IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Government Appeal No. 53 of 2005

State of Uttaranchal ..... Appellant

Vs.

Matbar Singh Rawat and another ..... Respondent

Present:
Mr. S.S.Adhikari, Deputy Advocate General, assisted by Mr. P.S.Uniyal, Brief Holder for the State/appellant.
Mr. Sandeep Kothari, Advocate for the respondents.

JUDGEMENT

Hon'ble Ravindra Maithani, J.(Oral)

The present appeal is preferred by the State against the judgment and order dated 19th July, 2001, passed in Criminal Case No 401 of 1996, State vs. Matbar Singh and another by the Court of learned Chief Judicial Magistrate, Pauri Garhwal (for short, "the case"). By the impugned judgment and order, the respondents Matbar Singh Rawat and Pushpa Nand Nautiyal were acquitted of the charge under Section 409 IPC. During the pendency of the appeal, a report was received that the respondent no. 1 Matbar Singh Rawat has died, therefore, the appeal was abated against him. It proceeded against respondent no. 2 Pushpa Nand Nautiyal.

2. Facts necessary to appreciate the controversy briefly stated are that a primary school building for village Anmdhar Talli was to be constructed in the year 1989-1990-. For this purpose, Rs.90,000/- were allotted and it was to be released in the joint accounts of village Pradhan and Principal of the school. According to the prosecution case, despite

entire amount having been released, the building was not constructed on time. Complaints were received and an inquiry was conducted. When the measurement was got done, it was found that the total work of Rs. 56,300/-only was done and thereby Rs. 33,700/- were misappropriated. Notices were given to the respondents and finally PW3 Gurudas Chandra Arya lodged a report to the Police on 20th September, 1993. This report was lodged by the Police on 25th March, 1994 and a case was registered against the respondent, Pushpa Nand Nautiyal, the then Principal of the school as well as the then village Pradhan Matbar Singh Rawat, against whom, the appeal stood abated.

3. The matter was investigated and charge-sheet was submitted against the respondent and Matbar Singh Rawat under Section 409 IPC. On 26.11.1996, charge under Section 409 IPC was framed, to which, the respondent denied. The specific charge against the respondent is that despite having received Rs. 90,000/- for the construction of the building, they utilised Rs. 56,300/- only and thereby misappropriated Rs. 33,700/-.

4. Prosecution examined ten witnesses, namely, PW1 M. B. Goswami, PW2 Hukam Singh, PW3 Gurudas Chandra Arya, PW4 Girish Singh, PW5 Mahiman Singh, PW6 Dinesh Chandra Mamgain, PW7 Dinesh Chandra, PW8 HIC Hanif Khan, PW9 Jagdish Pass and PW10 Pooran Chandra Joshi. Thereafter, the respondents were examined under Section 313 of the Code. The respondents denied the prosecution case. Matbar Singh Rawat, the then Village Pradhan had stated that some constructions, which they raised, had been erased due to heavy rain. The grounds were levelled. These all were not valued by the prosecution and

whatever material were on the spot was also not valued. He also denied the prosecution case.

5. By the impugned judgment and order, respondents Matbar Singh Rawat and Pushpa Nand Nautiyal were acquitted of the charge levelled against them. Aggrieved by it, the State preferred this appeal.

6. Learned State counsel would submit that a joint account of the Village Pradhan and Principal of the School was opened. In which, in three instalments, total Rs. 90,000/- were deposited for the purpose of construction of the school building. But, the school was not constructed on time. When a complaint was made and an inquiry was conducted, it was revealed that the total released amount was not utilised by the respondent and Matbar Singh Rawat and they misappropriated Rs. 33,700/- It is argued that the witnesses have proved the factum of the money released in the joint account; it is proved that the work which was done by the respondent and Matbar Singh Rawat was Rs. is 56,300/- only. Hence, the prosecution has been able to prove the case beyond reasonable doubts. The respondent ought to have been convicted for the charge, but the learned court below has committed an error, therefore, it is argued that this appeal deserves to be allowed.

7. On the other hand, learned counsel for the respondent Pushpa Nand Nautiyal would submit that all the three instalments were not given during his tenure as a Principal of the school; the first installment was released on 23rd January, 1990, when Kalam Singh Bhandari was the Principal and this amount had been withdrawn on the

next date i.e. on 24th January, 1990. It is argued that even the prosecution has not stablished that the amount which was released during the tenure of the then Principal Kalam Singh Bhandari had been properly utilised. Learned counsel also raised following points in his arguments:

(i) The villagers never complained against the respondent. Whatever was informed by the villagers was a request for completion of the school building. Not only this, even PW4 Girish Chandra categorically proved that the work was done with utmost honesty by the respondent.

(ii) The construction was erased due to heavy rain on 15th July, 1990 and the next date i.e. on 16th July, 1990, a resolution was passed by the villagers for extra money so that the construction may be completed.

(iii) The engineer, who made the assessment or the valuation, has not been examined; he has not commented about the nature of constructions, its measurement or as to whether any construction had fallen in the absence of it; it is argued that the case cannot be termed to be proved.

8. The respondent Pushpa Nand Nautiyal is charge-sheeted under Section 409 IPC. This Court will examine the evidence to the extent it relates to Pushpa Nand Nautiyal only, because, as stated, the appeal against Matbar Singh Rawat has already been abated.

9. Section 409 IPC provides punishment for criminal breach of trust by a Public servant. What is criminal breach of trust is defined under Section 405 IPC. First and foremost in such cases entrustment of the property has to be stablished, thereafter it is also to be established and proved beyond all reasonable doubts that the property has been

dishonestly misappropriated or converted for own use or dishonestly used or disposed of in violation of any direction of law.

10. Rs. 90,000/- were deposited in a joint account of the Pradhan of the Village and the Principal of the School, this fact is not much disputed. There are witnesses, who have spoken about it. PW1 M.G.Goswami is the person, who has proved one of his report with regard to valuation and condition of the building. This witness has proved Exts. A1 and A2. Interestingly, the valuation report was not prepared by this witness, but according to him, it was prepared by his Junior Engineer. This Ext A-1 simply gives cost of some work done. For example, for earth work and excavation, the total value is given 3005.03, for sight development, at the end of it, Rs.3000/- has been assessed and total valuation is assessed is Rs.56,700/-. This witness, PW1 M.G.Goswami has countersigned this paper Ext. A-1. According to him, based on this paper, he prepared a report which is Ext. A-2. It gives much details about the construction. This Ext.A-2 also reports that a slab was laid on the varandah, but RCC slab was not laid on the two rooms. There are other observations as well. This Court will further examine the evidence of PW1 M.G.Goswami, but before that, it may be seen as to what the other witnesses have stated. PW 2 Hukam Singh is an employee in the Basic Education Department, who has stated about the release of the money for construction of the school.

11. PW3 Gurdas Chandra Arya is the Basic Shiksha Adhikari, who lodged the report. According to him, he had given notices. This witness has proved the office records with regard to release of the money

as well as a report about the condition of the construction given by some authority on 20th July, 1990, which is Ext-A-7, which reveals that on that date only 70% of the work was done. According to PW3 Gurdas Chandra Arya valuation of the work was done through some Engineers. It was revealed that the work of Rs.56,300/- was done and Rs. 33,700/- was misappropriated.

12. PW4 Girish Singh is a person, who, in fact, worked in the construction of the school. He has been categorical that villagers had requested to the authorities about non-completion of the work. He has proved Ext.12-A, a representation of the villagers. According to it, the villagers had complaints that the school is not yet completed and the Gram Pradhan says that he his short of money, therefore, the matter may be looked into. This Ext 12-A is not a complaint. It is a kind of request giving the factual narration that according to the Gram Pradhan, due to paucity of funds, the constructions could not be completed. With regard to construction and quality of constructions, this Court will examine, this witness along with PW1 M.G.Goswami.

13. PW5 Mahiman Singh is another employee of the Education Department. He has proved certain documents with regard to release of money and other documents pertaining to guidelines relating to release of money. PW6 Dinesh Chandra Mamgain, is the Bank Manager, who has stated about the joint account and the money withdrawn from it. PW7 Dinesh Chandra Lohani has also stated relating to some records about the release of the money. PW8 Hanif Khan has proved the chik FIR and entry in the General Diary. PW9 Jagdish Das is the first investigating

officer, and PW10 Pooran Chandra Joshi completed the investigation and submitted the charge-sheet Ext A36.

14. As stated, it is not in dispute that Rs.90,000/- were provided by the Government for the construction of the school building. It is also not in dispute that the construction was done. The only question is whether the amount given for construction of the school was utilised in the manner provided for it or whether the respondent Pushpa Nand Nautiyal misappropriated the money? This is the short question for scrutiny. The basis for it is the valuation of the work and for this purpose, the prosecution has produced PW1 M.G.Goswami. He is the witness, who did not prepare the valuation report Ext A-1. In page 3 of his examination, he admits that the valuation was done by his Junior Engineer. Who is this junior engineer? What is the basis for its valuation? What were the measurements on the basis of which, the cost or the value was evaluated? There is no evidence to it. PW1 M.G. Goswami admits that he prepared the report Ext A-2, on the basis of the valuation report Ext A-1. The cross-examination of this witness makes a very interesting reading. He does not know whether any levelling of the ground was done or not; he has no experience of construction and the construction work relating to their department, according to this witness is undertaken by PWD department. The last sentence of this witness, in fact, contradicts the valuation report Ext A-1. In the last sentence, at page 3, PW1 M.G.Goswami tells that if any amount is spent on site development, it is not included in this report. This statement is palpably false. Because, as stated, in Ext A-1, the first entry is with regard to earth work and

excavation and the last entry is the site development and the amount for this purpose has been assessed as Rs.3050/- and Rs.3000/- respectively. What is its basis? The measurements are not shown and the maps are also proposed. It is a kind of weak evidence.

15. The defence case is that due to heavy rains, in fact, the construction was erased and an additional request was sent by the villager. PW3 the informant, in page 6 of his statement from para 2 onwards, categorically admits that on 16.07.1990, the Educational Samiti of Primary School Aamdhar Talli sent a proposal saying that the walls, roofs and shuttering materials had been destroyed during heavy rains. According to this witness, the resolution also demanded enhancement of the wages. In next page No.7, this witness admits that based on this, a recommendation was made for additional grant of money for completion of the building. Now, this is prosecution's witness. He is informant. He admits that such a proposal was received from the Education Samiti of the village that construction has been erased due to heavy rains. PW3 Gurudas Chandra Arya in page 7 admits that they had demanded additional funds for construction. It means that the Education Department, at that point of time believed the version of the Educational Samiti of the village that construction had fallen due to heavy rains. If it is so, what was the cost of construction which had fallen? Has it been assessed? Absolutely not. Why? It makes the prosecution case much weak.

16. A step ahead if the evidence of PW4 Girish Singh is examined, this witness, in fact, demolishes the prosecution case. He

proved Ext 12-A, a representation given by the villagers, which has already been discussed. In this representation, villager had simply drawn the attention of the authorities that due to paucity of funds, the school building could not be completed. It is not a complaint. In his cross examination, PW4 Girish Singh categorically says that he also worked in the construction of the school. He admits that once the construction was raised, it demolished due to heavy rains. PW5 Mahiman Singh is another Department witness. At page 7 at beginning lines, he claims that in defence to the notices the respondents claimed that the construction had fallen due to rains. This witness himself had proved notices given to the Head Master and the Principal, which were dated as 27.03.1993 and 29.04.1993 Ext. A-18 and A-19 respectively (Page 3 para 2 of the examination of PW5 Mahiman Singh). Now, if notices were given for the first time in the year 1993, how can it be said that the Village Samiti would generate a proposal in the year 1990, which has been admitted by PW2 Gurdas Chandra Arya. Village Samiti had given the proposal on 16.07.1990. According to PW2 Gurdas Chandra Arya, additional funds were demanded. They were never released. A valuation was done which was not based on any document, as such. There is no map of construction. No measurements done and PW1 M. G. Goswami is ignorant about the construction work. He simply signed the valuation report. These all facts make the prosecution case much doubtful.

17. There is another aspect of the matter. It is admitted that the instalments for the constructions was to be released after verification by the school authorities. Has it been done? Prosecution has not even tried to

prove it. There is a witness PW5 Mahiman Singh. He has been asked about it. In page 5 bottom and page 6 of his statements, this witness says that after the verification, only the amount was to be released. There is no such verification. This witness PW5 Mahiman Singh speaks of a report Ext A-7, but it is a report about position of construction on 20th July, 1990, which says 70% of the work was done till then. Before that, entire money had already been paid. PW3 Gurudas Chandra Arya himself has admitted that a proposal dated 16.07.2020 was received for village education samiti for additional funds on the ground that the construction has fallen due to heavy rains. After that additional budget was demanded by PW3 Gurudas Chandra Arya. As stated it makes prosecution case much doubtful.

18. Having considered the rival submissions and under the facts and circumstances, this Court is of the view that the prosecution has not been able to prove the charge under Section 409 IPC against the respondent Pushpa Nand Nautiyal and the learned court below did not commit any error in acquitting him. There is no force in the appeal and it deserves to be dismissed.

19. The appeal is dismissed.

20. Let a copy of this Judgement be sent to the learned Court below for compliance.

(Ravindra Maithani, J.)
30.12.2020

Kaushal