NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 3-4-2019

Delivered on 26-6-2019

CRA No. 1022 of 2012

- Rajesh Shukla S/o Late C.P. Shukla Aged About 46 Years R/o In Front Of Kosa Point , Khaparganj Marwadi Line , P.S. City Kotwali, Bilaspur C.G. , Chhattisgarh

---- Appellant

Versus

- Union Of India Through - The Central Beauro Of Investigation - Jabalpur, M.P. Presently - Bhilai Unit Bhilai Distt. Durg C.G.

---- Respondent

CRA No. 1032 of 2012

- Tirthankar Basu S/o Late Shri Ramkamal Basu Aged About 48 Years R/o Qr. No. C-2, Regional Colony, Post Dhanpuri, Distt. Shahdol Madhya Pradesh.

---- Appellant

Versus

- Union Of India Through The Central Bureau Of Investigation, Jabalpur Madhya Pradesh, Presently At Bhilai Unit, Bhilai, Distt. Durg C.G.

---- Respondent

CRA No. 1034 of 2012

- Gurmeet Singh Kainth S/o Late Shri J.S. Kainth Aged About 54 Years R/o C-32 Aadarsh Nagar, Kusmunda Area, Distt. Korba C.G.

---- Appellant

Versus

- Union Of India Through Central Bureau Of Investigation, Jabalpur M.P. Presently Bhilai Unit, Bhilai, Distt. Durg C.G.

---- Respondent

CRA No. 1040 of 2012

1. G.R. Jaiswal S/o Shri Kanhaiyalal Jaisawal Aged About 53 Years Clerk Grade - Ii, Kshetriya Store Kusmunda Area, S.E.C.L., Bilaspur, R/o Village-Parida, Tah. - Sakti, Ps - Sakti, Distt. - Bilaspur Now Distt. - Janj, Chhattisgarh

2. Kaushal Prasad Jaiswal S/o Muchudou Jaiswal Aged About 53 Years R/o Village - Parida, Ps - Malkharoda, Tah. - Sakti, Distt. - Bilaspur Now Distt. - Janjgir-Champa C.G. , District : Janjgir-Champa, Chhattisgarh

---- Appellants

Versus

- Union Of India Through Central Bureau Investigation, Jabalpur M.P. Now Bhilai Unit, Ps - Durg, Distt. - Durg C.G.

---- Respondent

And

CRA No. 1043 of 2012

- Ashok Govind Karwa S/o Shri Govind Lal Karwa Aged About 51 Years R/o 204, Jaydev Society C.A. Road Nagpur M.H. Presently At Central Avenue, Sharda Bhawan, Ps Lakadganj, Nagpur M.H. 440018 , Maharashtra

---- Appellant

Versus

- Union Of India Through, The Central Bureau Of Investigation, Jabalpur Madhya Pradesh, Presently Bhilai Unit, Bhilai Distt. - Durg C.G.

---- Respondent

For Appellants in CRA No.1022/2012 & 1032/2012.	:	Mr. P.K.C. Tiwari, Sr. Advocate with Mr. Shashi Bhushan Tiwari, Advocate
For Appellant in CRA No.1034/2012	:	Mr. Maneesh Sharma, Advocate.
For Appellants in CRA No. 1040/2012	:	Mr. Praful N. Bharat and Mr. H.S. Patel, Advocates.
For Appellant in CRA No.1043/2012	:	Mr. Prakash Tiwari, Advocate.
For Union of India	:	Mr. Gop Kumar, Asst. Solicitor General.

Hon'ble Shri Justice Ram Prasanna Sharma
CAV Judgment

1. As all the aforesaid five criminal appeals arise out of common judgment, they are heard analogously and are being disposed of by this common judgment.

2. All these appeals are preferred against the judgment dated 3-11-2012 passed by the Special Judge, C.B.I., Raipur, District Raipur (CG) in Special Criminal case (CBI) No. 24 of 2004 wherein the said Court has convicted the appellants for charges under Sections 120-B, 420 read with Section 120-B, 471 read with Section 468 of IPC and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act 1988 read with Section 120-B of the IPC sentenced them to undergo RI for six months and to pay fine of Rs.5,000/-, RI for three years and to pay fine of Rs.20,000/-RI for three years and to pay fne of Rs.10,000/- and RI for thee years and to pay fine of Rs.20,000/- with default stipulations. All the sentences are directed to run concurrently.

3. Appellant in Criminal Appeal No. 1022 of 2012 namely Rajesh Shukla was working as Accounts Clerk in South Eastern Coalfields Limited. Appellant in Criminal Appeal No.1032 of 2012 namely Tirthankar Basu was working as an Executive Engineer in the same department. Appellant in Criminal Appeal No. 1034 of 2012 namely

Gurmeet Singh Kainth was working as Superintendent Engineer in the same department. Appellants in Criminal Appeal No. 1040 of 2012 namely G.R. Jaiswal was working as Clerk Grade II at Regional Store Kusmunda area, SECL, Korba and he constituted a forged firm with appellant Kaushal Prasad Jaiswal namely National Trade Centre and opened account for the said centre. Appellant in Criminal Appeal No. 1043/2012 namely Ashok Govind Karva was working as Accounts Officer in Accounts Section of the said institution of SECL.

4. As per version of prosecution on 20-4-1994 one Mr. B.N. Bandhopadhyay, (PW/26) who was Deputy Chief Finance Manager, SECL, Kusumunda area, District Bilapur received information from his office bearer that some bills to the tune of Rs.6,04,831/- appears to be false payable to the firm named as National Trade Cente, Kolkata. The matter was brought to the notice of the General Manager, Kusumunda Branch, who constituted a committee and directed to submit the report. It is also directed to report whether any payment even being made to such firm. It is reported that earlier two cheques were issued which were cheque No.272336 dated 20-3-1993 to the tune of Rs.2,52,894.15 and cheque No.594122 dated 17-11-1993 to the tune of R.2,56,589.50, total about five lakhs and nine thousand approximately. After inquiry it was found that both cheques were cleared from State

Bank of India, Kusmunda Branch which were deposited in current Account No.6/8. The account was opened by introduction of Adivasi Book Binder Centre, Korba whose proprietor is one Puran Singh (PW/32). The matter was reported to Police Station, Kusmunda and during investigation of the case enquiry was handed over to Central Bureau of Investigation. Appellants were charge-sheeted and convicted as mentioned above.

5. Learned counsel appearing for the appellants in CRA Nos. 1022 of 2012 and 1043 of 2012 namely Rajesh Shukla and Ashok Govind Karwa would submit as under:

i) Appellant Ashok Govind Karva was working in Accounts Section and he was merely discharging duties of bill passing officer. He passed the bills after due formalities looking to relevant documents. He was not working in the Purchase Department and it was duty of the Accounts Officer working in the Purchase Department to enquire about the purchase order. The purchase order was verified by the Accounts Officer in the purchase department, therefore, no criminal liability can be fastened on him.

ii) Appellant Rajesh Shukla was assisting the appellant Ashok Govind Karva at the time of passing bills. The trial Court opined that ST number is not mentioned in the bill

Ex.P/20 and concurrence number is also not mentioned but as per statement of R.S. Pal (PW/25) (para 14). There is sales tax number mentioned in Ex.P/20 and P/22.

Iii) Again, B.N. Bandhopadhyay (PW/26) deposed that concurrence number mentioned in Ex.P/31 and P/26 and there was blank paper pasted in the backside of Ex.P/26. R.S. Pal (PW/25) deposed that there was paper pasted in Ex.P/26 at the same place and in Ex.P/31 indent number and FC number with signature is mentioned. Again R.S. Pal (PW/25) deposed that indent number and concurrence number mentioned in the bill and all the due process and procedure were followed while passing the bill by the appellant.

iv) Again, A.K. Bastiya (PW/21) deposed (para 29) that all the columns were duly filled by the appellant in the prescribed format which indicates that there was no irregularity adopted or made by the appellant. B.N. Bandhopadhyay (PW/26) deposed that bill in question i.e., Ex.P/20 and P/22 were followed with same procedure which was adopted for passing any other bill which passed through the department. Again he admitted that classification sheet was prepared after verifying the quantity mentioned in purchase order and quantity mentioned in bill which is forwarded to Senior Accounts Officer and then the bill was sent to the payment department. R.S. Pal (PW/25) depose that bill reaches to the accounts department after proper inspection is performed and it was also attached with daily receipt register and after receiving such bill it was produced before passing officer, therefore, both appellants had no role in any criminal act.

6. Learned counsel appearing for the appellants in CRA No.1032 of 2012 and 1034 of 2012 namely Tirthankar Basu and Gurmeet Singh Kainth would submit as under:

i) Both appellants have been charge sheeted on the ground that they had prepared the inspection report of the article bearing and spherical roller for which bill in question Ex.P/20 and P/22 was prepared. There is no evidence that said inspection report was prepared by them.

ii) The document was sent to expert for examination and it was examined by Hari Mohan Saxena and Subhashish Dey as experts and report is Ex.P/57-1. Though

Hari Mohan Saxena listed as prosecution witness in list of prosecution as witness No.28, but he has not been examined before the trial Court. Subhashish Dey was not examined before the trial Court, therefore, there is no evidence of expert to establish that said document was prepared by these two appellants. Opinion of expert is not certain that particular signature is that of person who purportedly signed it. The expert can state that there is probability, therefore, only expert's opinion is not sufficient to establish the signature in the document. The other circumstances should also be produced before the court to establish the charge.

Iii) In the present case, corroborative piece of evidence is lacking and evidence of expert is also not adduced before the trial Court. There is no evidence that these appellants were involved with other persons for doing any illegal act. There is no evidence that they have formed any scheme of a common design. There is no evidence of misconduct on the part of these appellants.

iv) There is no evidence regarding charge under Section 13-D of the Prevention of Corruption Act, 1988 that any of the appellants obtained for himself or for any other person any valuable thing or pecuniary advantage by abusing his position while holding office as a public servant. In absence of any evidence, any of the charge regarding conspiracy, cheating, forgery and misconduct by public servant is not established.

7. Learned counsel appearing for the appellants in CRA No. 1040 of 2012 namely G.R. Jaiswal and Kaushal Prasad Jaiswal would submit as under:

I) Appellant G.R. Jaiswal was posted as Clerk Grade II and his work was to make entry in registered book in respect of out-going and incoming goods. He did not sign in Ex.P/20 and P/22. Again, there is no evidence that he got printed letter head and bill in the name of M/s National Trade Centre for causing monetary loss to SECL.

ii) For opening of current account in the name of National Trade Centre, though Pradeep Moghe (PW/24) deposed that the appellant G.R. Jaiswal put his signature as identifier but PW/2 N.P. Kurre deposed that Puran Singh who is proprietor of Adhivasi Book Binding Centre put his signature in opening form in the name of National Trade Centre, but Puran Singh denied that he identified any one while account is opened.

Iii) From the evidence of Puran Singh,

involvement of both these appellants namely G.R. Jaiswal and Kaushal Prasad Jaiswal is not established regarding opening the account, therefore, liability cannot be fastened on him that they committed any conspiracy, cheating, forgery or any crime in the question.

iv) Learned counsel appearing for the appellants have placed reliance in the matter of **L. Chandraiah vs State of Andhra Pradesh,[1] R. Manoharan Jebaraj Julian vs. State represented by the Inspector of Police and another[2] Ramesh Chandra Bhogilal Patel vs. State of Gujrat and another[3], P.S. Rajya vs. State of Bihar[4].**

8. On the other hand, learned counsel for the respondent/Union of India would submit that the finding of the trial Court is based on proper marshaling of the evidence and the same is not liable to be interfered while invoking the jurisdiction of the appeal.

9. I have heard learned counsel for the parties and perused record of the court below in which impugned judgment is passed.

10. The first question for consideration of this court is as to what is the procedure of purchasing bearing and spherical roller in SECL.

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[1] 2003 Law Suit (SC) 1090
[2] 2011 (1) Criminal Court Cases 0550 (madras)
[3] 2011 (3) LAWDIGITAL.IN 716 (Gujrat)
[4] 1996 LawSuit (SC) 9838

R.S. Pal (PW/25) Manager Vigilance deposed that if any of the department/branch is in need of any material an indent is prepared in which indenter signed and then it is sent to Stores Department. If indent is agreed by manager, then it is sent to Stores Department. If material is available in the store then it is issued by Store and if it is not available then the Incharge issues non-availability certificate. The article can be purchased either by local market or it may be purchased after according sanction from Finance Department. Finance Department accords sanction only when budget is available. After sanction of finance department tender is called and tender is scrutinised by the Technical Department. After technical sanction purchase order is issued and article is supplied to Stores Department. The article is inspected by the competent officer and then entry is made in daily receipt register. After receiving bill and daily receipt register it was sent to Finance Department and then it is sent to bill passing officer. Bill passing officer passes then it is sent to cash section which issues cheque in favour of supplier.

11. The next question for consideration of this court is whether the appellant Trithankar Basu and G.S. Kethu inspected bearing and spherical roller and then they prepared inspection report as Ex.P/41.

12. To substantiate charge, prosecution examined as many as 32 witnesses. No one deposed before the trial court that inspection

report is prepared by Trithankar Basu and G.S. Kainth Inspection report (Ex.P/41) and other documents seized in the present case were sent to Government examiner of questioned document, Bureau of Police Research and Development, Central Forensic Institute, Kolkata and report of the said examiner is Ex.P/57-1 issued by Subhashish Dey and Harimohan Saxena. Harimohan Saxena was listed as prosecution witness but he was not examined before the trial Court. The other expert is also not examined. Though Bhakti Pad Mishra (PW/30) is examined for proving the expert opinion, but this witness is not examiner of the document. He only proved the signature of examiner Harimohan Saxena and Subhashish Dey.

13. Now the point is whether evidence of Bhakti Pad Mishra is sufficient to bring home the guilt. Evidence of expert is not conclusive proof but it is advisory in nature. In absence of other circumstances the opinion itself is not sufficient to prove that the appellants have prepared the inspection report, therefore, it is difficult to hold that these appellants have submitted the inspection report to processing bill section. Bhakti Pad Mishra is not examiner of the document and examiners have not been deposed before the trial Court. No opportunity of cross examination is provided against examiner, therefore, opinion is not proved.

14. The other question for consideration is whether appellant Rajesh Shukla and Ashok Govind Karva who were working in bill passing section committed any offence.

15. The trial court opined that there is no sales tax number and ST number mentioned in the said letter head Ex.P/20 and P/22 and concurrence number is also not mentioned in the alleged bill and purchase order. R.S. Pal (PW/25) deposed (para 14) that there is sales tax number mentioned in bill Ex.P/20 and P/22. B.N. Bandhopathyay (PW/26) deposed (para 11) that concurrence number is mentioned which is supported by version of R.S. Pal (PW/25). A.K. Bastiya (PW/21) deposed that no irregularity is adopted while discharging duties by the appellants. B.N. Bandhopadhyay (PW/26) deposed that bills Ex. P/20 and P/22 were cleared after following the same procedure which was adopted for passing any other bill. R.S. Pal (PW/25) deposed that bill was attached with daily receipt register and the inspection report and after receiving bill with these documents, the Accounts Clerk produced the bill before the passing officer. When all the documents were available before processing of bill, it cannot be held that bill was processed with any conspiracy with co-accused persons.

16. The charge against appellants Kaushal Prasad Jaiswal and G.R. Jaiswal is that one account in the name of National Trade

Centre is opened in State Bank of India, Kusmunda Branch in the name of proprietor Bindu Shah after impersonating of Binda Shah by Kaushal Prasad. G.R. Jaiswal introduced appellant Kaushal Prasad for opening the account. N.P. Kurre (PW/2) was working as Branch Manager in State Bank of India, Kusmunda Branch. As per version of this witness one current account was opened as account No.SBI 6/8. It is opened on 19-4-1993 in which proprietor is named as Binda Shah. One Puran Singh who was proprietor of Adivasi Book Binder Centre introduced Binda Shah, thereafter account was opened. As per version of this witness all the amount is withdrawn by proprietor Binda Shah. Version of this witness is supported by Senior Manager, State Bank of India, Branch Kusmunda namely Umakant Sharma (PW/3). Though Pradeep Moghe (PW/24), Manager, State Bank of India, Kusmunda Branch deposed that account of Binda Shah was opened after introducing by G.R. Jaiswal. The fact remained that version of this witness is contradicted by version of Branch Manager, N.P. Kurre (PW/2) and Senior Manager Umakant Sharma (PW/3).

17. Looking to the contradictory statement of all the three witnesses, it cannot be held that account was opened after introduction by appellant G.R. Jaiswal. Puran Singh (PW/32) deposed before the trial Court that he is running book binder centre in the name and style of Adivasi Book Binder. He deposed that he

signed in bank opening form (Ex.P/2) but he is not aware of the fact as to who named in the account opening form. This witness is not stable to his statement. First he deposed that he printed ten thousand forms of National Trade Centre on the direction of Appellant G.R. Jaiswal, but in cross examination he further deposed that he did not supply any form to G.R. Jaiswal and no seal was prepared by him and given to appellant G.R. Jaiswal. He further deposed that account opening form Ex.P/2 was already filled up when it was brought to him and he simply signed because of relation with bank officer. He again contradicted his earlier statement that G.R. Jaiswal opened the account for business purpose. As per version of this witness, Kaushal Prasad was not present at the time of opening of account. He is also not aware as to in whose name the account was opened. From his statement it is clear that when account opening form was brought to him it is already filled up.

18. From the entire evidence, it is not established that appellant G.R. Jaiswal introduced the account opener and appellant Kaushal Prasad was present while opening the account. From the statement of the above Bank Officer, it is clear that the amount was withdrawn by a person in whose name account was opened. Name of the said person is Binda Shah, therefore, in the present case, there is no connecting piece of evidence that any of the

amount is withdrawn by G.R. Jaiswal or Kaushal Prasad Jaiswal. It is also not proved that both have opened the account in the name of National Trade Centre, therefore, finding of the trial court on the basis of statement of Puran Singh (PW/32) is not sustainable. The trial court has also based finding on the statement of A.K.S. Chowhan (PW/29) who was Inspector, CBI at the time of investigation. Version of this witness is based on investigation after registration of FIR and this Inspector is not acquainted with process of purchase of material in SECL and thereafter processing of bill and payment by cash department, therefore, his version is only confined to seizure of document and his version as expert is not relevant as per Section 45 of the Indian Evidence Act, 1872.

19. The other question for consideration of this court is whether all the appellants agreed to prepare forged document and committed cheating against the institution i.e., SECL and thereby committed offence of conspiracy. It is established from the evidence of prosecution witnesses that number of sections are working in SECL and each section has its own work. Inspection is related to purchasing department and daily receipt register is prepared only after inspection of the case. Once daily receipt register and inspection report are submitted with bill to bill passing department, the department starts process for passing the bill bonafidely and thereafter, it is sent to cash department for preparation of cheque.

20. From the entire evidence it is not established as to who really opened the account in the name of National Trade Centre and who has withdrawn the amount, therefore, it cannot be said that each department has done illegal act for benefit of unknown person. There is nothing on record to say that any of the appellant was connected with the person who opened the account and withdrew the amount, therefore, conspiracy as defined in Section 120-A of the IPC is missing in the present case. If misconduct is done within institution by any of the officer, institution is always free to take action against erring officer/employee, but in absence of evidence of criminal mind set up, liability for criminal act cannot be fastened. Again, if any pecuniary loss is sustained by the institution for the act of any of the officer/employee, recovery can be made against him by the department/institution, but in absence of strict proof of criminal act, they cannot be convicted.

21. On over-all assessment of the evidence, charge of cheating/conspiracy/forgery is not established. It is also not established that any of the appellant obtained for himself or for any other person, any valuable thing or pecuniary advantage while holding office as public servant. Fact constituting offence under Section 13(1)(d) Prevention of Corruption Act, 1988 read with Section 120-B of IPC is also not established.

22. Accordingly, all the appeals are allowed. Conviction and sentence passed by the trial Court is set aside. All the appellants are acquitted of the charges framed against them. It is reported that all the appellants are reported to be on bail. Their bail bonds shall continue for further period of six months in view of Section 437-A of the Cr.P.C.

Sd/-
(Ram Prasanna Sharma)
Judge

Raju