IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 31.08.2020

\+ **CRL. A. 72/2017**

RAJESH KUMAR SHARMA @ RAJESH KUMAR .....Appellant

Versus

C.B.I. ..... Respondent

Advocates who appeared in this case:

For the Appellant: Mr. Kamlesh Kumar, Advocate.

For the Respondent: Mr. Anupam S. Sharma, SPP for CBI with Mr. Prakarsh Airan and Ms. Harpreet Kalsi, Advocates.

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HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The appellant has filed the present appeal impugning a judgment dated 29.11.2016, whereby the appellant and his brother, Ravinder Kumar Sharma, were convicted of an offence under Section 120B read with Sections 420/467/468/471 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The appellant also impugns the order on sentence dated 26.12.2016, whereby he was sentenced to rigorous imprisonment for a period of three years with a fine of ₹1,00,00,000/- for the offences for

which he was convicted. It was further directed that in default of payment of fine, the appellant would undergo simple imprisonment for a further period of six months.

2. The appellant's brother Ravinder Kumar was an employee of RITES Limited (hereafter 'RITES'). RITES is a Public Sector Undertaking under the Ministry of Railways and is engaged in providing consultancy in transport areas, quality assurance in India and abroad and export of rolling stock/locomotives to third world countries. Ravinder Kumar was working in the Accounts Department of the said company and the Trial Court found that he had, in conspiracy with the appellant, diverted funds from RITES/RITES CPF Trust for their personal gains.

3. The appellant and his brother Sh. Ravinder Kumar (since deceased) were prosecuted pursuant to registration of RC 39(A)/2009 registered with CBI/ACB Delhi. The said report was registered on 21.08.2009, pursuant to a complaint made by Sh. Rajesh Agarwal, General Manager (Vigilance), RITES. The said complaint dated 21.08.2009 (Ex.PW1/A), stated that RITES has its own Provident Fund Trust (CPF Trust) formed under the "Employees' Provident Funds and Miscellaneous Provisions Act, 1952", for the benefit of its employees. The said CPF Trust invests its corpus/funds in Central/State/PSE Securities and also lends them to its various members (employees of RITES) for purchase of property, construction of property and their other needs. The Board of Trustees of the said CPF Trust consists of ten trustees and its affairs are looked after in-

house through designated staff. The complainant alleged that Sh. Ravinder Kumar, who was at that time working as Assistant Manager (Accounts), was entrusted with looking after the work of the said CPF Trust from the early 90s till 2008. He was responsible for processing of applications for loans/advances made by the employees and would also prepare cheques for disbursement of the amounts. The trustees are also authorized signatories of the CPF Trust. It is stated that for withdrawal of funds from the CPF Fund, signatures of two trustees – one nominated from the management and the other elected from the employees – are mandatory. It was stated in the complaint that one of the employees of RITES, Sh. Dhananjaya Murthy, Manager (Civil) Employee No. 9577 who was posted at Bangalore, had reported that there was an excess debit of ₹2,20,000/- in his PF Account during the financial year 2006-07. He had sent number of complaints but no remedial action was taken. Subsequently, on scrutiny it was found that the said payment was made by a cheque issued from a cheque book that was in custody of Ravinder Kumar. It was alleged that no request was made by the concerned employee (Sh. Dhananjaya Murthy) for withdrawal of funds from his PF Account, yet the same was processed and disbursed by a cheque that was credited into the bank account of Sh. Rajesh Kumar Sharma (the appellant herein) maintained with HDFC Bank, KG Marg, New Delhi.

4. It was alleged in the complaint that further investigations were conducted and it was found that Ravinder Kumar had transferred an aggregate sum of ₹39.49 lacs to his account from the RITES CPF/

RITES during the years 2003 to 2009 and a further sum of ₹86.90 lacs had been diverted from the accounts of the RITES CPF/RITES into the bank account of his brother Sh. Rajesh Kumar Sharma (the appellant herein).

5. It is the prosecution's case that Sh. Ravinder Kumar had, in conspiracy with his brother—Rakesh Kumar Sharma (the appellant herein) and other persons, diverted funds from RITES Limited/RITES CPF Trust to his account, the account of his brother (the appellant) and other persons including his wife.

6. The *modus operandi* to divert the funds lying to the credit of various employees was by getting the cheques signed by both the trustees (one nominated by RITES and the other nominated by the employees) after securing an approval from the competent authority to disburse a loan/advance to the concerned employee. Sh. Ravinder Kumar would then inform the concerned office/branch of RITES located outside Delhi by sending a fax confirming that the loan/advance had been sanctioned and advising that payment to the concerned employee could be made. Pursuant to such confirmations, payments were made by the concerned office/branch of RITES. The corresponding cheques were issued from RITES CPF Trust in the name of RITES, but the said cheques were tampered/altered to reflect the name of Rajesh Kumar or Rajesh Kumar Sharma as the payee. These cheques were then deposited into the accounts of the appellant. In some cases, Sh. Ravinder Kumar used the names of employees whose names were identical to their names—Rakesh Kumar, Rajesh

Kumar Sharma or R.K. Sharma and the cheques prepared in these names were deposited into the bank account of the appellant herein.

7. The prosecution examined thirty-four witnesses to establish its case. Sh. Ram Prasad Jain, Officer of Punjab and Sind Bank was examined as PW5. He testified as to the Bank Account No. 10817 maintained by the appellant with Punjab Sind Bank. Similarly, Sh. Chander Bahadur, Branch Manager of HDFC Bank was examined as PW7 and he testified as to the Bank Account Nos. 37246 and 01375 maintained by the appellant with HDFC Bank. Sh. Satender Pal Singh, Senior Manager, Canara Bank was examined as PW26 and deposed regarding Bank Account No. 12826 maintained by the appellant with Canara Bank.

8. The prosecution established that a cheque bearing No. 603996 for a sum of ₹4,72,021/- was credited in the account of the appellant maintained with Punjab and Sind Bank (Account No. 10817). The said amount was intended for settlement of dues of Late Sh. Arup Saha. CBI also established that the following six cheques were deposited in Account bearing No. 0217100037426 maintained by the appellant with HDFC Bank: (a) Cheque No. 210392 for a sum of ₹9,98,162/-; (ii) Cheque No. 288887 for the sum of ₹10,00,000/-; (iii) Cheque No.288987 for a sum of ₹1,86,615/-; (iv) Cheque No.387380 for a sum of ₹2,20,000/-; (v) Cheque No.632138 in the sum of ₹6,95,000/-; and (vi) Cheque No.648102 amounting to ₹1,18,898/-. These cheques were intended to be paid to its employees but were diverted by the accused into the account of the appellant. CBI also established that the

following four cheques, which were intended for payments to other employees of RITES were deposited in Account bearing No. 02171600001375 maintained by the appellant with HDFC Bank: (i) Cheque No. 632037 for ₹2,50,000/-; (ii) Cheque No. 632094 for the sum of ₹4,46,972/-; (iii) Cheque No. 632202 for a sum of ₹3,17,293/-; (iv) Cheque No.632037 in the sum of ₹7,52,947/-.

9. It was also brought in evidence that the following 11 cheques were deposited in Account bearing No. 12826 maintained by the appellant with Canara Bank: (i) Cheque No.647815 for a sum of ₹3,50,000/-; (ii) Cheque No. 648024 for a sum of ₹4,60,000/-; (iii) Cheque No.647836 for a sum of ₹43,075/-; (iv) Cheque No.690014 for a sum of ₹2,18,965/-;(v) Cheque No.690063 for a sum of ₹3,00,000/-; (vi) Cheque No.001182 for a sum of ₹4,00,000/-; (vii) Cheque No.000198 for a sum of ₹12,65,000/-; (viii) Cheque No.288870 for a sum of ₹2,00,000/-; (ix) Cheque No.288982 for a sum of ₹3,25,305/-; (x) Cheque No.603906 for a sum of ₹8,00,000/-; and (xi) Cheque No.632041 for a sum of ₹22,304/-.

10. The CBI also established that some of the cheques, which had been issued in favour of RITES were subsequently altered/modified in favour of the appellant. Sh. Ram Niwas, Assistant Manager (Civil), RITES was examined as PW21. He testified that various cheques signed by him were issued in favour of RITES and not in favour of the appellant. However, the same were tampered/modified to reflect the appellant as the payee. These cheques were then deposited in the bank accounts maintained by the appellant. His testimony clearly

established that the cheques in question, which were signed by him, were tampered with.

11. Ms. Rita Handa, GM, Finance RITES Limited was examined as PW 12. She also testified that her signatures were fabricated by the accused at various places. Sh. Dhananjaya Murthy, Assistant Manager, RITES was examined as PW13. He testified that his CPF Account had been debited but he had not received any intimation in that regard.

12. The learned counsel for the appellant did not dispute that funds were illegally diverted from RITES/RITES CPF into the stated bank accounts maintained in the name of the appellant.

13. Mr Kamlesh Kumar, learned counsel appearing for the appellant, assailed the impugned judgment, essentially, on four fronts. First, he submitted that the acts pertaining to forgery, fabrication and diversion of funds from RITES Limited/RITES CPF Trust were allegedly done by Ravinder Kumar (brother of the appellant) and not by the appellant. He submitted that the only material on the basis of which the appellant has been convicted is that the cheques, which were to be issued to various employees of RITES Limited, were credited in the bank accounts maintained in the name of the appellant. But there was no evidence to establish that the said bank accounts had been opened or operated by the appellant. He stated that no witness had been examined to prove that the bank accounts were opened by the appellant. He contended that the prosecution had merely exhibited the bank statements, which reflected certain entries in the bank

accounts and did not establish that the appellant was culpably involved in any manner.

14. Second, he submitted that there was no incriminating material to establish that the appellant had conspired with his brother for committing the offence. He submitted that it was not established that there was meeting of minds in respect of commission of offences punishable under Sections 467/468/471 of the IPC and therefore, the appellant could not be convicted of conspiracy in respect of the said offences.

15. Third, he submitted that the essential ingredients of an offence punishable under Section 420 of the IPC were not established, inasmuch as, there was no evidence to indicate that there was any cheating; or that the appellant had dishonestly induced delivery of any property; or there was any *mens rea* on the part of the appellant.

16. Fourth, he submitted that there was no disclosure statement of the appellant, which showed his involvement in the present case. He submitted that, therefore, there was neither any direct evidence nor any disclosure statement to establish that the appellant was part of the alleged conspiracy to fraudulently withdraw funds from RITES Limited/RITES CPF Trust and divert the same for their benefit.

17. In addition to the above, Mr Kumar had also contended that the appellant had not been properly represented before the Trial Court. He submitted that the same counsel had represented the appellant and his brother Ravinder Kumar and none of the material witnesses had been

cross-examined. According to him, the appellant was convicted without a proper defence and his conviction was the result of an unfair trial.

18. During the course of the arguments, Mr Kumar had also sought to challenge the jurisdiction of the Special Judge to try the appellant. He had submitted that the Special Judge, CBI could only try offences in respect of specified employees. He submitted that in case of allegations of conspiracy, other persons could also be tried but not after the prosecution against the specified employee had abated. He contended that in this case, Sh. Ravinder Kumar had expired. However, this argument was not pressed as Sh. Ravinder Kumar (appellant's brother) had expired after the impugned judgment was delivered and not prior thereto.

19. The principal contention urged on behalf of the appellant was that there is no material to establish that the bank accounts used to encash the funds diverted from RITES Limited/RITES CPF Trust were operated by the appellant. A closer examination of the evidence indicates that the said contention is unmerited. The officials of the concerned banks (PW5, PW7 and PW26) had testified as to the bank accounts opened in the name of the appellant. PW5, Sh. Ram Prasad Jain (The officer from Punjab and Sind Bank, Naya Bazar, New Delhi) had testified as to the account opening form (Ex.PW5/2) pertaining to the appellant's account with Punjab Sind Bank. The said account opening form indicates that it is signed by the appellant and that the account is to be operated by him singly. He had also testified

as to the bank statements, which indicate not only deposits of funds diverted from RITES Limited/RITES CPF Trust, but also several withdrawals. In addition, there were cash deposits as well as cash withdrawals. Since the said account is in the name of the appellant and he alone could operate it, there is little doubt that the same was, indeed, operated by the appellant.

20. Similarly, Sh. Chander Bahadur, Branch Manager, HDFC Bank, Nai Sarak Branch, Chandni Chowk, Delhi was examined as PW7. He had also testified as to the account opening forms (Ex.PW7/5 and Ex PW7/12) for the two accounts (A/c no. 0217100037426 and A/c no. 02171600001375). The said account opening forms bear the signatures of the account holder as well as his photograph. Apart from the above, the account opening documents also include the self-attested copy of the appellant's PAN Card. He had also testified that the first deposit made for opening the bank account no. 02171000037246 was by a cheque drawn on Punjab and Sind Bank from Account No. 10817. It is material to note that this is the appellant's account with the Punjab and Sind Bank and PW5 had testified to opening of the said account.

21. Sh. Satender Pal Singh, Senior Manager, Canara Bank had deposed regarding the bank account opened in the name of the appellant with Canara Bank. He had also testified as to the account opening form (Ex.PW26/5). The photograph of the appellant was also affixed on the said form. In addition, he had produced the card bearing the specimen signature of the appellant.

22. It is also material to note that the evidence provided by the bank officials had been specifically put to the appellant while recording his statement under Section 313 of the Cr.PC. His response to all the questions was either that he cannot say or that it is a matter of record. Question no. 96 was put to the appellant, wherein he was asked regarding the account opening form bearing SB 07703200757 of Sh. Rajesh Kumar having mobile no. 9312666452, and whether it was of HDFC Bank, Chandni Chowk (exhibited as Ex.PW7/12). The said account was opened on the initial payment of ₹10,000/- through a cheque bearing 334615 drawn on HDFC Bank, Chandni Chowk Branch. Against the said account opening form, the customer was given an SB Account No. 02171600001375 with Customer ID 7006044 and the same bears the signature of the customer on the reverse side. In response to the said question, the appellant responded that his answer was same as question no.1, that is, it is a matter of record. Similar questions were also put to the appellant regarding opening of other accounts to enable him to respond to the evidence against him.

23. A plain reading of his statement under Section 313 of the Cr.PC indicates that the appellant did not dispute that the bank accounts, to which the witnesses had testified, were his or that the same were not opened or operated by him. His responses to evidence in regard to opening of the accounts, remained the same – that it was a matter of record or that he couldn't say.

24. In view of the above, there is no doubt that the bank accounts in question opened in the name of the appellant were operated by his signatures. Any doubt that could have been possibly entertained – although there is no reason to do so – was put to rest by the appellant's response to question no. 591. He was asked whether he had anything to say. In response, he admitted that he was working as a commission agent and was receiving a commission of 2% for encashing the cheques. Question no.591 and his response is set out below:

> "Q-591 Have you anything else to say?
>
> Ans. Yes. I am innocent and have been falsely implicated in this case. I was working as a commission agent and was getting two percent (2%) commission for encashing the cheques. I have done nothing wrong as these types of business is widely accepted in the business market in the locality of Karol Bagh, Sadar Bazaar and Khari Babri area and same things have been disclosed in my disclosure statement before the I.O., But, the I.O. has not gone through the facts of the case. It is surprised to the see that the I.O. had not enclosed my disclosure statement in Charge-Sheet."

25. In the light of the evidence led by CBI, there is little doubt that the accounts maintained in the name of the appellant were being operated by him. In the event there were any special circumstances in the knowledge of the appellant to dispel the same, it was necessary for the appellant to have led evidence in this regard. Once it is established that the accounts operated in the name of the appellant were opened pursuant to forms on which his photograph was affixed and on the

basis of his self-attested documents; it must be accepted that the account was being operated by the appellant. The prosecution had discharged its burden of proof in this regard. If the said accounts were being operated by his brother, as was suggested during the course of arguments, it was necessary for the appellant to state so and lead evidence to that effect.

26. It is also relevant to note that none of the witnesses who had deposed as to the said accounts were cross-examined. No suggestion was put to them that the documents brought in evidence bearing the appellant's signatures were either fabricated or forged and they did not bear his signatures. Further, the appellant also did not lead any evidence to dispute the same. In his statement under Section 313 of the Cr.PC, he candidly admitted that he was encashing the cheques in his normal course of activity for a commission at the rate of 2%.

27. The contention that the prosecution had failed to establish a conspiracy between the appellant and his brother, is equally unpersuasive. It is well accepted that in most cases direct evidence for establishing meeting of minds of two or more persons may not be available. However, the same can be inferred by circumstantial evidence. In the present case, the fact that the funds were diverted into the bank account of the appellant and had been withdrawn thereafter, is sufficient to establish that the appellant was acting in consort with his brother in commission of the offences for which they were charged. He cannot escape the inference that he was fully aware of his bank accounts and thus, would have been fully aware of the diversion

of funds. There was no occasion for RITES/RITES CPF Trust to issue any cheques in favour of the appellant. The fact that such cheques had been deposited in his accounts was clearly indicative of the fact that certain false documents would have been made to wrongfully obtain the said cheques. This Court is also of the view that the offence of forgery and creating wrongful documents to divert the funds from RITES/RITES CPF into the account of the appellant constitutes a single chain of acts involving the commission of the offences punishable under Sections 467/468/471 and Section 420 of the IPC. The appellant has been a vital link in this chain of acts and therefore, the decision of the Trial Court to convict the appellant as a conspirator for commission of these offences cannot be faulted.

28. Mr Kumar also contended that an offence of such nature could not have been committed without involvement of other officials of banks and higher rank officers of RITES/RITES CPF. The said contention is merely speculative as there is no evidence to establish the same. As noticed above, none of the witnesses were cross-examined on this aspect. No such suggestions were put to them.

29. The contention that the necessary ingredients of an offence under Section 420 of the IPC have not been established is also unpersuasive. Indisputably, RITES/Trustees of RITES CPF had been deceived by wrongful documents to issue funds, *inter alia*, in the name of the appellant. The appellant's brother, Ravinder Sharma, was bound to protect the interests of RITES/RITES CPF as an employee of RITES. He had cheated the said entities with full knowledge that

wrongful loss would be caused to them. The appellant has been convicted under Section 120B of the IPC as being a party to the said conspiracy with his brother. This Court finds no infirmity with the decision of the Trial Court in convicting the appellant for offences punishable under Section 120B read with Sections 420/467/468/471 of the IPC.

30. The appeal is unmerited and is, accordingly, dismissed.

VIBHU BAKHRU, J

AUGUST 31, 2020
RK