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Dalip Chand Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Mar-19-2013

Appellant : Dalip Chand

Respondent : State of Punjab

Judgement :

CRA-S No.26-SB o

1. In the High Court of Punjab and Haryana at Chandigarh CRA-S No.26-SB of 2009 Date of decision:

19. 3.2013 Dalip Chand .....Appellant Versus State of Punjab .....Respondent CORAM: HON'BLE MRS.JUSTICE SABINA Present: Mr.D.V.Sharma, Sr.Advocate with Ms.Shivani Sharma, Advocate, for the appellant.

Mr.G.S.Khandebad, DAG, Punjab.

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JUDGMENT
SABINA, J.

Appellant and his three co-accused were tried qua commission of offence punishable under Sections 13 (1) (d) of the Prevention of Corruption Act, 1988 (for short 'the Act') and Sections 420, 468, 471, 120-B of the Indian Penal Code, 1860

(IPC for short) in FIR No.55 dated 2.7.1998 registered at Police Station Vigilance Bureau, Jalandhar.

The trial Court, vide judgment and order dated 10.12.2008 convicted and sentenced the appellant and his Co.accused Madan Mohan qua commission of offence punishable under CRA-S No.26-SB o

2. Section 120-B, 424 IPC.

Daljit Singh, co-accused of the appellant, was acquitted by the trial Court, whereas, co-accused Mohinder Singh died during the pendency of the trial.

Co-accused Madan Mohan has died after his conviction and during the pendency of his appeal challenging the

JUDGMENT / ORDER

of the trial Court, whereby he was convicted and sentenced qua commission of offence punishable under Sections 424/ 120-B IPC.

Hence, the present appeal by the appellant.

Prosecution story, in brief, is that 17 kanals 18 marlas of land being 1/4th share out of 64 kanals 10 marlas of land was owned by accused Madan Mohan, who was posted as secretary in the Noushera Majha Singh Cooperative Agriculture society Limilted Noushera Majha Singh (hereinafter referred to as the society).The share of land belonging to accused Madan Mohan was attached in view of arbitration awards passed in favour of the society on account of embezzlement committed by him (accused Madan Mohan).Vide order dated 19.6.1996, it was ordered by the Deputy Registrar, Cooperative societies, Jalandhar that in case accused Madan Mohan returned the money belonging to the society, the land under attachment be released.

Vide order dated 12.7.1996, appellant ordered the release of the land of accused Madan Mohan, although he had not returned the money to the society.

Accused Daljit Singh being patwari and accused Mahinder Pal being Kanugo did not give a note in the jamabandi for the year 1993-94 with regard to attachment of the land belonging to accused Madan Mohan.

CRA-S No.26-SB o

3. Consequently, accused Madan Mohan sold the land of his share.

After completion of investigation and necessary formalities, challan was presented against the accused.

Charge was framed against the accused for commission of offence punishable under Sections 13 (1) (d) of the Act and Sections 420, 468, 471, 120-B IPC.

Prosecution, in order to prove its case, examined ten witnesses.

After the close of prosecution evidence appellant, when examined under Section 313 of the Code of Criminal Procedure, 1973, prayed that he was innocent and had been falsely involved in this case.

Appellant examined one witness in his defence.

Learned senior counsel for the appellant has submitted that the trial Court had erred in convicting and sentencing the appellant qua commission of offence punishable under Sections 424/ 120-B IPC.

The order dated 12.7.1996 was allegedly passed by the Assistant Registrar Cooperative Societies.

The said order had not been duly proved during trial.

Only a photocopy of the said order was on record.

The said order had not been passed by the appellant as the appellant had been posted as Assistant Registrar Cooperative Societies, Gurdaspur vide order dated 23.8.1996.

Before that appellant was posted as CEO,CCB, Kapurthala.

Hence, the appellant could not have passed the order dated 12.7.1996 as Assistant Registrar Cooperative Societies, Gurdaspur.

In this regard CRA-S No.26-SB o

4. reliance has been placed on Ex.PJ/1.

Learned State counsel, on the other hand, has opposed the submissions made by learned counsel for the appellant.

In the present case, prosecution story, qua the appellant, is that he had passed the order dated 12.7.1996 (Annexure DA).whereby the land belonging to accused Madan Mohan was ordered to be released from attachment.

The said order has not been duly proved by the prosecution during trial.

Only a photocopy of the said order is on record and it was stated by PW-2 Swinder Singh that Ex.DA had not been received in the society.

From Ex.DA, the name of the officer, who had passed the order is not clear.

Appellant had been posted as Assistant Registrar Cooperative Societies, Gurdaspur vide order dated 23.8.1996 (Annexure PJ/1).Before that the appellant was posted as CEOCCB, Kapurthala.

In these circumstances, the trial Court erred in ordering the conviction and sentence of the appellant basing reliance on Ex.DA.

FiRs.of all Ex.DA has not been duly proved on record not it can be made out from the perusal of Ex.DA as to who had signed the said order.

Secondly, at the relevant time, when order Ex.DA was passed, appellant was not posted as Assistant Registrar Cooperative Societies, Gurdaspur.

These facts make the prosecution case doubtful so far as appellant is concerned.

It is a settled proposition of law that an accused is presumed to be innocent till proved guilty.

However, in the present case, prosecution had miserably failed to prove its case against the CRA-S No.26-SB o

5. appellant.

Accordingly, the present appeal is allowed.

The appellant is acquitted of the charges framed against him.

JUDGMENT / ORDER

of conviction and sentence dated 10.12.2008 passed against the appellant by the trial Court are set aside.

(SABINA) JUDGE March 19, 2013 anita

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