

A SHIV SHANKAR PRASAD SINGH

v.

THE STATE OF BIHAR

(Criminal Appeal No. 1804 of 2011)

B FEBRUARY 28, 2019

**[ABHAY MANOHAR SAPRE AND
R. SUBHASH REDDY, JJ.]**

Penal Code, 1860 – ss.409, 477A r/w. s.120B – Prevention of

C *Corruption Act, 1947 – s.5(2) r/w. s.5(1)(c) and (d) – Prosecution case was that appellant-accused persons conspired and misappropriated the bags of fertilizers and made false entries in the records – On the basis of the complaint, FIR was registered – Appellants-accused Nos.3 & 1 were convicted by Special Judge, CBI for offence u/s.120B r/w. ss.409 & 477A of IPC and also for*

D *the offences u/s.5(1)(d) of the P.C. Act punishable u/s.5(2) thereof – High Court confirmed the conviction – On appeal, held: Considering the totality of oral and documentary evidence on record, the prosecution proved the guilt of the accused beyond the reasonable doubt – Apart from the allegation of misappropriation*

E *with original intent there is specific case of the prosecution that all the accused had conspired – Thus, appellants to serve the remaining sentence.*

Dismissing the appeals, the Court

HELD: 1. At the outset, it is to be noted that the initial

F **complaint was lodged alleging misappropriation of only 540 bags of urea but investigation revealed that entire 1040 bags of urea was misappropriated. It is the specific allegation of the prosecution that the appellants and other accused have conspired with criminal intent and indulged in the falsification of accounts.**

G **Out of 1040 bags of urea, 500 bags were shown to have loaded in the trucks bearing nos. BRI-7851 and BHF-3155 with 250 bags each for delivering the same at Food Corporation of India (F.C.I.) godown at Tilrath but it was found that there was no actual delivery of such fertiliser bags and the F.C.I. records were falsified. The specific case of the prosecution against appellant-accused no.3**

H

of 2011 is that he was responsible for making entries in the register at the gate and he has made false entries of arrival of such 500 bags of urea though such fertiliser was not actually delivered. Similarly and correspondingly, in the further registers in ‘O’ Form and ‘G’ Form, false entries were made for which appellant-accused no.1 is responsible. Merely because misappropriation of 540 bags of urea is mentioned in the initial complaint, one cannot ignore the chargesheet which was filed after investigation which revealed misappropriation of entire quantity of 1040 bags of urea. Same is clear from the deposition of the investigating officer who was examined as P.W.21. It is clear from the evidence on record, that so far as 500 bags of urea are concerned though they were loaded in the two trucks bearing nos.BRI-7851 and BHF-3155 but they were not taken to the F.C.I. godown at Tilrath and false entries were made in the main gate register and other registers which are being maintained in ‘O’ Form and ‘G’ Form to show as if such quantity of fertiliser was delivered. [Para 19][1085-G-H; 1086-A-D]

2. Considering the totality of oral and documentary evidence on record, the prosecution has proved the guilt of the accused beyond reasonable doubt. Having regard to evidence on record, it cannot be said that findings recorded by the trial court, as affirmed by the appellate court, are either perverse or erroneous so as to interfere with the same. Apart from the allegation of misappropriation with criminal intent there is specific case of the prosecution that all the accused have conspired and are punishable for offence under Section 120B of the I.P.C. It is further to be noted that Special Leave Petition filed by the other accused, is already dismissed by this Court. [Para 22][1087-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1804 of 2011.

From the Judgment and Order dated 17.02.2009 of the High Court of Judicature at Patna in Crl. Appeal No. 281 of 1997 (SJ).

With

Criminal Appeal No. 1805 of 2011.

Santosh Mishra, Manish Kumar, Ms. Sharmila Upadhyay, Ms. Aparajita Singh, T. Mahipal, Advs. for the Appellant.

A P. K. Dey, A. K. Srivastava, Arvind Kumar Sharma, Ashok Kumar Srivastava, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

B 1. These two criminal appeals, arising out of Judgment dated 26.09.1997 passed in Special Case No.18/1982, by Special Judge C.B.I. (North), Patna, as such they are heard together and being disposed of by this judgment.

C 2. In these appeals, the appellants have challenged the common judgment in criminal appeal nos. 281 and 282 of 1997 dated 17.02.2009, passed by the High Court of Patna.

D 3. The appellants herein are accused nos. 3 and 1 respectively, in Special Case No. 18 of 1982, before the Special Judge, C.B.I. (North), Patna. They were charged for the offences punishable under Sections

E 409 and 477A read with Section 120B of Indian Penal Code (IPC) and Section 5(2) read with Section 5(1)(c) and (d) of Prevention of Corruption Act, 1947 (for short, 'P.C. Act'). By the judgment dated 26.09.1997, the Special Judge C.B.I. (North), Patna convicted for offence under Section 120B read with Section 409 and 477A of IPC and also for the offences under Section 5(1)(d) of the P.C. Act punishable under Section 5(2)

F thereof.

G 4. The appellants herein were inflicted a sentence to undergo RI for 3 years for committing offence under Section 409 of the IPC. The appellant in Criminal Appeal No. 1805 of 2011 is further sentenced to undergo RI for 3 years for offence under Section 477A of I.P.C.

H 5. As there is a conviction recorded and sentence imposed on the appellants, (Shiv Shankar Prasad Singh) accused No.3 and accused No. 1 (Ramdeo Prasad), they have preferred criminal appeal Nos.281 of 1997 and 282 of 1997 respectively before the High Court of Patna. The High Court, while confirming the conviction recorded against the appellants, has reduced the sentence. The appellant in criminal appeal No.1804/2011 was sentenced to undergo RI for 6 months under Section 120B, read with Section 409 of I.P.C. and further sentenced to undergo RI for 6 months under Section 477A of I.P.C. The said appellant is also

sentenced to undergo RI for 6 months and a fine of Rs.15,000/- under Section 5(1)(d) read with Section 5(2) of the P.C. Act. As far as the appellant in criminal appeal No.1805/2011 (Ramdeo Prasad) is concerned, his sentence is reduced and he is sentenced to undergo RI for 6 months under Section 409 IPC. He is further sentenced to undergo RI for 6 months under Section 477A of I.P.C. and he is further sentenced to undergo RI for 6 months and a fine of Rs.15,000/- is imposed for offence punishable under Section 5(1)(c) read with 5(2) of the P.C. Act.

6. The aforesaid two appeals were disposed of alongwith appeal filed by accused No.4, i.e, (Ram Nath Sharma @ Ram Nath Prasad Sharma) in criminal appeal No. 299/1997 and the appeal filed by accused no.2, i.e, (Ram Uday Singh). It is brought to our notice that so far as special leave petition filed by 'Ram Nath Sharma' is concerned, the same is dismissed by this Court in Special Leave to Appeal (Crl.) No.4005 of 2009, by order dated 24.07.2009.

7. The prosecution case is based on a complaint dated 23.12.1981 (Ext.8), on the report of S.P. Singh (PW5), Deputy Manager (Vigilance and Security), Regional Office, Food Corporation of India (F.C.I.), Patna. On the basis of the said complaint, First Information Report (F.I.R)(Ext.9) was registered. It was the case of the prosecution that, Ramdeo Prasad, while functioning as Depot Incharge of F.C.I, Tilrath, District of Begusarai, has conspired alongwith the other accused Ramnath Sharma, AG-III, who was working as Incharge F.C.I, Railway Siding, Barauni and one Rama Shankar Prasad Singh, the handling/transporting contractor at F.S.D F.C.I, Tilrath during March, 1980 and have misappropriated 540 bags of fertilizers(urea). It is alleged that on 24.03.1980, two wagons bearing nos. NR17797 and NR61690, each containing 500 and 540 fertilizer bags respectively, were placed at Barauni Railway Station for the purpose of unloading. On the same day, the said fertilizer bags were unloaded and delivery of such goods was taken by Ramnath Sharma. It is the further case of prosecution that Ramdeo Prasad, AG-I was posted as Depot Incharge, F.S.D, F.C.I, at Tilrath during 1980 and he was the overall Incharge of the Depot and personally responsible for the safety of all the stock and also proper maintainence of records of the godown. It is alleged that Shiv Shankar Prasad Singh was functioning as AG-III and he was Incharge of receipt of the consignment in the Depot. It is the case of the prosecution that 500 bags and 540 bags of urea which were loaded from Madras and Cuttack respectively, were received at Barauni

A

B

C

D

E

F

G

H

- A and both wagons were placed in the Railway siding for giving delivery to FCI staff posted at Railway Station on 24.03.1980. It is the case of the prosecution that Ramnath Sharma took delivery of 1040 bags of urea on 25.03.1980 from Railway Station, Barauni and has put his signature on delivery book in token of having received the consignment vide page nos. 12 and 13 of Railway Delivery Book on 24.03.1980 and 25.03.1980.
- B 8. It is further alleged that Ramnath Prasad Sharma handed over 500 bags of urea to Ram Uday Singh representative of Rama Shankar Singh on 24.03.1980, who signed in two gate passes bearing nos. 14791 and 14792, issued by Ramnath Prasad Sharma for transportation of 500 bags of urea vide truck nos. BRI-7851 and BHF-3155. It is the case of the prosecution, as stated in the charge-sheet, that the abovesaid consignment of 500 bags of urea which is allegedly transported in two trucks bearing nos. BRI-7851 and BHF-3155, with 250 bags of urea each, have not been taken to the F.C.I. godown at Tilrath. However, the appellants have falsified the records of main gate register (Ext.6), Arrival Tally Book, 'G'- Form and 'O'-Form dated 24th/25th of March, 1980. The said 500 bags were shown to have been received in the godown by Shiv Shankar Prasad Singh, AG-III, which are also signed by Ramdeo Prasad and the said documents were prepared on the basis of Inward Register, F.C.I, F.S.D, Tilrath in which Shiv Shankar Prasad Singh has shown the arrival of truck nos. (as mentioned above) with 250 bags of urea each. It is the further case of the prosecution that the investigation disclosed that though the remaining 540 bags of urea received by Ramnath Sharma, are alleged to have dispatched with 270 bags of urea each in the trucks, but such quantity was criminally misappropriated by all the accused who have conspired for such misappropriation.
- C
- D
- E
- F 9. To prove the guilt of the appellants herein, the prosecution has examined 21 witnesses. PW-1 (Mr. Shankar Choudhary), a typist, was examined to prove sanction order under Ext.-1. PW-2 (S.B. Lal), who is an Assistant Manager (Contract), was examined to prove appointment of handling/transporting contractor for F.S.D at Tilrath. PW-4, Brijdeo
- G Ram, who was working as AG-III posted at F.S.D, F.C.I, Tilrath between 1979-1980 was examined to prove 'O'-Form (Ext.-4), of F.S.D, F.C.I, Tilrath dated 25.03.1980 to 24.12.1981. PW-5, Sudersan Prasad Singh was the Deputy Manager (Vigilance and Security) of F.C.I, in January 1982, was examined to prove the complaint under Ext.-8. PW-6, J.P. Verma was posted as Inspector of C.B.I, Patna, in the month of October
- H

1982, was examined to prove institution of F.I.R (Ext.-9) on the basis of complaint filed under(Ext.-8). PW-7, one Md. Ibrahim, Head Goods Clerk was examined to prove the entries in the wagon maintenance Register. PW-9, Ram Baran Mahto, is the driver of vehicle truck bearing no. BHF-3155. PW-10, Rajendra Mahto, Khalasi of Truck No. BHF.-3155 was also examined. PW-11, Dulal Biswas, Assistant Manager, Accounts, FCI was examined. PW-12, Triloki Ram, Assistant Manager, Audit Regional Office, FCI, Patna who has submitted a report (Ext.-12) was examined. PW-13, M.K. Pathak, Assistant Manager, FCI, who conducted the physical verification of the goods was examined. PW-14, Manmohan Singh, is the owner of truck bearing No. BHF-3155. PW-15, Pratul Kumar Singh, is the owner of Truck bearing no. BRI-7851. PW-16, is Ram Narayan Singh, was Head Watchman of marketing FCI. PW-17, is Ram Sagar Paswan, who was working as AG-III, FCI, Tilrath. PW-18, Rama Rai, is driver of the truck bearing No. BRI-7851. PW-19, is J.K Samuel, who was the Deputy Government Examiner of Questioned documents during the relevant time. PW-20, is Ramphal Yadav, who was employed as AG-II, Tilrath Depot between December 1978 to December 1980 and PW-21, K.N.Sinha, is the Investigating Officer, who has investigated the offence on behalf of the prosecution .

10. On behalf of the defence, one Mr. Anand Mohan Sahay, was examined as DW-1, who is retired as Assistant Depot Manager of FCI.

11. We have heard Mr. Santosh Mishra and Ms. Aparajita Singh, learned counsels for the appellants and Mr. Ashok Kumar Shrivastava and Mr. P.K. Dey, learned counsel appearing for the CBI.

12. In these appeals, it is contended by the learned counsel for the appellants that the High Court failed to appreciate the entire material on record, deposition of all witnesses, who were employees of FCI, who have deposed that 500 bags of urea reached the godown on 24th/25th of March, 1980, which is further supported by an Audit Report.

13. It is contended that though, the prosecution has mainly relied on the evidence of PW-9, PW-10 and PW-14, truck driver, Khalasi(cleaner) and owner respectively of truck bearing no.BHF-3155, PW-15 and PW-18, the owner and the driver respectively of truck bearing no. BRI-7851, in arriving at the conclusion that 500 bags were not delivered at Tilrath godown, but on a fair perusal of the evidence of the said witnesses, there were several inconsistencies and contradictions. It

A

B

C

D

E

F

G

H

- A is submitted that in view of such inconsistencies, in deposition of the witnesses referred above, the Trial Court as well as the High Court has committed an error in relying on the testimony of such witnesses. It is further the case of the appellants that the prosecution has failed to show that there was misappropriation of 1040 bags. On the contrary, the documentary and oral evidence on record suggests that there was complaint of misappropriation of 540 bags only.

- B
- C 14. In view of such allegation, the question of mode of transportation of 500 bags does not remain important and the Trial Court as well as the High Court should not have relied on the evidence of the witnesses, related to transportation of 500 bags. It is submitted that the FIR was lodged with regard to only 540 bags but not with regard to 1040 bags of urea, as alleged by the prosecution.

- D 15. By referring to the document under Ex.24, it is contended that the said document clearly reveals the delivery of 500 bags of urea in Tilrath godown on 25.03.1980. Further, by referring to the depositions of PW-4 and PW-20, it is stated that such witnesses were involved in the preparation of documents after weighing, counting and stacking of the bags, were competent witnesses, who have deposed the factum of receipt of 500 bags on 24th/25th of March, 1980. It is the case of the appellants that the Trial Court and the High Court ought not to have discarded the evidence of PW-4 and PW-20 in coming to the conclusion that the appellants are guilty for offences alleged. It is submitted that the evidence of PW-4 and PW-20 was not relied on surmises and conjectures, without appreciating such evidence which is not challenged by the prosecution. It is stated that even as per the documentary evidence adduced by the prosecution, arrival tally book ('D' Form), daily receipt register ('G' Form) and Godown stock register ('O' Form) were maintained by different officers based on the entry made by Shiv Shankar Singh in the main gate register.
- E
- F

- G 16. Learned counsels, by taking us to the oral and documentary evidence on record, have submitted that though there is no consistency in the evidence recorded by the prosecution and the prosecution has failed to establish the offence alleged against the appellants, the Trial Court has erroneously convicted them for the offences alleged, same is also confirmed by the High Court without appreciating the evidence on record in proper perspective.
- H

17. On the other hand, learned counsel appearing for the State, by referring to oral and documentary evidence on record, has submitted that the evidence adduced by the prosecution is consistent and the prosecution has proved the guilt of the appellants beyond reasonable doubt. It is submitted that though initially a complaint was lodged, based upon which, the F.I.R. was registered alleging that out of 1040 bags of fertilizer, there was misappropriation of only 540 bags of fertilizer, but after the investigation, it revealed that entire 1040 bags of fertilizer were misappropriated, of which, false entries were made to the extent of 500 bags in the records of the F.C.I. godown at Tilrath, so as to show as if 500 bags of urea were arrived. In this regard, the gate pass/register which was to be maintained by the appellant, i.e, Shiv Shankar Prasad Singh, he has falsified the entries with regard to receipt of such 500 bags of fertilizer. Equally, the appellant, namely, Ramdeo Prasad has also falsified the entries which are maintained by him and the 'G'-Form and godown stock register in 'O'-Form, were tampered and false entries were made to show that such 500 bags of fertilizer were arrived and unloaded. It is submitted from the oral and documentary evidence on record that the prosecution has proved beyond reasonable doubt, the conspiracy of all the accused who have committed criminal breach of trust by falsification of accounts. It is submitted, in view of such overwhelming evidence, the Trial Court has rightly convicted and the High Court has rightly confirmed the conviction against the appellants and there are no grounds to interfere with such concurrent findings recorded by the courts below. It is also submitted that having regard to the evidence on record, it cannot be said that the findings recorded are either perverse or erroneous, so as to interfere with the same. Learned counsel submitted that the appeals lack merit and deserve to be dismissed.

18. Having heard the learned counsel for the parties, we have perused the impugned judgments and the oral and documentary evidence on record.

19. At the outset, it is to be noted that the initial complaint was lodged alleging misappropriation of only 540 bags of urea but investigation revealed that entire 1040 bags of urea was misappropriated. It is the specific allegation of the prosecution that the appellants and other accused have conspired with criminal intent and indulged in falsification of accounts. Out of 1040 bags of urea, 500 bags were shown to have loaded in the trucks bearing nos.BRI-7851 and BHF-3155 with 250 bags each for

A

B

C

D

E

F

G

H

- A delivering the same at F.C.I. godown at Tilrath but it was found that there was no actual delivery of such fertiliser bags and the F.C.I. records were falsified. The specific case of the prosecution against Shiv Shankar Prasad Singh, the appellant in Criminal Appeal No.1804 of 2011 is that he was responsible for making entries in the register at the gate and he has made false entries of arrival of such 500 bags of urea though such fertiliser was not actually delivered. Similarly and correspondingly, in the further registers in 'O' Form and 'G' Form, false entries were made for which Ramdeo Prasad is responsible. Merely because misappropriation of 540 bags of urea is mentioned in the initial complaint, we cannot ignore the chargesheet which was filed after investigation
- B which revealed misappropriation of entire quality of 1040 bags of urea. Same is clear from the deposition of the investigating officer who was examined as P.W.21. It is clear from the evidence on record, that so far as 500 bags of urea are concerned though they were loaded in the two trucks bearing nos.BRI-7851 and BHF-3155 but they were not taken to the F.C.I. godown at Tilrath and false entries were made in the main gate register and other registers which are being maintained in 'O' Form and 'G' Form to show as if such quantity of fertiliser was delivered.

20. It is not in dispute that the appellant, Shiv Shankar Singh was functioning as AG-III during the relevant time and he was incharge of receipt of consignment at the Depot. Further evidence also makes it clear that the appellant Shiv Shankar Prasad Singh has shown arrival of trucks bearing BRI-7851 and BHF-3155 on 25.03.1980 with 250 bags of urea each. It is also clear from the evidence on record that the physical verification was carried out between 06.10.1982 and 06.11.1982 and just prior to that, chart (Ext.24) was brought into existence on 01.10.1982, indicating that 500 bags of urea were delivered in two trucks. It is the case of the prosecution that the document which is prepared under Ext.24 (the chart) is not a document which is required to be maintained in the official course of business and same is got prepared only to show that the stock of fertiliser is arrived at, though actually it was not brought. So far as deposition of PW-17, i.e, of Ram Sagar Paswan is concerned, same is not relied on by the prosecution and he was declared hostile.
- E
 - F
 - G

21. Learned counsel for the appellants has made much emphasis on the evidence of PW-4 and PW-20, who have spoken about the delivery of 500 bags of urea on 25.03.1980 on the basis of Ext.24, but it is to be
- H

noted that such document under Ext.24 is a document which is prepared much after filing of the FIR. The incident has occurred in the month of March 1980 and the document under Ext.24 was brought into existence only on 01.10.1982. The said evidence if considered alongwith the other oral and documentary evidence on record, it falsifies the case of the appellants. It is also clear from the evidence on record that one of the trucks was, in fact, used for transporting 250 bags of urea on 25.03.1980, but instead of delivering the said bags at FSD FCI, Tilrath, the truck was diverted and such commodity of fertiliser was delivered at Manjhaul which is a different place. It is also clear from the evidence on record, another truck bearing no.BRI-7851 which is allegedly used in carrying 250 bags of urea was never employed at all for carrying fertiliser. There is no reason to discard such positive evidence on record which clinchingly proved the guilt of the accused. The trial court as well as the appellate court has rightly relied upon deposition of owners, driver and khalasi of the vehicles in question.

22. Considering the totality of oral and documentary evidence on record, we are of the view that the prosecution has proved the guilt of the accused beyond reasonable doubt. Having regard to evidence on record, it cannot be said that findings recorded by the trial court, as affirmed by the appellate court, are either perverse or erroneous so as to interfere with the same. Apart from the allegation of misappropriation with criminal intent there is specific case of the prosecution that all the accused have conspired and are punishable for offence under Section 120B of the I.P.C. It is further to be noted that Special Leave Petition being SLP(Crl.) No.4005 of 2009 filed by the other accused, i.e, Ram Nath Sharma @ Ram Nath Prasad Sharma is already dismissed by this Court, at the stage of Special Leave Petition, by order dated 24.07.2009.

23. For the aforesaid reasons, we do not find any merit in these appeals, same are accordingly dismissed. Consequently, the bail bonds of the appellants stand cancelled. The appellants shall surrender to serve the remaining sentence, within a period of four weeks from today. Failing such surrender within the time, it is open to the respondents to take necessary steps against the accused.