

HIGH COURT OF ORISSA, CUTTACK

CRIMINAL APPEAL NO. 392 OF 2007

From the judgment dated 07.08.2007 passed by Shri S.K.Mishra, Special Judge (C.B.I.), Bhubaneswar in T.R. Case No. 6 of 2001.

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Niranjan Mishra

....

Appellant.

Versus

Republic of India.

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Respondent

For the Appellant

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M/s. D.P.Dhal, S.K.Dash,
B.S.Dasparida, A.K.Mishra, Adv.

For the Respondent

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Mr.V.Narasingh,
Addl. Standing Counsel (CBI)

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PRESENT:

THE HON'BLE MR. JUSTICE D. DASH

Date of hearing : 12.09.2014

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Date of judgment : 30.10.2014

The appellant having been convicted for offence under sections 477, I.P.C. and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act and sentenced to undergo rigorous imprisonment for one year with payment of fine of Rs.5,000/- (Rupees five thousand) in default to undergo rigorous imprisonment for one month on each count which are to run concurrently has preferred this appeal. The judgment of conviction and order of sentence dated 07.08.2007 passed by the learned Special Judge (C.B.I.), Bhubaneswar in T.R. No.6 of 2001 are thus now impugned in this appeal.

2. Prosecution case is that the appellant was a clerk in the Employees Provident Fund Organization (hereinafter referred to as "EPFO"). The said organization used to receive, keep deposit and manage the provident fund subscription of the employees. The subscriptions are contributed by the employees and their employers on monthly basis. Facilities are available to the employees to take advances against such balance in the account. For the purpose of medical treatment, marriage, post-matriculation examination of children etc., the limit to take loan is to the extent of 50% of the accumulation in employee's share for the purpose of defraying marriage expenses. The limit against such other advances stands that it should not extend three times of his basic emoluments. The employer's share can only be taken as an advance only in case of purchase, development, construction of dwelling house provided of course there has been completion of five years of service by the subscribers with minimum balance standing at Rs.1,000/- in his own share. Otherwise, the employer's share is to be paid to the employees only at the time of retirement or resignation of his service or on his death.

3. The allegation in the instant case is with regard to falsification of accounts by this appellant in four cases. Since the trial court has not accepted the case of the prosecution with regard to three and has only accepted the case of the prosecution with regard to falsification of account of one Sri Radha Kanta Panda (P.W.12), the

facts concerning those three cases are not required to be stated here not only because the learned counsel for the respondent has not touched those three cases during hearing but also in his written submission he has clearly indicated that narrow campus of the appeal with regard to the factum of falsification of account relating to Radha Kanta Panda (P.W.12).

4. On transfer of Sri Panda his account was transferred from one section of EPFO to another. A sum of Rs.28,267/- was transferred from account No.609/730 to ACOR/628/423 on 13.08.1993. The appellant is said to be the custodian of the ledger and he received Annexure-K containing particulars of the transferred account but credited Rs.38,627/- instead of crediting Rs.28,627/- thereby making an excess credit of Rs.10,000/- It may be stated here that during the year 1993-94 the share was Rs.4,083/- and the employer share was 19,544/- thus totaling to Rs.28,627/- So, it is alleged that the appellant manipulated the figure of Rs.9083/- and inflated it by Rs.10,000/- During 1994, the balance in the employees share was Rs.6436/- but then the appellant allowed a loan of Rs.11,000/- to the subscriber causing excess payment of Rs.4,564/- towards that and thereby it is said that the appellant caused wrongful gain to the subscriber.

The appellant finally faced the trial for commission of alleged offences. In trial while admitting the position in the office, the

appellant denied to have made any falsification of account causing wrongful gain to the subscriber and loss to the EPFO. Furthermore, he denied to be the custodian of ledger etc.

5. Prosecution in the trial has examined in total sixteen witnesses when the defence examined none. A large number of documents have also been proved from the side of the prosecution and so also the defence has not legged behind by proving six documents, i.e., Exts.A to F.

The trial court upon analysis of the evidence on record has come to a conclusion that the appellant being the custodian of the ledger, in question, has made falsification of the said account in so far as the inflation etc. in respect of that account is concerned. The trial court has found the said fact to have been proved beyond reasonable doubt. Accordingly, the appellant has been convicted for the above offences and sentenced as noted above, which have been called in question in this appeal.

6. Learned counsel for the appellant submitted that on the existing evidence, the prosecution case for the offence under section 477-A, I.P.C. has not been established. According to him, there is no acceptable evidence as regards the fact that the appellant has manipulated the figure in the official record and next there is also no evidence to show that it was done by the appellant willfully and with

intent to defraud when also there arises no such question of wrongful loss being caused thereby.

His main thrust is upon non-production of Annexure-K, the document which is vital one to establish that an amount of Rs.28,627/- was transferred and not Rs.38,627/- which would have shown the true fact and the factum of manipulation with the authorship could have been established accordingly. In this connection, he has drawn the attention to the deposition of witnesses and also that of I.O.(P.W.16) that it was seized. He then submits that the trial court's reasoning and ultimate conclusion that the extract of the same appearing in Ext.3 and taking that as its substitute is unsustainable and it ought not to have been lightly brushed aside saying that it being a lapse during investigation has not much of bearing on the case to stand as a circumstance to take any adverse view as regards the establishment of the charge.

In view of all the above, he urged that the judgment of conviction and consequential order of sentence are liable to be set aside.

6. Learned counsel for the C.B.I. contended that the appellant was admittedly the custodian of the ledger and had received Annexure-K containing the particulars of the transferred amount and having credited Rs.38,627/- instead of balance of Rs.28,627/- has been rightly held to have been the author of said falsification of

document which is well proved by Ext.3. It is his contention that the appellant having manipulated the figure Rs.9,083/- and having increased it by Rs.10,000/- and during 1994, while the balance in employees share was Rs.6,436/- only, appellant allowed a loan of Rs.11,000/- causing excess payment of Rs.4,564/- whereby wrongful gain stands proved and also the consequential wrongful loss, the conviction is justified.

As regards the non-production and non-proof of Annexure-K being projected as the triumph card by the learned counsel for the appellant, he argued in favour of the conclusion arrived at by the trial court as just and proper. So, he contended that the appeal bears no merit.

7. In view of such rival submission, now the evidence adduced by the prosecution during trial need be gone through for critical examination in order to test the defensibility of the finding of the trial court.

Admittedly, the appellant was working as a clerk in the RPF Commissioner's Office at Bhubaneswar during the year 1988-89 and 1992-95.

P.W.1, the then RPF Commissioner has stated to have been made abreast of such interpolation of documents and thus to have directed an enquiry. The report (Ext.2) though finds mention of interpolation of ledger, it does not in specific word implicates the

appellant to be the author of such interpolation even though his job was well known to all those associated in the process. There remains no plausible explanation to that effect as to why such an important aspect would be missing therein when also in the said enquiry in the office all detail procedures were not unknown including the person in custody of documents etc. Again the author of that report P.W.2 has also stated so without explanation by further stating that the appellant having received Annexure-K from account section (XII) had made the entry in the ledger which is disputed. He also states that there was verification of previous ledger and present ledger of Mr. Panda at that time. When P.W.2, has mentioned in respect of Ext.2 that no copy of Annexure-K was kept in the transfer or section though Annexure-K was sent to transferee section where also that was not available. P.W.3 while stating to have found overwriting on the ledger has fairly gone to state that Annexure-K reveals the detail particulars of the subscriber's balance EPF subscription amount and that the same is prepared in duplicate, one remaining with old section and the other is sent to the new section when the ledger is prepared on the basis of that Annexure-K. It is his evidence that appellant prepared the ledger which was checked by the head clerk. This checking by head clerk is thus certainly referring to Annexure-K before he puts his signature. P.W.3 states that basing on the figures of RS.38,627/- as reflected in Annexure-K of the subscriber Mr. Panda, the appellant prepared the ledger which was duly checked by head clerk and then the accounts

officer. He has also stated that as per Rule-32 of EPF Manual Vol.1, the head clerk has to go for 100%. checking of all the entries made in the ledger of the subscriber and he has to submit the claim application of the subscriber to Asst. Accounts Officer or Accounts Officer for sanction of the advance. P.W.4 has also stated about retention of one copy of Annexure-K by transferor section of which admittedly this appellant is not the custodian.

8. Next, P.W.5's evidence remains that the job of the appellant was to verify the correctness of the claim application and he is the custodian of all basic documents. At this stage, it is seen that the correctness of the claim application is with reference to ledger and ledger entry is basing upon Annexure-K. The point remains here is that of inflation in ledger. So, simultaneous verification of Annexure-K with both the transferor and transferee section can only throw clear light on the complicity of the appellant that he interpolated Annexure-K and thereby inflated the amount in ledger as per Annexure-K and that is the very purpose of having two copies for cross-checking in such eventuality. In the event that the interpolation either would have been there in Annexure-K or without that if there would have been inflation of the amount in ledger, the appellant could not have escaped for the same. Next, P.W.9 states that the entries in the ledger folio are verified by section supervisor and Assistant Accounts Officer. So, doubt arises in mind as to if there was interpolation in Annexure-K, how that it missed their sight when the verification of the ledger is on

the basis of Annexure-K. Next, witness P.W.8 has also stated that the Head Clerk is to attest. Now Ext.C has been proved as extract of Annexure-K. Here only the transferred amount is shown as Rs.38,627/- and that is interpolated when original figure was Rs.28,627/-.

9. At this stage, when the evidence of the I.O. (P.W.14) is seen, it reveals that he had seized Annexure-K. But interestingly it has been suppressed and that too no reason has been given nor it has been explained as to why the same was not produced and proved. The trial court in the absence of any seizure list being proved has not viewed it seriously. The trial court's conclusion that it Annexure-K was not prepared in duplicate is based on evidence of P.W.13 that he has not stated so and as its spare copy is not available in the office. So, nonproduction of Annexure-K according to the trial court cannot have any adverse affect on the prosecution case. Such a view appears to be unacceptable when the evidence of the prosecution is cumulatively viewed more particularly in view of specific stand of appellant that as Annexure-K found mention of Rs.38,627/- he has so reflected in the ledger which was placed before the head clerk who made detail verification and so on so forth and that too on the face of the codified procedure. In such state of affairs in prosecution evidence, Ext.3 cannot be taken as substitute of Annexure-'K' to conclusively establish the factum of inflation in the ledger by the appellant by interpolating the figure in Annexure-K.

10. For the aforesaid discussion of evidence on record and reason, this Court find that the prosecution has failed to establish the charges against the appellant beyond reasonable doubt by leading clear, cogent and reliable evidence and, therefore, the judgment of conviction and order of sentence are found to be unsustainable and as such are liable to be set aside.

11. In the result, the appeal stands allowed. The judgment of conviction and order of sentence impugned in this appeal are set aside.

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D. Dash, J.