

Balbir Singh Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : Jun-25-2010

Judge : Dev Darshan Sud, J.

Appellant : Balbir Singh

Respondent : State of H.P.

Disposition : Petition allowed

Judgement :

Dev Darshan Sud, J.

1. Petitioner has been charged for the offences under Sections 409, 419, 467 and 468 of the Indian Penal Code.

2. The prosecution case in brief is that complainant Munshi Ram PW-9 had filed a complaint (Ext.PW9/A) before the Superintendent of Police, Chamba on 19.7.1991, stating that his son Joginder Singh (PW-10) had sent a money order of Rs. 1200/- to his wife Smt. Biasa Devi (PW-11). The money order was sent from Post Office Dharamshala, H.P. and was to be delivered by the postal authorities at Patka. The gist of the complaint was that the amount had not been received by Smt. Viasa Devi (PW-11). Paras-2 & 3 of the complaint (Ext.PW9/A) are important. They read:

2. Sh. Balbir Post Master, Sh. Laxman Singh Postman, and Sh. Gagan Singh, who has signed the postal receipt, as witness have in connivance with each other have committed fraud and cheated Smt. Biaso Devi. Smt. Biaso Devi and her husband have sent various letters in this regard to postal authorities to take action against the culprits but the postal authorities are keeping silent over the matter which is most intriguing.

3. My son Rajinder Singh alias Joginder Singh reported the matter promptly to police authority at Chowari but no action has been taken so far.

3. In other words, reading the complaint as it is, shows that there were two more accused other than the petitioner. They have not been arrayed as accused.

4. After examination of the record, prosecution was launched against the petitioner, who was convicted by the Court under Section 409 of the Indian Penal Code and ordered to under go simple imprisonment for two years and fine of Rs. 500/- under Section 409 IPC., simple imprisonment for one year and a fine of Rs. 250/- under Section 419 I.P.C. and simple imprisonment for two years and fine of Rs. 500/-under Section 468 of the Indian Penal Code. All the sentences to run concurrently. To reach this conclusion, statement of four witnesses was relied upon by the prosecution. They were PW-7 Sh. Prabhat Chand, PW-11 Smt. Biasa Devi, PW-10 Sh. Joginder Singh and PW-12 Sh. Laxman Singh.

5. In the appeal preferred before the learned Sessions Judge, the contention urged on behalf of the petitioner that the prosecution has failed to establish the charge against the petitioner was rejected.

6. At this juncture, what is required to be considered is the finding of the learned Sessions Judge with respect to Ext.P-1 which is the thumb impression supposed to be that of Smt. Biasa Devi and the same was sent for comparison to the Director, Finger Prints Bureau, Phillour, who has opined that this was proved to be that of Balbir Singh-petitioner but the report could not be looked into as the specimen finger prints of the petitioner was not proved to have been taken in the presence of Tehsildar, Chowari. This is the central point of consideration in this petition. Petitioner stands charged for the offences of falsifying the record and mis-

appropriating money which rightfully does not belong to him. For this purpose, the case of the prosecution is that the thumb impression on Ext.P-1 is that of Balbir Singh-petitioner and not that of Smt. Biasa Devi to whom the money was sent.

7. Both the learned courts below have placed reliance on the evidence of the other witnesses without in any manner turning to the primary evidence which is the money order receipt thumb marked by the petitioner, there could have been no better evidence on the record to convict the petitioner then by proof of his thumb impression. Why this has not been done, remains a mystery. If the report regarding the thumb impression of the petitioner has not been proved, I do not see any valid reason for up-holding the conviction of the petitioner.

8. Learned Additional Advocate General submits that in revisional jurisdiction it is not open to the Court to scrutinize the evidence in detail, it has undergone this exercise in two courts below. This is the settled law and does not require any precedent or reiteration. True, this proposition of law cannot be disputed but at the same time this Court cannot over look the fact that if there is a perversity of finding on the record i.e. to say the primary evidence with respect to the involvement of the petitioner having not been established, there is no reason to convict the petitioner for the offences as charged. What this Court fails to comprehend is that if the report implicated the petitioner why it was not proved in accordance with law as held by the learned Sessions Judge. So much so even the thumb impression of the petitioner has not been proved to have been taken in the presence of the Tehsildar.

9. Learned Counsel for the petitioner places reliance on the judgment of the Supreme Court in Phool Kumar v. Delhi Administration : AIR 1975 SC 905 and State of Maharashtra through C.B.I. v. Sukhdev Singh alias Sukha and Ors. : AIR 1992 SC 2100 to urge that the Supreme Court has time and again held that the opinion of the hand writing expert is not conclusive.

10. Learned Counsel appearing for the petitioner submits that the best and primary evidence was that of the thumb impression of the petitioner which has not been proved on the record. The case according to the complainant was that the money order receipt was thumb marked by the petitioner and not by the recipient.

Although, the evidence of the hand writing/finger prints experts is not conclusive yet it is a very strong corroborative piece of evidence. Considering the totality of the facts and circumstances of the case, I cannot comprehend as to why the thumb impression of the petitioner was not proved on the record. To repeat, this was the best and primary evidence which would have nailed the petitioner.

11. I cannot subscribe to the findings of the courts below that the evidence of the complainant, his wife and son established that it was the petitioner who has taken the money. One more fact which emerges from the evidence is that as noticed, in the report lodged before the Superintendent of Police, complaint was made that three persons were responsible for mis-appropriating the money. What happened to the other two persons is not clear from the record.

12. This revision petition is accordingly allowed. The judgments of conviction and sentence of both the courts below are set aside. Bail bonds furnished by the petitioner shall stand discharged.

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