IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.437 of 2014

Arising Out of PS. Case No.-47 Year-2004 Thana- SINGHESHWAR District- Madhepura

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Sujit Kumar Sinha son of Late Mahendra Prasad resident of Mauza Khapaiti P.S . Madhepura district Madhepura . ... Appellant/s

Versus

The State Of Bihar ... ... Respondent/s

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Appearance :

For the Appellant/s : Mr.Sanjeev Verma, Adv

For the Respondent/s : Mr.S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

27-09-2019 Appellant, Sujit Kumar Sinha has been found guilty for an offence punishable under Section 409 IPC and sentenced to undergo RI for 6 years, under Section 419 IPC and sentenced to undergo RI for 3 years, under Section 420 IPC and sentenced to undergo RI for 3 years, under Section 468 IPC and sentenced to undergo RI for 5 years, under Section 471 IPC and sentenced to undergo RI for 3 years, under Section 120B IPC and sentenced to undergo RI for 6 years with a further direction to run the sentences concurrently, with a further direction that the period having undergone during course of trial would be set off in accordance with Section 428 CrPC vide judgment of conviction and order of sentence dated 21.05.2014 passed by 1st Additional Sessions Judge, Madhepura in Sessions Trial No. 213/2010 arising out of Singheshwar PS Case No. 47/2004.

2. Mahip Kumar Singh (PW 2) the then District

Education Officer, filed a written report addressed to Officer Incharge, Singheshwar PS disclosing therein that during course of audit of Primary Teacher Training College, Sukhasan-Manhara, Madhepura, it has been found that respective Principals by way of hatching a criminal conspiracy with other officials/staffs prepared forged and fabricated documents and, on the basis thereof, succeeded in withdrawing Rs. 1,06,00689.79 (Rupees One Crore Six Lacs Six Hundred Eighty Nine And Paise Seventy Nine) as well as misappropriating the same. The finance of the college is managed by the Principal, head clerk as well as treasury messenger. So, they are the persons responsible for preparing/ creating/forging the relevant bills as against fictitious persons and succeeded in their goal while misappropriating Rs. 1,06,00689.79 (Rupees One Crore Six Lacs Six Hundred Eighty Nine And Paise Seventy Nine). Then there happens to be some illustration (a) relating to provident fund head, sum of Rs. 40,000/- has been withdrawn as an advance in name of Ram Naresh Poddar but, the aforesaid Poddar is not at all posted/employed, that being so, is a fictitious person. The aforesaid activity has been taken up after transfer of one of the staffs namely, Binod Kumar. A request letter for preparation of bank draft happens to be in the name of Nasim

Alam. In spite of current account being available, the then Principal did not care to have the aforesaid amount deposited in the current account rather allowed direct withdrawal through the treasury. The then Principal, Parmeshwar Rai has been contacted whereupon, he shown his ignorance but, his signature is found duly attested by the then District Education Officer, (b) The then Principal had issued the cheque in favour of Sujit Kumar Sinha, Treasury Messenger appertaining to Rs. 1,04636/- out of which Rs. 72,636/- has been shown as deposit and then, shown against expenditure while Rs. 32,000/- neither been shown under the head of deposit nor in expenditure, (c) Smt. Neelam Rai, the then Principal died in between 01.09.1996 to 15.08.2000 (how, should have been unexplained), against whom the then Principal, Parmeshwar Rai, Staff, Nasib Alam, Sujit Kumar Sinha succeeded in withdrawing the advance against the provident fund in the name of fictitious lecturers and, during course thereof, the then District Education Officer had counter signed the signature of the then Principal Parmeshwar Rai, in spite of knowing the fact that all those bills were forged, on account of having in the name of fictitious persons and the amount of Rs. 8,09066=75/- was received in cash by Sujit Kumar and for that, there happens to be manipulation in the cash scroll.

3. Apart from this, Ram Naresh Poddar and Binod Kumar who were never employed at the college in any capacity have been shown to be an employee of the college and withdrawal has also been made against them. It has also been reported that while transmitting the pension paper relating to Murlidhar Gupta, Taukir Ahmad, Maharia Devi, Urmila, Lila Devi, the pension paper of Taukir Ahmad was also transmitted showing him to be a lecturer at the College while he was Principal, retired, and was withdrawing pension from Khagaria Treasury since before. In likewise manner, Murlidhar Gupta also retired since before and was drawing pension but papers relating to him was also transmitted. Parmeshwar Rai had also retired and was drawing pension through Begusarai Treasury but, the fresh pension papers relating thereto were also sent and the benefits were taken on that very score.

4. Furthermore, Sadanand Prasad Suman, Jaidev Pd. Thakur were never employed at the college but, all the retiral benefits against them on the basis of forged and fabricated document, have been withdrawn, appertaining to Rs. 7,38,638=85/-. It has also been disclosed that a sum of Rs. 5,34,286/- has been withdrawn by Parmeshwar Rai, the then

Principal having no entry, a sum of Rs. 3,72,219/- was further withdrawn in the signature of Parmeshwar Rai though, at that very time, Neelam Rai was the Principal who was expected to sign the relevant cheque and, on account thereof, has got no entry in the cash register. In likewise manner, Rs 3,67,850/- has been withdrawn against Sri Thakur showing him to be a lecturer of the College in lieu of retiral benefit without having entry in the cash register, although, no person, namley, Sri Thakur was ever employed at the College. In likewise manner, after death of Bindeshwari Pd. Yadav, an employee, sum of Rs. 1,55,112/- has been withdrawn against his entitlement which was to be received by his wife, she had got only 55,975/- and there happens to be no entry with regard to remaining Rs. 99, 177/-. In likewise manner, against retirement of Murlidhar Gupta, he succeeded in getting the retiral benefit twice and by such activity, a sum of Rs. 1, 74, 196/- has been withdrawn on the basis of forged and fabricated document. In likewise manner, group insurance against Ramanand Pandey, lecturer has been withdrawn at different occasions comprising of Rs. 1,60,450/-. Furthermore, the precised note of audit report has been annexed showing defalcation/misappropriation of Rs. 1,06,00689.79 (Rupees One Crore Six Lacs Six Hundred Eighty Nine And

Paise Seventy Nine) and for that, identity of Neelam Rai, Kusum Rai, Taukir Ahmad, Parmeshwar Rai, Nasib Alam, Sujit Kumar Sinha, District Education Officer to be responsible for creating/manufacturing and withdrawing the amount on the basis of forged and fabricated documents.

5. Singheshwar PS Case No. 47/2004 was instituted and as is evident, charge-sheet has been submitted only against the appellant, Sujit Kumar Sinha, although, charge-sheet speaks that case has been investigated and has been found true against remaining accused but, as the appellant is under custody, on account thereof, charge-sheet has been submitted only against him keeping investigation pending against others, (stage not known) facilitating trial meeting with ultimate result, subject matter of instant appeal.

6. At the present moment, it looks pertinent to mention that under the CrPC there happens to be no provision so prescribed barricading the I.O. to submit charge-sheet unless, all the accused are apprehended/ appearance of all the accused is procurde. Apprehension/appearance of an accused is a different phenomenon than, conducting investigation as well as submission of charge-sheet. In so many cases, where facts of the case speak about the mode of the exercise to be carried out but

the I.O. after having presence of an accused such as, circumstantial one or, when there happens to be deep rooted conspiracy, when there happens to be presence of accused necessary with regard to proper interrogation, where the offence happens to be against the nation, then in those circumstances, presence of accused is necessary to be interrogated upon, seizure of relevant documents having in possession of the accused for the collection of the evidence otherwise in normal phenomenon, the appearance of accused could be an ancillary event for having a charge-sheet (police report in accordance with Section 173 CrPC), and presence of accused may have after taking of cognizance under Section 190 CrPC followed with Section 204 CrPC.

7. So far this particular case is concerned, the accused were none others but Government Officials, some might have still under service on the date of institution of case, some had retired and, so, the same happens to be well within the knowledge of the prosecution and their location would have been traced out though the relevant treasury from where they were withdrawing their pension. Had there been sincerity at the end of the I.O, then in that circumstance, presence of all the accused would have been procured without any hurdle.

Furthermore, it is evident that the person happens to be at the lowest ladder being a treasury messenger has been arrested and put on trial while other accused persons were the head clerk, other staffs of the office, Principal, DEO, been allowed to remain unfettered.

8. It is further evident that even during course of investigation, the I.O. had not acted promptly, legally, effectively, diligently as, save and except audit report, no relevant documents have been seized neither from the office of the Primary Teacher Training Education College, Sukhasan nor from the treasury concerned, nay the concerned Branch of the Bank and in likewise manner from the A.G. Office. It is also found that during course of investigation, the I.O. failed to properly locate as to how many persons were deployed at the college as Principal apart from accused, Neelam Rai, Kusum Rai, Taukir Ahmad and Parmeshwar Rai during the tenure 1991-1992, 2001-2002 and in likewise manner, the D.E.O. and by such activity, allowed them to roam freely, to enjoy the pensionary benefit without any interruption apart from the fact that they succeeded in digesting the State exchequer on the other hand, the I.O. found and treated the appellant to be a sacrificing goat and for that, also paved the way for his clean acquittal as,

no relevant documents have been seized, more particularly treasury messenger book of the relevant period and produced along with supportive document from from concerned book suggests withdrawal by the appellant as a treasury messenger and, so, the record suggests that right from initiation of the case, all have discharged their duty in mechanical manner proving all kinds of terrine in their amulet. That happens to be the reason behind that the instant prosecution has become nothing but a simple paraphernalia to suppress such a huge defalcation without having positive effort.

9. In order to substantiate its case, prosecution has examined altogether four witnesses and they are PW-1, Ashok Kumar, PW-2, Mahip Kumar Singh, PW-3, Ashok Kumar Mandal and PW-4, Mahendra Pd. Yadav. Side by side has also exhibited Ext-1, Audit Report and Ext-2, written report.

10. PW-1 is Ashok Kumar who has deposed that in the year 2002, Kusum Rai, Incharge Principal had made written complaint that Sujit Kumar Sinha, Peon and Nasib Alam, clerk withdrew amount illegally. After depositing cash through Chalan, Sujit Kumar Sinha had deposited the receipt in office against a sum of Rs. 1,70,000/-. Then thereafter, there was audit whereupon, the defalcation of Rs. 1,60,00000/-

approximately, has been traced out. Aforesaid criminal activities having been done at the end of relevant officials in conspiracy with each other. On the basis thereof, this case has been instituted. Identified the accused. During cross-examination, he has stated that all the documents would be available in the office. He came to know through audit report. All those documents were not before him. He had not inquired personally with regard to allegation having levelled at the end of Kusum Rai. In para-6, he has stated that Drawing and Disbursing Officer was the Principal. Accountant-cum-head clerk was Nasib Alam and Sujit Kumar Sinha was the treasury messenger. Sujit was not at all competent to withdraw through his own signature. On court's question, he stated that after passing of bill, cash was being withdrawn by Sujit Kumar Sinha on an endorsement having so made by the competent authority. Then he said that he is unable to disclose any detail on that very score. Then has stated that Sunil was not authorized to withdraw money from the bank. In para-8, he has stated that the aforesaid college was under the control of DEO and so, DEO has got proper surveillance over the affair of the college.

11. PW-2 is the informant/the then DEO. He has stated that on 18.06.2004, he received audit report through

Finance Department, State of Bihar. After perusal of the same, he found defalcation/misappropriation of Rs. 1,06,00689.79 (Rupees One Crore Six Lacs Six Hundred Eighty Nine And Paise Seventy Nine) after preparing forged and fabricated document and for that, identified the different heads so detailed under the written report by the accused persons so named/unnamed. It has further been disclosed that a copy of audit report has been attached with the written report which happens to be an exhibit and then, allowed to be substituted by the court. Exhibited the written report, identified the accused. During cross-examination at para-5, he has stated that Kusum Rai, Neelam Rai, Parmeshwar Rai, Taukir Ahmad and other being Principals of the College were the Drawing and Disbursing Officers. In para-6, he has stated that he has got no personal knowledge with regard to the occurrence. Whatever been deposed at his end happens to be on the basis of the audit report. He has further stated that during his tenure, he had not visited the college and so, he has got no occasion to see the relevant documents.

12. PW-3 is the part I.O. who, after going through the case diary, examined some of the witnesses (so named) and then, handed over charge as was transferred. He has

further stated that Arjun Ojha was the main I.O. of this case and so, his evidence is not at all found relevant one.

13. PW-4 is also the part I.O. who has stated that on 14.04.2008 that means to say, four years after the registration of case, he took up investigation from Lal Mohan Ram. He had recorded statement of relevant witnesses. When he had gone to A.G. Ranchi in compliance of direction having been given by the Supervising Authority and asked for production of the original documents, it has been disclosed by the official concerned that the relevant documents have destroyed on account of having been decayed on account of efflux of time and so nothing was produced. He submitted charge-sheet only against Sujit Kumar Sinha. During cross-examination, he has stated that he had not seized any document from the College. He has submitted charge-sheet against the accused, Sujit Kumar Sinha keeping the investigation pending against others. In para-5, he has stated that he had not found any kind of document adverse to accused, Sujit Kumar Sinha.

14. Gone through the audit report. With regard to admissibility of the audit report, there happens to be some sort of hurdle because of the fact that it neither happens to be public document nor, for want of examination of the audit or it

could be allowed. Furthermore, so far relevancy is concerned, in the background of the fact that the same is found not at all supported with the relevant documents, which were necessary as the audit is based thereupon, it loses its santity.

15. The most surprising feature as is coming out from the evidence of PW-4, part I.O. who conducted the investigation at the fag end, no step was taken by the earlier I.O. to have the relevant documents seized from the college, from the department, from the Bank, treasury as well as from the A.G. Office, Ranchi. The lapses having at their end ultimately allowed destruction of the documents. That means to say, for want of those documents, could it be said that the accused, Sujit Kumar Sinha along with his associate indulged in preparing forged and fabricated document, withdrawn the amount by presenting the bill before the treasury, whether the bills were prepared in his signature or in the signature of Nasib Alam having signature of Principal or counterfeit signature attested by the DEO or counterfeit signature withdrawal from the Bank. So, there happens to be complete absence of the primary/secondary document and further, even the oral evidence is found insufficient, deficient one because of the fact that PWs-3 and 4 are part I.O., did not enlighten the issue, no occurrence took

place in presence of PW-2 and in likewise manner, there happens to be status of PW-1.

16. Consequent thereupon, the judgment of conviction and order of sentence rendered at the end of learned lower court, is hereby, set aside. The appeal is allowed.

17. It has been reported by the learned counsel for the appellant that after setting off the period of sentence, the appellant has already been released from the custody and so, needs no further order.

18. Considering the nature of the prosecution having been carried out by the all concerned, the prosecution is, hereby, directed to pay Rs. 1 Lac in lieu of compensation to the appellant, Sujit Kumar Sinha and the aforesaid amount will be recoverable by way of deduction from the pension/salary of the all concerned. The aforesaid amount must be paid within the period of eight weeks failing which, appellant will be at liberty to take proper legal recourse so prescribed in accordance with law.

(Aditya Kumar Trivedi, J)

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