

SHIV KUMAR SHARMA

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v.

STATE OF RAJASTHAN

(Criminal Appeal No. 1050 of 2022)

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JULY 28, 2022

**[B. R. GAVAI AND
PAMIDIGHANTAM SRI NARASIMHA, JJ.]**

*Prevention of Corruption Act, 1988 – ss.13(1)(d)(ii), 15 – C
Penal Code, 1860 – s.477A – Complaint made regarding
malpractices in the construction of rooms and varandha in Primary
Schools – As per the prosecution, the appellant manipulated the
record and after the complaint was made, the amount was reduced
by the appellant in the Measurement Book and also with regard to
the construction work – Appellant convicted u/s.13(1)(d)(ii) r/w s.15
and u/s.477A, IPC – On appeal, held: For an offence punishable
u/ss.13(1)(d)(ii) r/w s.15, it is necessary to establish that a public
servant has attempted to obtain for himself or for any other person
any valuable thing or pecuniary advantage – In the present case,
no such material has come on record – Further, the vital aspects
that the appellant did not have any role to play in either the
sanctioning of the money or making of payment, have been totally
ignored by both the Courts – The evidence that in the investigation,
the IO had not found any criminal intent has also been ignored –
Conviction u/s. 13(1)(d)(ii) r/w s.15 unsustainable – Further, even
the conviction u/s.477A, IPC is not sustainable as no material has
been placed on record to establish that the making of false entry or
omission or alteration of such entries has been done willfully with
an intent to defraud, as required for conviction u/s.477A, IPC –
Order of conviction and sentence passed by Special Judge and
confirmed by the High Court set aside – Appellant acquitted of all
the charges. D E F G*

*Criminal Law – Concurrent findings of fact – Held: Cannot
be interfered with unless shown to be perverse.*

A **Allowing the appeal, the Court**

- HELD:** 1.1 **For an offence punishable under Section 13(1)(d)(ii) read with Section 15 of the PC Act, it is necessary to establish that a public servant has attempted to obtain for himself or for any other person any valuable thing or pecuniary advantage.**
- B In the present case, no such material has come on record. On the contrary, the evidence of PW14, the Investigating Officer would clearly show that the payment of the construction material was directly made to the Gram Sewak by the Panchayat Samiti. It would further reveal that the bill of the material was also directly sent to Gram Sewak by the Panchayat Samiti. There was no verification done by the appellant. It is clearly admitted that the appellant was not aware of the amount paid to the Gram Sewak with respect to the construction material. It is further admitted that at the relevant time, there were around 100 to 125 panchayat works going on under the supervision of the present appellant.
- D It is further admitted that there was no material placed on record to show that the corrections in Ex-article-2 from Ex-P-22 to Ex-27 was made by the appellant after the complaint. PW14 further admits that the amount paid by the Panchayat Samiti was as per the amount corrected by the appellant. It is further admitted that
- E there was no evidence to show that the accused Bhagwan Sahai and the appellant had made corrections together. He further admits that ShivKumar Sharma, that is the present appellant, had made a complaint to the District Magistrate about the irregularity in the construction work by Bhagwan Sahai, Gram Sewak. These vital aspects that the appellant did not have any role to play in
- F either the sanctioning of the money or making of payment, have been totally ignored by both the Courts. The evidence that in the investigation, the Investigating Officer had not found any criminal intent has also been ignored. In that view of the matter, the conviction under Section 13(1)(d)(ii) read with Section 15 of the PC Act is totally unsustainable. [Paras 11-13][409-C-E; 409-G; 410-A-B]
- 1.2 **For a conviction under Section 477A of the IPC, it is necessary for the prosecution to establish that the making of false entry or omission or alteration of such entries has been done willfully with an intent to defraud. No such material has been**
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placed on record by the prosecution. On the contrary, the evidence of PW8 who was appointed as an Inquiry Officer, would show that the allegations made against the appellant were not sustainable. His deposition would clearly show that the measurements recorded by the appellant were found to be correct by the Inquiry Officer. He clearly admits that he did not find any irregularity in the work of village Mankot. He further admits that if any mistake was done in the total of Measurement Book at the time of preparing the bill, the mistake could be corrected by the accounts branch. He further admitted that in so far as Surjanpur is concerned, no person was appointed as a watchman or a supervisor. He admits that in the absence of a watchman, it is possible that the material lying at the site could be taken by anybody. He admits that even the patties were not found on the spot and has noted about the same in the report. He further admits that if the cost of patties of Rs. 6914/- were included in the valuation of Rs. 40,677/- then the valuation comes to Rs.47,181/-. Further, it could clearly be seen that the appellant had no role whatsoever in either approving the payment or making the payment. The evidence of PW8 would clearly show that at the most, the act of the appellant could be termed as irregular. However, there was nothing on record to show that such irregularities were committed willfully with an intent to defraud. In that view of the matter, even the conviction in so far as Section 477A of the IPC is concerned, is not sustainable in law. It is settled law that concurrent findings of fact cannot be interfered with unless shown to be perverse. In the present case, both the Trial Court and the High Court failed to take into consideration the relevant and vital admissions in the evidence of PW8. and PW 14. The said admissions were vital. Basing the order of conviction by ignoring the said vital admissions would bring the impugned judgments in the realm of perversity. The order of conviction and sentence as recorded by the Special Judge, Prevention of Corruption Act No.1, Jaipur and confirmed by the High Court are quashed and set aside. The appellant is acquitted of all the charges. The bail bonds stand discharged. [Paras 14-19, 25, 26][410-C-D; 411-C-H; 414-E-F]

*Mahesh Dattatray Thirthkar v. State of Maharashtra
(2009) 11 SCC 141 : [2009] 3 SCR 1122; Ashoksinh*

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- A *Jayendrasinh v. State of Gujarat (2019) 6 SCC 535 : [2019]7 SCR 309 – relied on.*

Case Law Reference

[2009] 3 SCR 1122

relied on

Para 22

B [2019] 7 SCR 309

relied on

Para 24

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1050 of 2022.

From the Judgment and Order dated 06.01.2017 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Misc. Criminal

C Appeal No. 800 of 2013.

Ritesh Agrawal, Ms. Arpana Kumari, Advs. for the Appellant.

Dr. Manish Singhvi, AAG, Anish Roy, Milind Kumar, Advs. for the Respondent.

D The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. Leave granted.

2. The appeal challenges the judgment and order dated 06.01.2017

E passed by the learned Single Judge of the High Court of Judicature for Rajasthan at Jaipur thereby dismissing the appeal filed by the appellant/ accused, which was in turn filed thereby challenging the judgment and order dated 24.10.2013 passed by the learned Special Judge, Prevention of Corruption Act No. 1, Jaipur (hereinafter referred to as “the Special Judge”), convicting the appellant for the offences punishable under Section

F 13(1)(d)(ii) read with Section 15 of the Prevention of Corruption Act, 1988 ('PC Act' for short) and under Section 477A of Indian Penal Code, 1860 ("IPC" for short) and sentencing him to suffer rigorous imprisonment for one year and a fine of Rs. 5000/- each for both the offences.

G 3. The Special Judge, vide order dated 03.06.2004, framed the following charges against the appellant:

“Firstly in the year 1994, on 25.04.1994 and around the same time, while working as public servant, you had conspired with the co-accused Bhagwan Sahai and in furtherance of that criminal

H conspiracy, you had received an advance of Rs. 15,000/- out of

the approved amount of Rs. 91,500/- with regard to construction of rooms and varandha in the Primary School, Mankot and Bhagwan Sahai had submitted the work of Rs. 14,508/- in three muster rolls and the voucher of construction material of Rs. 18,994/- thereby informed the expenditure as Rs. 33,502/- which was accepted at page No. 71 and 72 of M.B. No. 51 and mentioned as Rs. 34,580.13 by Shiv Kumar Sharma but later on, on complaint, the said amount of Rs. 34,580/- was modified to Rs. 25,911/-.

In the same manner, in furtherance of the aforesaid criminal conspiracy, an advance of Rs. 28,000/- was received out of the approved amount of Rs. 80,000/- for construction of rooms and varandha in Primary School Surjanpur and Sh. Bhagwan Sahai had shown the expenditure of Rs. 61,843.40 including the expenses of 7 muster rolls amounting to Rs. 36,552/- and the voucher of construction amounting to Rs. 25,291.40. The said amount was entered by Sh. Shiv Kumar Sharma at page No. 71-72 of M.B. No. 51 as Rs. 68,776/- but on complaint, the said amount of Rs. 68,776/- was reduced to 45,582/- by cutting. In the enquiry, only work worth Rs. 28,264.42 was found at Surjanpur and work worth Rs. 25,911/- was found at Mankot and thus, you have shown the excess expenditure of labour and construction which was excess of Rs. 7,698/- at Mankot and Rs. 16,644/- at Surjanpur, totalling Rs. 22,353/- for which the excess payment was made and wrongful loss was caused to the State Government and wrongful gain was received by you. You also created false record by cutting in the records. The said act of you being the public servant is a criminal offence. Thus, you have committed a punishable offence under section 417, 477A read with section 120B IPC and offence under section 13(1)(d)(2) of the Prevention of Corruption Act, 1988, for which I have taken cognizance.”

4. It appears that a complaint was made to the authorities regarding malpractices in the construction of rooms and varandha in Primary School, Mankot and Surjanpur. It was the prosecution case that, in the Measurement Book with regard to Mankot, the amount was reduced from Rs. 34,580/- to Rs. 25,911/- by the appellant after the complaint was made. With regard to the construction work at Surjanpur, after the complaint was made, the amount was reduced to Rs.45,582/- from Rs.68,776/-.

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- A 5. After the receipt of the complaint, Mr. Mahesh Prasad Mathur was appointed as an Inquiry Officer. After completion of inquiry, he submitted an inquiry report. On the basis of the inquiry report, the crime came to be registered. The chargesheet was filed. The appellant pleaded not guilty and claimed to be tried. The learned Special Judge, at the conclusion of the trial, convicted the appellant as aforesaid. The appellant filed an appeal before the High Court and the High Court confirmed the order of the learned Special Judge. Hence the present appeal.
- B 6. Mr. Ritesh Agrawal, the learned counsel appearing on behalf of the appellant submits that both the High Court and the learned Trial Court have grossly erred in not giving due weightage to the evidence of PW-8 Mr. Mahesh Prasad Mathur as well as PW14-Jai Bhagwan, the Investigating Officer.
- C 7. The learned counsel further submits that there is no material to show that the appellant either had made any demand or by abusing his position as a public servant, had obtained for himself or any other person any valuable thing or pecuniary advantage. It is submitted that in the absence of any material to show that the appellant attempted to obtain for himself or any other person any valuable thing or pecuniary advantage, the conviction under Section 13(1)(d)(ii) read with Section 15 of the PC Act was not tenable. He further submits that for an offence punishable under Section 477A of the IPC, the prosecution is required to establish that the alleged act was willful with an intent to defraud. It is his submission that no such evidence has come up on record.
- D 8. Learned counsel therefore, submits that the concurrent orders of conviction are liable to be set aside and the accused is entitled to be acquitted.
- E 9. Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan vehemently opposes the appeal. He submits that the scope of interference in concurrent findings of fact is very limited. He submits that the learned Trial Court and the High Court, upon correct appreciation of evidence, have found that the appellant had manipulated the record with dishonest intention. He submitted that only after the complaint was made to the higher authorities, the appellant, in order to save his skin, had manipulated the record and as such, the case clearly falls under Section 477A of the IPC.
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10. No doubt that the scope of interference in the concurrent findings of the fact is very limited. Unless the findings are found to be perverse or impossible, the Court would refrain from interfering with the concurrent findings of fact. However, it is settled that when the findings recorded by the courts below are found to be recorded by ignoring the material evidence or the appreciation of evidence is manifestly erroneous, they would not come in the way of this Court in interfering with the same.

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11. For an offence punishable under Section 13(1)(d)(ii) read with Section 15 of the PC Act, it is necessary to establish that a public servant has attempted to obtain for himself or for any other person any valuable thing or pecuniary advantage. In the present case, no such material has come on record. On the contrary, the evidence of PW14-Jai Bhagwan, the Investigating Officer would clearly show that the payment of the construction material was directly made to the Gram Sewak by the Panchayat Samiti. It would further reveal that the bill of the material was also directly sent to Gram Sewak by the Panchayat Samiti. There was no verification done by the appellant. It is clearly admitted that the appellant was not aware of the amount paid to the Gram Sewak with respect to the construction material. It is further admitted that at the relevant time, there were around 100 to 125 panchayat works going on under the supervision of the present appellant. It is further admitted that there was no material placed on record to show that the corrections in Ex-article-2 from Ex-P-22 to Ex-27 was made by the appellant after the complaint. It will be relevant to refer to the following part of deposition of PW14-Jai Bhagwan, the I.O.:

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“I had not found any criminal charges against Shiv Kumar in my investigation report sent to the Headquarter and had only recommended for Departmental Enquiry. However, on the decision of the higher officials, charge sheet was filed.”

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12. PW14 further admits that the amount paid by the Panchayat Samiti was as per the amount corrected by the appellant. It is further admitted that there was no evidence to show that the accused Bhagwan Sahai and the appellant had made corrections together. He further admits that Shiv Kumar Sharma, that is the present appellant, had made a complaint to the District Magistrate about the irregularity in the construction work by Bhagwan Sahai, Gram Sewak.

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- A 13. These vital aspects that the appellant did not have any role to play in either the sanctioning of the money or making of payment, have been totally ignored by both the Courts. The evidence that in the investigation, the Investigating Officer had not found any criminal intent has also been ignored. In that view of the matter, the conviction under Section 13(1)(d)(ii) read with Section 15 of the PC Act is totally unsustainable.
- B 14. That leaves us with conviction under Section 477A of the IPC. For a conviction under Section 477A of the IPC, it is necessary for the prosecution to establish that the making of false entry or omission or alteration of such entries has been done willfully with an intent to defraud.
- C No such material has been placed on record by the prosecution. On the contrary, the evidence of PW8-Mahesh Prasad Mathur, who was appointed as an Inquiry Officer, would show that the allegations made against the appellant were not sustainable. It will be relevant to refer to the deposition of PW8-Mahesh Prasad Mathur, which reads thus:
- D "When I went on the spot to conduct enquiry then M.B. of Mankot and Surjpur was given to me. On the basis of which on dated 4.10 and 19.10.94 I had conducted enquiry after visiting the spot. On the instructions of C.O. I had prepared the difference detail on 17.2.95. At page No. 71,72 of the MB No. 51 (Article-2) the measurement have been recorded by the Jr. Eng. That was found correct upon my examination. Against this work of Rs. 25911/- payment of Rs. 13422/- was made as labour charges, which is entered in the MB from X to Y. I did not find any irregularity in the work of village Mankot. In case by mistake if any mistake is done in the total of MB, then at the time of preparing bill on the basis of MB, this mistake can be corrected by the account branch. I had gone there three months after ending of the famine relief works. At that place (Surjanpur) for the supervision of the material of work, there was no person appointed. On the spot there was not watchman, in the absence of which if anyone would take the material lying there, I cannot say. The Patties which have been shown in the MB, the same were not found on the spot, therefore, I had noted about it in the Report. It is the responsibility of the Gram Sewak to get conducted the construction work. If the costs of Patties of Rs. 6914/- would be included in my evaluation of Rs. 40267/-, then the valuation amount becomes Rs. 47181/-.
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Rs.6914/- the cost of patties is written according to BSR. When MB-51 (Article-2) was received to me, at that time due to mistake in total by J. En by cutting the amount of Rs. 59273/- the amount 47183/- has been marked, whereupon the J. En put his signatures. The payment of construction material was made to the Sarpanch of the Gram Panchayat, the agency which get conducted the work while the muster roll's payment is made by the tehsil employees. The payment of construction material was made by the Panchayat.”

15. The above deposition would clearly show that the measurements recorded by the appellant were found to be correct by the Inquiry Officer. He clearly admits that he did not find any irregularity in the work of village Mankot. He further admits that if any mistake was done in the total of Measurement Book at the time of preparing the bill, the mistake could be corrected by the accounts branch.

16. PW8-Mahesh Prasad Mathur further admitted that in so far as Surjanpur is concerned, no person was appointed as a watchman or a supervisor. He admits that in the absence of a watchman, it is possible that the material lying at the site could be taken by anybody. He admits that even the patties were not found on the spot and has noted about the same in the report. He further admits that if the cost of patties of Rs. 6914/- were included in the valuation of Rs. 40,677/- then the valuation comes to Rs.47,181/-.

17. PW8-Mahesh Prasad Mathur has further admitted that the payment for the construction material was made directly to the Sarpanch of the Gram Panchayat by the agency while the muster roll's payment was made by the tehsil employees. Payment of the construction material was made by the Panchayat. Thus, it could clearly be seen that the appellant had no role whatsoever in either approving the payment or making the payment.

18. The evidence of PW8-Mahesh Prasad Mathur would clearly show that at the most, the act of the appellant could be termed as irregular. However, there was nothing on record to show that such irregularities were committed willfully with an intent to defraud.

19. In that view of the matter, we find that even the conviction in so far as Section 477A of the IPC is concerned, is not sustainable in law.

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A 20. Dr. Manish Singhvi, learned Additional Advocate General for the State of Rajasthan has submitted that since the findings of fact are concurrent, the Court should be slow in interfering with the same.

B 21. It is settled principle of law that concurrent findings of fact cannot be interfered with unless shown to be perverse. Concurrency, after all, is no answer to perversity.

C 22. This Court in the case of *Mahesh Dattatray Thirthkar vs State of Maharashtra*¹ had laid down certain principles when this Court is entitled to exercise powers under Article 136 of the Constitution of India and interfere with the findings of fact. One of the principles laid down is thus:

D “Where findings of subordinate courts are shown to be *perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship.*”

E 23. This Court in the aforesaid case has referred to some of the earlier judgments of this Court on the issue. It will be apposite to refer to the same, which are as under:

F “**29.** Again in *H.P. Admn. v. Om Prakash* [(1972) 1 SCC 249 : 1972 SCC (Cri) 88] this Court while considering its power under Article 136 of the Constitution of India on the question of interference with the findings of fact, observed as follows: (SCC p. 256, para 4)

G “**4.** In appeals against acquittal by special leave under Article 136, this Court has undoubtedly power to interfere with the findings of fact, no distinction being made between judgments of acquittal and conviction, though in the case of acquittals it will not ordinarily interfere with the appreciation of evidence or on findings of fact unless the High Court ‘acts perversely or otherwise improperly’.”

H **30.** In *Arunachalam v. P.S.R. Sadhanantham* [(1979) 2 SCC 297 : 1979 SCC (Cri) 454] this Court while agreeing with the views expressed in the aforementioned decisions of this Court stated thus: (SCC p. 300, para 4)

H ¹(2009) 11 SCC 141

“4. ... The power is plenary in the sense that there are no words in Article 136 itself qualifying that power. But, the very nature of the power has led the court to set limits to itself within which to exercise such power. It is now the well-established practice of this Court to permit the invocation of the power under Article 136 only in very exceptional circumstances, as when a question of law of general public importance arises or *a decision shocks the conscience of the court*. But, within the restrictions imposed by itself, this Court has the undoubted power to interfere even with findings of fact, making no distinction between judgments of acquittal and conviction, if the High Court, in arriving at those findings, has acted ‘perversely or otherwise improperly.’”

(emphasis supplied)

31. Again in *State of U.P. v. Babul Nath* [(1994) 6 SCC 29 : 1994 SCC (Cri) 1585] this Court observed as follows: (SCC p. 33, para 5)

“5. At the very outset we may mention that in an appeal under Article 136 of the Constitution this Court does not normally reappraise the evidence by itself and go into the question of credibility of the witnesses and the assessment of the evidence by the High Court is accepted by the Supreme Court as final unless, of course, the appreciation of evidence and finding is vitiated by any error of law of procedure or found contrary to the principles of natural justice, errors of record and misreading of the evidence, or where the conclusions of the High Court are manifestly perverse and unsupportable from the evidence on record.”

32. In *Pattakkal Kunhikoya v. Thoopyakkal Koya* [(2000) 2 SCC 185] it was held (SCC p. 186c-d) that when an appeal arises under Article 136 of the Constitution of India,

“[i]t is not the practice of the Supreme Court to reappreciate the evidence for the purpose of examining whether the finding of fact arrived at by the High Court and the subordinate court is correct or not. Exception can be taken only in the event of *serious miscarriage of justice or manifest illegality* but not otherwise”.

(emphasis supplied)

- A 33. In *Mithilesh Kumari v. Prem Behari Khare* [(1989) 2 SCC 95] this Court has held (SCC p. 99) that where findings of subordinate courts are shown to be “*perverse or based on no evidence or irrelevant evidence or there are material irregularities affecting the said findings or where the court feels that justice has failed and the findings are likely to result in unduly excessive hardship, the Supreme Court could not decline to interfere merely on the ground that findings in question are findings of fact*”.
- (emphasis supplied)”
- C 24. Recently, this Court in the case of *Ashoksinh Jayendrasinh vs. State of Gujarat*² had also held that when the High Court has failed to appreciate the oral evidence in correct perspective, this Court would certainly be entitled to re-appreciate the evidence. In the said case also, this Court, finding that the conviction was recorded after ignoring the vital evidence, has set aside the order of conviction and acquitted the accused.
- E 25. In the present case, as discussed hereinabove, both the Trial Court and the High Court have failed to take into consideration the relevant and vital admissions in the evidence of PW8-Mr. Mahesh Prasad Mathur and PW 14-Jai Bhagwan. In our view, the said admissions were vital. Basing the order of conviction by ignoring the said vital admissions, in our view, would bring the impugned judgments in the realm of perversity.
- F 26. As such, the appeal is allowed. The order of conviction and sentence as recorded by the learned Special Judge, Prevention of Corruption Act No.1, Jaipur and confirmed by the High Court are quashed and set aside. The appellant is acquitted of all the charges. The bail bonds stand discharged.
27. Pending application(s), if any, shall stand disposed of.

G Divya Pandey
 (Assisted by : Roopanshi Virang, LCRA)

Appeal allowed.

²(2019) 6 SCC 535