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JARNAIL SINGH & ANR.

v.

STATE OF PUNJAB

(Criminal Appeal No. 634 of 2010)

B

JULY 12, 2022

[AJAY RASTOGI AND VIKRAM NATH, JJ.]

- Penal Code, 1860: ss. 409/109, 420/109, 467/109, 471/109, 474/109, 477-A/109 and 120-B – Prevention of Corruption Act, 1988 – ss. 13(i)(d) and 7 – Allegations against the General Manager of the State Roadways Depot, that in connivance with conductor and others was selling and using tickets got printed on his own and sold through his own persons, who used to collect money for him, causing huge loss to the Depot – Registration of FIR – Conviction and sentence of the three conductors-appellants u/ss. 409/109, 420/109, 467/109, 471/109, 474/109, 477-A/109 and 120-B IPC and ss. 13(i)(d) and 7 of the PC Act, and acquittal of the others by the courts below – On appeal, held: Failure of the inspecting team, to prove the recovery of the tickets to have been validly made as also failure to prove the enquiry report as only a photocopy was filed –*
- C *No efforts by the prosecution to prove the existence of the original and loss thereof in order to take an order for leading secondary evidence – Thus, no reliance could be placed upon the enquiry report – Once, the recovery of the tickets is found to have not been made in accordance with law, nor the seized tickets could be connected to the three different buses and the conductors manning*
- D *the said buses-appellants, not safe to rely upon the unconfirmed tickets to connect them to the appellants – Enquiry report not proved despite the State applying for leading secondary evidence and not pursuing it any further – Thus, no evidence to establish the charge against the appellants – Judgment of the High Court and the trial court qua the appellants set aside – Evidence.*
- E *Ashok Dhulichand v. Madhavrao Dube (1975) 4 SCC 664 : [1976] 1 SCR 246; Jai Dev v. State of Punjab AIR 1973 SC 612; Sharad Birdichand Sarda v. State of Maharashtra (1984) 4 SCC 116 : [1985] 1 SCR 88; Sujit Biswas v. State of Assam (2013) 12 SCC 406;*
- F *H*

Samsul Haque v. State of Assam (2019) 18 SCC 161; Sarwan Singh v. State of Punjab AIR 1957 SC 637 : [1957] SCR 953; Shivaji S. Bobade v. State of Maharashtra (1973) 2 SCC 793 : [1974] 1 SCR 489; Subhash Chand v. State of Rajasthan (2002) 1 SCC 702 : [2001] 4 Suppl. SCR 163; Sujit Biswas v. State of Assam (2013) 12 SCC 406 : [2013] 3 SCR 830; Rajiv Singh v. State of Bihar (2015) 16 SCC 369; State of U.P. v. Wasif Haider (2019) 2 SCC 303 : [2018] 14 SCR 1161 – referred to.

<u>Case Law Reference</u>		
[1976] 1SCR 246 6	referred to	Para 6 (iv)
AIR 1973 SC 612	referred to	Para 6 (vii)
[1985] 1 SCR 88	referred to	Para 6 (vii)
(2013) 12 SCC 406 6	referred to	Para 6 (vii)
(2019) 18 SCC 161 6	referred to	Para 6 (vii)
[1957] SCR 953	referred to	Para 6 (viii)
[1974] 1 SCR 489	referred to	Para 6 (viii)
[2001] 4 Suppl. SCR 163	referred to	Para 6 (viii)
[2013] 3 SCR 830	referred to	Para 6 (viii)
(2015) 16 SCC 369	referred to	Para 6 (viii)
[2018] 14 SCR 1161	referred to	Para 6 (viii)

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. F 634 of 2010.

From the Judgment and Order dated 14.09.2009 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 205-SB of 2002.

With G

Criminal Appeal No. 633 of 2010.

Neeraj Kumar Jain, Sr. Adv., D. P. Singh, Ms. Shreya Dutt, Manu Mishra, Tavishi Kumar, Sanjay Jain, Sanjay Singh, Aniket Jain, Umang Shankar, Advs. for the Appellants.

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A R. K. Rathore, Ms. Jaspreet Gogia, Advs. for the Respondent.

The Judgment of the Court was delivered by

VIKRAM NATH, J.

1. These two appeals question the correctness of the judgment
- B and order dated 14.09.2009 passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No.205 (SB) of 2002 (Sohan Lal and others Vs. The State of Punjab) whereby, the High Court confirmed the conviction of the appellants namely, Jarnail Singh, Salwant Singh and Balkar Singh under Sections 409/109, 420/109, 467/109, 471/109, 474/109, 477-A/109 and 120-B of the Indian Penal Code, 1860¹ and
- C Sections 13(i)(d) and 7 of the Prevention of Corruption Act, 1988² to undergo three years rigorous imprisonment with fine of Rs.1000/- and in default of fine to undergo additional six months imprisonment, awarded by the Special Judge, Faridkot vide judgment and order dated 28th January, 2002.

D **FACTS:**

2. Briefly stated the relevant facts could be summarised as under:

- (i) One Malkiat Singh, a driver of the Punjab Roadways Depot, Muktsar made a complaint dated 04.05.1996 to the higher officers of the Department alleging that General Manager of the Punjab Roadways Depot, Muktsar in connivance with conductor and others has been selling and using tickets got printed on his own and sold through his own persons, who used to collect money for him and, as such, has caused loss to the tune of crores of rupees to the Depot.
- F (ii) On the basis of the said complaint, the Deputy Commissioner addressed a letter to the Senior Superintendent of Police, Muktsar and on its basis, an FIR was registered by Inspector, Dilbag Singh.
- G (iii) The Deputy Commissioner, Muktsar also forwarded the complaint to the Secretary, Transport Department, Chandigarh regarding the alleged scandal. The Secretary in turn required three Officers namely,
 - (a) Mr. Darshan Singh Sandhu, Deputy Secretary, Forest and Wildlife, Chandigarh, Muktsar (PW-20),
 - (b) Mr. M.S. Sandhu, S.D.M., Zira (PW-21) and,

¹ In short "IPC"

H ² In short "PC Act"

(c) Mr. Amarjit Singh Shahi, S.D.M., Bassi Pathana (PW-22); A
to make a surprise checking and submit their report.

(iv) These three officers made checking of the conductors of the buses on the routes of Delhi-Muktsar and Sirsa-Muktsar on 11.05.1996. They took into possession old tickets and tickets value of which was increased by affixing stamps on the same, the diaries and way-bills of drivers, and the cash in their possession in the ticket bag. B

(v) The Enquiry Committee also recorded statements. The statements of conductors of some of the buses, which were given on contract basis by the General Manager were also recorded. C

(vi) The Enquiry Committee also recorded the statements of General Manager, Traffic Manager and the Assistant Mechanical Engineer. C

(vii) The Committee was of the view that with the connivance of the General Manager, a big scandal was committed and the Government was put to loss of lakhs of rupees by the Inspectors of Muktsar Depot and also Inspectors of other Depots and even the Inspectors of the flying squad and the In-charge of the flying squad were also conniving in the same. D

(viii) On the basis of the detailed enquiry report, a recommendation was made for suspending the General Manager, Traffic Manager, Assistant Mechanical Engineer, concerned Inspectors and Conductors. E

(ix) On the basis of legal opinion given that a *prima facie* case was made out for registering a case under Sections 409, 419, 420, 465, 468, 467, 471, 474, 477-A and 120-B of IPC, an FIR was registered. F

(x) Accordingly, after due investigation, a police report under Section 173(2) the Code of Criminal Procedure, 1973³ was submitted on the basis of which, cognizance was taken and charges were framed against fifteen (15) persons, viz. seven (7) Conductors, four (4) Inspectors and four (4) Managers/Senior officials. The prosecution examined as many as twenty-three (23) witnesses and also filed documentary evidence. G

3. All the incriminating circumstances and the evidence led by the prosecution were put to the accused at the stage of section 313 CrPC. The accused denied all the allegations and pleaded innocence.

³ In short "CrPC"

- A 4. The Trial Court vide judgment dated 28.01.2002 acquitted two Managers/Senior officials namely, Iqbal Singh and Amrik Singh and two Inspectors namely, Gurucharan Singh and Kharaiti Lal. Rest of the eleven(11) accused were convicted by the Trial Court. Against the judgment of the Trial Court four (4) appeals were filed bearing Nos.179 (SB) of 2002, 205 (SB) of 2002, 228 (SB) of 2002 and 245 (SB) of 2002.
- B The High Court vide judgment and order dated 14.09.2009 acquitted the remaining Managers/Senior Officials namely, Jagdip Singh Galwatti and Amarjeet Singh Sandhu. It also acquitted remaining two Inspectors namely, Sohan Lal and Teja Singh. It further acquitted three Conductors namely, Charanjeet Singh, Iqbal Singh and Sham Lal. One of the conductors namely, Jugraj Singh had died during the trial and against him proceedings were abated. The High Court thus confirmed the conviction of three conductors namely, Jarnail Singh, Salwant Singh and Balkar Singh, who are before this Court.
- C 5. We have heard learned counsel for the parties and perused the material on record.
- D 6. The submissions advanced on behalf of the appellants may be summarized as follows:
- (i) The enquiry report jointly submitted by the three officers who were examined as PW-20, PW-21 and PW-22 were not placed on record
- E in original, an objection was taken regarding its admissibility as only a xerox copy was filed. The Trial Court had taken it on record subject to the objection by the defence that the same would be admitted subject to proof and further evidence. This order was passed by the Trial Court on 15th February, 2001 on an application, filed by the Public Prosecutor under Section 65(c) and the Indian Evidence Act, 1872⁴, seeking permission to give secondary evidence of the original document, namely, the affidavit of Malkiat Singh and the enquiry report given by the three officers. The Trial Court by the above order allowed the application for permission to lead secondary evidence of the above-mentioned documents subject to proof of its existence and subsequent loss of the said documents.
- F Thereafter, no further evidence was led by the State to prove the loss of the existence of the original documents thereby enabling the Trial Court to accept the said explanation and permit them to lead secondary evidence. No further evidence was led by the State.
- G

H ⁴In short "Evidence Act"

(ii) The enquiry report at best could be said to be a fact-finding report and was not a piece of evidence. It could have been the basis for registering the FIR and nothing more than that. Even the Trial Court, when the true copy of the report was being exhibited, had recorded the objections of the defence in the following terms in the statement of Arjan Singh, PW-18, who had come to prove the said report in the following terms: "*Objected to as these documents will be exhibited subject to proof of the existence of documents in original and loss thereof.*"

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(iii) The Investigating Officer, Baljeet Singh Buttar, PW-23 stated that he had received a photocopy of the affidavit of Malkiat Singh marked with a letter of Deputy Commissioner and enquiry report from the Station House Officer, Dilbag Singh and that he conducted the investigation. He further goes on to say that he does not know whether the original of the enquiry report, affidavit and other documents were lost.

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(iv) In support of the above submissions, the appellants have relied upon the judgment in the case of *Ashok Dhulichand Vs. Madhavrao Dube⁵*.

C

(v) The alleged used tickets/fake tickets/tickets bearing the nomination of higher value were taken into custody by the Inspection Committee while inspecting the three buses from the conductors present on the vehicle. These seized tickets are said to have been subsequently handed over to the Investigating Officer or at the Police Station-Dilbagh. These seized tickets were never seen either by the Inspecting Team or by the police at any stage. There was no segregation of the tickets seized by the Inspection Team from the conductors of the three different buses. Even before the Court, these tickets were produced in an unsealed form and are said to have been proved by PW-8 and PW-15. Both these witnesses were neither the witnesses of recovery nor they had personal knowledge of said recovery of tickets. They only said that these are the same tickets which they had seen at the police station.

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(vi) There is no evidence of sale of such tickets of higher denomination to any passenger as no passenger was examined during the trial. The case of the prosecution at best is that of possession of such fake tickets and nothing beyond that.

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(vii) Lastly, it was submitted that the excess cash alleged to have been found at the time of inspection also has neither been proved, nor

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⁵(1975) 4 SCC 664 (Para 7 thereof)

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A any evidence was led with respect to the same, nor were any such questions put to the accused at the stage of Section 313 CrPC. Such evidence as such could not be read against the accused. For the above proposition, reliance has been placed upon the following judgments: -

- B *(1) Jai Dev Vs. State of Punjab⁶,*
- B *(2) Sharad Birdichand Sarda Vs. State of Maharashtra⁷,*
- B *(3) Sujit Biswas Vs. State of Assam⁸,*
- B *(4) Samsul Haque Vs. State of Assam⁹*

C (viii) Lastly, the counsel for the appellants submitted that the prosecution failed to prove his case not only beyond reasonable doubt but, in fact, it completely failed to prove its case in the absence of any legally, reliable, admissible and unimpeachable evidence. In support of the above submissions, he placed reliance upon the following judgments:

- D *(1) Sarwan Singh Vs. State of Punjab¹⁰,*
- D *(2) Shivaji S. Bobade Vs. State of Maharashtra¹¹,*
- D *(3) Subhash Chand Vs. State of Rajasthan¹²,*
- D *(4) Sujit Biswas Vs. State of Assam¹³,*
- E *(5) Rajiv Singh Vs. State of Bihar¹⁴,*
- E *(6) State of U.P. Vs. Wasif Haider¹⁵.*

F 7. On the other hand, learned counsel for the State of Punjab has supported the judgment of the High Court. It was submitted that conviction of the appellants is based upon reliable, cogent and convincing evidence led by the prosecution. It is also submitted that PW-8 and PW-15 proved the recovery of the tickets and further that PW-20, PW-21 and PW-22 proved the inspection and the enquiry report and, as such, nothing further

⁶ AIR 1973 SC 612 (Para 21)

⁷ (1984) 4 SCC 116 (Para 143-145)

⁸ (2013) 12 SCC 406 (Para 20)

⁹ (2019) 18 SCC 161 (Paras 13, 22, 23)

¹⁰ AIR 1957 SC 637 (Para 12)

¹¹ (1973) 2 SCC 793 (Para 19)

¹² (2002) 1 SCC 702 (Para 24)

¹³ (2013) 12 SCC 406 (Para 13)

¹⁴ (2015) 16 SCC 369 (Page 69)

H ¹⁵ (2019) 2 SCC 303 (Para 22).

remains to be established for conviction of the appellants. It is also submitted that appellants are assailing the judgment of the High Court on purely technical grounds; the Court should examine the substantive material on record, which has been relied upon by the High Court to uphold the conviction.

8. Having considered the submissions advanced and the material on record, we now proceed to analyse the evidence relevant for the conviction of the appellants as also the submissions made.

9. PW-8 is Charanjeet Singh, who at the relevant time was posted as Station Supervisor, Muktsar Depot. In his examination-in-chief, he has stated that he, along with Tarlochan Singh, Chief Inspector, Punjab Roadways, Muktsar had compared the tickets with the way-bills and dockets. He has sought to distinguish the tickets of Jarnail Singh and Salwant Singh as also Balkar Singh. He has also sought to identify those tickets vis-a-vis, the respective buses being conducted by the aforesaid three conductors. On his statement, exhibits were marked of the tickets shown to him. However, in the cross-examination, PW-8 clearly states that all the tickets and the way-bills shown to him in Court were actually shown to them in the Police Station by the police. None of these documents were sealed at that time. We did not know at that time that which tickets are relating to which bus or conductor. He was not present, when the alleged tickets and way-bills were taken into possession by the police or anyone else from the bus conductors. He cannot say whether these way-bills and these tickets were connected or relevant with any bus mentioned in his report. Lastly, in the cross-examination, he states that numbers of the tickets issued to the conductors by the Head Office were note supplied to them for comparison and checking.

10. PW-15 is Tarlochan Singh, Inspector Punjab Roadways, Muktsar. He states in his examination-in-chief that on 04.08.1986, he along with Charanjeet Singh, Station Supervisor (PW-8) were deputed to check the vouchers, way-bills and tickets pertaining to the three buses. After checking the records, they have submitted their report Ext. PW-8/A, which bears his signatures. He further repeats the same statement as given by Charanjeet Singh (PW-8) regarding the tickets of the three buses, where Jarnail Singh, Salwant Singh and Balkar Singh were deputed as conductors. However, in the cross-examination, he admits that all the way-bills and tickets referred to above, were shown to them in the Police Station. None of these were sealed at that time. He did not know which

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- A tickets or way-bills were relating to which bus as they were not recovered in his presence. No numbers of the tickets issued by the Office or Depot were supplied to them for checking purposes.
11. PW-8 and PW-15 are the two witnesses relied upon by the High Court to uphold the conviction of the appellants. From the perusal
- B of their statement as noted above, we are afraid that the High Court could have recorded conviction on its basis for the following reasons:
- Firstly, there is no evidence of the seized tickets being sealed at any stage.
 - PW-8 and PW-15 have clearly stated that they were not present at the time of recovery of these tickets.
 - They have also clearly stated that these tickets were not sealed, when they went to the Police Station.
 - They have further stated that they do not know whether these way-bills and tickets are connected or relevant to any of the vehicles mentioned in their report.
 - They also stated that no numbers of the tickets issued to the conductors by the Head office, were supplied to them for comparison in checking.
- C
- E 12. PW-20, PW-21 and PW-22 are the members of the Inspection Committee constituted by the Deputy Commissioner. They had checked three buses on 11.05.1996, which are said to be manned by the present appellants as conductors. Their statements are more or less similar, as such, they are not being repeated but the contents as stated in their examination-in-chief and in their cross- examination are referred to hereunder:
- F
- G (i) In their examination-in-chief, it is stated that the Committee was constituted by the Deputy Commissioner to check buses of the Punjab Roadways, Muktsar Depot, as there was a complaint regarding use of already sold tickets (Khaddar tickets) by the conductors in connivance with the officers of Muktsar Depot of Punjab Roadways.
- (ii) The Members of the Committee were Darshan Singh Sandhu, M.S. Sandhu and Mr. Amarjeet Singh Shahi.
- H

(iii) They checked three buses and in one of the buses they found a suspended conductor was present in place of the regular conductor. A

(iv) Upon enquiry, the conductors informed that they were carrying used tickets and that they were doing this on the orders of higher authorities. B

(v) They took the tickets in their possession.

(vi) They further stated that they cannot identify the accused from whom they had taken which ticket.

(vii) They made further enquiry after inspecting three buses and recorded the statements of the General Manager and the Traffic Manager and also the concerned conductors and also inspected the relevant records. C

(viii) Upon enquiry, it was found that even some buses of Punjab Roadways were plying on roads without permit and without any time schedule. D

(ix) It is specifically stated in the examination-in-chief that they could not tell the name of the conductor, number of the buses and the number of the Khaddar tickets recovered from the accused conductor and which Khaddar tickets were recovered from which accused. E

(x) It is further stated that they had mentioned the details in the enquiry report Ext.PW-20/A.

(xi) They admitted that Ext. PW-20/A is a photocopy. The original enquiry report was submitted to the Deputy Commissioner, Muktsar, who had forwarded the same to the Secretary, Transport for immediate action and suspension. F

(xii) They also stated that their statements were recorded by the police.

(xiii) Apparently, in view of the statements given in the examination-in-chief not much of cross-examination was required, as such, only formal questions were put during cross-examination, which we need not refer to here. G

- A 13. From the above statements of the Inspecting Team, they failed to firstly prove the recovery of the tickets to have been validly made. Secondly, they also failed to prove the enquiry report as only a photocopy was filed and objections to the same was recorded in the statement itself, that the same would be exhibited subject to proof of the existence of the documents in original and loss thereof. The prosecution did not make that effort to prove the existence of the original and loss thereof in order to take an order for leading secondary evidence. Thus, no reliance could be placed upon the enquiry report and even the High Court has recorded that enquiry report was not a piece of evidence. Once, the recovery of the tickets is found to have not been made in accordance with law, nor the seized tickets could be connected to the three different buses and the conductors manning the said buses (the appellants), it would not be safe to rely upon the unconfirmed tickets to connect them to the appellants. Secondly, the enquiry report having not been proved despite the State applying for leading secondary evidence and not pursuing it any further, there appears to be a complete vacuum of substratum on the basis of which, the entire case was set up by the prosecution.

14. In view of our finding that there is no evidence to establish the charge against the appellants, we need not burden this judgment by referring to the case laws relied upon by the appellants.

- E 15. Accordingly, the Appeals are allowed.
- F 16. The judgment of the High Court and the trial court *qua* the present appellants are set aside.
- F 17. The conviction of the appellants is set aside. They stand acquitted of all the charges levelled against them. They are already on bail. Their bail-bonds stand discharged.