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

CRA-S-971-SB of 2009

Date of decision: March 09, 2018

Ashok Kumar and another

.....Appellants

Versus

U.T., Chandigarh

.....Respondent

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

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Jasdev Singh Mehndiratta, Advocate and
Mr. Pratham Sethi, Advocate for the appellants.

Mr. Gautam Kaile, Advocate for
Mr. Rajive Sharma, APP for U.T., Chandigarh.

A.B. CHAUDHARI, J

Being aggrieved by the judgment/order dated 27.03.2009/30.03.2009, in corruption case No.151 passed by the Special Judge, Chandigarh, by which, the appellants, namely Ashok Kumar and Vinod Kumar, both brothers were convicted for commission of offence punishable under Sections 120-B, 420 read with Section 120-B, 468 read with Section 120-B and 471 read with Section 120-B of the Indian Penal Code, 1860 (for short 'IPC') and sentenced them to undergo Rigorous Imprisonment for five years plus fine; and in default of payment of fine, to further undergo Rigorous Imprisonment for one year, the present appeal was filed by them.

FACTS

In brief, the case of the prosecution was that the Director,

Transport, U.T., Chandigarh had made a complaint to the Vigilance Department stating that appellant No.2-Vinod Kumar working as an Assistant Battery Attendant in Chandigarh Transport Undertaking, Chandigarh had applied for getting his designation changed from Assistant Battery Attendant to that of Clerk. An amount of ₹20,000/- was to be paid by way of consideration to Rakesh Thakur, Senior Assistant. The application was forwarded, examined and by report dated 05.04.2000, the Director, Transport, Chandigarh recorded that the request of appellant No.2-Vinod Kumar for the change as desired by him could not be entertained. This letter was collected directly by appellant No.1-Ashok Kumar, the real brother of Vinod Kumar and was handed over to Rakesh Thakur. Rakesh Thakur then, prepared a note, on 19.04.2000 favoring the change of designation of Vinod Kumar. In the last line of the letter received by the office of Director, Transport, Chandigarh, on 05.04.2000, it was found that there was tampering and the words “cannot be entertained” were made as “may be entertained”. In the said allegation, investigation was made. The allegations were made after completion of enquiry and thereafter, charges were filed before the trial Court. The prosecution examined number of witnesses to prove its case. The accused persons were charged for commission of offence punishable under Sections 420, 461, 468, 471, 120-B of IPC and Sections 7, 13(1)(d) and 2 of PC Act. The learned trial Court, thereafter, heard the entire evidence and recorded the impugned judgment and order of conviction and sentence.

In so far as the present appellants are concerned, they were not convicted for offences punishable under Sections 7, 13(1)(d) and 2 of PC Act, but were convicted as stated above.

ARGUMENTS

In support of the appeal, learned Senior counsel for the appellants submitted that the impugned judgment and order made by the learned trial Court is not based on evidence, but is based on the inferences drawn which are totally wrong and highly improbable and rather impossible. He submitted that the trial Court got impressed with so called theory of prosecution that the proposed beneficiary in the crime must necessarily be held guilty for offences in question and in this case, appellant No.2-Vinod Kumar. In so far as appellant No.1-Ashok Kumar is concerned, he being the real brother of Vinod Kumar had carried the file directly to Rakesh Thakur and therefore, he was in criminal conspiracy for getting the benefit to his brother Vinod Kumar. Learned Senior counsel for the appellants submitted that the entire approach of the trial Court in recording conviction on such theory of prosecution is unknown to the criminal jurisprudence and the appellants could not have been convicted. He then submitted that the prosecution itself had examined PW5-Dr. Amar Pal Singh, the person who was in full knowledge about the alleged tampering of letter dated 05.04.2000 and PW12-Ashwani Kumar Dhamija whose evidence has been totally ignored by the trial Court, though, it has recorded the arguments made by the learned counsel for the appellants. That could not have been done merely because his evidence was favourable to the

accused persons. He then submitted that no conviction can be based merely because there is some proposed beneficiary without anything further. He then submitted that the witness PW12 who was in custody of the said document right from the beginning himself stated that he had made corrections in the letter, though, he did not say about other material of the letter that was corrected without putting any initial thereon. It was, therefore, the case where the prosecution itself brought the evidence on which there was serious doubt and merely because Vinod Kumar was the alleged proposed beneficiary and further merely because Ashok Kumar was his real brother, the impugned judgment of conviction could not have been made. Learned Senior counsel for the appellants then contended that there was no eye witness to the alleged tampering of the document in the first place. Secondly, the report of any expert for type print compare etc. was not obtained. The reason given by the trial Court that it was not possible to obtain any such report because there were several typewriters available in the office and even outside office and from anywhere the forgery could be done is faulty. The burden was on the prosecution to prove that it was accused and none other who carried out the correction in the letter or tampered with the letter. All the more so, PW12-Ashwani Kumar had stated that he had made corrections in the letter. The learned Senior counsel further submitted that a departmental inquiry was held against Vinod Kumar and those documents have already been exhibited on record of the trial Court through DW2. If the findings in the said inquiry report are seen, though, not binding on the Court, the trial

Court did not even touch that aspect of the matter. Such inquiry report which was the basis for final order and the inquiry report were the relevant evidence.

Per contra, learned State counsel opposed the appeal and submitted that the trial Court has made a detailed judgment running into number of pages and has given reasons for recording the conviction. He, further submitted that there is ample evidence on record that Vinod Kumar was the real beneficiary and therefore, none other than him would tamper the evidence to gain favour to himself. Learned State counsel, therefore, prayed for dismissal of the appeal.

In reply, learned counsel for the appellants submitted that there is admitted evidence on record that the pay-scale of a Clerk is lesser than that of an Assistant Battery Attendant.

CONSIDERATION

I have gone through the entire judgment and order made by the learned trial Court. I have also gone through the entire evidence with the assistance of the learned counsel for the rival parties. Upon perusal of the reasons given by the trial Court, it clearly appears that the trial Court found that it was Vinod Kumar who was the beneficiary and therefore, none else except the beneficiary could commit the offence of tampering of document. The trial Court has not relied on any other evidence in support of the said inference drawn. In my opinion, the finding is strange and cannot be countenanced. In so far as Ashok Kumar is concerned, the only allegation against him is that he had carried the said letter and that he is the brother of Ashok Kumar.

This is again the finding which has resulted into miscarriage of justice to Ashok Kumar for no reasons. The alleged angle of crime qua conspiracy etc. stated in the impugned judgment is again not based on evidence and is a perverse finding. The trial Court itself stated that it is very difficult to prove forgery, but it is only the beneficiary who can be held culpable. It is better to quote the relevant portion from the Para 17 of the impugned judgment which I quote hereunder:-

“.....At this, Ashok Kumar, dispatcher told him to hand over that letter to Ashok Kumar, Clerk and then obtained his signatures on the office copy of the letter dated 5/4/2000. Thereafter, he had gone to his branch for obtaining the file of this case. He then took the file to the dispatch section of the office and thereafter, he gave the letter in question to Ashok Kumar, Clerk of their office and obtained his signatures on the office copy Ex.PK. He also identified the signatures of Ashok Kumar, Clerk at point 'A' on Ex.PK. He further stated that thereafter, Ashok Kumar, Clerk left the office alongwith the aforesaid letter. At that time, the last line of the letter was having recommendation “may not be entertained”. After few days, copy of that letter was shown to him by the police and then he found that in the last line of original letter Ex.PJ words “may be” entertained were written instead of words “may not be entertained”. Thus, with the statement of this witness, it stands proved that the letter in question was taken by Ashok Kumar accused to the office of Home Secretary, UT, Chandigarh. Ashok Kumar is the real brother of Vinod Kumar. Vinod Kumar is the beneficiary. Since the culprits would not commit the crime in the presence of stranger, therefore, it cannot be said that the

serious crime of forgery would go unpunished. The evidence as to in whose presence the offence of forgery was committed is very difficult to be obtained. Even, if it is not proved on the file as to who has committed the offence of forgery, when and where and in what manner, if the forgery is there at least the beneficiary of forgery is said to be the one who is involved in the case. He is the one who would do that or would get the same done. Without the involvement of the beneficiary no other person would like to commit the offence of forgery. As such, even in the absence of clear cut evidence as to who committed the forgery it is always there that the beneficiary of the forgery is the one who had committed the offence of forgery.....”

In this connection, it is important to note that the pay-scale of a Clerk is lesser than the pay-scale of an Assistant Battery Attendant. The trial Court has simply ignored this aspect of the matter which was relevant, and there is no plausible answer given by the trial Court. In this connection, it would be appropriate to quote the evidence of PW12-Ashwani Kumar, which I quote hereunder:-

“Vinod Kumar, accused was serving in the workshop in August, 2000 as Asstt. Battery Attendant. It is correct that at that time he was working at Computer. Till date he is working in the same section on the computer. It is correct that the salary of Asstt. Battery Attendant is more than that of a clerk...”

In the backdrop of the above evidence, merely because an application was made by Vinod Kumar for changing his designation, one cannot jump the conclusion that he must have committed the

forgery, in the absence of legal evidence. There is reason to believe that he could not be the proposed beneficiary because post of Assistant Battery Attendant on which he was working carries more pay-scale than that of a Clerk. Therefore, that aspect of the matter was relevant to discard the theory of proposed beneficiary.

The prosecution examined PW12-Ashwani Kumar who, in fact, demolished the prosecution case, but then his evidence has not even been considered by the trial Court. It would be appropriate to extract the relevant evidence from his deposition:-

“On 01.08.2000 I was posted as Sr. Asstt., O/o Director Transport, CTU, Chandigarh. I had put up the draft letter dated 05.04.2000 for the approval of Director Transport, CTU, Chandigarh. The Director Transport after making some changes, approved the draft. Thereafter, the said letter was handed over to Anil Kumar Sharma, Jr. Asstt. for affixing dispatch number. I immediately called him back to see the letter. I then saw the letter and since the letter was to be sent to Higher Authority i.e. the Home Secretary, Chandigarh as such I myself change the word “can” into “may” in the last line of memo. I had made this change in the draft itself. Thereafter, I had also made this change in the letter (original) and in the office copy as well. However, with the aforesaid change, the meaning of the letter remained the same. At that time the word “not be” was there in the draft as well as in the letter. I did not interfere with the word “not be”. I have not typed word “be” in the draft or in the letter. Thereafter, I had handed over the entire file to Anil Kumar, Jr. Asstt. for dispatch and thereafter, I do not know as to where the file had gone. After few days Director had called me. The Director

was having original letter with him. Director had asked me about the changes made in the letter, thereupon, I told him that I had only changed the word “can” into “may”. At that time a white fluid was there whereupon the word “be” was typed in the place of word “not be”. I had told the Director I had not made the aforesaid change in the letter from word “not be” to “be”. My statement was recorded. I have seen the noting Ex.P-N which bears my signatures at Point K, L, P, Q, R and O.”

Reading of the evidence of Ashwani Kumar shows that he was the custodian of the document and he had, in fact, stated that he made changes in the original letter as well as office copy, but did not make any initial. However, when, it came to material words regarding “can be” and “not be”, he stated that there was a white fluid on the words and thus, could not say anything further. Fact of the matter however, is that he admitted that he had made corrections in the letter. There is no evidence to show that either Vinod Kumar or Ashok Kumar had made any correction in the letter or had put white fluid on the letter nor there is any eye witness to that effect. In my opinion, such a candid evidence of PW12-Ashwani Kumar could not have been ignored by the trial Court merely because the same was favourable to the appellants. This was corroborated by the evidence of PW5-Dr. Amar Pal Singh, in the cross-examination, which I quote hereunder:-

“It is correct that the official dak is sent after making entry in the despatch register by the office. On my asking from the staff concerned as to how there is a change in office copy of letter from “cannot be entertained” to “may not be entertained” to which Mr. Ashwani Dhamija official

said that he has done it.....”

It is then significant to note that a departmental inquiry was held against Vinod Kumar in the same subject matter. The defence produced the inquiry report as well as final order before the trial Court and those documents are exhibited. It is important to note that the trial Court has not even looked into those documents. These evidences, in the form of said documents, may not be binding on the trial Court, but then in a criminal trial, the same is also relevant piece of evidence to be considered, but that was not done. I have, therefore, myself gone through all the relevant papers in the departmental inquiry regarding the findings. I quote the relevant portion from the final order accepting the inquiry report, which reads thus:-

“.....The inquiry Officer submitted his Inquiry Report wherein she came to the conclusion that tampered letter in question has not been proved by an expert. Accordingly the facts of tampering of the document of change the word from 'Can' to May' cannot be relied upon. Moreover, no eye witness has been produced to prove the facts of alleged tampering of documents. Further the documents on records do not support the fact that it was the delinquent official who has tampered the letter in question. It has also not been proved by any evidence that the letter in question was ever handed over to his brother Sh. Ashok Kumar, Clerk to be delivered to the office of Home Secretary, Chandigarh Administration, Chandigarh. In the absence of any corroborated evidence, oral or documentary, the version of the department cannot be relied upon and it is highly doubted that it is delinquent official who has committed the offence charge through

memo dated 18.12.2001. Accordingly, the version of department is highly doubted and thus in such a situation the charges leveled against Sh. Vinod Kumar, Asstt. Battery Attendant vide memo no. 17810/DT/ECM/CTU/2001, dt. 18.12.2001 stands not proved.

Now therefore, the undersigned being fully agreed with the findings of the inquiry officer and in exercise of powers conferred under Punjab Civil Services Rules (Punishment & appeal) Rules, 1970 does hereby order to file the case.”

It is thus, clearly seen that the prosecution miserably failed to prove its case against the appellants. It is then significant to note that the prosecution did not examine any expert evidence and it has no eye witness to say that any particular person had committed the forgery of the document.

The upshot of the above discussion is that the present appeal must succeed. In the result, I make the following order:-

ORDER

- (i) CRA-S-971-SB of 2009 is allowed;
- (ii) The impugned judgment/ order dated 27.03.2009/ 30.03.2009, in corruption case No.151 passed by the Special Judge, Chandigarh, by which, the appellants, namely Ashok Kumar and Vinod Kumar, both brothers were convicted for commission of offence punishable under Sections 120-B, 420 read with Section 120-B, 468 read with Section 120-B and 471 read with Section 120-B of IPC and sentenced them to undergo Rigorous Imprisonment for five years plus fine; and in default of payment of fine, to further undergo Rigorous

Imprisonment for one year, is set aside;

- (iii) Appellants, namely Ashok Kumar and Vinod Kumar are acquitted of the charge that was framed against them;
- (iv) Fine, if paid, be refunded to them.

(A.B. CHAUDHARI)
JUDGE

March 09, 2018

mahavir

Whether speaking/ reasoned: **Yes**

Whether Reportable: **Yes**