IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Criminal Misc. A-1662-MA of 2017
Date of Decision : October 22, 2018

State of Punjab

....Applicant

Vs.

Sarup Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present : Mr. H.S. Sullar, Deputy Advocate General, Punjab.

T.P.S. MANN, J.

The State of Punjab has filed the present application under Section 378(3) of the Code of Criminal Procedure, 1973 seeking permission for leave to appeal against the judgment dated 13.3.2015.

Vide impugned judgment, learned Judge, Special Court, Amritsar acquitted the accused-respondents of the charges under Sections 120-B, 420, 409, 468 and 471 IPC and Section 13(1)(c)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

According to the prosecution, the Director, Social Welfare, Women and Child Development, Punjab, addressed a complaint to the Senior Superintendent of Police, Amritsar alleging therein that as per the audit report for the period from 1996-97 to 2000-01, misappropriation of government money amounting to Rs.2437.45 lacs, released under various pension schemes had come to light. The District Social Security Officers, Amritsar, alongwith staff members, in connivance with private persons/agents had committed embezzlement of government money in a big way. Besides the offence relating to committing of fraud, deception, extortion of money by adopting unlawful means and by committing grave irregularities, the officers/officials had deprived genuine beneficiaries from their right of getting pension under the pension scheme. On those allegations, FIR was registered at Police Station, Police Lines, Amritsar.

After going through the evidence led by the prosecution, learned trial Court came to the conclusion that the prosecution never discharged the onus of proving its case and, accordingly, acquitted the accused of the charges against them.

Having heard learned State counsel and on going through the impugned judgment of acquittal, this Court finds that mere proof of audit report brought on the record by the prosecution was not sufficient to connect the accused with the alleged acts of fraud, cheating, misappropriation or forgery. There is no evidence as to who were the alleged beneficiaries and who had received double payments. Those beneficiaries were neither named in the audit report nor joined during the investigation nor they were arraigned as accused. Even the relevant record was not produced to show that the accused sent cheques in the names of the beneficiaries time and again for deposit in the bank accounts of those beneficiaries. No official from treasury was joined during the investigation despite the fact that there was no evidence about the accused depositing those funds in various bank accounts opened by the District Social Security Officers from time to time. Bank officials were also not joined in the investigation nor any such official examined during trial.

No evidence has been led to show that the accused had misappropriated the money. Mere statement made by PW9 Sham Lal, Section Officer, who conducted the audit or PW3 Hardeep Singh to the effect that certain discrepancies were found during audit is not sufficient to prove that the accused committed those deficiencies leading to misappropriation of funds. The prosecution was required to lead evidence to prove as to what false record had been prepared by the accused. The cash book in which alleged entry of Rs.88,000/- was made and subsequent cash book in which the said entry was not made have not come on record. There is also no evidence as to who had made any such entry or omitted to make such an entry. There is no evidence as to how much money was drawn from the treasury and how much money was further disbursed to the beneficiaries and in what manner the amount has been misappropriated as stated so in the audit report.

The prosecution was under a duty to prove all the incriminating entries and then to connect those entries with the accused in order to establish that there was misappropriation of money or forgery of the record. There is also no evidence as to what wrongful loss was caused to the government by any act of the accused or what wrongful gain has been made by the accused.

No official from the bank who had allegedly deposited huge amounts after withdrawing those funds from the treasury under various heads was examined. Even it is not known as to how much amount was drawn from which head and also that the amounts were drawn without any purpose and to put into banks to benefit those banks. There is also no evidence as to how much money had been entrusted to the accused or placed under their control. Merely because a witness deposed about some documents without any personal knowledge with regard to the same or the maker thereof and what was the import of said document, it cannot be said that the document stood proved. The prosecution was required to prove as to what funds were given to the District Social Security Officer, Amritsar for a particular financial year and the heads under which the funds were provided; how said money was to be used; what was the procedure to be adopted for utilization of those funds; who could be the beneficiary under various social security schemes of the government; what criteria was to be adopted to identify those beneficiaries; how much money was to be paid to them and the periods of payments; the mode of payments; how many beneficiaries were identified for payment; how much payment was made to them; how much amount was paid in excess to them. The beneficiaries who received double payments were required to be identified and brought to book alongwith the present accused. The prosecution was under a duty to prove whether there was misuse of the funds allegedly deposited in banks. No such evidence is available on the file. On the other hand, the prosecution relied upon the circumstances that the money was found lying deposited in various accounts. That may be violation of financial rules but it would not give rise to criminal liability. When the prosecution has failed to prove that the accused by their act had caused wrongful loss to the government or wrongful gain to themselves, it cannot be said that they had conspired to commit cheating or misappropriation or forgery.

In view of the above, no case is made out for any interference in the impugned order of acquittal.

The application is without any merit and, therefore, dismissed. Leave to appeal is declined.

(T.P.S. MANN)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

October 22, 2018
satish

Whether speaking/reasoned : YES/NO

Whether reportable : YES/NO