

Des Raj Vs. State of J. and K.

Des Raj Vs. State of J. and K.

SooperKanoon Citation : sooperkanoon.com/901677

Court : Jammu and Kashmir

Decided On : Apr-05-2004

Reported in : 2005CriLJ1677,2005(2)JKJ135

Judge : Y.P. Nargotra, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(2); ;Ranbir Penal Code (IPC), 1989 Smvt. - 409, 420, 467, 468 and 477A; ;Evidence Act - Section 47

Appeal No. : Case No. 1 of 1992

Appellant : Des Raj

Respondent : State of J. and K.

Advocate for Def. : B.S. Salathia, A.A.G.

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

Disposition : Appeal allowed

Judgement :

Y.P. Nargotra, J.

1. Two accused were tried for commission of offences Under Section 5(2) Prevention of Corruption Act and Sections 409, 420, 467, 468 and 477A, RPC, by the learned Special Judge Anti-Corruption, Jammu, however, the learned trial

Court acquitted accused-Dr. Gugli Razdan and convicted and sentenced the appellant herein, Des Raj, to undergo rigorous imprisonment for three years and a fine of Rs. 5000/-, in default of payment of fine to further undergo rigorous imprisonment for one year for commission of the offence Under Section 5(2) P.C. Act and to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1000/-, in default of payment of fine to undergo rigorous imprisonment for six months, on each count for commission of offences Under Sections 409, 420, 467, 468 and 477A, R.P.C. All the sentences have been ordered to run concurrently.

2. P.W. Dr. Wachaspati, was the CMO, Udhampur, he had gone to Japan on a training course. In his absence his charge of the office was with accused No. 1-Dr. Gugli Razdan. Accused No. 2, who is appellant herein, was the cashier. He is alleged to have prepared treasury voucher dated 31-8-1976 for withdrawal of Rs. 1500/- on account of G.P. Fund advance in the name of Dr. A.K. Dhar. He got the voucher signed from accused No. 1 (now acquitted), who was acting as drawing and disbursing officer and then the appellant withdrew the amount from the treasury and reflected its payment to P.W. Krishanlal in the cash book entry dated 31-8-1976 as there was no employee with the name of A.K. Dhar working in the office, however, the accused in his statement submitted to the Accountant General reflected payment of said amount to one Dr. A.K. Dhar. The case of the prosecution against the accused No. 2 in nutshell was that by making false documents and fictitious entries in the record the accused withdrew Rs. 1500/- from the treasury and misappropriated the same by misusing his official position as a public servant. Charges were framed against both the accused for commission of the above said offences and were called upon to plead. The accused, however, abjured their guilt in answer to the charge, so the prosecution examined ten witnesses for proving its case against the accused. The accused did not examine any witness in defence. Learned trial Court, after appreciating the evidence of the prosecution has convicted the accused No. 2 herein whereas accused No. 1-Dr. Gugli Razdan has been acquitted. The acquittal of accused No. 1 has however not been challenged by the State in appeal and thus has attained finality. As regards the appellant herein learned trial Court found the case of the prosecution completely proved, therefore, he has been convicted and sentenced as aforesaid.

3. I have heard the learned counsel for the appellant and the learned Addl. Advocate General and perused the record of the case thoroughly.
4. The appellant has not denied his being a public servant while being posted as a cashier in the office of CMO, Udhampur. He has however denied the commission of crime. P.W. Krishan Kumar who was Treatment Organizer in T.B. Centre, Udhampur since 1980 and before that during the years 1971 to 1976 remained posted in the office of CMO where accused No. 2 was cashier and, therefore, was familiar with the handwriting and signatures of both the accused. He has testified that in 1974 he obtained GP fund but had not drawn any such advance in August, 1976. According to him he had proceeded on two months leave from 22-7-1976. He has stated that the cash book entry EXPWRS/2 dated 31-8-1976 regarding GP fund advance is in the hand of accused-Des Raj. In the drawal register entry EXPWRK3 at SNO 29 is also in the handwriting of the accused. P.W. Wachaspati has stated that the appellant worked under him for seven years so he is acquainted with his handwriting. According to him also cash book entry EXPWRK2 is in the handwriting of the appellant; that the words 'paid to Krishan Kumar' EXPWRK are in the handwriting of the appellant and the entry in the drawal register EXPWRK 3 dated 31-8-1976 is also in his handwriting. P.W. R. L Dhar, Asstt. Director FSL who has been examined by the prosecution has proved his report EXPWRL/1 in which he has stated that after comparison of the questioned writings and sample writings of the accused he found similarity for opining both in the handwriting of the same person. Learned trial Court accepted the evidence of P.W. Krishan Kumar, Dr. Wachaspati and Dr. R.L. Dhar to hold that the cashbook entry and drawal register entry was in the handwriting of the accused-Des Raj on the basis of which the prosecution has proved that the accused had drawn Rs. 1500/- as GP fund advance in the name of P.W. Krishan Kumar but P.W. Krishan Kumar has denied of having applied and received the same amount, so the accused is found to have misappropriated the amount by making false entries and on this premise the trial Court has convicted and sentenced the accused as aforesaid.
5. Learned counsel for the appellant has argued that the prosecution has not conclusively proved that the said entries of the cashbook and drawal register were

in the handwriting of the appellant. She argued that no reliance could be placed on the evidence of the expert witness Dr. R.L. Dhar because no evidence has been led by the prosecution to prove that the sample writings were taken from the appellant. She also argued that the evidence of Dr. Wachaspati and Krishan Kumar P.Ws. alone could not be relied upon.

6. I have gone through the evidence led by the prosecution and find that there is no evidence available on the record to indicate as to who had obtained the sample writings of the accused. Even the sample writings which were sent for examination to the expert are not available on the record of the investigating agency. Unless the sample writings are connected with the accused, no reliance can be placed upon the report of the handwriting expert. Therefore, the evidence of Dr. R.L. Dhar was of no use to the prosecution against the appellant. Now the question is can the evidence of P.Ws. Dr. Wachaspati and Krishan Kumar be relied upon to prove that the entries of the cash-book and drawal register dated 31-8-1976 were in the handwriting of the appellant. Section 47 of the Evidence Act in this behalf reads as follows :--

'47. Opinion of handwriting, when relevant.-- When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person is a relevant fact.

Explanation.-- A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents, written by himself or under his authority and addressed to that person or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.'

7. From the bare reading of the section it is manifest that whenever the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by

that person is relevant. A person is said to be acquainted with the handwriting of another person when he has seen that person write or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person or when in the ordinary course of business, the document purporting to be written by that person have been habitually submitted to him. In the present case Dr. Wachaspati was the Chief Medical Officer. He has stated that the accused had worked under him as a cashier for about seven years. This fact has not been questioned by the accused in the cross-examination which means that the appellant accepts that he had worked under Dr. Wachaspati for a period of seven years. In view of the official position of the accused vis-a-vis Dr. Wachaspati, who was admittedly the drawing and disbursing officer, the bills prepared by the appellant in his handwriting must be coming before him and, therefore, Dr. Wachaspati can be said to be a person acquainted with the handwriting of the accused in the ordinary course of business. Same is the position of Krishan Kumar who has also stated that he has worked with the appellant in the same office from 1971 to 1976. Therefore, he is also expected to be seeing the handwriting of the accused on official communications. Both of them have in categorical terms asserted that they are acquainted with the handwriting of the appellant. Their evidence deserves due credibility and, therefore, can be relied upon for identification of the handwriting of the accused. Both of them have testified that the cashbook and drawal register entries were in the handwriting of the appellant. Said entries, therefore, stand duly proved by the prosecution to be in the handwriting of the appellant. Through these entries the appellant has admitted that he received the amount of Rs. 1500/- on account of GP fund advance of P.W. Krishan Kumar and disbursed the same to P.W. Krishan Kumar. P.W. Krishan Kumar has not admitted the receipt of the said amount. There is nothing on record to show that P.W. Krishan Kumar, had received the said amount. From this the natural inference would be that the accused falsely reflected disbursement of the above said amount to Krishan Kumar and, therefore, learned trial court was justified in holding that it was the accused who defrauded the Government for Rs. 1500/- and misappropriated the same, Therefore, the conviction of the accused by the trial Court cannot be said to be illegal in any manner.

8. 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 1976 and conviction was recorded on 27-12-1991, the appeal though was filed in 1992 is being disposed of in 2004 i.e. after a period of about 12 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.

9. I have given my due thought 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 three 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 409, 420, 467, 468 and 477A, 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.

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

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com