

State of H.P. Vs. Sukh Ram and Others

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Court : Himachal Pradesh

Decided On : Aug-08-2011

Judge : Surjit Singh & Rajiv Sharma

Appeal No. : Criminal Appeal No. 418 of 2007

Appellant : State of H.P.

Respondent : Sukh Ram and Others

Judgement :

SURJIT SINGH, J. (Oral)

1. State has appealed against the judgment, dated 30.6.2007, whereby respondents Sukh Ram, Balbir Singh and Arun Kumar Sood, who were tried for offences, under Sections 409, 467, 468, 471, 120-B, 420 IPC and Section 13(2) of the Prevention of Corruption Act, 1988, have been acquitted.

2. Respondents were sent up for trial by the State, on the allegations that during the year 1984, there was a scheme of the Government for providing loans at cheaper interest rates to poor persons for purchase of buffaloes, running small businesses, for development of land etc. Loans used to be disbursed by the bank, on the recommendation of Block Development Officer.

3. Respondent Balbir Singh was working as Block Development Officer, Kunihar. Respondent Sukh Ram was employed as a Gram Sewak, under him. In the year

1984, applications, in the names of several persons, including PW-5 Nathu Ram and PW7 Kirpu, were submitted to respondent Balbir Singh, in his capacity as Block Development Officer, by respondent Sukh Ram, who was Gram Sewak. As per those applications, the two witnesses had applied for grant of loan, under the aforesaid scheme. Loans were sanctioned by respondent Balbir Singh, in his capacity as BDO and sanction order was sent to respondent No.3 Arun Kumar Sood in his capacity, as Branch Manager, UCO Bank, Darlaghat, for making payment to the above named two witnesses. Documents, like agreements, guarantee deed etc. for repayment of loan, were executed in the name of the aforesaid two witnesses and the loans were disbursed.

4. On getting a source report that there had been bungling in the matter of grant of loan, investigation was conducted by Anti-Corruption people of Solan. During the course of preliminary inquiry, it came to light that PW-5 Nathu Ram and PW-7 Kirpu and some other persons had not applied for loans and the applications in their names were forged and also the loan papers were not executed by them. It also came to light that disbursement of loan was also not made to the above named two witnesses and several other persons. So, a case was formally registered against the present respondents.

5. During the course of investigation, police felt that there was a criminal conspiracy among the three respondents to cheat the government, by claiming subsidy on interest and, so, papers were forged, with regard to the sanction of loan and the subsidy amount was claimed and misappropriated by the three respondents.

6. On completion of investigation, report, under Section 173 Cr. P.C. was filed in the Court of Special Judge, Solan, who, after complying the requirement of Section 207 Cr. P.C., charged the respondents with offences, under the aforesaid penal provisions of Indian Penal Code and Prevention of Corruption Act. Respondents pleaded not guilty to the charge. They were, therefore, put on trial.

7. Defence of the respondents was of denial simplicitor. They denied that there was any criminal conspiracy. Respondent Balbir Singh took the plea that since the applications were verified by respondent Sukh Ram, who was working as Gram

Sewak under him, he sanctioned the loans and wrote to respondent No.3 Arun Kumar Sood, Branch Manager, UCO Bank, Darlaghat, to disburse the loan money to the applicants. Respondent Arun Kumar Sood took the plea that he disbursed the loan to the persons, who had been duly identified before him.

8. Learned trial Court concluded that the case of the prosecution did not stand established, beyond reasonable doubt, holding that the purported specimen signatures of PW-5 Nathu Ram and PW-7 Kirpu, taken during the course of investigation, could not have been lawfully taken and, hence, the comparison of the disputed signatures on the documents and the actual payees receipts, with the aforesaid specimen signatures of the two witnesses, was of no avail to the prosecution. In support of this reasoning, learned trial Court placed reliance upon a judgment of the Supreme Court in Sukhvinder Singh and others Vs. State of Punjab, 1994 SCC (Cri) 1376. State is aggrieved by the judgment of trial Court and, so, it has filed the present appeal, with the leave of this Court.

9. We have heard learned Assistant Advocate General as also learned counsel, representing the respondents, and gone through the record.

10. Documents in respect of PW-5 Nathu Ram, which have been proved by the prosecution, are Ext. PW5/A, application, Ext. PW5/B another application addressed to the bank and Ext. PW5/C agreement relating to term loan. Nathu Ram, while in the witness box as PW-5, admitted that he had signed application Ext. PW5/A, at the instance of respondent Sukh Ram, but denied his signatures on the remaining two documents, i.e. Ext. PW5/B (application on the prescribed form addressed to Branch Manager) and the agreement Ext. PW5/C.

11. During the course of investigation, specimen signatures of PW5 Nathu Ram were taken. The same are on documents Exts. PW5/D-1 to PW5/D-3. Nathu Ram while in the witness box as PW5, admitted that these signatures are his own. Documents Exts. PW5/A, PW5/B and PW5/C were sent to Handwriting Expert, namely PW-20 Mohinder Singh, for comparison of purported signature of PW5 Nathu Ram thereon, with his specimen signatures on Exts. PW5/D-1 to Ext. PW5/D-3. The said witness, vide opinion Ext. PW-20/C-1 (item No.12), opined that purported signatures of PW-5 Nathu Ram on all the three documents, i.e. Ext.

PW5/A, PW5/B and PW5/C were different from the specimen signatures on Ext. PW5/D1 to Ext. PW5/D3. Opinion of Handwriting Expert, thus, corroborates the testimony of PW5 Nathu Ram that documents Ext. PW5/B and Ext. PW5/C did not bear his signatures and that neither he applied for loan nor did he receive any loan money from the bank.

12. As regards the documents purportedly executed by PW-7 Kirpu, the same are Ext. PW7/A, application on the prescribed form, Ext. PW7/B, agreement between the bank and the loanee, Ext. PW7/C, a declaration submitted to the bank and purporting to have been signed by the loanee, Ext. PW7/D, again an application for sanction of loan on another prescribed form, Ext. PW7/E, carbon copy of Ext. PW7/B, Ext. PW7/F, actual payee's receipt, regarding disbursement of loan and Ext. PW7/G, letter of guarantee.

13. PW7 Kirpu, while in the witness box, denied having signed any of these documents. His specimen signatures PW7/H-1 to PW7/H-3 were taken before Tehsildar by the Investigating Officer, namely PW-10 Damodar Dass. PW7 Kirpu admitted that signatures on Exts. PW7/H-1 to PW7/H-3 were his own. PW-20 Mohinder Singh, Handwriting Expert, opined vide opinion Ext. PW20/C-1 (Item No.13) that the purported signatures of Kirpu on documents Exts. PW7/A to PW7/G did not match with his specimen signatures on Ext. PW7/H-1 to Ext. PW7/H-3.

14. Learned trial Court has disbelieved the opinion evidence of PW-20 Mohinder Singh, Handwriting Expert, given in the form of his testimony in the Court and written opinion Ext. PW2/C-1. Reason given by the learned trial Court is that specimen signatures of PW-5 Nathu Ram and PW-7 Kirpu had been taken before a Tehsildar who did not have the authority to enquire into or try the offence, because in view of the law laid down by the Hon'ble Supreme Court, in the aforesaid judgment, such specimen signatures are required to be excluded from evidence and when such specimen signatures are so excluded, report of Handwriting Expert and his opinion, as testified in the Court, become immaterial. Learned trial Court has supported its view by a judgment of Hon'ble Supreme Court in Sukhvinder Singh and others Vs. State of Punjab, 1994 SCC (Cri) 1376.

15. Learned counsel, representing respondent Sukh Ram, also relies upon the aforesaid judgment of the Supreme Court as also a judgment of a Division Bench of this court in State of H.P. Vs. Laje Ram and others, 2011 (2) Him L.R. (DB) 597, wherein relying upon the aforesaid judgment of the Supreme Court, opinion of the Handwriting Expert, with regard to the disputed signatures of the accused, has been excluded from the evidence, on the ground that signatures of the accused had been obtained before an Executive Magistrate, who did not have the authority to enquire into or try the case.

16. Both the aforesaid judgments, upon which reliance has been placed, i.e. judgment of the Supreme Court as also the judgment of a Division Bench of this Court, are distinguishable, both on facts and law. On facts, the judgments are distinguishable, because in the case decided by the Hon'ble Supreme Court, specimen signatures of the accused had been taken before Tehsildar and in the case decided by a Division Bench of this Court, specimen signatures of the accused had been taken before Executive Magistrate and the accused had denied that those were their signatures. In the present case specimen signatures of the aforesaid two witnesses were taken before an Executive Magistrate, who of course did not have the authority to enquire into or try the case. Distinguishing feature is that both the witnesses, in this case, admit the specimen signatures to be theirs.

17. Aforesaid precedents are distinguishable from the present case on law point also. In the case before the Supreme Court, Tehsildar had directed the accused to give his specimen signatures/writings. In the present case, witnesses were not directed to give their specimen signatures by the Executive Magistrate. They were produced before the Executive Magistrate by the police, with a request that their specimen signatures may be obtained. Hon'ble Supreme Court while dealing with a situation similar to the one with which we are dealing in this case in Vijay @ Gian Chand Jain Vs. State of M.P., 1994 SCC (Cri) 1755, has approved the reasoning of the High Court that dealt with the matter at the appellate stage that the bar of Section 73 of the Evidence Act does not apply in cases where Investigating Officer approaches an Executive Magistrate or Tehsildar etc. for taking specimen writings or signatures of an accused and on such request being made, Tehsildar or

Executive Magistrate takes such specimen signatures or writings. This judgment of the Hon'ble Supreme Court being subsequent to the judgment relied upon by the learned counsel for the respondents should hold the field.

18. Also, we are of the considered view that first part of Section 73 of the Evidence Act permits the taking of specimen signatures/writings of an accused or any other person, whose signatures may be required for comparison with the disputed signatures/writings, before an authority other than the Court which has ultimately to enquire into or try that case, during the course of investigation. Such specimen signatures/writings are then required to be proved unless they are admitted by the accused or the concerned person during the course of enquiry or trial. Use of words in first part of Section 73 of the Evidence Act that either such specimen signatures/writings should be admitted or proved clearly suggests that specimen signatures/writings of a person, whose disputed signatures/writings on some documents are required to be proved by the opinion of an expert, can be obtained for comparison with disputed signatures/writings during the course of investigation, before an authority other than the Magistrate or Court having jurisdiction to enquire into or try such case. First part of Section 73 Evidence Act is reproduced for ready reference:

“73. Comparison of signature, writing or seal with others admitted or proved.-In order to ascertain whether a signature, writing, or seal is that of the person by whom it purports to have been written or made, any signature, writing or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose. ...”

19. In view of the above discussion, we find no merit in the submission made on behalf of the respondents that specimen writings of the witnesses, namely PW5 Nathu Ram and PW7 Kirpu are required to be excluded from the evidence and incidentally, opinion of the Handwriting Expert is also to be ignored.

20. No other submission has been made before us.

21. As regards charge of criminal conspiracy, there is nothing on record, indicating that respondent Balbir Singh, in his capacity as BDO and Arun Kumar Sood, Branch Manager, acted in league with respondent Sukh Ram, in the matter of submission of applications for loan in the names of above named two witnesses and some other persons to the BDO. Plea of respondent Balbir Singh that he sanctioned the loans, because the applications were verified by respondent Sukh Ram, Gram Sewak, working under him, cannot be said to be improbable, especially when there is no evidence suggestive of the alleged conspiracy. So is the case with respect to the plea of respondent Arun Kumar Sood, who says that he released the loan amounts because of the sanctioning of loan by Balbir Singh, BDO and that he disbursed the loans after the purported loanees were duly identified before him. Prosecution has proved on record actually payees receipt Ext. PW7/F, in respect of PW-7 Kirpu only and this receipt shows that Kirpu was identified by some Sukh Ram, at the time of disbursement of loan.

22. As a result of above discussion, we partly allow the State appeal, set aside the judgment of acquittal passed by the learned trial Court, so far as it pertains to respondent Sukh Ram and hold him guilty of forging application Ext. PW5/B in the name of PW5 Nathu Ram and application Ext. PW7/A, in the name of PW7 Kirpu, for the purpose of cheating, punishable under Section 468 IPC and also for the offence of using the aforesaid forged applications as genuine, punishable under Section 471 IPC. He be produced on 12.9.2011 for being heard on the question of quantum of sentence.

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