractor. There is no evidence whatsoever led by the prosecution nor any finding has been recorded by the trial Court also that there was any conspiracy on his part, except saying that he had conspired with other accused. The trial Court ought to have seen that there has to be some evidence to prove the conspiracy. Even for convicting Nachattar Singh

the trial Court has without evidence drawn inferences. Merely because he was the transport contractor, he must have joined hands with Ashok Kumar, is *ipse dixit* for which no conviction could be recorded.

Conclusion

15. To sum up, I find that the appeal filed by the Ashok Kumar i.e. **CRA-S-No.570-SB of 2003** must be dismissed and the appeals filed by Nachattar Singh and J. C. Pankaj i.e. **CRA-S-No.544-SB of 2003** and **CRA-S-No. 580-SB of 2003** respectively, must be allowed.

16. Hence I make the following order:

ORDER

- (i) CRA-S-No.570-SB of 2003 filed by Ashok Kumar is dismissed.
- (ii) The judgment and order dated 28.02.2003 passed by Special Judge, Bathinda qua appellant-Ashok Kumar is upheld.
- (iii) CRA-S-No.544-SB OF 2003 and CRA-S-No.580-SB of 2003 filed by Nachattar Singh and J.C. Pankaj, are allowed.
- (iv) The judgment and order dated 28.02.2003 passed by Special Judge, Bathinda convicting and sentencing the appellants- Nachattar Singh and J.C. Pankaj, is set aside qua them only.
- (v) The appellants Nachattar Singh and J. C. Pankaj are acquitted of the charges framed against them.

17th AUGUST 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned: **Yes**

Whether Reportable: **Yes** **No**