

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA
Cr. Appeal No.400 of 2006
Decided on: April 29, 2011

State of H.P.	.. Appellant
Versus	
Rajinder Kumar and another	.. Respondents

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

Whether approved for reporting?¹

For the Appellant : Mr. Ramesh Thakur, Assistant Advocate General.

For the Respondents : M/s Anup Chitkara and Vinay Thakur, Advocates.

Surjit Singh, Judge (oral)

This appeal by the State is directed against the judgment dated 14.7.2006 of learned Special Judge, Hamirpur, whereby respondents Rajinder Kumar, Patwari, and Rattan Chand, Kanungo, who were tried for offences, under Sections 420, 466, 468 read with Section 120-IPC and Section 13(2) of Prevention of Corruption Act, 1988, have been acquitted.

2. Case of the prosecution, which led to the trial of the respondents, may be noticed. Respondents Rajinder Kumar and Rattan Chand were posted as Patwari and Kanungo, respectively, in Patwar Circle, Shiv Nagar,

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

Hamirpur, during the year 1993-94, when Jamabandi of that Patwar Circle was revised. With respect to Khasra Nos. 310 and 312 entries in the previous Jamabandi showed that though Niranjana Dass, father, and Ram Chand, father's brother of respondent Rajinder Kumar, were the owners and one Bihari Lal was a mortgagee with possession, under them and the names of Kishor Chand, Dharam Chand, Amar Chand and Prem Chand, four brothers, were recorded in the column pertaining to possession, but in the revised Jamabandi for the year 1993-94, names of the aforesaid four brothers were omitted and entry was made that possession was with the owners, namely Niranjana Dass and Ram Chand, father and father's brother, respectively, of respondent Rajinder Kumar. Revised Jamabandi was written by respondent Rajinder Kumar and it was verified by respondent Rattan Chand, who was Kanungo. They were alleged to have made the change unauthorizedly, without there being any corresponding entry in the Khasra Girdawari or mutation register or there being any order of superior revenue officer for such change and this they allegedly did as a part of criminal conspiracy to cause wrongful gain to Niranjana Dass and Ram Chand, father and father's brother respectively, of respondent Rajinder Kumar and to cause wrongful loss to aforesaid Kishore Chand etc.

3. Matter was reported to the police, vide complaint Ext. PW12/A, by PW-12 Surinder Chand son of one of the above named four persons, namely Kishore Chand, who

were recorded in the column of possession in the previous Jamabandi. Preliminary inquiry was conducted by Vigilance Cell and report Ext. PW11/A was submitted. On the basis of this report, case was formally registered vide FIR Ext. PW1/A. During the course of investigation, specimen and admitted writings of both the respondents were taken and got compared with the writings on the Jamabandi for the year 1993-94. On completion of investigation, matter was submitted to the Deputy Commissioner (Collector) for according sanction to prosecute respondent Rajinder Kumar, which was accorded vide order Ext. PW14/A.

4. Report, under Section 173 Cr. P.C. was filed, alongwith relevant papers, in the Court of Special Judge, who charged the respondents with the offences, under Section 13(2) of Prevention of Corruption Act, 1988, and Sections 466, 468, 420 and 120-B IPC and on their pleading not guilty, proceeded to try them for the aforesaid offences.

5. Prosecution examined 14 witnesses, besides proving entries in the revenue papers, to bring the charge home to the respondents.

6. Respondents, in their statements, under Section 313 Cr. P.C., denied that there was any criminal conspiracy or that changes in the Jamabandi for the year 1993-94, had been made to favour Niranjana Dass and Ram Chand, father and uncle of respondent Rajinder Kumar. They took the plea that the names of Kishore Chand and his three brothers got omitted from being recorded at the time of

preparation of Jamabandi and when this omission came to notice a Farad Badr (correction slip) was prepared and after obtaining orders from the Tehsildar entries were restored. They denied that they had recorded Niranjn Dass and Ram Chand to be in possession of the land, in question, in the revised Jamabandi for the year 1993-94.

7. Learned trial Court concluded that entry made in the Jamabandi for the year 1993-94, in the column pertaining to possession, did not record the father and the father's brother of respondent Rajinder Kumar in possession of the land, but it recorded the mortgagee, namely Bihari Lal, in possession. Learned trial Court also observed that senior revenue officers had, during the course of investigation itself, pointed out to the Investigating Agency that this was a case of inadvertent omission and not a case of deliberate or intentional omission and that the omission had been set right by preparing a Fard Badr, as soon as it came to light. With this observation, learned trial Court acquitted the respondents.

8. I have heard learned Assistant Advocate General as also learned counsel, representing the respondents and gone through the record.

9. Copy of Jamabandi for the year 1993-94, in which the alleged deliberate omission of the names of Kishore Chand and his three brothers took place, is Ext. P-3. In this Jamabandi, possession is not recorded to

be with the owners, i.e. Niranjana Dass and Ram Chand, father and father's brother, respectively, of respondent Rajinder Kumar, but with the mortgagee, Bihari Lal. That means, the prosecution version that there was a conspiracy to help the father and the father's brother of respondent Rajinder Kumar, by recording their names in the column of possession, is not correct.

10. Also, there is no evidence on record, showing that the entry in the Jamabandi for the year 1993-94, photocopy Ext. PW2/B, in which the alleged change was made, is in the hand of respondent Rajinder Kumar. It was this photostat copy of Jamabandi for the year 1993-94, which was compared by PW-9 Dr. Minakshi Mathur, Handwriting Expert, with the standard writings of the two respondents. She has not expressed any opinion qua the writing in the column, pertaining to names of the persons in possession against Khasra Nos. 310 and 312, where the words "**Kabja Swayam Murthin**" (possession with the mortgagee) are written. Further, there are reports by the Tehsildar, copies Ext. PW1/A and DW1/B to the Investigating Officer that the omission of the names of Kishore Chand and his three brothers, in the column pertaining to the names of persons in possession, was inadvertent and that when this fact was noticed, correction had been carried out by preparing Fard Badr (correction slip). Correction Slip is Ext. DW2/A, which shows that errors had crept in the Jamabandi

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for the year 1993-94 not only in respect of the land, in question, but in a large number of entries, pertaining to other lands also. The fact suggests that the alleged criminal acts of the respondents could have been the result of inadvertence or at the most negligence in the discharge of their duty.

As a result of the above stated position, I do not consider this to be a fit case for interfering with the judgment of acquittal. Hence, the appeal is dismissed.

April 29, 2011 (ss)

(Surjit Singh), J.