

The State Vs. Kamal Singh

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Court : Rajasthan

Decided On : Apr-09-1975

Reported in : 1975WLN(UC)180

Judge : Kan Singh and; S.N. Modi, JJ.

Appeal No. : D.B. Cr. Appeal No. 377 of 1968 and S.B. Criminal Appeal No. 6 of 1968

Appellant : The State

Respondent : Kamal Singh

Disposition : Appeal allowed

Judgement :

Kan Singh, J.

1. These are two appeals brought against the judgment of the learned Special Judge, Jaipur City, dated 30.1.68. Three persons, namely, Radbakumar, Kishan Sahai and Kamalsingh were put on trial before the learned Special Judge for offences under Sections 409, 420, 467 IPC and Section 6(1)(c)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. The learned Special Judge convicted the accused Radhakumar under Sections 420 and 468 IPC as also under Section 5(2) of the Prevention of Corruption Act, 1947. He was awarded two

years' rigorous imprisonment and a fine of Rs. 500/- in default, further three months' rigorous imprisonment, two years' rigorous imprisonment and a fine of Rs. 500/- in default, further three months' rigorous imprisonment and two years' rigorous imprisonment and a fine of Rs. 500/- in default, further three months' rigorous imprisonment, on the three counts respectively. The substantive sentences of imprisonment were ordered to run concurrently. Kishan Sahai Srivastava was like-wise convicted under Section 420 IPC and Section 6(2) of the Prevention of Corruption Act. He was awarded the sentence of one year's rigorous imprisonment and fine of Rs. 200/- on each count; the substantive sentence of imprisonment were ordered to run concurrently. Kamalsingh was, however acquitted.

2. The State appeal is against the acquittal of Kamalsingh while the two convict filed an appeal challenging their convictions Radhakumar, how ever, expired during the pendency of the appeal and his appeal consequently abated. We are thus left to deal with the cases of Kishan Sahai Srivastava and Kamai singh.

3. The prosecution story, in brief, was that the work of repairing the Maheshwa Bund in district Sawai Madhopur was given to Messrs Kironlal Kamal Singh contractors for Rs. 21,020/-. The work was being looked after on behalf of the firm by Kamal Singh Radha Kumar was an overseer and Kishao Sihai Srivastava was an Assistant Engineer whose duty was to supervise the work and to record it in measurement books and then to prepare running bills on the basis of the measurement books. The estimate for the work before the contract was given, was prepared on 17-11-65 vide Ex. P. 1. There were four items included in the estimate. The first item was for earth work estimated at 56,000 cft. The rate was Rs. 30/- per one thousand cubic feet and the expenditure under this head was estimated at Rs. 1680/-. The second item was for digging the foundation for & toe wall. It was estimated at 4500 cft. at the rate of Rs. 20/- per thousand cubic feet. The cost for this item was estimated at Rs. 90/-. The third item was for quarry spawl which was estimated at 15,000 cft. The rate was Rs. 25 per hundred cubic feet and the estimated cost was Rs. 3750/-. The fourth item consisted of stone pitching of 50,000 cft. The rate was Rs. 31 par hundred cubic feet and the estimated cost was Rs. 15,500/-. On 24-11-55 a formal agreement between the

Government and the contractor was executed. Three running bills for an amount of Rs. 19,445/8/- were prepared by the overseer Radha kumar and the Assistant Engineer Kishan Sabai Srivastava on the basis of the measurement books. The measurement books were filled in by these two accused and were said to have been signed by Kamal Singh, the third accused. According to the prosecution payment was made to the contractors on the basis of these three running bills after making deduction, as per rules, by way of security. A complaint was subsequently received by the higher authorities that the Government had been cheated by the three accused who had been in conspiracy. It was alleged that even though the work had not been done on the spot, the measurement books were wrongly filled in and on the basis thereof a false infilled bill had been prepared and payment obtained. P.W. 3 R.P. Chawla had re-measured the work said to have been done by the contractor and then he reported that the work worth Rs. 5750/- only had been done. In this way, the Government had been cheated of the amount drawn in excess of Rs. 5760/-.

4. The appeals came up for hearing before a Division Bench of this Court on 20-8-74. It transpired during the course of the arguments that the measurement books Nos. 197 and 152 were not traceable in the High Court Office and it was not clear from the record whether the two measurement books were sent by the learned Special Judge, Jaipur City, to this Court or not. A requisition was, therefore, ordered to be sent to the Special Judge, Jaipur City, to submit the two measurement books which were very material for disposing of the appeals. The High Court office was also directed to check up whether the books had been received or not. The appeals were ordered to be listed for hearing after this was done. The High Court office reported that the measurement books did not appear to have been received in the High Court office. When the learned Special Judge was addressed, he replied vide his letter dated No. 172 dated 30-10-74 that though the various measurement books were available in the record the measurement books Nos. 197 and 152 were not available and were missing. The above measurement books were not traceable anywhere in his office.

5. Thus, we are compelled to state that we will have to decide the appeals on the footing that the measurements are not available anywhere. The learned Public

Prosecutor requested us to grant him further time to be able to have the measurement books traced out but he is unable to throw any light as to where these measurement books would be. The appeals are amongst the oldest appeals in this Court. Seven years is sufficiently a long period for the disposal of the Division Bench appeals. The case is a simple one as to whether the running bills had been prepared and the amount of the running bills paid to the contractors when indeed they had not done that work for which the payment had been made. To bring home the guilt to the contractors, measurement books could be the only material documents because the running bills are prepared by the Department on the basis of the measurement books at the site of the work. The guilt of the other accused would depend on what he had written or attested in the measurement books after his so called spot check up, Running bills are prepared on the footing of the measurement books in the office of the officer whose duty it is to prepare such running bills. Therefore, to fasten liability on Kishan Sahai Srivastava the two missing measurement book' are an important link in the case. Unfortunately, they are not available. That being so, both the learned Counsel are agreed that without the measurement books and the running bills, which too are not there, it will be exceedingly difficult for us to reach any definite conclusion one way or the other. In the circumstances, therefore, we are constrained to say that we are unable to affirm the convictions of the accused or to disturb the acquittal of Kamal Singh.

6. In the result, therefore, though not without reluctance, we allow the appeal of Kishan Sahai Srivastava, set aside his convictions and sentences and acquit him. We dismiss the State appeal against Kamal Singh. Kishan Sahai Srivastava is on bail and he need not surrender. His bail-bonds shall stand cancelled.