

Supreme Court of India

Madhusudan Singh And Another vs State Of Bihar on 12 January, 1995

Equivalent citations: AIR 1995 SC 1437, (1996) 11 SCC 248

Bench: . A Anand, M Mukherjee

JUDGMENT

1. The appellant in these three appeals, by special leave, along with R. C. Goshwami (A-1), Sabir Ahmed (A-2) and Mahendra Narain Salt (A-5) were tried for offences under Sections 120B, 409 I.P.C., 477A I.P.C. and Section 5(1)(c) and 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act, 1947. A-1 and A-2 have not filed any appeal in this Court and A-5 died during the pendency of his appeal in the High Court. The trial court convicted the appellants for the offences for which they were charged except for the offence under Section 409 I.P.C. They were sentenced to suffer rigorous imprisonment for one year each under Section 477A I.P.C. and Sections 5(1)(c) and 5(1)(d) read with Section 5(2) of the Prevention of Corruption Act. No separate sentence was imposed for the offence under Section 120-B against any of the accused. Different appeals were filed by the accused before the High Court. The High Court by its judgment dated 21-10-1990 disposed of all the appeals, maintaining the conviction of the appellants as well as of A-1 and A-2 (A-5 having died during the pendency of the appeal in the High Court). So far as the sentence of the appellants is concerned, the High Court reduced the substantive sentence of imprisonment to the period already undergone by them. However, fine of Rs. 1,000/- was imposed on A-1 and A-2 each while a fine of Rs. 500/- was imposed on each of the four appellants. In default of payment of fine, the appellants were to suffer one year's rigorous imprisonment under each of the counts.

2. This case is concerned with the alleged misappropriation of wheat, weighing 2564,00,000 qtls. The misappropriation, according to the prosecution case, occurred during the period 12-1-1975 and 30-3-1976. According to the prosecution case, R. C. Goshwami, A-1 was posted as Depot in charge of the F.S.D of the Food Corporation of India at Muzaffarpur while Sabir Ahmed, A-2 was the in charge of the two sectors of the said depot. Mahendra Narain Sah, A-5 (since deceased) was working as A.G.I at the said depot, Narain Mahto, appellant (A-4) was working as an AG-11 staff attached to Sector-A while appellant Jagannath Prasad Singh (A-6) was attached to Sector-B. Appellant Jagan Nath Singh (A-3) was working as AG-III and was attached to the depot and looking after the movements. Appellant Madhusudan Singh (A-7) was also working as AG-III and was attached to Sector-A of the aforesaid depot. A-1 was the godown in charge of the entire depot. A-3, A-4, A-6 and A-7, the appellants herein were assisting A-1 and A-2 in the discharge of their duties and the day-to-day functioning of the depot in respect of the two sectors of the depot.

3. It appears that one Shri Himat Singh joined as an Assistant Superintendent of the Muzaffarpur P.S.D. in March, 1976 and discovered that the arrangement of the stock of wheat in the godown was not proper and that the quantity of the wheat was lying in disarray. The bags containing wheat were found to be so placed as not to be capable of be in counted properly. Even the accounts and the record relating to the stock of wheat was not properly maintained. He made a report to his superior upon which special physical verification was ordered. On completion of the special physical verification, huge shortage of wheat was detected. The Deputy Manager, vigilance, thereupon reported the matter to the CBI and the case was investigated. The appellants along with the three

others were then sent up for trial and convicted and sentenced as noticed above.

4. The prosecution examined 16 witnesses to connect the appellants and others with the crime and brought on record a number of documents including the Form 'O' in which the entries had been finalised. The substance of the prosecution case against the appellants and the other co-accused is that they entered into a conspiracy to put the F.C.I to loss for the benefit of themselves or others and towards that end in view, falsified the entries contained in various 'O' Forms and the stock registers and ledgers. Whereas, the trial court noticed and detailed the irregularities and the manner in which false records had been prepared in para-2 of its judgment, the High Court enumerated the details of the irregularities and the shortages, in para 10 of the judgment. We, under the circumstances do not find it necessary to reproduce the same once again in our judgment. After going through the evidence, both oral and documentary, we are of the opinion that the findings with regard to various irregularities committed by the appellants and others and the shortage of wheat which was detected and/or misappropriated, as noticed by the trial court as well as the High Court, are amply borne out from the record and are based on proper appreciation of evidence. That the irregularities were committed pursuant to a conspiracy, is also writ large in the material on the record. The evidence on the record has clearly established that the appellants along with the three others, who were tried along with them, were working at the Muzaffarpur depot of the F.C.I. where the shortage and misappropriation of the wheat took place. We are in agreement with the findings of the trial court and the High Court in so far as the complicity of appellants, A-3, A-4 and A-6 in the commission of the crime is concerned. However, in view of their acquittal by the trial court for the offence under Section 409 I.P.C., we find that their conviction for the offence under Section 5(1)(c) of the Prevention of Corruption Act, 1947, which is based on similar ingredients cannot be sustained. In our opinion, however, the evidence on the record in so far as A-7, Madhusudan Singh is concerned, is not sufficient to hold him guilty of the offences for which he has been convicted.

5. The High Court has dealt with the case of Madhusudan Singh in para 23 of the judgment. A perusal of the said paragraph shows that for coming to the conclusion, that he was responsible for misappropriation of 19 qtls. of wheat, reliance has been placed only on the allegations contained in the F.I.R. F.I.R. by itself is not a substantive piece of evidence. It can be used to either contradict or corroborate the maker thereof in the manner provided under the Evidence Act. Nothing has been brought to our notice from the record from which it may be possible to hold that the allegations made in the F.I.R. regarding Madhusudan Singh, A-7 were at all substantiated at the trial by any oral evidence. The allegations contained in the F.I.R. have, thus, not been proved at the trial. That being the position, we do not find it possible to uphold the conviction and sentence of Madhusudan Singh, A-7 for any of the charges.

6. We, accordingly, accept his appeal being Criminal Appeal No. 637/91 and giving him the benefit of doubt acquit him of all the charges.

7. In view of our discussion above and since we are in agreement with the High Court and the trial court and find that the findings of guilt recorded by them with regard to Jagan Nath Singh, A-3, Narain Mahto, A-4 and Jagannath Prasad Singh, A-6, have been established by the prosecution beyond every reasonable doubt, we do not find any reason to interfere with their conviction and

sentence for the offences under Section 120-B and Section 477A I.P.C. and Section 5(1)(d) read with Section 5(2) Prevention of Corruption Act. Their conviction and sentence for the offence under Section 5(1)(c) Prevention of Corruption Act is, however, set aside. Consequently, Criminal Appeal No. 638/91 and Criminal Appeal No. 639/91 partly succeed and are disposed of.