

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.763 of 2016

Arising Out of PS.Case No. -25 Year- 1990 Thana -C.B.I CASE District- PATNA

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Mangala Nand Jha (M. N. Jha), aged about 66 years, S/o- Late Satanjeeb Jha,
Resident of Village- Baruar, P.S.- Laukha(Aadharathari), District- Madhubani,
Bihar, Ex-Branch Manager, S.B.I., A.D.B. Branch, Benepur, District-Darbhanga.

.... Appellant/s

Versus

The State through the Central Bureau of Investigation / Anti Corruption, Patna.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 743 of 2016

Arising Out of P S.Case No. -25 Year- 1990 Thana -C.B.I CASE District- PATNA

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Ram Padarath Thakur Son of Late Bhola Thakur Resident of Village Majhaura,
P.S. Bahera, District Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar.
2. C.B.I. Ac B, Patna

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.763 of 2016)

For the Appellant/s : Mr. Uday Shankar Choudhary, Adv.

For the CBI : Mr. Bipin Kumar Sinha, SC, CBI

(In CR. APP (SJ) No.743 of 2016)

For the Appellant/s : Mr. Jagdish Prasad Singh, Adv.

For the CBI : Mr. Bipin Kumar Sinha, SC, CBI

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 07-02-2019

Cr. Appeal (SJ) No.743 of 2016 wherein Ram Padarath

Thakur is the appellant and Cr. Appeal (SJ) No.763 of 2016 wherein

Mangala Nand Jha is the appellant, arise out from common judgment of

conviction and sentence dated 26.08.2016 passed by Special Judge,

CBI, 1st, Patna relating to R.C. Case No.25 (A)/90, Special Case

no.108/2011, on account thereof, have been heard together and are



being decided by a common judgment.

2. Both the appellants named above have been found guilty for an offence punishable under Section 120B read with Sections 418, 420, 468, 471, 477A of the IPC. The appellant M.N. Jha has further been found guilty for an offence punishable under Sections 420, 418, 477A of the IPC, 13(2) of the P.C. Act. Appellant R.P. Thakur has been separately found guilty for the offences punishable under Sections 420, 468, 471 of the IPC. Appellant R.P. Thakur on account of being physically handicapped has been directed to undergo R.I. for three years as well to pay fine appertaining to Rs.2000/- separately and independently for the offences punishable under Sections 420, 468, 471 of the IPC and in default of payment of fine to undergo S.I. for six months under each head with a further direction to run the sentences concurrently with a further direction to set off the period having undergone during course of trial as provided under Section 428 of the Cr.P.C.

Appellant, M.N. Jha has been directed to undergo R.I. for three years for an offence punishable under Section 418 of the IPC, R.I. for three years as well as to pay fine appertaining to Rs.2000/- and in default thereof, to undergo S.I. for six months, additionally under Section 420 IPC, to undergo R.I. for five years as well as to pay fine appertaining to Rs.2000/- in default thereof, to undergo R.I. for six months, additionally, for an offence punishable under Section 468 IPC



as well as 471 IPC, respectively, to undergo R.I. for three years for an offence punishable under Section 477A of the IPC, to undergo R.I. for five years as well as to pay fine appertaining to Rs.2000/- in default thereof, to undergo S.I. for six month, additionally, for an offence punishable under Section 13(2) of the P.C. Act with a further direction to run the sentences concurrently, with a further direction to set off the period having undergone during course of trial as provided under Section 428 Cr.P.C. However, there happens to be no indication with regard to infliction of sentence under Section 120B IPC read with 420,418,468,471,477A IPC against both the appellants. However, rest of the accused were acquitted.

3. Informant R.S.S. Yadav (PW.10) recorded his own statement to the effect that he received information through reliable sources that Sri M.N. Jha, Branch Manager, Himadri Shekhar Mitra, Field Officer, Kalyan Kumar Vishwas, Field Officer, Chandrabhushan Choudhary, Cash Officer, Arvind Kumar Jha, Rural Development Officer, B.K. Jha, Agricultural Assistant SBI, ADB Branch Benipur, while occupying their respective post during the period of 01.04.1989 to 31.03.1990 entered into a criminal conspiracy amongst themselves including M/s Binod Khad Beej Bhandar, Habibpur, M/s Mithila Khad Bhandar, Aashapur along with some unknown persons and in furtherance of said conspiracy as well as misusing their official status, fraudulently and dishonestly sanctioned and disbursed Short Term Crop



Loan amounting to Rs.23,26,831/- to 311 farmers on the basis of forged and fabricated cash memos against purchase of fertilizers and other agricultural inputs as well as also manipulated forged signature/certificate of the C.O. in order to facilitate the same and thereby defrauded the bank to the extent of Rs.23,26,831/-. It has also been alleged that aforesaid bank officials with an ill design flouted rules/circulars of the bank guiding the procedure for the short term loan, extended the loan facility to the loanees beyond the service area of the branch, no pre-sanction survey was conducted and in some cases, it was done after disbursement of the loan, in some cases 100% of sanction loan amount were paid to the loanee at the first installment, against the circular wherein at a first instance 40% of sanctioned loan was to be paid while remaining 60% at second installment, in some cases land holdings certificate furnished along with the loan application were changed /altered, in some case landless persons were sanctioned loan and by such activity, they caused wrongful loss to bank having wrongful gain to them.

4. After registration of the case, investigation followed and then, concluding the same, charge sheet was submitted which happens to be the basis of the trial which concluded in a manner, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the



Cr.P.C. is that of complete denial. Furthermore, it has been pleaded that purposely, intentionally, malafidely been victimized at the end of the CBI sleuths for extraneous consideration. However, nothing has been adduced in defence.

6. In order to substantiate its case, prosecution has examined altogether seventeen PWs who are PW.1-Nathuni Jha, PW.2-Birendra Prasad, PW.3-Dev Narayan Choubey, PW.4-Arvind Kumar Mishra, PW.5-Ram Bilash Thakur, PW.6-Anil Kumar, PW.7-Pawan Kumar Choudhary, PW.8-Ram Briksh Mahto, PW.9-Mithilesh Kumar Singh, PW.10-Ram Shankar Singh, PW.11-Suresh Chandra Gupta, PW.12-Dr. Udaya Narayan Rai, PW.13-Negeshwar Jha, PW.14-Ali Hassan, PW.15-Hemant Mishra, PW.16-Kari Nadaf and PW.17-Madhu Kant Jha. Side-by-side has also exhibited following exhibits Ext.1, 1/1 to 1/42, Ext.2, 2 to 2/3, Ext.3, 3/1 to 3/59, Ext.4, 4/1 to 4/2, Ext.5, 5/1 to 52, Ext.6, 6/1 to 6/9, Ext.7, 7/1 to 7/11, Ext.8 to 8/1, Ext.9, 9/1 to 9/18, Ext.10, Ext.11, Ext.12, 12/1 to 12/2, Ext.13 to 13/1, Ext.14 and Ext.15. By these exhibits, bank loan documents, loan files, letter of sanction order land verification report, GEQD opinion, specimen writing and signatures along with report have been exhibited.

7. Manifold arguments have been raised on behalf of appellants while challenging the judgment impugned. The first and foremost happens to be over theme of double jeopardy. To justify the same, it has been submitted that altogether five cases were registered at



the behest of CBI out of which, in two cases acquittal have been recorded while in remaining three, they have been convicted and sentenced being under challenge before the High Court under different criminal appeals. In all the five cases similar kind of allegation has been made with regard to the activity so perceived obnoxious to the Bank while dealing with short term crop loan in between 01-04-1989 to 31-03-1990. The snake and ladder game has been played by two CBI officials namely R.S. Yadav as well as U.N. Rai. Whereever R.S.S. Yadav is the informant U.N. Rai happens to be Investigating Officer and vice-versa. So, they have registered five cases illegally, malafidely for the same act in contravention of Section 300 Cr.P.C. as well as article 20(2) of the Constitution of India. Moreover, the learned lower court not only at an initial stage rather even at the time of framing of charge failed to acknowledge the same otherwise would have discharged the appellant in accordance with Section 239 of the Cr.P.C. On the other hand proceeded independently relating to all the five cases irrespective of the fact that by catena of decisions right of Ram Lal Narang, T.T. Antony and subsequently thereof, the Apex Court deprecated the aforesaid procedure save and except being counter version of the occurrence. Furthermore, it has also been submitted that had there been proper appreciation then, in that circumstance, the allegation whatsoever been at the end of prosecution, would have been properly proceeded, tried with under one trial which, the learned lower



court contravened violated and so, the illegality having been committed at the end of the learned lower court made the trial impuissant.

8. It has further been pleaded that learned lower court failed to act in accordance with the relevant provisions so prescribed under Section 219 Cr.P.C. 220 Cr.P.C. as well as Section 222 Cr.P.C. read with Section 23 of the P.C. Act whereunder, the grievances of the prosecution as alleged would have been properly redressed. In likewise manner, had there been proper exercise of aforesaid provisions at the stage of framing of charge, there could not be an occasion of failure of justice as the allegation would not be dealt with independently in utter violation of mandate of law. That being so, the judgment impugned does not justify its sustainability.

9. Now coming over facts of the case, it has been submitted that none of the loanee who came to depose had alleged that they have not taken loan. Some of them even stated that they have repaid the same whereupon could not be said to be influenced with criminality. Further, non-repayment of loan amount by some of the loanees would attract launching of certificate proceeding against them at the end of bank and not the criminal prosecution. Furthermore, it has been submitted that even for argument sake not admitted, that loan application form contains forged signature of C.O., C.I./Karamchari, would not attract criminal prosecution of the appellants, as (i) none had alleged that loan application form was placed before the Bank without containing land



holding certificate countersigned by the C.O., (ii) neither those loanees have been made an accused (iii) Those loanees have got illegal gain (iv) Deficiency at the end of prosecution to substantiate pre-meeting of mind (iv) No evidence on record that the forged documents were prepared by the appellants or at their behest (v) and were used by the appellants knowingly that the signature was forged, (vi) Loanees were impersonated, (vii) prosecution itself suffers from vagueness on proper identification of the loanees. In an alternative, it has been submitted that whatever lapses have been defected, were only procedural, as disclosed by Bank officials, so pointed out during course of Audit, negating the criminal prosecution. It has also been submitted that as not even a single loanee has been made an accused in that event, prosecution could not succeed, as it suffers from inherent defect.

10. Apart from this, as urged during course of audit nothing wrong was found save and except administrative lapses, nor the Bank officials during course of their evidence put any sort of allegation.

11. Furthermore, it has also been argued that there happens to be an admission at the end of bank officials that in exceptional case, exercising its power the manager could disburse 100% of the loan amount and on that very score, no prosecution could be launched. In likewise manner extending the service area in exceptional cases were also within the discretion of Branch Manager.



12. It has further been submitted that majority part of loan was to be dispersed in form of fertilizer as well as seeds through some cash through recognized shops. When the proprietor of the concerned shops has already been acquitted then, in that circumstance, case of the prosecution could not stand. Hence, the prosecution case, as now remains did not justify the finding as a result of which the judgment impugned is fit to be set aside. Also referred (1999) 8 SCC 572, AIR 1956 SC 464, 2011(4) PLJR 287(SC), AIR 2003 SC 3838, 2000(3) PLJR 357, (2013) 16 SCC 574, 2017(3) BBCJ 248.

13. On the other hand, the learned Standing Counsel for the CBI controverting the submission made on behalf of appellants, has submitted that finding recorded by the learned lower court is fit to be confirmed. In order to justify the same, it has been submitted that first of all mensrea has to be seen. When the evidence, as placed on behalf of prosecution is properly scrutinized, it is apparent that whole exercise having at the end of appellants is found completely soaked with criminal design in order to misappropriate the amounts and for that, forged and fabricated documents have been prepared as well as used. That being so, the judgment impugned did not attract interference.

14. It is needless to say that under the principle of double jeopardy, the subsequent prosecution for the same occurrence against the same accused at the behest of same informant is forbidden as, apart from Section 300 of the Cr.P.C., Article 20(2) of the Constitution of



India forbids the same. However, during course of consideration stage of the case has also to be seen, as the same happens to be the crucial factor. Once trial commenced, witnesses having been examined, judgment delivered independently, then in that circumstance, applicability of principle of double jeopardy would not be fruitful event, more particularly at the appellate stage where the matter has to be seen in the background of evidence having on the record coupled with the fact that judgment are/were pronounced on the same day, without having an opportunity to perceive sailing and adjudication on property.

15. As per Section 22 of the P.C. Act, the matter would have been properly considers at the stage of framing of charge in pursuance of Sections 219, 220, 223 of the Cr.P.C. which the Apex Court in ***Lalu Prasad alias Lalul Prasad Yadav, v. State through C.B.I. (A.H.D.), Ranchi*** reported in ***AIR 2003 SC 3838*** has also laid down. For better appreciation the same is quoted below:

“10. The application for amalgamation of cases is under Section 223 of the Criminal Procedure Code which reads as under:5

“223. What persons may be charged jointly.—The following persons may be charged and tried together, namely—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of Section 219 committed by them jointly within the period of twelve months;



(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under **Sections 411 and 414 of the Indian Penal Code (45 of 1860)** or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply in all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

It is thus to be seen that irrespective of the applicability of **clauses (a) to (g), Section 223** gives to the Magistrate a discretion to amalgamate cases. The Magistrate has to be satisfied that persons would not be prejudicially affected and that it is expedient to amalgamate cases.”

16. In State of Jharkhand through SP, CBI Vs. Lalu Prasad @ Lalu Prasad Yadav with State of Jharkhand through S.P., CBI Vs. Sajal Chakraborty with State of Jharkhand through SP, CBI Vs. Dr. Jagannath Mishra reported in 2017 Cr.L.J. 4008



after discussing all the previous judgment on the score, concluded under para-39, as follows:-

“**39.** The modus operandi being the same would not make it a single offence when the offences are separate. Commission of offence pursuant to a conspiracy has to be punished. If conspiracy is furthered into several distinct offences there have to be separate trials. There may be a situation where in furtherance of general conspiracy, offences take place in various parts of India and several persons are killed at different times. Each trial has to be separately held and the accused to be punished separately for the offence committed in furtherance of conspiracy. In case there is only one trial for such conspiracy for separate offences, it would enable the accused person to go scotfree and commit number of offences which is not the intendment of law. The concept is of 'same offence' under Article 20(2) and section 300 Cr.PC. In case distinct offences are being committed there has to be independent trial for each of such offence based on such conspiracy and in the case of misappropriation as statutorily mandated, there should not be joinder of charges in one trial for more than one year except as provided in section 219. One general conspiracy from 1988 to 1996 has led to various offences as such there have to be different trials for each of such offence based upon conspiracy in which different persons have participated at different times at different places for completion of the offence. Whatever could be combined has already been done. Thus we find no merit in the submissions made by learned senior counsel appearing on behalf of accused persons.”

17. Before coming to discuss the evidence of the PWs the procedure, as admitted, to be followed while sanctioning of short terms crop loan is to be seen. After getting loan application, the loanee has to



place the same before the Karamchari/C.I. for having land holding certificate. Thereafter, the loanee has got two options. The first one, will present the loan form with land holding certificate before the C.O. for counter signature, and after obtaining the same, will place before the Bank, where pre loan survey has to be exercised, side by side the genuineness of the signature of C.O. is to be verified. The other option, the loanee, directly file loan application form before the Bank along with land holding certificate, wherefrom it is sent to C.O. for counter signature, and then, the same is remitted back by the C.O. to Bank after having counter signature. In likewise manner, so far manner of disbursement of loan amount is concerned, 40% of sanctioned amount is to be given at first phase while remaining, at second stage.

18. Now coming to the facts of case, it is evident that three kinds of witnesses have been examined. The first category is of loanee, the second category of bank officials and the third category of C.O. and other witness. The loanees PW.5, PW.6 have admitted that they had repaid the borrowed amount. While the remaining loanees PW.1, PW.13, PW.14, PW.16, PW.17 they had admitted to have obtained loan, but out of them PW.1, PW.13, PW.14, PW.16 have exposed the malfunctioning at the end of Bank officials during sanctioning. PW.1 had stated that loan of Rs.8000/- was sanctioned out of which he was given Rs.6800/-. He had not stated with regard to repayment. PW.13 had stated that Rs.5000/- was sanctioned which he received in cash. He



had denied to have submitted cash memo nor he received fertilizer, seed from Mithila Khad Beej Bhandar. Appellant R.P. Thakur is the proprietor of M/s Mithila Khad Bhandar. PW.16 had stated that although he is not a land holder even then he was sanctioned loan of Rs.7000/-. He received cash. He was not supplied with fertilizer, seed. However, there happens to be cash memo issued in his favour from Binod Khad Beej Bhandar of Rs.7075/-.PW.17 also stated he was not possessing land and even then, he was sanctioned Rs.10,000/-. He received cash. He was not at all supplied seed as well as fertilizer though cash memo issued by Binod Khand Beej Bhandar is found tagged with the form.

19. The second category of witnesses who are bank officials are PW.2, PW.3, PW.4, PW.7, PW.8 out of whom PW.4, PW.7, PW.8 are formal in nature, as they simply exhibited signature of respective accused over the relevant documents (loan application form, sanction). PW.2 and PW.3 have deposed over mode of functioning of the Bank, more particularly, identifying the power of Manager, Field Officer, Rural Development Officer during course of scrutiny, sanctioning of short term crop loan, as well as bank circular, circular issued by NAWARD on that very score, and during course thereof, they have not alleged adverse to the accused bank officials save and except some lapses that too due to over work as loan was to be dispersed during short span of time, dearth of staff inconsonance with work load, and that too,



traced out during course of Audit. However, no misappropriation was detected nor withdrawal on the basis of forged, fake document was alleged.

20. The third category happens to be that of PW.9, the then C.O. From the evidence of PW.9, who not only disclosed the procedure rather also deposed that on some of the loan application his signature has been forged regarding which he informed the Bank which he exhibited (Para-7, Ext.3 Series). The most devastating feature is, he has not been cross-examined. That means to say whatever been alleged at his end remained uncontroverted.

21. PW.10 is informant who had simply reproduced the contents of the FIR, having no much stress. PW.11 is the handwriting expert who had deposed that the handwriting over S-1 to S-50 as well as Q 1 to Q 10 are of same person and had exhibited his opinion, who also was not cross-examined. PW.12 is the I.O. who had stated that after having been entrusted with the investigation, he recorded statement of the witnesses, procured relevant document, obtained specimen signature of the accused, sent it to FSL Kolkatta, got the report, obtained sanction order, and then, submitted charge sheet. During cross-examination he had stated that he had not made physical verification of the loanee, had not made any of the loanee as an accused, denied the suggestion that as loan was sanctioned in proper way, hence they were not made accused.



22. From the evidence as discussed hereinabove, it is evident that prosecution has sailed with the case in its peculiar manner, as none of the loanee has come forward to say that he has been impersonated, none has come to say that he has not applied for short term crop loan. In likewise manner during course of investigation the specimen signature C.O. PW.9 was not taken nor tallied with the signature having over relevant application form. It is also evident that initial allegation relates with siphoning of Rs.23,26,831/- relating to 311 farmers, which is found substantially reduced in charge sheet and during course of framing of charge, it is evident that it suffers from ambiguity as nothing has been averred on that score. But the weakness of the defence is, PW.9 was not cross-examined. That being so, whatever been deposed by him remained intact. PW.11, handwriting expert also not been cross-examination on that score. That means to say what he said with regard to having his signature forged over different loan application form regarding which he had already intimated the Bank (Ext.8 Series) and further, having loan disbursed relating those found adverse to appellant, as the loan has been disbursed only after having sanctioned, which appellant Mangla Nand Jha, Manager allowed. At the present juncture, statement of appellants under Section 313 Cr.P.C. has also to be taken into consideration.

23. On account of non-cross-examination of a witness in order to shake his testimony on particular point, will tantamount to an



admission as held by the Apex Court in ***Gian Chand & others v. State of Haryana*** reported in **2013(4) PLJR 7 (SC)** wherein it has been held as follows:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in ***Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors.***, AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, *inter-alia*, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(Emphasis supplied)”



24. In the aforesaid facts and circumstances of the case, the judgment impugned attracts no interference consequent thereupon, instant appeal is dismissed. Appellants who are under custody will remain till saturation of the sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
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