

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Criminal Appeal No.735 of 2002

Date of decision : February 28, 2011

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J.C. Chauhan

....Appellant

Versus

State of H.P.

...Respondent.

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*Coram*

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

Whether approved for reporting?

For the Appellant : Mr. Satyen Vaidya, Advocate.

For the Respondent : Mr. Vikas Rathore, Deputy Advocate General and Mr. Ramesh Thakur, Assistant Advocate General.

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Surjit Singh, J<sup>(Oral)</sup>

This appeal is directed by appellant J.C. Chauhan against the judgment dated 27<sup>th</sup> November, 2002 of learned Special Judge (Forests), Shimla, whereby he has been convicted of offences, under Section 420 of the Indian Penal Code and Section 13(2), read with Section 13(1)(d)(i) of the Prevention of Corruption Act, 1988, and sentenced to undergo rigorous imprisonment for one year and to pay a fine of ₹1,000/-, in respect of each of the aforesaid offences.

2. Case of the prosecution, which is not denied even by the appellant, is like this. Appellant was employed as Junior Engineer with the Himachal Pradesh State Electricity Board. The Board allows Leave Travel

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

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Concession facility to its employees. Appellant wanted to avail Leave Travel Concession, alongwith five members of his family, dependent upon him, for which he submitted application Ex. PW-1/C and sought advance TA, to the extent of 80%, as per rules/instructions. Advance was sanctioned. He submitted bill Ex. PW-1/E, after allegedly performing the journey. In the bill, he claimed a sum of ₹25,140/-, on account of travelling expenses, by train, from Shimla to Kanya Kumari and back. A sum of ₹19,800/- had been paid to him earlier, as advance. So, the amount claimed by him in the bill, after adjustment of advance, was to the tune of ₹5,340/-. Alongwith this bill, he submitted Railway tickets Ex. PW-1/G, Ex. PW-1/G-1, Ex. PW-1/G-2 and Ex. PW-1/G-3, in respect of forward journey. As per these tickets, a sum of ₹12,540/- had been paid, on account of Railway fare, for all the six persons, including the appellant.

**3.** Enforcement Department of the State came to know through some undisclosed source that the appellant had submitted a bogus claim, regarding availment of Leave Travel Concession and in fact he had not only not travelled to the destination, shown in the LTC bill, but had in fact got the Railway tickets, with regard to forward journey cancelled and taken refund of Railway fare from the Railways. Matter was investigated. Investigation revealed that though Railway tickets submitted with the

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bill, i.e. Ex. PW-1/G, Ex. PW-1/G-1, Ex. PW-1/G-2 and Ex. PW-1/G-3, had been initially purchased but they had been got cancelled subsequently and the refund of fare had been received by the appellant.

4. Employer of the appellant, i.e. Himachal Pradesh State Electricity Board, came to know about the bungling, even before the registration of case by the Enforcement Department. The Board came to know about the same, when audit was conducted and the Auditor asked for the return tickets, which had not been submitted. They enquired and found that the tickets, with regard to forward journey, had been got cancelled and the refund of fare obtained by the appellant. Appellant then refunded the entire amount of Leave Travel Concession, together with penal interest.

5. On completion of investigation, challan was filed. Copies of the challan and other documents, submitted therewith, were made available to the appellant, as per requirement of Section 207 of the Code of Criminal Procedure. He was charged with offences, under Section 420 of the Indian Penal Code and Section 13(2) of the Prevention of Corruption Act, 1988. In addition to that he was also charged with offences, falling in the category of forgery. He pleaded not guilty and was, therefore, put on trial.

6. Prosecution examined a number of witnesses and proved the LTC bill and Railway tickets submitted with the bill. Appellant did not deny having submitted the LTC bill alongwith the aforesaid Railway tickets, in support of his claim for forward journey. He also admitted that the Railway tickets submitted with the bill had been got cancelled and he had received the refund. He, however, pleaded that he had to get the tickets cancelled, because some of his family members, who were to have travelled with him, on those tickets, got stuck up at his native place in the interiors of Shimla district, because of snow-fall and when after three-four days his family members reached Shimla, he travelled alongwith them by Bus upto Delhi and from Delhi he went by train to Kanya Kumari. He also pleaded that the entire return journey was performed by train.

7. Learned trial Court has not believed the defence version and held the appellant guilty and convicted and sentenced him, as aforesaid.

8. Learned counsel for the appellant submits that evidence on record proves the defence plea that the appellant alongwith the dependent five family members had performed the journey and the bill submitted by him was, therefore, not bogus. He has taken me through the defence evidence.

9. Evidence adduced by the appellant consists of the testimony of DW-1 K.G. Bhakta Vatsala, an employee of a Guest House at Bangalore, his own testimony as DW-3 and the testimony of one Devinder Sharma (DW-2), Manager of HPMC Juice Bar. DW-1 K.G. Bhakta Vatsala has proved an entry in a Register maintained at the Guest House, he claimed to be employed in, and as per this entry appellant alongwith two other males stayed in the Guest House from 6<sup>th</sup> February, 1996 to 8<sup>th</sup> February, 1996. DW-2 Devinder Sharma testified that he was employed as Manager of a Juice Bar at Bangalore and that that Bar is situated just opposite the Guest House, spoken to by DW-1 K.G. Bhakta Vatsal, and that appellant had stayed in that Guest House, five-six years back and had met him. As per this entry, appellant, accompanied by two other males, checked in the Guest House on 6<sup>th</sup> February, 1996 and checked out on 8<sup>th</sup> February, 1996. The entry and the other evidence, with regard to the visit of the appellant and his accompanying family members to Bangalore, is falsified by the LTC bill Ex. PW-1/E itself, which was submitted by the appellant. As per bill Ex. PW-1/E, the appellant and the family members accompanying him reached Bangalore on 7<sup>th</sup> February, 1996 at 5.3.0 p.m. Now, if the appellant had reached Bangalore on 7<sup>th</sup> February, 1996, how could have he checked-in at the Guest House on 6<sup>th</sup> February, 1996.

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**10.** Learned counsel representing the appellant submits that details of journey and stay, shown in Ex. PW-1/E, are incorrect, as they are based upon original itinerary, which was submitted by the appellant, for seeking advance and that, therefore, on the basis of the dates and other details of travelling, indicated in bill Ex. PW-1/E, entry in the Guest House register, cannot be disbelieved. Even if the submission made by the learned counsel for the appellant is accepted, for argument sake, case of the appellant would be worse.

**11.** The appellant, according to his own testimony, started journey from Shimla three-four days, after the date of start of journey in the original programme. According to the original programme, as shown in Ex. PW-1/E, he was supposed to have started journey on 29<sup>th</sup> January, 1996 and reached Delhi on 30<sup>th</sup> January, 1996 and was to have left Delhi on 30<sup>th</sup> January, 1996 and reached Kanya Kumari on 2<sup>nd</sup> February, 1996, where he was supposed to have stayed upto 6<sup>th</sup> February, 1996. Now, as per his plea, he started three-four days later, than the original itinerary. That means he started on 1<sup>st</sup> of 2<sup>nd</sup> February, 1996. If he started on 1<sup>st</sup> February, 1996, he would have reached Kanya Kumari on 5<sup>th</sup> and if he started on 2<sup>nd</sup>, he would have reached there on 6<sup>th</sup>. As per his own testimony as DW-3, he stayed at Kanya Kumari for three-four days, before leaving for Bangalore. Now, if he reached Kanya

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Kumari on 5<sup>th</sup> or 6<sup>th</sup> February, 1996 and stayed there for three-four days, how could have he started from there before 8<sup>th</sup> February, 1996. That way also, he could not have stayed at the Guest House from 6<sup>th</sup> to 8<sup>th</sup> February, 1996. Thus, the evidence is shown to be false.

**12.** Appellant has also relied upon a ticket, pertaining to journey within Karnataka State. The same is Mark DW-3/A. The ticket is dated 8<sup>th</sup> February, 1996. Now, when the appellant could not have reached Bangalore before 8<sup>th</sup> February, 1996, as demonstrated hereinabove, there was no question of his and his family members performing journey within Karnataka State (Bangalore to Mysore and back) on 8<sup>th</sup> February, 1996. Otherwise also, this ticket has not been proved, as the person, who issued it, has not been examined.

**13.** In any case, appellant's plea is that journey from Delhi to Kanya Kumari and then from Kanya Kumari to Delhi was performed by train, but neither Railway tickets, in support of this plea, have been produced nor has any other evidence, in the form of record from Railways, adduced to prove the plea. This by itself is enough to reject the defence plea.

**14.** Learned counsel representing the appellant, replying upon the testimony of the appellant, who appeared as DW-3, further argued that there was not intention on the part of the appellant to commit the offence

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of cheating or of criminal misconduct and that cancelled Railway tickets were attached with the bill, on the advice of the concerned Accountant, who told that since the advance had been taken for purchase of Railway tickets, right from Shimla upto Kanya Kumari, his changing the mode of journey from Shimla to Delhi and showing it by Bus was likely to create some technical hitch in the clearance of his claim. Submission has been noticed only to be rejected. If it were so then what prevented the appellant from preserving the returned Railway tickets, if he had in fact travelled by train. He could have submitted those tickets with the bill or in any case he could be produced the same in the Court, while leading defence evidence.

**15.** In view of the above discussed position, which conclusively negates the defence plea, there cannot be any manner of doubt in holding that LTC Bill Ex.PW-1/E, submitted by the appellant, was bogus and he, alongwith his dependent family members, never performed the journey, indicated in the Bill. Hence, the appeal is dismissed.

**February 28, 2011**<sub>(sd)</sub>

**( Surjit Singh ), J**