IN THE HIGH COURT AT CALCUTTA

CRIMINAL APPELLATE JURISDICTION

<u>APPELLATE SIDE</u>

Before: Hon'ble Justice Sugato Majumdar

CRA 613 of 2012

Nand Kishore Rai & Anr.

Vs.

State (CBI)

For the Appellant s	:	Mr. Anand Bhandari, Mr. Urgen Lama, Mr. Panthu Rai, Mr. Mayank Bhandari, Ms. Shalini Shah.
For the CBI	:	Mr. Aniruddha Mitra.
Hearing concluded on	:	25.04.2023
Judgment on	:	11.05.2023

<u>Sugato Majumdar, J.:-</u>

The instant appeal is directed against Judgment dated 30.08.2012 and Order of conviction dated 31.08.2012 passed by the Judge Special (CBI) Court, Siliguri, Darjeeling in Special C.B.I Case No. 33 of 2012 whereby the Appellants were convicted under Section 420/468/120B of the Indian Penal Code and read with Section 13 (1) (d) and 13 (2) of Prevention of Corruption Act, 1988.

The Spices Board, Ministry of Commerce, Government of India, introduced a scheme in the State of Sikkim as well as in the district of Darjeeling, West Bengal for providing financial assistance for construction of cardamom curing house for individual cardamom growers (200 kgs capacity). According to this scheme planters who were willing to avail of subsidy under the scheme had to construct curing house in accordance with the standard approved by the Cardamom Board. The latter was to provide financial assistance in the form of subsidy for construction of such curing house. Applications for subsidy were to be submitted to the concerned Assistant Director under whose jurisdiction the plantation was situated. The Assistant Director after conducting spot inspection, may forward the application to the Deputy Director with his own recommendations and remarks. The Deputy Director may also conduct spot inspections, if necessary and accord sanction in eligible cases with the concurrence of the Director.

The Appellant No. 1 was Extension Assistance in the office of the Assistant Director, Spices Board, Kalimpong. He was in charge of the said office from 19.06.1990 to 13.09.1990 and also from 10.12.1990 to 25.02.1991. At the relevant point of time the Appellant No. 2 was in the same office as Extension Assistant.

Mr. N. Dasgupta, Inspector of Police, CBI, Siliguri Sub-Unit lodged a first information report on 12th August, 1993 alleging that the Appellant No. 1 was assistant in the office of Assistant Director, Spices Board, Kalimpong and while holding the chair of the said office from 19.06.1992 to 13.09.1990 entered into a criminal conspiracy with the Appellant No. 2 who was Extension Assistant at that time and in furtherance of the conspiracy dishonestly cheated the Department to the tune of Rs.12,000/- which was property of the Department. The Appellant No. 1, while functioning in the aforesaid post, in collusion with the Appellant No. 2 dishonestly shown disbursed an amount of Rs.12,000/- to one Bhakta Bahadur Rai of Gitkolbong Busty, was a non-existent person, in terms of a cheque dated 09/07/1990. Stay at check amount was shown to be disbursed as a subsidy for construction of curing houses in cardamom plantation. For this end the Appellant No. 1 issued false certificate dated 30/06/1990 on the basis of a false inspection report dated same prepared by the Appellant No. 2.

The first information report was registered as R.C. Case No. 41 of 1993 - Calcutta dated 12th August, 1993. Mr. R. Debnath was entrusted with investigating into the case. In course of investigation, he examined witnesses and recorded their statements, seized relevant documents, obtained specimen signatures and handwriting, got the signatures and handwriting examined by Government examiner of questioned documents, obtained sanction order for prosecution and finally submitted charge sheet.

Charges were framed under Section 120B/420/468 of the Indian Penal Code and under Section 13 (1) (d) and 13 (2) of the Prevention of Corruption Act, 1988 charges were read over and explained to the Appellants to which they pleaded not guilty. Thereafter the trial followed.

The prosecution examined eleven witnesses and produced various documents marked as Exhibit 1 to 18 respectively. On behalf of the Appellants' statements of the defense witness Albert Singh, in connection with departmental proceeding was produced and marked as Ext. A.

The defense of the Appellants as appears from the trend of cross-examination and from reply to the examination under Section 313 of the Code of Criminal Procedure is denial of allegations and plea of false implication.

The Trial Court in terms of the impugned Judgment convicted the Appellants and imposed sentence subsequently, as stated above.

Mr. Anand Bhandari, the Learned Counsel appearing for the Appellants submitted Firstly that the prosecution evidences suffer from serious anomalies and contradictions. Therefore, according to him the Appellants should be acquitted.

The second leg of argument of Mr. Bhandari is that so far as the Appellant No. 1 is concerned, the only issued a certificate on the basis of the inspection report prepared by the Appellant No. 2. It is alleged that Appellant No. 1 did not verify the inspection report. At best, the same can be a dereliction of duty without anything more. Therefore, according to him, the Appellant No. 1 should be acquitted.

The third leg of argument of Mr. Bhandari is that Spices Board Regulation does not enjoin upon the Appellant No. 1 to make an inspection and verification on the basis of the report submitted by the Appellant No. 2. More so, copies of such regulation when they were given to the Appellants enabling them to make up their defence properly. This highly prejudiced the Appellants causing aberration of justice. This itself justifies setting aside of the impugned judgement and order of conviction.

Per contra, Mr. Mitra, the Learned Counsel appearing for CBI argued that there are very strong allegation and supporting evidences of such allegation which bring home the charges levelled against the Appellants. According to him there very strong evidences of conspiracy between the Appellant s to commit the offence is charged. It is a case where a non-existent person was impersonated to commit the offence is charged it is in the allegation and prove beyond doubt of doubt that shake was issued in an unauthorised manner for wrongful pecuniary gain of the Appellants. According to Mr. Mitra prosecution is able to establish beyond diet of doubt the allegation against the Appellants. The Trial Court did not commit any error in appreciation of evidence and application of law. Therefore, according to him the impugned judgement demands no interference.

I have heard rival submissions.

The sum and substance of the allegation against the Appellants at that and application in the name of the non-existent person was prepared and submitted in writing of the Appellant No. 2. Thereafter, the applicant No. 2 submitted a false inspection report stating therein that such person namely Bhakta Bahadur Rai, intended to be beneficiary of the scheme, made construction in accordance with the scheme. The Appellant No. 1 prepared and submitted certificate without verifying the contents and truthfulness of the inspection report and without visiting the spot. Thereafter, the Appellant No. 1

issued a cheque of Rs.12,000/- which was misappropriated by the Appellant No. 2 for his own pecuniary gain.

P.W.1 G.K. Shekarappa succeeded the Appellant No. 1 in the post of Assistant Director, Kalimpong. P.W.1 identified the carbon copy of the application under cyclostyled form dated 06.04.1990 (Ext.3) in the name of Bhakta Bahadur Rai of Gitkolbong village which he stated to be filled up by the Appellant No. 2. He stated in evidence that he went to inspect construction of curing house. But on local enquiry he came to know that there was no person named Bhakta Bahadur Rai in that village. There is another person named Bhanu Bhakta Rai in the locality. P.W.1 identified the Inspection Report dated 30.06.1990 (Ext.4) as prepared by the Appellant No. 2. He also identified the certificate dated 29.06.1990 (Ext.5) issued under signature of the Appellant No. 1. He further stated that the proforma of the certificate was filled up by the Appellant No. 2 where Appellant No. 1 signed. He identified all these signatures. Ext.6 is the cheque dated 09.07.1990 for a sum of Rs. 12,000/- issued under the seal of the Appellant No. 1. Not a single question was asked in course of cross-examination challenging identification of signatures of the Appellants or veracity of documents or that part of testimony which states that the certificate (Ext.5) was filled up by the Appellant No. 2 and signed by the Appellant No. 1. P.W.8 Umesh Kumar and P.W.11 Rajeev Debnath, the later being the Investigating Officer of the case, corroborated the testimony of P.W.1 that both of them visited Gitkolbong busty; but on interrogation of several local people, they came to know that no person named Bhakta Bahadur Rai stayed there.

Signature identification of P.W.1 was corroborated by P.W.9, a government examiner of questioned document, in terms of his report (Ext.11). It is in evidence of P.W.1 that the cheque (Ext.6) was signed by the Appellant No. 1; P.W.1 identified the signature, corroborated by testimony of P.W.9 and Ext.11. P.W.6, K.B. Soren was Passing Officer at Kalimpong Branch of State Bank of India. His evidence is that the cheque was encashed by one Bhakta Bahadur Rai. When confronted with all incriminating materials, Appellant No.1 did not make any substantial denial. He rather stated that they did inspection of the spot and that Bhakta Bahadur Rai was there at material point of time.

The Appellants produced Ext.A which is deposition of defence witness Albert Singh given in the departmental proceeding. The said Albert Singh was not called as defence witness so that his statements could be tested by cross examination and veracity could be put in test. Therefore, that piece of evidence cannot be relied upon.

Section 463 of the Indian Penal Code defines forgery as:

> *"463. Forgery.— Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury], to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

Section 463 should be read along with Section 464 of the Indian Penal Code. Relevant part of Section 464 states:

> *464. Making a false document. —A person is said to make a false document or false electronic record— First —Who dishonestly or fraudulently—*
>
> *(a) makes, signs, seals or executes a document or part of a document;*
>
> *(b) makes or transmits any electronic record or part of any electronic record;*
>
> *(c) affixes any [electronic signature] on any electronic record;*
>
> *(d) makes any mark denoting the execution of a document or the authenticity of the [electronic signature],*
>
> *with the intention of causing it to be believed that such document or part of document, electronic record or [electronic signature] was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or*
>
> *Secondly —Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it*

has been made, executed or affixed with [electronic signature] either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly —Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his [electronic signature] on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

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Explanation 2. —The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration: A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

Section 13(1) (d) was substituted by Act 16 of 2018. Before substitution the section stood as follow:

"(*d*) *if he,-*

i. by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

ii. by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

iii. while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or.."

Oral and documentary evidences adduced by prosecution establish that an application for grant of subsidy was made by one Bhakta Bahadur Rai of Gitcolban village. No such person was found living in that village. The application was signed by the Appellant No.2 in the name of that non-existent person. One inspection report was prepared by the Appellant No.2 stating that the said Bhakta Bahadur Rai constructed a house in terms of specification of the Spices Board which although no such person was found to exist. Appellant No.1 signed a proforma certificate filled up by the Appellant No.2 in respect of a non-existent person. Appellant No.1 issued a cheque containing a sum of Rs.12,000/- out of government fund in the name of that non-existent Bhakta Bahadur Rai which was encashed by the Appellant No.2. No explanation was there by the Appellant No.2 as to what he did with that money. Explanation 2 of Section 464 of the Indian Penal Code clearly applies in this case bringing the acts of the Appellants within period of Section 463/464 of the Indian Penal Code, creation of false documents and committing the offence of forgery and cheating under Section 420 of the Code. Although Mr. Bhandari vehemently argued that the acts of the Appellant No.1 is nothing more than mere dereliction of duty, such argument is not tenable. What the Appellant No.2 did is not mere dereliction of duty, but did such acts which shows very existence of dishonest intention to commit the offences. The Appellant No. 1 created a document and drawn up a cheque in the name of a non-existent person. The conduct of the Appellant No. 1 very clearly establish that both the Appellants acted in tandem and conspired together to do the offences alleged. The alleged acts of the Appellants also comes within the ambit of Section 13 (1) (d) and Section 13 (2) of the Prevention of Corruption Act, 1988.

Evidences, so adduced by the prosecution beyond reasonable doubt, brings the case within ambit of the charges framed against the Appellants. It is established clearly, unequivocally and beyond reasonable doubt that the Appellants committed offences so charged.

The Trial Court committed no error passing the impugned judgment of conviction and order of sentence. The judgment of conviction demands no interference, therefore. However, considering the long pendency of the trial, terms of sentences are reduced to four years for both the Appellants. The impugned order of sentence is modified to that extent.

In nutshell, the appeal is partly allowed.

The Appellants shall surrender before the Trial Court to serve the rest of the sentence, if not served.

The instant appeal is disposed of accordingly.

(Sugato Majumdar, J.)