

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.89 of 2003

Date of decision : February 28, 2011

Padam Dev

...Appellant.

Versus

State of H.P.

...Respondent.

Coram

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

Whether approved for reporting?¹ Yes

For the appellant : Mr. Vinay Thakur, Advocate.

For the Respondent: Mr. Vikas Rathore, Deputy Advocate General.

Surjit Singh, Judge (Oral)

Appellant Padam Dev has assailed his conviction and sentence for offences, under Sections 409, 420, 477-A IPC and Section 13(2) of Prevention of Corruption Act, 1988, ordered by learned Special Judge (Forests), Shimla, vide judgment dated 22.2.2003, in the present appeal. Appellant has been sentenced as follows:-

Sr. No.	Offence	Sentence awarded
(i)	409 IPC	Rigorous imprisonment for three years and fine of ₹2000/-; in default of payment of fine; rigorous imprisonment for a further period of two months;
(ii)	420 IPC	Rigorous imprisonment for three years and fine of ₹2000/-; in default of payment of fine; rigorous imprisonment for a further period of two months;
(iii)	477A IPC	Rigorous imprisonment for three years and fine of ₹2000/-; in default of payment of fine, rigorous imprisonment for a further period of two months;
(iv)	13(2) of the Prevention of Corruption Act, 1988	Rigorous imprisonment for one year and fine of ₹1000/-; in default of payment of fine, rigorous imprisonment for a further period of two months.

Whether reporters of the local papers may be allowed to see the judgment?

2. Prosecution case, which led to the trial of the appellant alongwith two other persons, who have been acquitted by the same judgment, may be summed up thus. Appellant remained Pardhan of Gram Panchayat, Chebri, from 1992 to 1995. In that capacity, he was required to get executed a number of developmental works, for which money used to be paid to him by the Government through Block Development Officer. When in the year 1996, new Pardhan, namely PW-6 Durga Dass took over charge from him, he found that funds released, at least in respect of eleven works of development, had been misappropriated either in full or in part. A complaint was lodged with the Superintendent of Police (Vigilance) by the Panchayat alongwith resolution of the Panchayat. Copy of that complaint is Ext. PW1/A. The same is dated 2.7.1996. S.P. (Vigilance) sent the complaint to Director, Panchayati Raj, who deputed PW-1 Mehar Chand, Deputy Controller (Finance & Accounts) to enquire into the matter. He associated with him a Junior Engineer to evaluate the works executed during the tenure of the appellant. After inspecting the spot and getting the works evaluated from a Junior Engineer, he submitted report Ext. PW1/C, per which, funds sanctioned for ten different works had been misappropriated. Total amount, as per report Ext. PW1/C, was ₹2,68,268/-.

3. On receipt of the aforesaid report Ext. PW1/C, case was formally registered against the appellant and two other persons, namely Nand Lal, J.E., through whom works were

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executed and Harminder Kumar, Secretary of the Gram Panchayat.

4. During the course of investigation, specimen writings and signatures of the appellant were obtained and got compared with the papers against which he allegedly received the money from BDO office, as also the papers, prepared by him, to show the utilization of money. Handwriting Expert, who made comparison of the specimen writings/signatures with the questioned writings/signatures, opined that the questioned writings/signatures were in the hand of the appellant. Other record, pertaining to the case, in the nature of muster-rolls, documents regarding entrustment of money to the appellant, entries in the account books etc., was taken into possession.

5. One J.E., i.e. PW-4 Satya Paul, was required by the Investigating Agency to evaluate the works. He submitted his report Ext. PW4/A, per which he assessed the value of some of the works and with respect to some other works, particularly regarding repair work of school buildings at Mogna and Lunsu, he reported that alleged repairs having been carried out 5-6 years back, it was not possible to assess their value. On completion of investigation, Challan, under section 173 Cr. P.C. was filed in the Court. Appellant and his companions were charged with offences, under Sections, 120-B, 409, 420, 477-A IPC and Section 13(2) of Prevention of corruption Act, to which they pleaded not guilty.

6. Prosecution examined its witnesses and also proved various documents to bring the charge home to the appellant and his co-accused. Appellant and his co-accused pleaded

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innocence. They denied having misappropriated any part of the money released for various developmental jobs.

7. Learned trial Court acquitted the two co-accused of the appellant, but convicted and sentenced him, as aforesaid, holding that prosecution had been successful in proving that the appellant had misappropriated ₹9280/- out of ₹9500/- released for the repair of Primary School Building at Mogna and ₹8382/- out of the amount of ₹9000/- released for the repair of Primary School Building at Lunsu.

8. Reasons given by the trial Court for holding the appellant guilty for misappropriation of funds, in respect of the aforesaid two items are-- (a) appellant during the trial denied entrustment of money in respect of the aforesaid two items, though before PW-1 Mehar Chand, during the course of preliminary inquiry, vide statement Ext. PW1/E, he admitted entrustment of the said money; (b) money entrusted to the appellant for the aforesaid two items had been misappropriated by him; (c) in statement Ext. PW1/E, made to PW-1 Mehar Chand, appellant admitted that he had spent the money shown as labour charges in the muster roll, in respect of Mogna School building, for purchase of timber, required for the repair of that school, but that timber was still with him and (d) funds shown to have been utilized for the repair of school building at Lunsu had in fact been utilized for development of a playground and repair of school building situated in village Khera.

9. I have heard learned counsel for the appellant as also the learned Deputy Advocate General and gone through the record.

10. It is true that appellant while being examined under Section 313 Cr. P.C, expressed ignorance if any funds were sanctioned for the repairs of building of Primary School, Mogna and Primary School, Lunsu and in statement Ext. PW1/E, which he made to PW-1 Mehar Chand, during the course of departmental inquiry, it is admitted that he had received the funds and the said statement stands duly proved by PW-1 Mehar Chand, but that does not prove the allegation of misappropriation. Appellant did not deny that he had received the money for the repair of the aforesaid two school buildings, but only expressed ignorance. In his statement Ext. PW1/E, no doubt he admitted the receipt of funds to the tune of ₹9500/-, in respect of Mogna School and ₹9000/- in respect of Lunsu School, but offered explanation, with regard to the spending of aforesaid amounts of money. He stated that funds to the extent shown to have been disbursed to labourers in the muster-roll had in fact been spent on purchase of timber required in connection with the repair of school building at Khera and the said timber was available with him. Similarly, with respect to the funds for Lunsu School to the extent they are alleged to have been misappropriated, he stated that the same had been diverted for the development of a playground and repair of school building at Khera.

11. Learned trial Court has observed that the timber allegedly purchased with the money shown to have been disbursed to the labourers had been lying with the appellant, per his statement Ext. PW1/E and it had not been handed over to the Panchayat nor had it been utilized in the repair of any school or

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other developmental work. View taken by the trial Court is not correct. It was in the year 1996 that the appellant stated, per statement Ext. PW1/E, that the timber was available with him and he would hand it over to the Panchayat. Prosecution did not lead any evidence to show that this statement of the appellant, made in the course of preliminary inquiry, was incorrect nor did it examine anyone from the Panchayat to prove that appellant had not handed over the timber to it subsequent to the making of the statement. Therefore, learned trial Court was not right in concluding that the appellant had misappropriated the timber.

12. Also, there is no evidence, worth the name, that funds sanctioned for the repair of other school, i.e. Govt. Primary School, Lunsu had not been utilized for the development of playground and repair of school at village Khera. That means, there is no reason to disbelieve the statement, made by appellant, that funds shown to have been spent on repair of Govt. School, Lunsu, had in fact been utilized for the school at Khera. Utilization of funds meant for an item for another item may not be permissible under the relevant financial rules, but that would not constitute an offence of criminal breach of trust, because in such an event the element of dishonesty or fraudulent intention would be missing.

13. For the foregoing reasons, appeal is accepted. Impugned judgment, convicting and sentencing the appellant is set aside and the appellant is acquitted.

February 28, 2011 (ss)

(Surjit Singh), J.