

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 414 of 1999

Reserved on: 3.6.2008

Date of decision: 30.06.2008

State of H.P. ... Appellant

Versus

Shanti Swarup & Ors. ... Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?¹ No.

For the appellant: Mr. J.S. Guleria, Law Officer.

For the respondents: Mr. Ajay Kochar, Advocate, for respondents
No. 1,2, 4 and 5.

V.K. Ahuja , J.:

This is an appeal filed by the appellant/State of H.P. against the judgment of the Court of learned Special Judge(F) Shimla, dated 4.6.1999, vide which two of the respondents were acquitted of the charge framed against them under Section 120-B read with Section 420 of the Indian Penal Code, under Rule 18/20 of the Himachal Pradesh Forest Produce Transit (Land Routes) Rules 1978 and three of the respondents were acquitted of the charge framed against them under Section 120-B read with Sections 420, 218 of the Indian Penal Code read with Rule 18/20 of the Himachal Pradesh Forest Produce Transit

¹Whether reporters of Local Papers may be allowed to see the judgment? Yes.

(Land Routes) Rules 1978, under Section 5(2) of the Prevention of Corruption Act, 1947.

Briefly stated the facts of the case are that during investigation of FIR No. 19/84 dated 29.9.1984 under the provisions of Forest Act and Section 5(2) of the Corruption Act by P.S. Enforcement South Zone Shimla, it came to light that against permit No. 263/82-83 dated 30.3.82 issued by the Divisional Forest Officer, Shimla, which was valid upto 25.4.84 for 1135 scants of different varieties and 599 scants of timber were exported in excess on the basis of this permit. An inquiry was conducted and the case was registered and it was found that M/S Partap Timber Forest Contractor, Kotkhai had purchased 206 trees of Kail and Deodar from Balak Ram in April, 1980 and thereafter, felling order was issued by the D.F.O., Shimla, who after verification and marking the trees granted permission for export of 1135 scants of different varieties alongwith fuel wood of 200 quintals in favour of the said contractor which was to be sent outside Himachal Pradesh.

It was further investigated that the timber was transported outside Himachal Pradesh vide 9 RRS and was sent to Jagadhari and Yamuna Nagar which timber was booked by one Satish Kumar and respondents No. 1 and 2 by filling up the forwarding notes and in connivance with respondents No. 3, 4 and 5 who were posted as Assistant Station Masters at Shoghi and it was found that excess timber has been exported as mentioned above and the case was registered against the railway officials also for preparing wrong record and after investigation the challan was filed before the learned trial Court who tried the respondents as detailed above leading to their acquittal.

I have heard the learned counsel for the parties and have gone through the record.

The submissions made by the learned Law Officer for the appellant were that there was sufficient evidence in regard to criminal conspiracy that the respondents had exported more timber than permitted on the permit and they prepared incorrect report to transport excess timber for which there was sufficient evidence on record, but the learned trial Court wrongly acquitted the respondents, which findings are perverse and as such, they are liable to be reversed.

On the other hand, the learned counsel for the respondents had supported the impugned judgment for the reasons given therein and thus, it was submitted that there was no merit in the appeal filed by the State of H.P. which has been filed in routine and as such, the appeal is liable to be dismissed.

The charge against accused Shanti Swarup and Vinod Kumar, respondents No. 1 and 2 is that they were loading and unloading contractors at Railway Station Shoghi and they alongwith their co-accused Satish Kumar (now dead) and railway officials managed to export 599 scants of timber in excess against the permit in question and they prepared incorrect record. In the present case, it is not disputed that Firm M/S Partap Timber & Company had felled the trees and converted them into 1135 scants and obtained the necessary permit dated 30.3.1982. It was valid upto 25.4. 1982 and was further extended upto 29.9.1982. However, it is the case of the prosecution that 734 number of scants of different pieces were sent to outside vide railway receipts which were filled in by these two forwarding agents, respondents

No. 1 and 2 alongwith Satish Kumar. It has to be seen whether it was proved that excess timber was supplied and the railway receipts bore the signatures of respondents No. 1 and 2 or not. PW-12 Ashok Kumar Goel a partner of M/S ESS ESS Trading Company has received the consignment of railway receipts Exs.PW2/A-1, PW2/A-3, PW2/A-5 and Ext. PW2/A-9. He stated that as per entry of the ledger vide these railway receipts, the firm received the timber on different dates and has also proved the copy of the ledger vide payment of Rs.50,000/- which was made vide bank draft. PW-19 Krishan Kumar, a partner of firm M/S Padam Chand Krishan Kumar Sood, testified that they received timber vide railway receipt Ext. PW2/A-4 and received 207 scants of timber from M/S Mata Timber and has proved the copy of Khata and its entries. He admitted in his cross-examination that some of leaves of the register were blank. He stated that they used to receive the timber of different sizes ranging from 2feet to 12 feet.

The learned trial Court has referred to the evidence in this regard in paras 20, 21 and 22 of the judgment and has also referred to the statement of DW-1 J.N. Mittal examined in defence who has stated that in order to keep the balance of boggy, timber used to be cut and in that eventuality number of the scants used to increase. However, the volume remains the same.

It is not necessary for this Court to again reproduce the evidence as discussed by the learned trial Court in these paras by reiterating the evidence in different words. It was observed in another decision based on similar facts by Hon'ble Mr. Justice C.K. Thakker, the then Chief Justice of this High Court, presently a Judge of Supreme Court

in **Criminal Appeal No. 261 of 1997**, titled **State of Himachal Pradesh Vs. Gian Singh Chauhan and another**, decided on similar facts on 12.1.2001. In that case, a similar question arose in regard to export of excess timber and beyond the date of expiry by the railway authorities. The Hon'ble Judge had not considered it necessary to again discuss the evidence in his own words when the observations made were not in dispute and had accordingly referred and reproduced many of the paras of the judgment given by the learned Special Judge and had concluded that the findings of the learned Special Judge cannot be said to be contrary to law or inconsistent with the evidence on record and materials placed before the Court.

A reference can be made to findings recorded under Paras 31 to 34 asunder:-

"31. The volume of 1734 number of scants shown to have been booked and exported as per railway station Shogi to outside Himachal Pradesh vide 9 railway receipts has not been mentioned. Now it has to be seen whether the volume of 1734 scants exported by the accused exceeded the volume mentioned in the export permit and the onus to prove that the volume of the scants exported also exceeded than the limit prescribed in the export permit Ext. PW46/A is admittedly on the prosecution and it has also to be seen as to whether the prosecution has been able to prove this fact. The prosecution in order to prove this fact has placed on record the railway receipts Ext. PW2/A-1 to Ext. PW2/A-9 vide which 1734 number of scants have been exported on the authority of the permit Ext. PW46/A from the railway station Shogi to outside Himachal Pradesh in the names of different firms i.e. ESS. ESS Trading company has received the consignment of 5 railway receipts i.e. Ext. PW2/A-1 to Ext. PW2/A-3 and

Ext. PW2/A-5 and Ext. PW2/A-9, M/S. Padam Chand and Krishan Kumar has received the consignment of railway receipt Ext. PW2/A-4, M/S. Ajanta Wood has received the consignment Ext. PW2/A-6, M/S. Khajan Singh Sobh Ram has received the consignment of Ext. PW2/A-7 and M/S. Amritsaria Ram has received the consignment Ext. PW2/A-8. Whereas the permit Ext. PW46/A was issued by the DFO Shimla in favour of Partap Chauhan for 1135 scants and thus the prosecution has alleged that 599 scants were transported in excess.

32. Further in order to prove the factum of excess transportation of timber on the authority of the permit has also examined Shri K.C. Nandwani as PW-4 and PW-46 Shri M.A. Siddiquie. Both these persons were vigilance inspectors during the year 1982 and 1988 they were directed by the Director(Vigilance) to check the record of the railway station Shogi with regard to the irregularities of the booking of the forest produce. PW-4 Shri K.C. Nandwani has appeared in the witness box and has proved the inquiry report Ext. PW4/A and irregularity statement Ext. PW4/1. According to the irregularity statement, 499 scants were transported excess on the authority of the permit. In cross-examination he has very specifically stated that in order to avoid uneven loading and to use the wagon to its full capacity, the timber pieces are some times cut and he has further admitted that in such eventuality, the number of scants will increase. Another inspector Shri M.A. Siddiquie PW-46 who also worked as Inspector, Vigilance in the Special Quad Railway Board New Delhi has testified that he was ordered to associate Shri K.C. Nandwani in respect of the irregularities of the booking of timber at Railway Station Shogi and checked the record and found irregularity as per the clarification given by the Chief Conservator of forest, Shimla. In cross-examination he has not mentioned in his report that Cft.

volume of the timber has been increased or decreased. He has specifically admitted that loading should be done equally in the wagon and wagon should be equally balanced. He has admitted that sometimes, in order to avoid uneven loading, the scants are cut.

33. Shri J.N. Mittal, (DW-1), retired traffic inspector has been examined by the defence as DW-1 who has testified that in order to keep balance of the wagon and to use the wagon to its full capacity, timber is cut into pieces. He has further stated that in that eventuality number of the scants will increase. However, the volume of the scants would remain the same. This witness has not been cross-examined in respect of cutting of timber into pieces and statement remained unrebutted, unquestioned. Nor even a single question has been put to the witness that he is deposing falsely and such practice of cutting of the timber was there. Therefore, it has come in the prosecution evidence itself that some times scants are cut into pieces to avoid uneven loading and to make the wagon to its full capacity.

34. On the face of the prosecution evidence coming on the record that the scants used to be cut into pieces in order to avoid uneven loading and to make the wagon to its full capacity and in the event of cutting of scants of the timber into pieces, the volume of the scants will remain the same. There is no evidence of the prosecution that the volume of the timber has also been increased than mentioned in the export permit. The only conclusion arrived at is that if the number of the scants increases by cutting the timber into scants to avoid uneven loading of the wagon but the volume remains the same. Even the perusal of the railway receipts would go to show that the number of the scants have been correctly mentioned and it is not the case of the prosecution that the railway officials have written incorrectly number of the scants on the

railway receipts. Therefore no fault can be found with the increase of the number of the scants and they cannot be held guilty for transporting excess timber in such eventuality when the scants were cut into pieces.”

I have mentioned this to show that it is not necessary to reproduce the evidence in detail when nothing has been shown that the observations made were incorrect.

The learned counsel for the respondents had also referred to the decision of this Court in **Criminal Appeal No. 175 of 1991**, titled **Nathu Singh and another Vs. State of H.P.**, decided on 3.12.1996. In that case, there were allegations that 33 pieces of timber had been exported in excess. However, it was held by this Court on the basis of the evidence that to cover the entire space of the wagon and to ensure even and proper loading, scants were often cut into pieces and that could have been the cause of increase in the numerical quantity. It was held that in the face of such evidence, it could not be said that any offence had been committed or that timber had been exported in excess of the quantity mentioned in the permit. It was held in that case that it was incumbent upon the prosecution to have proved that the timber exported was in excess volume-wise and not numerically.

The learned trial Court had referred to in the judgment that there is no direct evidence in regard to conspiracy and even the circumstantial evidence was not sufficient to prove the charge of conspiracy. The evidence led by the prosecution do not prove the sizes of scants though 9 railway receipts were proved in evidence to show that 1734 scants were booked and exported to outside Himachal Pradesh. In case volume is not mentioned and as per the practice if the scants are

cut to pieces to facilitate their transportation, it cannot be said that 599 scants were exported in excess until and unless the volume in question total also exceeds than the one mentioned in the permits issued by the D.F.O. Shimla. The practice of cutting the timber into pieces was admitted by PW-4 K.C. Nandwani who appeared in the witness box who was Vigilance Inspector and similarly PW-46 M.A. Siddiquie, Vigilance Inspector, also admitted about this practice. In the report submitted, it has not been specifically proved from the statement of these witnesses that volume of the timber had been increased and they have clearly admitted that the scants cut to pieces often to facilitate the loading. Until and unless the volume was proved to be in excess, it cannot be said that the timber was exported in excess and as such, the guilt of the respondents cannot be said to have been proved. During the arguments, the learned Law Officer has not been able to show that any material evidence was not considered by the learned trial Court or incorrect conclusion was drawn by the learned trial Court while referring to the evidence and, therefore, no case is made out to hold that the findings recorded by the learned trial Court are perverse calling for an interference by this Court.

In view of the above discussion, I accordingly hold that there is no merit in the appeal filed by the State of H.P., which is dismissed. The bail bonds furnished by the respondents stand discharged forthwith.

June 30, 2008
(BSS)

(V.K. Ahuja)
Judge

