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Court : Rajasthan

Decided On : Aug-25-1982

Reported in : 1982WLN(UC)518

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Criminal Revision Petition No. 139/82

Appellant : Himmat Singh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

S.C. Agrawal, J.

1. This revision petition, filed by the petitioner Himmat Singh, is directed against the order dated April 17, 1982, passed by the Chief Judicial Magistrate, Banswara, in Criminal Original Case No. 197/84. By his order aforesaid the Chief Judicial Magistrate has ordered that charges under Sections 468, 420 and 109 I.P.C. be framed against the petitioner. In pursuance of the aforesaid order charges under Section 420/420 read with Section 109 I.P.C. and 468 I.P.C. have been framed against the petitioner on April 17, 1982. In the revision petition the petitioner has prayed that the aforesaid order dated April 17, 1982, passed by the Chief Judicial

Magistrate and the charges framed against the petitioner in pursuance of the said order be quashed.

2. The petitioner was posted as Overseer in the office of the Assistant Engineer, P.W.D. (B&R;) at Banswara during the period from July 1, 1958 to August 27, 1959. During this period the work for repair of the Ghatol Road from Banswara to Pratapgarh was under taken by the P.W.D. On the basis of an anonymous complaint addressed to the Deputy Superintendent of Police, Anti-Corruption Department, Udaipur, a case under Sections 420, 468 I.P.C. was registered on June 23, 1961. In the said complaint it was stated that in the construction of the Ghatol Road during the period from April to June 1959, fictitous names were entered in the attendance registers of labourers and cartmen and that the Overseer in the P.W.D. at Bansawara and other staff of the Government had misappropriated Government money. In the said complaint it was further stated that the name of Bhawani Singh s/o Kodarsingh, Rajput, resident of Surpur, Tehsil Banswara, was entered amongst the cartmen but the said Bhawanisingh had no cart and no bullock and that he had actually worked as a labourer and was paid Rs. 50/- and that about Rs. 50/- had been received by Overseer Harnarian. In that complaint it was also stated that Nathusingh s/o Bhawani Singh, Rajput r/o Surpur also does not have a cart or a bullock but his name is entered amongst cartman although he was studying in Class vi when his name was shown in the register and that the Overseer after getting his signatures forged by some body else had obtained payment in his name Another instance given in the said complaint was that of Puja, resident of Ghatol whose name was entered amongst Cart menalthough he does not have a cart & payment was obtained in his name. In the said complaint it was also stated that payments were taken by the Overseer in the names of other persons also by showing their names. After the receipt of the aforesaid anonymous complaint the police investigated the matter and after investigation a final report was submitted on 29-8-1968. In the said report it was stated that there is no sufficient evidence to establish the guilt of the accused persons The Munsif and Judicial Magistrate 1st class, Banswara, by his order dated January 4, 1971, did not accept the said final report submitted by the police and after perusal of the documents filed with the report, held that there was sufficient ground for proceeding against the petitioner and the other there accused

persons viz Harinarain, Narainsingh and Pratapsingh, under Sections 420, 468, and 109 I.P.C.

3. By the aforesaid order the Judicial Magistrate took cognizance of the offences under Sections 420, 468 and 109 I.P.C. against the petitioner and other accused persons. The accused Nathusingh could not be apprehended and eventually the Chief Judicial Magistrate passed the order dated April 17, 1982, whereby he directed that charges under Section 46, 420 and 109 I.P.C. be framed against the accused persons.

4. I have heard Shri M.M. Singhvi, the learned Counsel for the petitioner and the learned Public Prosecutor.

5. Shri Singhvi has submitted that on the basis of the material on record the Chief Judicial Magistrate has erred in framing charges under Section 420/420 read with Section 109 I.P.C. and Section 468 I.P.C. against the petitioner. The submission of Shri Singhvi was that there is nothing on the record to show hat the petitioner was in any way responsible for the fictitous payments or for falsifying the muster rolls it connection with the said fictitous payments. According to Shri Singhvi the petitioner has only certified that bullock-carts, had been used for bringing boulders from a distance and that the payments to the persons mentioned in the muster roils were made in his presence and he has certified the total amount that was paid. The submission of Shri Singhvi was that it was not the responsibility of the petitioner to ascertain the identity of the labourers or the cartmen mentioned in the muster rolls and to whom payments were made ' at that the said responsibility of identifying the recepients lay with the Mistry and therefore, the petitioner cannot be held responsible for making payments to persons other than those whose names were mentioned in the muster rolls. According to Shri Singhvi, on the basis of the material on record, there is no possibility of the petitioner being convicted of the offences under. Sections 420/420 read with Section 109 I.P.C. or 468 I.P.C. with which the petitioner has been charged and that no purpose would be served by requiring the petitioner to undergo the harassment of a trial and that this is a fit case m which the criminal proceedings initiated against the petitioner should be quashed.

6. The charges that have been framed against the petitioner show that the said charges relate to the following payments:

Nathusingh -- Rs. 76.50

Dayalal -- Rs. 51.75

Bhawanisingh -- Rs. 27.00

7. According to the charges the aforesaid payment were made on April 19, 1959, under vouchers Nos. 98,99 and 100.

8. On a perusal of the aforesaid vouchers I find that under voucher No. 99 dated August 19, 1959, a sum of Rs. 27.00 was paid to Bhawanisingh who is shown as labourer & a sum of Rs. 76 50 has been paid to Nathusingh who is shown as a cartman. Daya Lal was not paid any amount on August 19, 1959, under the aforesaid vouchers but he was paid a sum of Rs. 51.75 on January 8, 1960, under voucher No. 13. In the said voucher-Dayalal is-shown as a cartman. The petitioner had relinquished the charge of the post of Overseer at Banswara on August 27, 1959, and the payment which was made to Daya Lal under voucher dated January 8, 1960, was after the petitioner had relinquished the charge of the post of Overseer at Banswara and the petitioner has, therefore, no role in the payment of the aforesaid amount in the name of Daya Lal. With regard to the payments which were made in the name of Bhawanising and Nathusing under voucher No. 99 the said voucher contains the signatures of the petitioner at three places. In one place the petitioner has put his signatures under the endorsement Bullock-cart was urged for bringing the boulders from a distance.' Another place where signatures have been put by the petitioner is below the total of the amount which was paid. The third place where the signatures of the petitioner were put is under the endrosement 'paid in my presence.' The aforesaid voucher No. 99 also contains the initials of Narainsing and Pratapsingh as the persons who made the daily attendance of the labourers or cartmen on each date of the attendance. The said voucher also contains the signature of the Assistant Engi neer at the end.

9. According to the letter dated November 2(sic)9, 1961, which was addressed by the Executive Engineer, P.W.D. (B&R;), Dungarpur, to the Dy. Superintendent of Police, Ann Corruption Department, Udaipur, the mate writes the attendence and maintains the muster roils at the site of work, the Assistant Engineer makes payment to labourers & that though the presence of the Assistant Engineer is not essential while making payments but he is fully responsible for the payments made.

10. Ratanlal was the cashier in the office of the Assistant Engineer, P.W.D. (B&K;) Banswara, at the relevant time. In-his statement recorded under Section 161 Cr. P.C. Ratanlal has stated that payments had been made in accordance with the vouchers, by the Overseer and has indentified the signatures of the petitioner and Harinarain, Overseer on the vouchers. Ratan Lal has also stated that in the muster rolls lie had put the serial numbers against the thumb impressions of the labourers & cartmen, and that he has made the payments to the labourers and cartmen on the basis of the slips that were issued by Narain Singh, mistry and that while making the payments he used to obtain the thumb impression of the person to whom payment was made and who carried the slip of Narain Singh, mistry and that at the time of the aforesaid payment the petitioner, who was the overseer, was present.

11. It would, thus, be seen that although the petitioner was present at the time when the payment was made to the labourers and the cartmen on the basis of the voucher No. 99 but the payment was actually made by the cashier, Ratan Lal, and that Ratan Lal had made the said payments to the persons who carried the slips issued by Narainsingh, mistry and while doing so Ratan Lal had obtained the thumb impressions, or signatures on the voucher of the persons to whom payments were made. In other words, neither from the voucher No. 99, nor from the statements of Ratanlal, recorded under Section 161 Cr.P.C. it can be said that the petitioner was in any way resonsible for identifying the persons to whom payments were made as the persons whose names were actually entered in the muster rolls and it cannot, therefore, be said that it was the petitioner who was responsible for making payments to persons other than the persons whose names were entered in the muster roll.

12. The learned Public Prosecutor has submitted that since the petitioner was the Overseer be had the supervisory function to see that payments were made rightly and only to persons whose names were shown in the muster roll and if it is found that payments have been made to persons other than those whose names have been mentioned in the muster rolls the petitioner cannot escape his responsibility. The learned Public Prosecutor has, how ever, not been able to show any rule or circular of the Government, whereby the petitioner as Overseer, was required to check the identity of the labourers and cartmen to whom payments were made in his presence. My attention has been drawn to rule 430 of the Public Works Financial and Account Rules of the Government of Rajasthan which was applicable at the relevant time. Rule 430 relates to preparation of the muster rolls and prescribes that muster rolls should be prepared in accordance with the prescribed from. Clause (d) of the said rule and the notes appended there ars relevant for the purpose of present case and they read as under:

(d) After a muster roll has been passed by the Sub Divisional and Divisional Officers, payment thereon should be made as expeditioulsy as possible. Each payment should be made or witnessed by the official of highest standing available, who should eertify to the payments individually or by groups, at the same time specifying, both in words & in figures, at the foot of the muster roil, the total amount paid on each date. Ff any items remain unpaid, the details thereof should be recorded in part II, the register of arrears before the memorandum at the foot of the muster rolls is completed by the person who made the payments.

Note, (i) In the Buildings Roads Branch of the Department the muster rolls shall be prepared by the subordinate in direct charge of the work and unless they do not exceed Rs. 25/- in amount and are to be paid from his permanent imprest, should be submitted to the Assistant Engineer, or Assistant Executive Engineer, incharge of the Section or authorised Sub division. The latter officer will give the pay order only after the muster rolls have been pre-audited by the Accountant, in the case of a Divisional Officer or checked by the sub-divisional clerk, in the case of a sub-divisional office. The Assistant Engineer or Assistant Executive Engineer will be responsible for their correctness and for the disbursement of the wages of the labourers.

(ii) The following officials in the Irrigation Branch may make payments on muster rolls, upto the extent mentioned against each, without obtaining the previous sanction of the Sub-Divisional and Divisional Officers, provided daily reports are despatched to the Sub-Divisional Officer showing the number of labourers employed and the approximate quantity of work done.

13. According to the aforesaid clause the muster roll was required to be passed by the Sub-Divisional and Divisional Officers and each payment was required to be made or witness by the official of highest standing available who should certify to the payments individually or by groups, at the same time specifying both in words and in figures, at the foot of the muster rolls the total amount paid on each date. Note No. 1 referred to above, lays down that the muster roll shall be prepared by the subordinate in direct charge of the work and unless they do not exceed Rs. 25/- they should be submitted to the Assistent Engineer, or Assistant Executive Engineer incharge of the section or authorised Sub-division and the pay order should only be given after the muster rolls have been pre-audited by the Accountant in the case of Divisional Office or checked by the sub-divisional clerk in the case of sub-divisional office and that the Assistant Engineer or Assistant Executive Engineer will be responsible for the disbursement of the wages of the labourers.

14. In view of the aforesaid rule the petitioner can be said to be the official of the highest standing available who should witness the payment to the labourers and the cartmen and he was required to certify with re gard to the payments made individually or by groups specifying both in words and in figures at the foot of the muster roll the total amount paid on each date. There is nothing in the aforesaid rule to show that the official who witnessed the payment was also required to check the identity of the person to whom payment was being made. As mentioned earlier the petitioner has certified the fact that payment had been made to the persons mentioned in the muster roll and has also specified at the foot of the muster roll the total amount that had been paid on August 19, 1959. On the basis of the aforesaid rule it cannot be said that the petitioner has in any way failed to discharge the duty imposed upon him.

15. The record of the Chief Judicial Magistrate Court shows that the Assistant Public Prosecutor has submitted a list of witnesses before the Chief Judicial Magistrate on April 17, 1982. The said list contains the names of six witnesses. Out of them Nathu Singh s/o Bhawani Singh, s/o Kesar Singh Daya Lal, s/o Murarji, are the three persons in whose names the disputed payments have been made and who would be examined to prove that they did not receive the payment referred to in the vouchers. Nathu Singh s/o Dhulji and Bapulal s/o Krishnalal also are witnesses who will be examined to support the testimony of the aforesaid three witnesses that they did not work as cart-men or labourer. The only other witness is Ratan Lal, cashier. Thus out of the six witnesses in the said list five witnesses are for the purpose of showing that the payments were not made to Nathu Singh s/o Bhawanisingh, Bhawani Singh s/o Kedarsingh and Dayalal s/o Murarji but were made to other persons and Ratanlal is the only person who will be examined to prove the complicity of the petitioner. Reference has already been made to the statements made by Ratanlal during the course of investigation and it had been noticed that from the aforesaid statements of Ratanlal it cannot be said that the petitioner was in any way responsible for the disputed payment to fictitous persons. It will thus be seen that there is no material on the record on the basis of which it can be said that the petitioner was responsible for the payment of the disputed amounts to persons other than the persons whose names are shown in the muster rolls and on the basis of the aforesaid material it will not be possible to hold that the petitioner has committed the offences under Sections 420/120 read with Section 109 I.P.C. and Section 468 I.P.C.

16. Thus, this is a case in which there is no possibility of the petitioner being convicted of the offences with which he has been charged on the basis of the material on record and requiring the petitioner to undergo a trial more than 20 years after the payments in question were made, would not subserve the ends of justice and this is a fit case in which the charges framed against the petitioner should be quashed.

17. The revision petition is, therefore, allowed and the order dated April 17, 1982, passed by the Cheif Judicial Magistrate with regard to framing of the charges under Section 420, 468 & 109, I P.C. as well as the charges framed by the Chief

Judicial Magistrate on April 17, 1982, against the petitioner under Section 420/420 read with Section 109, and Section 468 I.P.C. are quashed.

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