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Court : Patna

Decided On : Jan-03-2002

Judge : Indu Prabha Singh, J.

Appeal No. : Criminal Appeal No. 187 of 1990 (SJ)

Appellant : Girish Kumar

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

I.P. Singh, J.

1. This appeal is against the judgment dated 24th May, 1990 passed by Shri Ram Gopal Pandey, Special Judge, (C.B.I.) South Bihar, Patna in Special Case No. 31 of 1997. The sole appellant who was a Senior Accountant in A.G. Office, Patna has been convicted under Sections 420,467,471,477 and 511 of the Indian Penal Code and also under Section 3(a) of the Prevention of Corruption Act and has been sentenced to undergo rigorous imprisonment for one year under each count. All the sentences were ordered to run concurrently.

2. The brief facts of the case, as disclosed in the FIR are that the appellant while functioning as Selection Grade Accountant in the office of Accountant General,

Bihar, Patna during the period January, 1987 to May, 1987 misused his official position and fraudulently and dishonestly preferred a claim towards Leave Travel Concession for Rs. 18,576/-. It has been further alleged that Girish Kumar withdrew an advance of Rs. 13,000/- from the office of the Accountant General, Bihar for the purpose of visiting Trivandrum and back alongwith his 11 dependents on 21-1 -1986. However, during the financial year he could not perform journey as such amount so taken as advance was being recovered from the salary at the rate of Rs. 500/- per month. However, it is alleged that again during the month of January, 1987 the appellant informed the office of the Accountant General that he wanted to utilise his Leave Travel Concession in the month of February, 1987 for which he also filed an application for availing earned leave with effect from 4-2-1987 to 13-2-1987. Earned Leave was sanctioned by the competent authority. Thereafter on 25-2-1987 the appellant submitted a bill (Ext. 16 and 16/1) relating to his alleged journey for Rs. 18,576/-including the advance already received by him. According to the appellant he alongwith his 11 family members travelled from Patna to Trivandrum on 7-2-1987 and ending his journey on 15-2-1987. He also submitted photo copies of two blank paper tickets bearing Ticket Nos. 326981 and 326982 (Ext. II) alongwith bill. According to the prosecution the appellant and his family members did not travel from Patna to Trivandrum and back. He and his family members during that period very much remained at patna at his residence at Bhawar Pokhar, P.S. Pirbahore. His children during this period have also attended the school as usual. It was further alleged that even the blank paper ticket Nos. 326981 and 326982 were forged and fabricated. It was thus alleged that the appellant tried to cheat Accountant General, Bihar and misappropriated Rs. 18,576/- by submitting forged and fabricated bills and as such he has very much misused his position as Officer for his personal wrongful gain. Thereafter a charge-sheet was submitted. Thereafter, investigation was started. After completion of investigation charge-sheet was submitted and cognizance was taken. Subsequently, the case was tried by the Special Judge and concluded with the result as indicated above.

3. The defence denied the charges and pleaded himself to be innocent and also examined two defence witnesses.

4. The prosecution to prove its case has examined 15 witnesses and also submitted many documents.

5. The prosecution in order to prove that during the aforesaid period (7-2-1987 to 15-2-1987) for which the appellant and his family members have claimed L.T.C. bill were present at Patna itself examined PW1, A.K. Pandey, a teacher of St. Xaviers School. This witness has proved the Attendance Register (Ext. 1 and 1/1) of the class in which the appellant's son, namely, Rajnish Kumar was a student. PW1 has stated that Rajnish Kumar was present in his class on 9th, 10th and 12th February, 1987 and has also supported that his presence has been marked in the attendance register.

6. PW 2, P.C. Banerjee has been examined by the prosecution to prove that the blank paper ticket Nos. 326981 and 326982 was actually not issued to the appellant and was not actually used for the journey of appellant and his.family members from Patna to Trivandrum and back. The ticket was shown to have been issued from Danapur. This witness has categorically stated that 6 DN Howrah--Amritsar Mail was not having any quota from Danapur. There were 14 berths quota from Patna but as per reservation chart these ticket numbers find no mention in the reservation chart dated 7-2-1987 (Ext. 2). He has further stated that tickets bearing aforesaid numbers were issued for second class journey and not for 1st class as claimed. He has further proved the blank paper ticket book which is Ext. 3 from which it is clear that disputed tickets number is E-326981 was issued for second class journey from Patna to Naini and disputed ticket No. E-326982 dated 25-3-1987 was issued for journey Patna to Madras Central. The counter foil of both these bank tickets were also proved by this witness which are Exts. 3,3/1 and 3/2. From his deposition it is clear that both the tickets were respectively issued from Patna to Naini and from Patna to Madras Central on different dates and not from Patna to Trivandrum and Trivandrum to Patna as claimed by the appellant. This witness has also denied that letter dated 15-5-1987 (Ext. T) was not issued by him or by is office. According to this letter it did not bear his signature neither it bears the seal of the office. He has further proved the peon book (Ext. 4). From the perusal of the said book it appears that no letter dated 15-5-1987 (Ext. T) was ever issued. He has further proved cash settlement book of

the Patna Railway Station as Exts. 5 and 6. From this book one can verify the ticket numbers of the sold criket and cancelled ticket. From perusal of this book it appears that neither such tickets as alleged was sold for Trivandrum and back nor cancelled on the alleged date.

7. Another witness PW-4, Shiv Shanker Lal, was Reservation Clerk at Patna Junction Railway Station. He has stated that the blank paper ticket is prepared by the Reservation Clerk and the aforesaid tickets i.e., 326981 and 326982 were prepared in his pen and writing which was issued for Naini and Madras Central from Patna Junction on different dates. He also proved the relevant requisition slip for reservation of tickets (Ext. 8 and 8/1).

8. PW 8, Govind Choundary, Booking Supervisor of Danapur Railway Station, has stated that there was no reservation at Danapur in 6 DN Howrah--Amritsar Mail on the alleged dates. He has also stated that the details of paper tickets are mentioned in cash book and details of sold tickets are also mentioned in it. He proved supply book, details of paper tickets register and cash book meant for upper class tickets at the Danapur Railway Station as Exts. 18 and 6/1.

9. PW 9, Railway employee of Danapur Booking Counter has stated that he was on duty on 4-2-1987. He has further stated that blank paper ticket Nos. E-234241 and 234242 shown to have bee issued from Danapur on 4-2-1987 was not actually issued from his counter. He has further stated that on 4-2-1987 only one blank paper ticket was issued which was bearing E-234242 and that too was also for second class and not for the first class. As such he also corroborated that the ticket for which L.T.C. was claimed were not genuine ticket.

10. PW 10, Shri K.K. Sinha, has proved Ext. 17/1 which was letter issued on 22-7-1987, whereby office of the Accountant General was informed by the Divisional Railway Manager, Danapur regarding the disputed blank paper ticket. He has stated that on the basis of the enquiry dated 24-3-1987 by the Chief Reservation Supervisor it was found that the disputed ticket Nos. 236981 and 236982 were fake and fabricated.

11. On the question for granting sanction prosecution has examined PWs 11 and PW 13, PW 11 was the Deputy Accountant who accorded sanction for the prosecution which was typed by his steno (PW 3) and the sanction letter was Ext. 7. He has clearly stated that he was competent to accord sanction and he was the appointing authority and also disbursing authority. In his deposition he has further stated that he has gone through the relevant papers and applied his mind before according his sanction for pr.osecution.

12. PW 7, M.N. Haque, is another important witness in this case. He was Accounts Officer of the office of the Accountant-General, Bihar, Patna. He was the person who has raised doubt when bill submitted by the appellant. He has given the details regarding claim of the appellant for his L.T.C. He has further stated that he wrote a letter to the Chief Booking Supervisor and on 15-5-1987 he received a reply. Again he wrote a letter to the Divisional Railway Manager, Danapur requesting him to clarify as to whether the claimed tickets were actually issued from Danapur or not. He has proved two copies of the LT.C. bills submitted by the appellant and two disputed copy of the tickets enclosed with as Exts. 16 and 16/1. He has also proved Exts. 13,13/1 14 and 15. He has also proved letters which were sent to the Chief Ticket Supervisor Danapur and Divisional Railway Manager as Exts. 17 and 17/1.

13. Otherwitnesses PWs 5,6,11 and 13 were well Officers of the office of the Accountant General who have also corroborated the prosecution case. These witnesses have supported that PW 11 was the competent to accord sanction for prosecution against the appellant. They have also corroborated the sanction for prosecution.

14. Learned Counsel has assailed the order of conviction on the grounds that the prosecution witnesses could not prove that actually the tickets on the basis of which appellant claimed his L.T.C. bill were forged or not. It has also been submitted that as alleged the letter (Ext. I) issued by Chief Booking Supervisor Patna dated 15-5-1987 was not managed by the appellant. It has been further submitted that the attendance register (Ext. 1) of Class 10th of St. Xaviers School was forged and fabricated. It has also been submitted that entire advance money

amounting to Rs. 13,000/- received by the appellant has already been recovered from the appellant with interest. He has further submitted that though PW 1 R.N. Pandey has stated that son of the appellant, Rajnish was not present on 10th, 11th and 12th of February, 1987 as the attendance register shows. But PW 1 has also stated that if a student is not present teachers put either Ab mark or also put dot and in register, dot is shown for Rajnish on 27th February. Thus, there was possibility that dot on the above-mentioned date might have been marked as Ah by the enemy.

15. To elaborate the submissions raised on behalf of the learned Counsel for the appellant he has drawn my attention towards the deposition of 1.0. has has specifically said that he did not enquire from any of the classmate of Rajnish about his presence during the aforesaid period. PW 7 M.D. Haque also has stated in para 13 of his deposition that no body told him that appellant was at Patna from 7th to 15th February, 1987. It has been also pointed out that I.O. did not investigate at Danapur Railway Station about the availability of seats in trains neither he did go to Howrah and Trivandrum for investigation. It has been also pointed out that PW 2 in para 2 of his deposition has stated that if there was no seat available at Danapur the station authority usually sent telegrams to the originating station for reserving a seat. It has also been stated that all the railway'employees examined as PWs 2, 3, 4, 7, 8 and 9 have stated that even if seat is not available a person can travel some how managing the T.T.I, and other running staff.

16. The learned Counsel has vehemently contended that no witness has stated that tickets were forged and were not issued from Danapur. Though the tickets are supplied from Howrah printing office but the tickets in question were not sent to Howrah printing press to verify whether they were genuine or not. Even the C.B. I. did not get them examined by Government Examiner of questioned document.

17. Lastly it has been submitted that appellant being a public servant a valid sanction under Section 197 of the Code of Criminal Procedure was required and sanction granted by Shri Sumer Rai (PW 11) was not proper since he was not competent to grant sanction in this case.

18. Considering the submissions of the learned Counsel on the point that the appellant actually travelled from Patna to Trivandrum and back, no positive witness from the side of defence has been examined. However, in this case the case of prosecution solely rest on the simple fact that the ticket bearing Nos. 326981 and 326982 on the basis of which the L.T.C. bills were claimed has not been purchased by and issued to the appellant from Danapur station as claimed and were forged and fabricated ticket.

19. In this case there are witnesses who have been examined by the prosecution to prove that no reservation on 7-2-1987 was made in 6 DN Howrah--Amritsar Mail for appellant and his family members. PW2 Chief Reservation Supervisor has clearly mentioned that the reservation that does not include their name neither ticket number so claimed were also not mentioned in the chart. Even the cash settlement book of railway does not mention such sale of tickets and collection of money thereof.

20. Taking into consideration all the documents and also the evidence of the witnesses I find that as discussed earlier, - the prosecution has clearly established its case that the railway tickets bearing Nos. 326981 and 326982 were issued from Patna Railway Junction for commencing journey to Naini and Madras Central from Patna Junction and that too for second class and not for Trivandrum and backings Class as claimed. The prosecution has also established that the photo copies of blank paper tickets bearing above mentioned numbers were forged and fabricated and were not issued from Railway Counter of Danapur neither money transaction for the same was made. The prosecution also proved that the original ticket bearing the aforesaid numbers were actually issued on 25-3-1987 and not on 4-2-1987 as shown on the photo copy of the tickets. In view of these documents and evidence of the prosecution witnesses there remains no doubt that the appellant submitted a bill amounting to Rs. 18.576/- for the alleged L.T.C. during the period 7-2-1987 to 15-2-1987 on the basis of forged ticket and no reservation in the name of appellant and members of his family was there on those dates and as such it could be conferred that actually he did not travel to the places he claimed to have travelled. Though challenged but prosecution also produced evidence to prove the presence of his son in the school.

21. As the learned Counsel has vehemently argued that PW 11 Deputy Accountant General who accorded sanction for prosecution required under Section 197 of the Code of Criminal Procedure actually was not authority to suspend or punish the appellant, as he was not appointing authority. Thus he was even not empowered to sanction prosecution. Actually Accountant General (A & E). Ranchi was competent authority to grant sanction against Senior Accountant, the post held by the appellant, since he was cadre controlling authority. It has been further submitted that Sumer Rai (PW11) has no power to grant sanction prior to 18-4-1988, cut of date on which Patna Office of Acc untant General, Bihar was given administrative and disciplinary powers. The sanction so granted was dated 23-10-1987 by the Senior Deputy Accountant General Administration, Bihar, Patna. Letter (Ext. 17/2) from Accountant General, Accounts I, Bihar at Ranchi shows that he too was fully informed about the case of Shri Girish Kumar and he on appreciation of the documents found it to be a fit case for sanction to the prosecution and accordingly accorded the permission for grant of sanction On the subject a circular from the office of C.A.G., Government of India has also been exhibited as Ext. 20 in which while decentralizing the control it has been laid down that the controlling authority, Accountant General should only be consulted before taking disciplinary actions and with his agreement further action can be taken by order local officers. In this case these formalities have been fully observed. As such I do not find that there is any irregularities in according the sanction and the sanction so granted by PW 11 does not suffer from any technical defect thus does not vitiate the case. That apart in a recent judgment of the apex Court in the case of Central Bureau of Investigation v. V.K. Sehgal and Anr. reported in 2000 (1) East Cr C 184 (SC) : PUR 2000 (1) SC 9, in which it was held that no order of conviction and sentence can be reversed or altered by a Court of appeal on the sole ground of absence of sanction unless in the opinion of the Court a failure of justice has been occasioned thereby. However, in this case the sanction has been properly granted on appreciation of fact of the case in concurrence with the Controlling Officer by a competent authority so authorised. As it has been already held that if there is a prima facie case of corruption even sanction not granted properly would not vitiate the case. On appreciation of evidence of the witnesses and also the documents so exhibited the Court below has rightly found the

appellant guilty for attempting to get the L.T.C. bill encashed on the basis of that forged railway tickets thereby cheating and dishonestly getting the money encased as such the Court below has rightly found him guilty of the above mentioned charges punishable under Sections 420,467,471,477 and 511 of the Indian Penal Code and he undoubtedly being a public servant used his official position for making wrongful gain and this act also attracts the offence punishable under Section 5(1)(d) read with Section 3(a) of the Prevention of Corruption Act.

22. However, coming to the question of sentence the learned Counsel for the appellant has submitted that the occurrence took place in the year 1987 and since then 14 years have already passed and the appellant has been sufficiently harassed during this prolonged litigation and has also lost his job and has also remained in jail for some time, therefore, some lenient view may be taken while awarding sentence to him.

23. Considering the submissions raised on behalf of the learned Counsel for the appellant. I am of the opinion that it would be expedient in the interest of justice if the sentence awarded to the appellant is reduced to the period he has already remained in jail.

24. With the aforesaid modification in the sentence this appeal is dismissed.