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Des Raj Vs. State of J and K

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Court : Jammu and Kashmir

Decided On : Mar-26-2004

Reported in : 2004(2)JKJ299

Judge : Y.P. Nargotra, J.

Acts : Code of Criminal Procedure (CrPC) - Section 342

Appeal No. : Case No Cr.A. 46/1986

Appellant : Des Raj

Respondent : State of J and K

Advocate for Def. : B.S. Salathia, AAG

Advocate for Pet/Ap. : Radha Sharma, Adv.

Judgement :

Y.P. Nargotra, J.

1. The appellant-accused was tried, convicted and sentenced by the Special Judge Anti-corruption Jammu by his judgment dated 25.6.1986 to undergo rigorous imprisonment for five years and a fine of Rs. 5000/- and in case of default in payment of fine to undergo one year's rigorous imprisonment for the offence Under Section 5(2) Prevention of Corruption Act 2006; three years rigorous

imprisonment and a fine of Rs. 500/- and in case of default in payment of fine to undergo simple imprisonment for three months for the offence Under Section 467 RPC and two years rigorous imprisonment and a fine of Rs. 500/- and in default of payment of fine to undergo three months imprisonment for the offence Under Section 468 RPC.

2. The prosecution case in nutshell was that the appellant was the cashier in the office of the Chief Medical Officer Udhampur, Dr. Abdul Samad who was the drawing and disbursing officer. The appellant-accused was alleged to have forged three bills for withdrawal of G.P. Fund advance in the name of Sham Sunder, Girdharilal and himself for Rs. 2018, 1800/-and 1500/-respectively. As the advance could be drawn only after sanction of the competent officer on the application of the concerned employee so he also forged three sanction orders dated 6.12.78, 5.1.1979 and 19.1.1979 on the basis of which he prepared treasury vouchers for withdrawal of the said amounts and then without getting the bills cleared from the Accountant Sh. O.P. Nargotra, appended the forged signatures of Dr. Abdul Samad thereon and encashed the same from the treasury and misappropriated the amount of the bills totaling Rs. 5818/-.Sometime later Sh. Girdharilal detected the withdrawal of Rs. 1800/- from his G.P. fund account. He made a complaint, EXPWP, to the C.M.O. who reported the matter to the police on 7.8.1981 as per EXPW4 and ultimately FIR No. 38/82 came to be registered against the appellant. Investigation into the FIR culminated into the charge sheet, which was filed before the court of learned Special Judge Anti-corruption after obtaining due sanction of the competent authority Under Section 6 of the Act.

3. The accused was charged by the learned Special Judge Anti-corruption for commission of offences Under Section 5(2) P.C. Act and 467 & 468 RPC to which he pleaded 'not guilty' and the prosecution in support of the charge examined 15 witnesses but the accused did not examine any witness in defence. He put up a simple denial as defence to the charge.

4. There is sufficient evidence to prove that the accused at the relevant time was cashier in the office of the C.M.O. It has not been denied by the accused. There is ample evidence available on the record that the duty of the accused as cashier

was also to prepare bills of the office for withdrawal from the treasury. This also has not been disputed by the appellant. The crucial question for determination is as to who prepared the three bills in issue. The accused has denied the preparation of the same. All the three bills along with sample writings of the accused were sent to the handwriting expert PW Dr. R.L. Dhar who examined and compared the writings. As per his report the three bills in question were found to be in the handwriting of the accused appellant. The evidence of the expert is also found corroboration by the evidence of PWs Mohanlal Bakshi, Dr. Abdul Samad and Dharam chand. Learned trial court has accepted the evidence of the above said witnesses to come to the conclusion that the bills were prepared by the accused. The preparation of bills is not sufficient to constitute the offence unless it is also proved that the signatures of the competent authority who authorized the withdrawal are also forged one. The prosecution mainly relies upon the evidence of Dr. R.L. Dhar who has testified that the same writings of the accused obtained during investigation tallied with the questioned writings on the bills. Reliance was also place on the evidence of Dr. Abdul Samad who has deposed that the signatures on the said bills purported to be his signatures are not his signatures but are forged one. His evidence on this aspect finds support from the evidence of handwriting expert PW Dr. R.L. Dhar who compared his sample signatures with that of the questioned signatures. Learned trial court after appreciating the evidence of the prosecution came to the conclusion that it was the accused alone who was the author of the forged bills and it was he who had forged the signatures of Dr. Abdul Samad, the drawing and disbursing officer. Learned trial court also accepted the evidence of PWs R.D. Gupta and Babu Ram Gupta, the two bank employees and the then Treasury officer for holding that it was the accused who had received the payment from the bank on the basis of the forged bills after the bills being passed from the office of the treasury.

5. The accused in his statement Under Section 342 Cr.PC has not disputed the fact that his sample writings were obtained during investigation in the face of the evidence of the prosecution that sample writings of the accused were obtained from him and the fact not being denied by the accused, the evidence of the handwriting expert gets due corroboration.

6. I have heard the learned counsel for the parties and perused the record.

7. Learned counsel for the appellant has not been able to point out anything from the record on which slightest doubt can be caused on the credibility, acceptability or truthfulness of the handwriting expert. Once we accept the independent evidence of the handwriting expert, the irresistible conclusion would be that the accused prepared the forged bills in question. On the same reasoning therefore it is found established conclusively that the accused forged the three sanction letters for withdrawal of the amounts under three treasury vouchers. The signatures under which these sanction letters have been attested have also been found to be forged. As regards the receipt of the amount of the bills is concerned PW Babu Ram a clerk of the Bank has stated that the amount of the bill WB was paid to the appellant. He has proved the entry EXPWRD5 on the bank scroll in this behalf. Likewise he has stated about the bill WP1. PW R.D. Gupta, Manager J&K; Bank has stated that the amount of Rs. 1500/- was received by the accused against bill WP2. The learned trial court has accepted the evidence of these two witnesses to hold that the accused received the payment. Learned counsel for the appellant has not been able to persuade me to hold otherwise. The evidence of these two witnesses is clinching for having not been impeached in any manner in the cross-examination. Admittedly the amount received by the accused has not been accounted for in the account books of the office. PWs Girdharilal and Sham Sunder for whom the two bills were drawn by the accused have stated that they had not applied for withdrawal of any amount as G.P. Fund and had not received the same. Learned trial court has thus found the commission of offences against the accused conclusively, cogently and completely established and in my opinion also learned trial court was justified in doing so.

8. Learned counsel for the appellant has thrown challenge to the finding of the trial court only on the ground that Hakam Din who ought to have compared the signatures of the drawing and disbursing officer on the bills with the sample signatures available in the treasury has not been examined and likewise Mr. O.P. Nargotra Accountant without whose certifying the bills the D.D.O. would not have signed the bills has also not been examined. According to the learned counsel their non-examination causes serious doubt on the story of the prosecution. Same

plea was raised by the defence before the trial court and was rejected. In my view also there is no reason to make the story of the prosecution doubtful because though the said persons had to play some role in the passing of the bills hut their omission or commission cannot, in any manner, dig hole in the story of the prosecution as far as the case of the appellant is concerned. The acts of the accused towards the commission of crime have cogently and completely been proved beyond reasonable shadow of doubt. The contention of the learned counsel for the appellant therefore is without any force and is rejected.

9. In the last the learned counsel for the appellant has pleaded for mercy and compassion of the court. She has stated that the accused would lose his job as well as the pensionary benefits as a result of his conviction. He has three unmarried daughters who would also lose social protection of their father. According to the learned counsel the appellant has suffered a lot as the offence was committed in the year 1978-79 and conviction was recorded on 25.6.1986, the appeal though was filed in 1986 is being disposed of in 2004 i.e. after a period of about 18 years. According to the learned counsel for all these long years the accused has been suffering the trial as well as agony of conviction. She also submits that the amount misappropriated by the appellant is a small amount and therefore the sentence awarded is harsh and does not commensurate with the gravity of the offence in the above said circumstances. She has argued that the accused deserves a lenient treatment at the hands of the court, so the sentence should be reduced to the imprisonment, which he has undergone after registration of the FIR.

10. I have give my due though to the pleas raised. The delay in the trial of criminal cases in my opinion is not a mitigating circumstance for reducing the sentence. Corruption is the biggest challenge, which is being faced by the country. It cannot be disputed that corruption is eating the vitals of the society, therefore, whosoever indulges in corruption has to be dealt with sternly but the fact remains that the sentence which is awarded to an employee who has indulged in corruption must commensurate with the gravity of the offence. In the present case the amount involved is very small amount, the sentence of five years Under Section 5(2) P.C. Act, in my view, seems to be a bit harsh. I therefore reduce the same to rigorous

imprisonment for one year and a fine of Rs. 5000/-, in default of payment of fine the appellant shall further undergo simple imprisonment for three months. Likewise I also reduce the sentence from three years to one year for offences Under Sections 467 & 468 RPC with a fine of Rs. 500/- for each offence and in default of payment of fine he shall suffer further simple imprisonment for a period of three months on each count. All the sentences shall, however, run concurrently.

11. With the above said modifications, the appeal is disposed of and conviction of appellant for said offences is upheld. Bail bonds of the accused-appellant are cancelled and he is directed to surrender before trial court for suffering sentence. In case, accused fails to surrender before trial court within 2 weeks from today, learned trial court shall be at liberty to take appropriate steps for his arrest ands sending him to jail for suffering the sentences.

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