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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-S-466-SB of 2001
Date of decision: March 17, 2017

K.S. Mann

.....Appellant

Versus

CBI and another

.....Respondents

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

Present: Mrs. Baljit Kaur Mann, Advocate for the appellant.

Mr. Sumeet Goel, Retainer Counsel and
Mr. Sangram Singh, Advocate for the respondent-CBI.

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A.B. CHAUDHARI, J (Oral)

Being aggrieved by the judgment and order dated 04.04.2001, in case R.C. No.3 dated 15.01.1993 passed by the learned Special Judge, CBI Punjab, Patiala, by which the appellant-K.S. Mann was found guilty of offences punishable under Sections 120-B/420, 420, 471 of the Indian Penal Code, 1860 (for short 'IPC') and Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'PC Act') and was sentenced to undergo Rigorous Imprisonment for one and a half years, one and a half years, one and a half years and 2 years, respectively, with fine of ₹1,000/- in each count, the present appeal was present by him in this Court.

FACTS

Central Bureau of Investigation, ACB, Chandigarh (for short 'the agency') had filed charge-sheet against the accused persons, namely Hamir Singh son of Hari Singh (accused No.1) and the present appellant-K.S. Mann (accused No.2). In brief, the case of the prosecution was that Hamir Singh-accused No.1 had cheated the State Bank of Patiala, Branch Nabha to the tune of ₹19,97,540/- by forging signatures of the accounts holders on withdrawal slips and then, withdrawing the amounts from the said Branch. During investigation, the agency found that the appellant-K.S. Mann was working as a Teller whose job was to honor the withdrawal slips and make payments to the customers. It was thus, concluded by the agency that without the conspiracy between accused No.1-Hamir Singh and present appellant-K.S. Mann, 400 withdrawals made on forged withdrawal slips were not possible. The present appellant-K.S. Mann was also guilty of the fraud and forgery. It is in this background, the prosecution examined witnesses before the trial Court. The prosecution examined PW1-Amar Chand Sharma (retired Manager), PW2-Satish Kumar Mishra, clerk-cum-typist, PW3-Kailash Kumari to PW30, the account holders in respect of whom the forgery of signatures on the withdrawal slips was alleged to have been made by Hamir Singh and the amounts were withdrawn from their respective accounts. Concluding the entire evidence of the witnesses, learned Special Court convicted both Hamir Singh and the present appellant. Some other officers were also prosecuted by the agency in different challans, but all of them were acquitted by the Special Court, on the ground that they were not directly concerned with the withdrawals. The judgments in their cases of the trial Court, have been placed on record from Exhibit D-14 to Exhibit D-22. Upon hearing the evidence of the prosecution, learned Special Judge ultimately convicted only two accused, i.e. accused No.1-Hamir Singh and present appellant-K.S. Mann. Hamir Singh had preferred criminal appeal in this Court vide CRA-S-552-SB of 2001 which was dismissed on 27.04.2010. The appeal preferred by K.S. Mann, the second accused has now come up for hearing before this Court.

ARGUMENTS

Mrs. Baljit Kaur Mann, learned counsel for the appellant assailing the impugned judgment and order of conviction of the appellant argued that the trial Court judgment is merely based on surmises, conjectures and inferences. According to her, the prosecution failed to bring any positive evidence on record regarding conspiracy, forgery or cheating atleast by the present appellant. It was never the case of the prosecution nor any evidence was brought on record that the present appellant had forged any signature or performed any overt act in the matter of forgery. On the contrary, according to her, referring to the evidence of the witnesses, she argued that the period spread over in respect of the appellant is three years in respect of 185 transactions of withdrawals as against 400 total and therefore, it is not the case of the prosecution that the withdrawals were made during a short period. Referring to the evidence of the witnesses, she argued that the witnesses have clearly stated that whenever, there is a doubt about the signatures of the customers lurking in the mind of the teller, then only signature is to be referred and the payment has to be stopped and the inquiry is required to be made before clearing the payment. There is no evidence on record affirmatively showing that the appellant had deliberately, during the period of three years in respect of 185 transactions, allowed the withdrawals nor there is any evidence of conspiracy with Hamir Singh. According to her, learned Special Court has merely drawn inferences regarding conspiracy theory in the absence of any evidence on record. Not a single witness has alleged the conspiracy against the appellant and on the contrary, concerned witnesses have stated that due to lot of rush in the Bank during banking withdrawal hours, it is difficult to confirm the exact nature of signature in each and every case and therefore, the prosecution failed to establish *mens rea*. She then, contended that the conviction could not have been recorded without the proof about *mens rea* on the part of the appellant and as it can be seen that the witnesses as well as the learned Judge has drawn inferences about the conspiracy, forgery and fraud qua the appellant. Referring to the judgment of this Court in the case of Hamir Singh, learned counsel for the appellant argued that the role of Hamir Singh, even according to the prosecution, was of a principal offender who himself had forged the signatures in respect of 400 withdrawals, identified the customers and had withdrawn the amounts in about 400 transactions. The case of Hamir Singh cannot be, therefore, compared with the case of present appellant-K.S. Mann and the case of the appellant will have to be examined in the light of the evidence against him, if any, on record.

She, then contended that the perusal of the evidence of the witnesses tendered by the prosecution does not anywhere show that the appellant, had in fact, performed any overt act in the matter of the offence for which he has been convicted. The judgment rendered in the case of Hamir Singh will not come in the way of the appellant in any way.

Per contra, Mr. Sumeet Goel, Advocate, learned counsel for the CBI vehemently opposed the appeal and supported the impugned judgment and order. He contended that the both Hamir Singh and present appellant-K.S. Mann were tried together and by common judgment, they have been convicted. Hamir Singh's appeal has been dismissed. The evidence in respect of both is same and therefore, no second view can be taken by this Court while dealing with the case of the appellant-K.S. Mann. Without prejudice to the above contention of, he then submitted that the judgment of acquittal in the case of officers recorded by the learned Special judge has no relevant whatsoever in the present matter. The role of the officers was to only verify the signatures that too in respect of the amount above ₹3,000/- and therefore, the attempt to apply those judgments in the case of the present appellant is misconceived. Finally, he submitted that the judgment recorded by the trial Court deserves to be upheld and prayed for dismissal of the appeal.

CONSIDERATIONS

I have heard learned counsel for the rival parties at length.

I have perused the entire record and seen the evidence, documentary as well as oral that was tendered by the prosecution before the trial Court.

At the outset, comparison made by the learned counsel for the appellant in respect of acquittals of the officers by the judgments Exhibit D-1 to D-22 placed on record for claiming any benefit for appellant is wrong. The officers were acquitted on the basis of the insufficient evidence against them and independently seen by the trial Court. I therefore, do not agree with the submission made by the learned counsel for the appellant that because other officers were acquitted, the appellant should also be acquitted. Equally, I do not agree with the submissions made by Mr. Sumeet Goel, Advocate, learned counsel for the CBI that the judgment in the case of Hamir Singh would apply in the instant case. The evidence qua Hamir Singh cannot be applied in the case of the appellant-K.S. Mann. The reason is that the case of the prosecution itself was that Hamir Singh used to forged the signatures on the withdrawal slips, identify customers and then obtain withdrawal from the Teller. There is no evidence against the appellant that he had, at any point of time, forged anybody's signature on any withdrawal slip or that he had tampered with any withdrawal slip in order to have a wrongful gain. It is, thus, clear that it was Hamir Singh against whom the charge about forgery, fraud was proved. Having disposed of the above point as above, I now proceed to deal with the evidence regarding appellant.

The relevant period during which withdrawals were made was from 1988 to 1991 for a period of three years. In so far as the appellant is concerned, the prosecution has alleged that there are 185 withdrawals which have been made during the aforesaid period of three years. PW2-Satish Kumar Mishra stated thus, in his evidence:-

> *"Accused K.S. Maan was working as officiating Teller. He was not imparted any training to work as Teller. Teller can keep Rs.50,000/- in one go for payment to the customers. The banking hours for payment are from 10 AM to 2 PM from Monday to Friday and 10 AM to 12 noon on Saturday. During those hours, the Teller collect Rs.50,000/- from Head-cashier and account the same and disburse the same. When Rs.50,000/- are exhausted, then he is to get another Rs.50,000/- from the cashier. The teller is supposed to make the payment to 50 customers in one hour in average. As per instructions of 1987, the Teller is supposed to tally the specimen signatures in case of doubt only, otherwise he is to make the payment at a speed. This circular was issued, so that speedy payment is made to the customers. In case of doubt, the Teller can ask for the identification before making the payment. In most of the cases, identification was put up Hamir Singh, while in some cases, he signed as recipient of the payment. During those days, third party payment was allowed. Hamir Singh was a permanent employee of the bank. The teller is not supposed to make entries either in the ledger or passbook. It is the duty of the ledger keeper to make entries in the ledger as well as in the passbook. Ledger-keeper is either a permanent or in case of leave, some other arrangement is made by the Bank Manager. Usually, identification by the employee of the bank is accepted for payment. It is correct that on coming to know about the*

fraud, the bank had got audit conducted. The Audit report is Ex.DA. The audit party had seen all the relevant documents. xxxxx."

It is clear from the above evidence of PW2-Satish Kumar Mishra that the appellant was officiating Teller without being imparted any training. It is also clear that a Teller is supposed to tally specific signatures only in case of doubt or would ask identification before making the payment. He, further states that the identification was made by Hamir Singh, i.e. co-employee working in the Bank. He also admitted that third party payment was also allowed during those days and usually, identification made by the Bank employees is accepted without any doubt.

It will necessary now to refer the evidence of the account-holders PW3 to PW30 from whom accounts, money was withdrawn by forging their signatures on the withdrawal slips by Hamir Singh. It is not necessary for me to discuss evidence of all these witnesses as their evidence has been recorded ditto. I reproduce following evidence of PW3:-

"I know Hamir Singh accused present in the Court, as he has been occasionally coming to our house. I never authorised Hamir Singh to withdraw any amount from my account. I have been handing over my passbook to Hamir Singh for deposit of pension of my husband, payable to me. I have given my passbook to Hamir Singh, but he did not return the same. Hamir Singh accused had withdrawn the amounts of the vouchers by forging my signatures. xxxx".

It is clear from the above evidence that it was Hamir Singh who used to visit the house of customers and had good relations with them and not only that, they had handed-over their passbooks to Hamir Singh, obviously, out of trust. It is thus, clear that the customers themselves had handed-over their passbooks to Hamir Singh; as a result of which, Hamir Singh got a chance to withdraw the amounts from their respective accounts by forging their signatures. Had those account-holders not given their passbooks to Hamir Singh, fraud could have been easily prevented. That apart, the evidence show that it was Hamir Singh who had forged their signatures and withdrawn the amounts from their accounts. There is no allegation much less any evidence against the appellant that the appellant had acted in collusion with Hamir Singh. Trial Court has recorded a reason that since the money was paid by the Teller, i.e. the appellant after accepting withdrawal slips, the inference can be drawn that the appellant was in collusion or conspiracy with Hamir Singh. That is absurd. According to me, keeping in mind that initial burden of proof is always on the prosecution and not on the defence and further that the prosecution has to positively prove its case rather than asking the Court to draw inference, the prosecution failed to bring positive evidence against the present appellant. The prosecution, on the contrary relied upon the evidence from which it wanted that the Court should draw inferences and the trial Court indeed drew inferences. In my opinion, it is against the basic tenets of the criminal jurisprudence. The reading of the entire evidence, to my mind shows that during the period of three years, total

185 withdrawal slips were entertained by the appellant as a Teller and the payments were made which were, ultimately, found to have been based on the forgery that too made by Hamir Singh only and there is no evidence that the appellant was a party to it. The only fact that the appellant had made the payment as a Teller, which he was otherwise also bound to make, would not clothe him with the guilt even by drawing inference, according to me. The period is not a short period that one would lead to have a suspicion about it, but the period is spread over three long years for 185 transactions. Since the withdrawals from Bank are not less every day, it is quite probable that there could be error of judgment. But then suspicion cannot take the place of proof. There is no other evidence against the appellant except the above which I have discussed. In the result, I find that the impugned judgment and order, in so far as the appellant-K.S. Mann is concerned, will have to be set aside and hence, I make the following order:-

ORDER

(i) CRA-S-466-SB of 2001 is allowed;

(ii) The judgment and order dated 04.04.2001, in case R.C. No.3 dated 15.01.1993 passed by the learned Special Judge, CBI Punjab, Patiala by which the appellant-K.S. Mann was found guilty of offences punishable under Sections 120-B/420, 420, 471 of IPC and Section 13(2) of the PC Act and was sentenced to undergo Rigorous Imprisonment for one and a half years, one and a half years, one and a half years and 2 years, respectively, with fine of ₹1,000/- in each count, is set aside;

(iii) The appellant-K.S. Mann is acquitted of the charges framed against him;

(iv) Fine, if paid, be refunded to him.

(A.B. CHAUDHARI)
JUDGE

March 17, 2017
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No