IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No.D-160-DB of 2014
Date of Decision: 08.03.2022

State of Haryana **...** Appellant

versus

Shamshad Khan and another **...**Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Ankur Mittal, Addl.A.G, Haryana with
Mr. Saurabh Mago, AAG, Haryana
for the appellant.

Mr. Lekh Raj Sharma, Advocate
for the respondents.

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<u>RITU BAHRI, J.</u>

The State has come up in appeal against the judgment and order dated 30.11.2012 passed by the learned Special Judge, Ambala (herein after to be referred as 'the trial Court'), whereby respondents were acquitted of the charges framed against them by giving them benefit of doubt.

The case set up by the prosecution is that two complaints were made, one by constable Tejbir Singh against HC Shamshad Khan regarding embezzlement of government funds by forging the bills and another complaint regarding corruption in the Govt. Railway Police, Ambala City and the allegations were leveled therein, which reads as under:-

Charge no. 1:- Constable Tejbir Singh, posted as driver on the vehicle of CIA Staff Ambala had met with an accident and his leg was broken. During his hospitalization, he spent Rs. 25,000-30,000/- on the repairs of said vehicle and did not obtain any amount from the department but Shamshad, MTO got prepared forged bills of Rs.35,000/- for repair of the vehicle from the mechanic and himself misappropriated the said amount whereas constable Tejbir Singh did not obtain any amount for repair of the vehicle

Charge No. 2:- MTO, Ram Sarup handed over box of condemned articles, tochan and oil extracting machine etc. in the charge of MTO Harnek who further handed over the charge of those articles to Shamshad Khan, but he (Shamshad) prepared forged bills regarding purchase of said old articles and repair of oil extracting machine and misappropriated the amount.

Charge no.3:- He prepared forged bills regarding purchase of tarpaulin for government truck No. HR-01-6456 and repair of other articles and misappropriated/embezzled the government funds.

Charge No. 4:- He prepared forged bills of 17/18 CBZ motor cycles and embezzled the government funds.

Charge No. 5:- He prepared forged bills regarding purchases of diesel for electricity generators and their repair, installed in the office and residence office of S.P. GRP and misappropriated the amount.

Charge No. 6:- He prepared forged bills regarding repair of new Swaraj Mazda vehicles etc though it were within guarantee period, from the concerned firm and misappropriated the amount. He prepared forged bills of Rs. 10,04,750/- but did not purchase any article and got signed those bills in routine from the higher officers and sometimes forged their signatures.

Charge No. 7:- He prepared forged bill No. 8312 dated 22.3.2004 for

Rs. 49,500/- regarding installation of tiles on the roof of the office of SP, GRP, and embezzled the said amount and this work was done by Jaidev Bakshi Clerk, though not even a single tile was installed. Six months prior to that also, Rs. 50,000/- were recovered through forged bills for installation of tiles on the roof, though 8/9 years ago, the office of SP, GRP, was constructed by the Railways department and the tiles were installed /affixed at that time and that record is available with railways department.

Charge no. 8:- He got prepared forged bills from M/s Nain Enterprises, Ambala City and M/s Kaushal Traders for Rs.49,940/ each (total about Rs. One lac) regarding installation of tiles on the roofs of both barracks of Police Lines, GRP, but actually no tiles were affixed there and thus, misappropriated the said amount.

Charge no. 9- The amount of Rs. 49,520/- was embezzled through forged/bogus bill No. 302 in June 2004, regarding construction of boundary wall in GRP lines

Charge no. 10- The amount worth lacs of rupees was embezzled through forged bills regarding installation of solar light in GRP Lines Ambala and office of SP, Ambala Cantt, through no solar light was installed.

Charge no. 11- Amount of thousands of rupees was embezzled in February 2004 regarding installation of polythene tarpaulin in canteen and cobbler shop of GRP lines, but purchase of tarpaulin was made and if purchased, then it could upto 20 kg. only.

Charge No. 12- In February 2004, the amount was embezelled vide two forged bills of Omega Sales, Ambala Cantt regarding installation of tiles in the orderly room of GRP lines though only 350 tiles were already installed there some time ago.

Charge No. 13:- In March 2004, the bills worth Rs. 30,000/ were drawn through forged bills regarding construction of pucca path from GRP lines to GRP quarters, though that path was already got construction two year ago.

Charge no. 14:- In March 2004, thousands of rupees were embezzled by showing the expenditure to be incurred on installation of iron grill in SP office, GRP though that grill was got installed by the railways department.

Charge no. 15:- The amount was embezzled preparing forged bills five times regarding purchase of iron box for keeping the articles in MT branch, GRP lines, though the box already lying there was given to the In-charge at the time of handing over of the charge every time.

Charge no. 16- The amount was misappropriated by sale of iron grills weighing about 8/9 quintals to private person installed by the railways department at the time of construction of office of SP, GRP.

Thus, the accused caused a total loss of Rs 30 lacs to the State exchequer by forging the bills. These firms are fictitious and there is no account of the received amount vide these bills in the record of sale tax and income tax. There is no entry in the registers regarding purchase of new items/articles. The NOC is required to be obtained from the PWD, B&R prior to construction of the building, but AC-4 and THC have got prepared fake/forged seal of SDO, PWD and they have also forged the signatures of some senior officers regarding completion of formalities for recovery of bills. DSP Arun Kumar was transferred on 10.01.2004 but his signatures are forged by the THC on 17.1.2004 on the bills of survey committee and other documents. Similarly, signatures of other officers who were transferred and the DSP Hissar are forged on several bills of survey committees.

During inquiry by CM Flying Squad, Haryana, the allegations leveled in all the charges except charge no. 4, 10 and 16 were found to be true the correct. Besides these allegations, some other irregularities were also found and thus, HC Shamshad Khan during his posting as MTO/THC in Govt. Railway Police, Ambala committed embezzlement of total sum of Rs. 7,81,258/- after forging the bills regarding repair of vehicles and other different construction works. Similarly, THV Shailender Pal also committed embezzlement of the sum of 76,000/- after preparing forged bills regarding different construction works, they both have committed total embezzlement of Rs. 8,57,258/- in criminal conspiracy with Ravi Azad, the then SP, GRP, Ambala Cantt.

On the basis of the inquiry report, the instant case was registered and investigation was set into motion. During investigation, accused HC Shailender Pal Singh and HC Shamshad Khan, were arrested in criminal conspiracy with Ravi Azad, the then SP, GRP, Ambala Cantt. have committed embezzlement/misappropriation government to the tune of Rs 9,51,392/- after preparing fake and forged bills. Ravi Azad the then SP, Railways died on 01.01.2008. HC Shamshad was dismissed from department. After completion of investigation, challan against accused Shamshad Khan and Shailender Pal was prepared and put in the Court for their trial under Section 409, 467, 468, 471, 120-B of the indian Penal Code and Section 7/8/13 of the Prevention of Corruption Act, 1988.

Copies of the challan were supplied to the accused free of costs, as envisaged under Section 208 CrPC.

On finding a prima facie case against the accused, they were charge-sheeted under Sections 409, 467, 471 of the Indian Penal Code and also under sections 13(1)(c), 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act, 1988, to which they pleaded not guilty and claimed trial.

To prove charge against the accused, the prosecution examined as many as 44 witnesses.

This is the entire evidence adduced by the prosecution.

All the incriminating evidence which appeared against the accused was put to them while recording their statement under section 313 CrPC to which they claimed themselves innocent and pleaded false implication. However, they did not lead any evidence in their defence

The trial Court after going through the entire evidence led by the parties acquitted the accused, as firstly the departmental inquiry was held but as against charges No. 4, 10 and 16, no irregularity was found. The prosecution in all examined 44 witnesses in this case. Further there was no documentary evidence worth the name on the file to prove the entrustment of money as detailed in the charge against the accused on the record. None of the prosecution witnesses have deposed anything regarding entrustment of money with the accused and its misappropriation with the criminal intention. The accused were acquitted in the departmental proceedings.

P.W.2 ASI Sujan Singh in his cross examination has stated that it is correct that there is always a committee in the office of S.P may be the SP or the GRP or the SP of the district. The committee which consists of SP, DSP, Inspector and Sub Inspector allows the purchase of any item and only then a single penny can be spent and not otherwise. The amount being spent on repair of the vehicle and repair of the building has been sanctioned by the committee after thoroughly examining the same and after the approval of the said committee.

P.W.39 Arun Kumar, DSP admitted that all the bills were duly signed by the members of the committee including him and approval was then given by the then SP Ravi Azad. No forgery of any kind was brought to their notice regarding forging of his signatures on any bill. The bills issued by Nayan Enterprises of Rs.41,500/- have been signed by him. SP is the only final authority for the purchase of material and disbursement of the amount.

PW26 is the material witness. He stated that he supplied the material to the office of SP Railways after getting the payment of the same. He also stated in connection with the bills Ex P381 to Ex P389 that as and when his quotations were accepted by the SP Railways for supply of building material and for supply of furniture, he supplied the same and furnished bills and received the payment from the office of SP Railways. He handed over the buildings material or the furniture to the committee which approved the same and the payment was made through the in-charge of the committee. The bills are genuine and there has been no manipulation of the single penny in the said bills.

With regard to bills Ex P390 to P419, PW27 Ram Kumar, has stated that he supplied the building material to the office of SP Railways and the quotations were accepted for supply of building material and the bills were furnished and he received the payment. He handed over the building material to the committee. The bills are genuine and there has been no manipulation of the single penny in the said bills.

As regards the bill no. 144 Ex.P110, PW29 has stated that the material was supplied and he received the payment. No cheating was committed with him by any person. The bill Ex.P110 as genuine and there was no manipulation of a single penny.

PW31 also admitted that he received the orders by SP, GRP Ambala to hand over the amount to Shailender Pal to give it to Jaidev Bakshi, who was doing the work of construction of canteen and Bagicha. He never appeared before the SP in the departmental inquiry.

PW32 has recorded the statement of Arun Kumar, DSP, who admitted that the bills have been singed by him after due verification. He also admitted that a constable or HC or ASI have no business to spend any money on anything except when so directed by the committee.

PW33 Surender Singh, JE, PWD, B&R, Ambala Cantt. proved the report Ex.P370 which was prepared by SDO Ram Karan. He stated that the new building was already constructed when they visited the spot. They have given their report of the spot which was not shown by the dealing hand. They have not asked from any member of the committee in this respect. He could not say whether the disputed spot was shown or not. He also could not say that whether the report in question is in respect of the disputable spot or not. No site plan of the spot has been prepared.

PW34 admitted that he supplied material in the year 2003. His quotations were accepted and approved by committee. The receipts, bills and quotations are genuine and there is no manipulation of even a single penny.

After going through the detailed judgment passed by the trial Court, we are of the view that the present appeal deserves to be dismissed as learned counsel for the appellant could not refer to any evidence which was led before the trial Court which could show that the accused committed the fraud. After following the due procedure of law, the accused were acquitted by giving them benefit of doubt. The prosecution failed to prove that the accused were in any manner connected/dealing with the proceedings, when entrustment is not proved. It has come in evidence as well that the material was supplied and all the bills were original and the payment was made to the company/firm after getting approval from the Committee.

Finding no merits, the appeal is dismissed.

(RITU BAHRI)
JUDGE

08.03.2022 **(ASHOK KUMAR VERMA)**
G Arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No