

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.Appeal No.236 of 2001

Judgment reserved on:23.7.2008.

Decided on: August 29, 2008.

State of H.P.

...Appellant.

VERSUS

Raj Kumar & Anr.

....Respondents.

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?¹ No

For the Appellant: Mr Anshul Bansal, Addl.A.G.

**For the respondents: Ms Archna Dutt, Advocate for
respondent No.1.**

**Mr HKS Thakur, Advocate for
respondent No.2.**

Kuldip Singh, Judge:

This appeal has been directed against the judgment dated 25.11.2000 passed by learned Special Judge (Forests), Shimla in C.Case No.2-S/7 of 1999 acquitting the respondents under Sections 384, 511, 109/34 IPC and Sections 9 and 14 of the Prevention of Corruption Act, 1988.

2. The prosecution case, in brief, is that respondent No.1 during the year 1995-97 was posted as Male Health

Whether the reporters of the local papers maybe allowed to see the judgment? Yes

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Supervisor in Rippon Hospital, Shimla and respondent No.2 during this period was posted as Mechanic in the office of District Horticulture Office, Shimla. Shanti Swarup Sharma during this period was posted as Junior Assistant in the Department of Industries, Himachal Pradesh at Shimla, his wife PW-1 Smt.Rajni Sharma was posted as Senior Assistant, ARO Branch, H.P. Secretariat Shimla. PW-22 Anant Ram, Dy.S.P. Incharge Anti Corruption Zone, received a letter along with news item on 20.9.1997 from the office of Superintendent of Police, Shimla. On the basis of said letter PW-22 Anant Ram conducted inquiry and submitted his report. Thereupon, Superintendent of Police granted permission to register case against both the accused, hence F.I.R. Ext.PW-22/E came to be registered at Police Station, Anti Corruption Zone, Shimla.

3. The further case of the prosecution is that PW-2 Shanti Swarup Sharma was transferred on 22.5.1995, 2.1.1997 and 6.9.1997 even though there were three other Junior Assistants in the same office having longer stay at Shimla than PW-2. The transfer orders of PW-2 later on were cancelled without assigning any reason. It is alleged that for cancellation of first transfer order dated 22.5.1995 PW-2 had paid Rs.5000 bribe to respondent No.1 on demand on 1.6.1995, for cancellation of transfer order dated

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2.1.1997 he again paid Rs.10,000 to respondent No.1 on 28.1.1997 on demand. It is alleged that on both occasions demand was made by respondent No.1 and payment made to him in presence of PW-3 Kapil Kumar and one Mushtaq Quraishi. The said amount was received by respondent No.1 as contribution towards Chief Minister's Relief Fund but the amount was never deposited in the said relief fund nor any receipt to this effect was issued to PW-2. It has been alleged that on both the occasions unofficial (U.O.) letters were issued from Chief Minister's office to Director Industries, Himachal Pradesh directing him to transfer PW-2 from the office of Department of Industries to Industries Office, Bilaspur. The learned Special Judge (F) has referred such letters in chronological order in Paragraph-2 of the impugned judgment.

4. The further prosecution case is that on 30.7.1997 when PW-1 came out from her office in Secretariat both respondents misbehaved with her. She reported the matter to police at Police Station, Chhota Shimla but the matter was compromised by respondents with PW-1 and her husband PW-2. It has been alleged that when respondents left the Police Station, they threatened PW-1 and PW-2 that they would get PW-2 transferred to Chamba instead of Bilaspur. It has been alleged that on 16.9.1997 PW-2 was transferred

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from Shimla to Chamba. On 23.9.1997 PW-1 lodged a complaint to Superintendent of Police, District Shimla against both the respondents, who were proceeded under Sections 107/150 Cr.P.C. In the meantime, several newspapers published news items mentioning that bribes were being paid to NGO leaders for transferring employees and for cancellation of transfer orders.

5. It has been alleged that during investigation it has come that individual employees were not authorized to make collection in Chief Minister's Fund though they could contribute individually in that fund. The respondents were not posted in Industries Department, therefore, they could not collect contribution from PW-2 Shanti Swarup Sharma for Chief Minister's Relief Fund. They received the amounts as illegal gratification. The respondent No.2 had deposited Rs.3600 on 11.3.1996 and Rs.6300 on 21.3.1996 in Chief Minister's Relief Fund. The respondents did not issue any receipt to PW-2 of Rs.5000 and Rs.10,000 which were received by them in June 1995 and January 1997. The respondents were NGO leaders. The respondent No.2 abetted respondent No.1 to extort money from PW-2. The respondents intentionally put PW-2 in fear of transfer to Bilaspur and Chamba and dishonestly induced him to pay Rs.5000 and Rs.10,000.

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6. The respondents were charged for offences punishable under Sections 384, 511, 109, 34 IPC and Sections 9 and 14 of the Prevention of Corruption Act, 1988. The respondents did not plead guilty and claimed trial, prosecution examined 25 witnesses. The statements of respondents were recorded under Section 313 Cr.P.C. in which they denied the prosecution case but did not lead any evidence in defence. The learned Special Judge acquitted the respondents on 25.11.2000, hence, this appeal.

7. I have heard learned Additional Advocate General for the State, Ms.Archna Dutt, learned counsel for respondent No.1, Mr.HKS Thakur, learned counsel for respondent No.2 and gone through the record. The learned Additional Advocate General has submitted that learned Special Judge has not properly appreciated the material on record and has erred in acquitting the respondents. The prosecution has proved the case against the respondents beyond reasonable doubt, he submitted for setting aside the acquittal of the respondents. Per contra, the learned counsel, representing the respondents, have supported the impugned judgment of acquittal and have submitted that learned Special Judge has minutely gone into the matter and the judgment of acquittal of respondents does not require any interference.

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8. PW-1 Smt.Rajni Sharma has stated that both the accused had demanded Rs.5000 from her husband for relief fund, thereupon transfer of her husband was cancelled. After some time in the year 1996 her husband was again transferred to Bilaspur and both accused had charged Rs.10,000 from her husband for cancellation of his transfer in the shape of relief fund, but no receipt was issued on both occasions. Both the accused misbehaved with her. She reported the matter to police vide Ext.PW-1/A. She also lodged complaint Ext.PW-1/B to the police. In her statement she has nowhere stated that the amount of Rs.5000 and another amount of Rs.10,000 was paid to respondents in her presence or in presence of any other person. She has also not stated that the amounts were paid by her to the respondents. In cross examination, she has, however, stated that the amount of Rs.10,000 and another amount of Rs.5000 was paid from her pocket but she has not clearly stated that the said amounts were actually paid by her to the respondents. She has admitted that at the relevant time in the year 1995 her husband was Joint Secretary of NGO Federation. In the later part of the cross examination, she has stated that Rs.5000 and Rs.10,000 were jointly paid by both of them but again she has not clearly stated that those amounts were actually paid by whom to whom.

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9. PW-2 Shanti Swarup Sharma has stated that he came to know that his transfer was done at the instance of Raj Kumar and Laxmi Chand Machhan accused. The accused demanded Rs.5000 for cancellation of the transfer. Laxmi Chand Machhan contacted him on telephone and told that he would send Raj Kumar accused for receiving the amount. Raj Kumar probably came to his office on 1.6.1995 and he gave Rs.5000 to him in the name of Chief Minister's Relief Fund. This amount was paid in presence of Kapil Kumar and Mushtaq Quraishi. Thereafter, his transfer was cancelled. He was again transferred to Bilaspur in the year 1996. Both the accused approached him and his wife for cancellation of his transfer on payment of amount in relief fund. In January 1997 Raj Kumar accused came to his office and he paid Rs.10,000 to him in presence of Kapil Kumar and Mushtaq Quraishi. In middle of 1997 Raj Kumar and Laxmi Chand Machhan misbehaved with his wife at Chhota Shimla but the matter was compromised in the Police Station. Laxmi Chand Machhan threatened him with dire consequences and within 15 days he was transferred to Chamba. PW-2 has stated that amounts of Rs.5000 and Rs.10,000 were given by him to Raj Kumar accused in presence of Kapil Kumar and Mushtaq Quraishi but this is not so stated by PW-1 Smt.Rajni Sharma. PW-2 has stated

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that the amounts were paid by him from his pocket whereas PW-1 has stated that the amounts were paid from her pocket. PW-2 at the end of his cross examination has clearly stated that amounts of Rs.5000 and Rs.10,000 were paid by him to accused for Chief Minister's Relief Fund and not as bribe.

10. PW-3 Kapil Kumar has stated that in June 1995 Shanti Swarup gave a sum of Rs.5000 to Raj Kumar in envelope. Mushtaq Quraishi had come to his room when the payment was passed over to Raj Kumar. In January 1997 Shanti Swarup paid a sum of Rs.10,000 to Raj Kumar in his presence as well as in presence of Mushtaq Quraishi. In cross examination, he has stated that neither he saw the currency notes nor counted them personally. It is not understandable when PW-3 had not seen the currency notes nor counted them then how he can say that an amounts of Rs.5000 and Rs.10,000 were paid to Raj Kumar by Shanti Swarup. PW-4 Inder Singh, PW-5 Baldev Dass, PW-6 Hem Raj, PW-7 Ravinder Kumar and PW-8 Akshay Sood are not relevant witnesses for the controversy in question. PW-9 Ram Saran has stated that from 1996-97 he remained posted as Inspector / SHO Police Station, Chhota Shimla. Smt.Rajni Devi and her husband submitted an application on simple paper against Laxmi and Raj Kumar but the matter

was compromised. PW-10 Udham Singh, PW-11 Talwar Singh, PW-12 Govind Ram, PW-13 Chhanga Ram, PW-14 Maya Thakur, PW-15 Chander Mani, PW-16 Sita Ram Chandel, PW-17 Dharam Parkash Sharma and PW-18 Narain Singh are again not material witnesses regarding the point in issue.

11. PW-19 T.C.Janartha has stated that from December 1993 to 1998 he remained posted as Additional Secretary-cum-Private Secretary to Chief Minister, Himachal Pradesh. Any individual of the State or employee or NGO leader could have moved to Chief Minister for transfer of any employee of the State Government. No complaint against Raj Kumar accused was made to him or came to his notice to the effect that he was collecting money from employees for Chief Minister's Relief Fund. Statement of PW-20 Mukesh Agnihotri is not relevant to the point in controversy. PW-21 Vichitar Singh has partly investigated the case. PW-22 Anant Ram has stated that he remained posted as Dy.S.P. Incharge, Anti Corruption Zone, Shimla from 1996 to 1999. He has only recorded F.I.R. Ext.PW-22/A in the case. He conducted inquiry and submitted his report Ext.PW-22/C. PW-23 Vivek Srivastava has stated that he remained posted as Director Industries, Himachal Pradesh from February 1996 to December 1997. He has proved some letters and

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his signatures on noting sheets. In cross examination, he has stated that transfer of Shanti Swarup was done in accordance with the policy and instructions of the Government and without any pressure from any quarter. PW-24 Jog Raj has partly investigated the case, he took into possession some record. PW-25 Parma Nand did not support the prosecution and he was declared hostile. In his cross examination, the prosecution could not extract anything favourable to the prosecution.

12. The perusal of statements of PW-1, PW-2 and PW-3 does not prove payments of Rs.5000 and Rs.10,000 by PW-2 or PW-1 to respondents as bribe or for seeking favour for cancellation of transfer orders of PW-2. In fact, payments of Rs.5000 and Rs.10,000 have not at all been proved. On material points by PW-1, PW-2 and PW-3 regarding payments of amounts to accused No.1 have contradicted. PW-3 had not seen the amounts when these were allegedly paid by PW-2 to accused No.1. Mushtaq Quraishi witness of the alleged payments has not been examined. PW-1 has not stated that the amounts were paid by PW-2 in presence of PW-3 and Mushtaq Quraishi. PW-19 has stated that no complaint was received against Raj Kumar accused that he was collecting money for Chief Minister's Relief Fund. It has come on record that PW-2 was an NGO leader at the

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relevant time. The allegations against the accused are that in their capacity as NGO leaders they were collecting money and influencing the authorities for ordering transfer of the employees and then cancellation of the transfer orders. PW-2 himself was an NGO leader at the relevant time, therefore, on the basis of prosecution story it is not believable that he would also pay some amount for cancellation of his own transfer orders. PW-23 Vivek Srivastava has stated that transfer of Shanti Swarup was done in accordance with the policy and instructions issued by the Government and without any pressure from any quarter. PW-2 has stated that he paid Rs.5000 and Rs.10,000 for Chief Minister's Relief Fund and not as bribe. It completely demolishes the case of the prosecution. The alleged misbehaviour of respondents with PW-1 was compromised between the parties. The learned Special Judge has rightly appreciated the material on record. The view taken by the learned Special Judge emerges from the oral and documentary evidence which has come on record. No case for interference has been made out.

13. No other point was urged.

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14. The result of the above discussion, appeal fails and is accordingly dismissed. Bail bonds, furnished by the respondents, are discharged.

August 29, 2008.
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(Kuldip Singh), J.