

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

**Cr. A. No. : 232 of 2005.**

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

---

**State of Himachal Pradesh.**

**...Appellant.**

**-Versus-**

**Partap Singh and others.**

**...Respondents.**

---

**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.*

---

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

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

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

State has filed this appeal against the judgment dated 01.03.2005, rendered by the learned Special Judge (Forests), Shimla in Corruption Case No. 32-S/7 of 2003/95, whereby respondents Partap Singh, J.S.Parihar, Prem Chand Thakur and Mohan Singh, 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.

---

<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, Prem Chand Thakur as Junior Engineer and Mohan Singh, Head Draftsman, allotted the work for construction of 24'/36' Wide Approach Road to Power House Site RD-2000 to 3155 meters Sub-head, construction of retaining wall RD-2150 to RD-2160 meters for ₹72422/-, which was 30% above than the estimated cost of ₹55700/-. The final payment was released for ₹71879/- to the contractor. PW-1 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-1/A, on the basis of which, *naka* Ex.PW-1/C was sent. Thereafter, F.I.R. Ex.PA/1 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, Prem Chand and Mohan Singh were charged under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, Sections 420, 468, 465, 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. Respondent Partap Singh was 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-1/A and after taking into consideration the statements of material witnesses, i.e., PW-3 K.R. Verma and PW-4 R.C. Chopra, 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 01.03.2005, 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 21.09.1990 to 26.09.1990 and again on 30.11.1990 in the presence of JE/AEE/Executive Engineer concerned. The material witnesses relied upon by the prosecution are PW-3 K.R. Verma and PW-4 R.C. Chopra.

**10.** PW-3 K.R. Verma, who was one of the members of the technical committee, has deposed that committee members visited the spot on 21.09.1990 to 26.09.1990 and again on 30.11.1990 and found certain short-comings and excess payment of ₹36814.82 paise which the respondents have released to the contractor. In cross-examination, he has stated that the committee members had not fixed the RDs independently on the site. He also testified that due to natural calamities and damages, RDs are bound to change. He also stated that for construction of retaining wall, one has to go below the natural surface level for construction of foundation. He could not tell as to what was the height of retaining wall below the natural surface level as no excavation or digging was carried out on the spot. The slant height of the retaining wall was 8.56 meters as per measurement book, but he could not say what was the height found on the spot by the committee during inspection. He also did not know what was the difference in the slant height found on the spot or entered in the measurement book. He did not know what was the actual top width, vertical height, slant height and base width of the retaining wall inspected by the committee on the spot. He has admitted that the margin of error is more in Off-set method than the other method like Theodolite method etc.. He has also admitted that without ascertaining the height found below natural surface level, it cannot be specifically stated as to what was the actual slant height of the retaining wall below the natural surface level.

**11.** PW-4 R.C. Chopra, who was also one of the members of the technical committee, has supported the version of PW-3 K.R. Verma. According to him, he could not say as to what extent the wall was below the natural surface level. He has also stated that the committee members have not taken into consideration the actual cutting, excavation, boulder filling, dry masonry and RR masonry in the cement mortar. According to him, there is no mention in the report as to what was the difference in the slant height entered in the measurement and found on the spot. They have not taken into consideration the cross-sections or the contour plan of the site, which were prepared before the execution of the work.

**12.** PW-5 Harbans Lal has prepared the site plan Ex. PW-5/A. According to him, in order to construct the retaining wall, one has to go below the natural surface level. He has also stated that the entire retaining wall was in continuity and it was not opened either at RD-2150 or RD-2160 to check base width.

**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 members of the technical committee have not mentioned in the report what was the difference in the slant height entered in the measurement and found on the spot. The committee members have stated that they have not taken the measurement of the retaining wall from below the natural surface level. They have admitted that for the construction of retaining wall, one has to go below the natural surface level for construction of foundation and for raising

construction of retaining wall. In the report, there is no mention of excavation or digging. According to PW-5 Harbans Lal, they had not given any reason why the retaining wall was not opened either at RD-2150 or RD-2160 to check the base width. In cross-examination, PW-3 K.R. Verma has stated that the committee members had not fixed the RDs independently on the site. He also testified that due to natural calamities and damages, RDs are bound to change.

**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)

