

HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 460 of 2001.
Reserved on: 16.10.2008.
Decided on: 31.10.2008.

State of H.P.Appellant.

Versus

Attar Singh and othersRespondents

Coram:

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

Whether approved for reporting?	No.

For the appellant: Ms.Shubh Mahajan, Deputy Advocate General.

For respondent No.1: Ms.Yogita Datta, Advocate.

For respondents No.2 and 3: Mr.Ajay Kochhar, Advocate.

V.K. Ahuja, J:

This is an appeal filed by the State of H.P. against the judgment of the court of learned Special Judge (Forest), Shimla, dated 31.3.2001, vide which the respondents were acquitted of the charges framed against them under Sections 379/420-B of the IPC, Section 42-42 of the Indian Forest Act and Section 5(2) of the Prevention of Corruption Act 1947.

Briefly stated the facts of the case are that Bharat Singh, Ran Vijay Singh, Manju Lata and Naginder Singh applied for demarcation, marking, felling and sale of the trees from their own lands situated in Village Anu Pargna Mandalgarh, Tehsil Rohru District Shimla to DFO Rohru. On the basis of

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

these applications, 196 trees were marked for felling and accordingly felling order was issued in their favour by the DFO. It was alleged that these persons extracted timber as per the said felling order. Shri Ran Vijay Singh applied for grant of export permit on 27.4.1982 to export the timber so extracted. The export permit was granted in his favour on 30.4.1982 valid upto 29.5.1982. According to the said export permit, Ran Vijay Singh was allowed to export 3130 nags of timber from Samala to Yamunanagar. It was further alleged that the said timber was sold by Ran Vijay Singh and others to a firm named M/s Bhupinder Singh Charanjit Singh, Summer Hill, Shimla. During investigation of a case FIR No.17/1984, it was revealed that on the strength of the export permit, the said firm exported 6974 nags against 3130 nags, which were allowed to be exported vide different railway receipts. Thus, it was found that the said persons exported 3844 scants in excess and that too beyond the validity period of the export permit and not from the specified route mentioned therein. On disclosure of these facts, an FIR was registered which was investigated by the Police Station, Enforcement (South Zone), Shimla. It is the further case of the prosecution that during the course of investigation, demarcation of the land from where those persons were allowed to fell trees was got conducted but no illicit felling was found in the adjoining government forest. It was found that the timber was sent on behalf of Ran Vijay Singh in favour of the said firm and the challan was incorrectly prepared and as mentioned above, 3632 nags were exported in excess vide 63 railway receipts from Railway Station Summer Hill to other Stations than permitted and some of these were exported after the expiry of the date of permit. One Mr.R.M. Dua, the then Assistant Station Master, died during the pendency of the investigation. One of the accused, namely, Avtar

Singh was granted pardon and was made approver. After investigation, the challan was filed as against the respondents for having misused their official position and prepared wrong and incorrect records and exported excess scants than permitted by the export permit and that too after the expiry of the period of the export permit.

On consideration, a charge was framed as against the respondents for having committed offences under Sections 379, 420, 467, 471 read with Section 120-B of the Indian Penal Code, under Rules 18/20 of the Himachal Pradesh Forest Produce Transit (land Routes) Rules, 1978 framed under Section 41-42 of the Indian Forest Act and under Section 5(2) of the Prevention of Corruption Act, 1947. The prosecution examined 75 witnesses in all and on conclusion of the trial, the learned trial Court, vide its impugned judgment, acquitted all the respondents.

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

The submissions made by the learned Deputy Advocate General for the State were that the prosecution had proved their case beyond any reasonable doubt that excess scants of timber were exported and that too beyond the validity period of export permit and from the route not specified in the export permit and the findings to the contrary recorded by the learned Special Judge are liable to be reversed.

On the other hand, the learned counsel for the respondents supported the impugned judgment for the reasons recorded therein.

Coming to the first point in regard to the export of excess number of scants vide the export permit, the learned trial Court had referred to the various

railway receipts numbering from 1 to 64 to prove that the timber was exported vide different receipts and I need not reproduce the number of nags exported vide these receipts which have been duly discussed by the learned trial Court in para 13 of the judgment. It was observed by the learned trial Court that the railway receipts do not show that such a number of scants, as alleged by the prosecution, had been exported and only one B.C. has been written on each railway receipt. A perusal of the 46 railway receipts, out of the total 64 receipts proved in evidence, shows that figure of scants have been clearly written in them and under those 46 railway receipts, 3119 scants have been shown to have been exported. Under remaining 18 railway receipts, the word BC has been written and the prosecution has not proved as to how many scants have been exported under these 18 railway receipts.

To prove that excess timber was exported, the prosecution has placed on record 64 railway receipts out of which 63 railway receipts were allegedly issued by the Assistant Station Master R.M. Dua, now dead. Only one railway receipt Ext.PW-40/A-44 was issued by accused Amrit Singh, the then Station Master. The prosecution had examined some of the timber merchants, namely, PW-8 Ashok Kumar, PW-9 Som Nath, PW-10 Amar Singh, PW-11 Prem Nath, PW-12 Subhash Chand, PW-14 Madan Mohan, PW-18 Bishamber Dass, PW-19 Dharam Chand, PW-27 Jawahar Singh, PW-28 Ranjit Singh Bhalla, PW-61 Suresh Kumar, PW-66 Purshotam Lal and PW-68 Dalprit Singh and the statements of these witnesses, who received the timber in question, nowhere connect the accused with the timber allegedly received by them. The original records of these Firms were not produced on record and only some of the photocopies were proved which were not prepared by any of these witnesses. There is nothing on

record to establish that the payments of these timbers were received by any of the accused. This evidence has been duly discussed by the learned trial Court in paras 12 to 16 of its judgment and I need not reproduce the said evidence as has been discussed by the learned trial Court.

The evidence led by the prosecution does not prove as to how much scants of timber have been purchased by the various firms whose records have been produced by the prosecution during the trial. Accordingly to the prosecution case, under these receipts 9483.69 cubic feet of timber was allowed to be exported but the volume of the scants exported was not established by the prosecution evidence. A perusal of the statement of PW-2 K.C. Nandwani from the Railway Department shows that some times in order to avoid uneven loading, some pieces of timber are cut.

The permit was allegedly for 9384.69 cubic feet of timber but there was no evidence on record as to how much cubic feet of the timber was exported and as such there was increase in volume. PW-75 Gurdit Singh, the Investigating Officer, had admitted that the timber is measured in cft. volume and any piece of timber irrespective of its size would be called as scant for the purpose of railway. There was no evidence as to the size of scants exported through the railway receipts.

The fact that such a practice was prevalent in the railways that to avoid uneven loading in the railways, the scants are often cut into pieces was also observed by this Court in number of decisions. In this regard, a reference can be made to a decision in Criminal Appeal No.175 of 1991, titled Nathu Singh and another v. 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. Therefore, the prosecution evidence does not establish that excess timber was exported under the export permit.

Coming to the next question that this timber was exported beyond the validity period, a perusal of the forwarding notes Ext.PW-54/A-4 to 33 shows that in them the dates have been mentioned as 14.5.1982, 17.5.1982, 11.5.1982 and 18.5.1982 and on rest of these forwarding notes no dates of presentation have been mentioned. The export permit was valid from 30.4.1982 to 29.5.1982 and, therefore, this part of the evidence does not establish that the timber was exported beyond 29.5.1982 i.e. the last date for export of the timber. Moreover, these are the actual dates when the timber was produced at the railway station, but the prosecution has not produced the priority register which could have proved as to whether the timber was produced for export at railway station beyond the validity period of export permit. Therefore, the learned trial Court had rightly concluded that the evidence led does not establish that the timber was exported under the export permits beyond the validity period.

The learned Deputy Advocate General has not been able to point out any infirmity in the findings recorded under point No.3 that the timber specified was not exported through the routes mentioned in the export permit. The

timber was to be exported from different places to Summer Hill Railway Station and from Summer Hill it was to be exported through the railways. It is not the case of the prosecution that the timber was not exported from Summer Hill to Yamuna Nagar and other places and the learned trial Court had concluded that H.P. Forest Produce Transit Rules, 1978 controls the movement of timber into, from and within the territory of Himachal Pradesh and there is nothing to establish that there was any violation of these Rules and the learned Deputy Advocate General had failed to show any infirmity in the findings so recorded by the learned trial Court. The evidence of the prosecution is not being discussed referring to each of the documents suffice to say that no infirmity could be pointed out by the appellant during the course of arguments that which findings recorded by the learned Special Judge were incorrect, which plea deserves to be reversed accordingly.

Keeping in view the findings recorded by the learned Special Judge and the reasoning given therein, I find no reason to interfere with these findings since these cannot be termed as perverse on the basis of the discussion made keeping in view the evidence led by the prosecution. I accordingly hold that there is no merit in the appeal filed by the State of H.P. which is dismissed accordingly. The bail bonds furnished by the respondents shall stand discharged.

October 31, 2008
(TILAK)

(V.K. Ahuja),
Judge.