

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**Cr. A. No. : 212 of 2005.**

**Decided on: 31<sup>st</sup> May, 2011.**

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**State of Himachal Pradesh.**

**...Appellant.**

**-Versus-**

**Suraj Parkash Kapoor & others.**

**...Respondents.**

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**Coram:**

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

**The Hon'ble Mr. Justice Rajiv Sharma, Judge.**

*Whether approved for reporting?<sup>1</sup> No.*

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**For the appellant : Mr. J.S. Guleria, Assistant Advocate General.**

**For the respondents. : M/s. Satyen Vaidya, Ajay Kochhar and M.S. Kanwar, Advocates.**

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**Rajiv Sharma, Judge(Oral) :**

State has filed this appeal against the judgment dated 16.02.2005, rendered by the learned Special Judge (Forests), Shimla in Corruption Case No. 42-S/7 of 2003/94, whereby respondents Suraj Parkash Kapoor, J.S. Parihar, Mohan Singh, Partap Singh and Parkash Chand, who were charged with and tried for offences, under Sections 218, 420, 465, 467, 468, 471 and 120-B of the Indian Penal Code, Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 4, 5 & 6 of the H.P. Prevention of Specific Corrupt Practices Act, 1983, have been acquitted.

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<sup>1</sup> *Whether the reporters of the local papers may be allowed to see the judgment? No.*

**2.** Case of the prosecution, in a nut-shell, is that respondent J.S. Parihar, while working as Executive Engineer, Suraj Parkash as Junior Engineer and Mohan Singh, Head Draftsman, allotted the work for construction of 6.1/9.1 meters wide approach road to dumping area from Surge Shaft (sub-head construction of retaining wall RD-92 to RD-100) for ₹97631/- and final payment was released for ₹95750/-. PW-9 Rama Nand, while investigating F.I.R. No. 25/90, noticed certain irregularities in the work of Jhakri Division. He has requested the superior officers for constituting a technical committee to look into the matter. Consequently, the H.P. State Electricity Board constituted a technical committee to detect the irregularities committed during the execution of work in Jhakri Division. The committee submitted its report Ex. PW-4/D, on the basis of which, *ruka* Ex.PW-9/A was sent. Thereafter, F.I.R. Ex.-PA was registered. The matter was investigated by the police thoroughly. The challan was put up after completing all the codal formalities.

**3.** Respondents J.S. Parihar, Suraj Parkash and Mohan Singh were charged under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, Sections 420, 218, 468, 467, 471 and 120-B of the Indian Penal Code and Sections 5 & 6 of the H.P. Prevention of Specific Corrupt Practices Act, 1983. Respondents Partap Singh and Parkash Chand were also charged under Sections 420, 468, 471, 465 and 120-B of the Indian Penal Code and Section 4 of

the H.P. Prevention of Specific Corrupt Practices Act, 1983. They pleaded not guilty.

**4.** The Prosecution, in order to prove its case, has examined as many as 12 witnesses. Respondents were also examined under Section 313 of the Code of Criminal Procedure. Their stand was that of denial simplicitor.

**5.** Learned trial Court, after appreciating Ex. PW-4/D and after taking into consideration the statements of material witnesses, i.e., PW-4 G.P. Saroch and PW-6 V.L. Gupta, acquitted the respondents. Hence, this appeal.

**6.** Mr. J.S. Guleria, learned Assistant Advocate General has strenuously argued that the prosecution has proved its case. According to him, learned Special Judge (Forest) has not correctly appreciated the oral as well as documentary evidence.

**7.** Mr. Satyen Vaidya, Mr. Ajay Kochhar and Mr. M.S. Kanwar, learned counsel for the respondents have supported the judgment dated 16.02.2005, passed by the learned Special Judge (Forests), Shimla.

**8.** We have heard the learned counsel for the respondents and gone through the record meticulously.

**9.** The site was inspected by the members of the technical committee on 30.11.1990 in the presence of JE/AEE/Executive Engineer concerned. The material witnesses relied upon by the prosecution are PW-4 G.P. Saroch, PW-6 V.L. Gupta and PW-7 K.R. Verma.

**10.** PW-4 G.P. Saroch was one of the members of the technical committee. He has deposed that the committee has visited the spot on 30.11.1990. According to him, the committee found 7.89 sq. meters work short and also noticed that excess payment of ₹30,066.70 paise was released. The work was awarded for ₹97,631/- which was 30% higher above the estimated cost of ₹75,101/-. In cross-examination, he has admitted that whenever retaining wall is raised, the work is to be carried out from the natural surface level. He did not remember the whether the committee visited the spot to verify the natural surface level. He has also stated that the *Danga* was measured by Off-set method. They have not carried out digging work below the surface level on the spot. He has further testified that Nathpa Jhakri Project falls in sliding and sinking zones and there were damages due to natural calamities during 1990.

**11.** PW-6 V.L. Gupta, who was also associated in the investigation, has prepared the site plan Ex. PW-6/A. In cross-examination, he has stated that they had not worked out any cross-sections while carrying out the measurement and preparing the site plan Ex. PW-6/A. He also stated that on the day of inspection, no digging or excavation work was undertaken. He further stated that exact measurement of the retaining wall as exposed over ground and out of the earth has not been mentioned in the site plan.

**12.** PW-7 K.R. Verma, who was one of the members of the technical committee, has supported the version of PW-4 G.P. Saroch. In cross-examination, he has stated that there is no

detail in Ex. PW-4/D about the other work existing adjoining the retaining wall. They have not mentioned in the report by whom the RDs were identified. He did not know whether any damage was caused in the project area due to natural calamities during 1990. They have not carried out any excavation while taking the measurement of the *Danga*. He has admitted that the sites were located as per master plan of the project which has not been annexed with the report.

**13.** We are of the considered view that till the foundation was not opened or dug up, the height of the retaining wall could not be ascertained. The technical committee has adopted a method to measure the height of the retaining wall, which was prone to errors vis-à-vis other methods. PW-4 G.P. Saroch has admitted that whenever retaining wall is raised, the work is to be carried out from the natural surface level. He has also stated that *Danga* was measured by Off-set method, which is not mentioned in the report. He further stated that committee members have not carried out digging work below the surface level on the spot. He has specifically stated that Nathpa Jhakri Project falls in sliding and sinking zones and there were damages due to the natural calamities during 1990. PW-6 V.L. Gupta has also stated that on the day of inspection, no digging or excavation work was undertaken. He also stated in cross-examination that they had not worked out any cross-sections while carrying out the measurement.

**14.** In view of the abovestated position, we see no reason to interfere with the judgment of acquittal passed by the trial Court. Hence, the appeal is dismissed.

**(Surjit Singh),  
Judge**

**(Rajiv Sharma),  
Judge**

May 31, 2011.  
(bhupender)

