

S.K.Batham vs The State Of M.P. Thru Lok Aukta,Jbp on 20 March, 2010

Author: Rakesh Saxena

Bench: Sushma Shrivastava, Rakesh Saxena

HIGH COURT OF MADHYA PRADESH: JABALPUR

CRIMINAL APPEAL NO. 1946/2000

S.K.Batham son of late Shri Bhagwandas Batham,
Sub-Engineer, Central Store,
Bargi Project, Bargi District-Jabalpur
Presently posted as Sub-Engineer,
Narbada Nagar,
Khandwa, District Khandwa (MP)
Resident of G-7, Narbada-Nagar,
Khandwa(MP).

.....Appellant

-Versus-

State of Madhya Pradesh through Lokayukta
Jabalpur.

.....Respondent

For the appellant:

Shri S.C.Datt,Senior Advocate with Shri
Siddharth Datt, Advocate.

For the respondent:

Shri Aditya Adhikari, Advocate.

Present:

Hon'ble Justice Shri Rakesh Saxena
Hon'ble Justice Smt. Sushma Shrivastava

Date of hearing : 18.02.2010

Date of judgment: 20.03.2010

J U D G M E N T

Per Rakesh Saxena, J.

Appellant has filed this appeal against the judgment dated 23th July, 2000 passed by Special Judge/Ist Additional Sessions Judge, Jabalpur in Special Criminal Case No.3/1995 convicting him under section 409 of the Indian Penal Code and section 5(1)(c) read with section 5(2) of the Prevention of Corruption Act,1947/section 13(1)(c) read with section 13(2) of the Prevention of Corruption Act, 1988 and sentencing him to rigorous imprisonment for 2 years with fine of Rs.10,000/- and rigorous imprisonment for 2 years with fine of Rs.10,000/- on each count respectively. Both the sentences have been directed to run concurrently.

2. According to prosecution, on 14.2.1983 and before, appellant was posted as Sub-Engineer in Receipt Sub-division of Rani Awanti Bai, Sagar Project. In discharge of his duties as a public servant, he dishonestly misappropriated the property of the store worth Rs.34,762.69 and obtained pecuniary advantage, thus, committed criminal breach of trust and criminal misconduct punishable under section 409 I.P.C. and section 5(1)(c) of the Prevention of Corruption Act, 1947.

3. It is not disputed that appellant remained posted as Sub- Engineer in Receipt Sub-division of the store of Awanti Bai Sagar Project, Bargi Nagar Jabalpur between the year 1979 and 28.3.83.

4. Prosecution case in brief is that Hanumant Singh, Inspector of Special Police Establishment Division, Jabalpur, under the orders of Superintendent of Police, checked the stock of Central store of Bargi Dam Project with the help of technical assistants viz. Ajit Lal and Dilip Kumar Ghosh between 14.2.83 to 20.2.83 in presence of appellant S.K.Batham, incharge of Receipt Sub-division. On checking, various articles worth Rs.34,672.69 were found short and at the same time goods worth Rs.13,220.24 was found surplus. According to prosecution, this indicated that most of the transactions of issue and receipts of the store were false and fraudulent. After checking the balance and after physical verification of articles, inspecting team prepared index Ex.P/1 as follows:

S.No.	Articles	Balance	Number of articles found after physical verification.
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1. G.I hooks 650 kg x 650 kg 1048=05
2. Tree guards 24 part 4 part 20 part 1900=00
3. G.I.washers 175 kg 45 kg 130 kg 1690=00

4. Hold fast 500 kg 374 kg 125.20 kg 2253=00
5. Quarried 450 cu.m. 269.5 cu.m. 180.45 cu.m. 8118=00 rubble stone
6. Synthetic 180 litres 160 litres 20 litres 640=00 white paint
7. Darkgreen 60 litres 40 litres 20 litres 532=00 paint
8. Smoke grey 700 litres 600 litres 100 litres 2760=00 paint
9. Copper sheets 3874.530 kg 3753 kg 121.53 kg 7583=47
10. G.I. Pipe 5 mm 1498 Rmt 1481 Rmt 16.20 Rmt 208=17
11. G.I.Pipe 80mm 4597.30 Rmt 4581.17 Rmt 16.20 Rmt 1051=30
12. G.I.Pipe 50mm 5497.6 Rmt 4511.88 Rmt 39.13 Rmt 3333=09
13. M.S.Black pipe 1248.97 Rmt 1219.68 Rmt 29.29 Rmt 3624=13 150mm

Total 34,762=69

5. During investigation, various registers, forms, indents, account registers, contract files, supply files and other documents were seized. On further investigation by Inspector S.K.Mishra, again a list of short and surplus articles in the store was prepared. On completion of the investigation and after obtaining the sanction, charge sheet against the appellant was filed.

6. Appellant abjured his guilt and pleaded false implication. According to him, he had obtained charge from Sub-Engineer Shri S.K.Dubey. Though Executive Engineer directed him to take charge of late Shri Thomas, but none handed over him the charge and, therefore, without taking formal charge, in compliance of the order of Executive Engineer he started his work. He denied that any measurement or raid was done before him and any shortage was found in the stock.

7. To substantiate prosecution case, ten prosecution witnesses were examined and number of documents were exhibited. Learned Special Judge, after trial and upon appreciation of the evidence adduced in the case, held the appellant guilty and convicted him under section 409 I.P.C. and section 5(1)(c) read with section 5(2) of the Prevention of Corruption Act, 1947/section 13(1)

(c) read with Section 13(2) of the Prevention of Corruption Act, 1988.

8. We have heard the learned counsel for the parties and perused the evidence and material on record.

9. It is no longer disputed that the appellant was a public servant and was posted as Sub-Engineer in Store Sub-division of Bargi Dam Project. D.C.Bisen (PW3), who was posted as Steno in the office of Superintending Engineer in the said Project, stated that he was directed to produce the papers in respect of the charge of Sub-Engineers S.K.Dubey and S.K.Batham. He produced the letters and correspondence in that regard which were Ex.P/8 to P/13. He also proved letter Ex.P/14, signed by the Executive Engineer. On perusal of letter Ex.P/14, it is revealed that on 23.6.1982 appellant was asked to take over charge of the stock items handled by late Shri P.V.Thomas Sub-Engineer. S.K.Dubey (PW2), who was posted as Sub-Engineer, stated that when he was transferred to store division, appellant was working in his department. Since he was dealing the cases of cement, on his transfer to other division, he handed over the charge of some articles to appellant. According to him, Sub-Engineer Thomas was posted in Receipt section of the Sub-division. After his death, in the same section appellant was posted. The evidence of aforesaid witnesses stood corroborated by the evidence of Purushottam Dubey (PW8) who was posted as supervisor in the Receipt Sub-division of the store. He categorically stated that appellant was posted as Sub-Engineer and the receipt charge of the store was with him. It is thus evident that on 14.2.1983 appellant was a public servant and was posted as incharge of the Receipt Sub-division of the store of Bargi Project.

10. According to Dilip Kumar Ghosh (PW1), he was posted as a technical assistant in Lokayukta office Bhopal. On the orders of his department in the year 1983 he had conducted checking of the store of Bargi Project. He had found shortage of property in the store whereas some articles in the store were found surplus. At the time of checking, appellant had been incharge of the store. He had prepared the list of property (Ex.P/1) recording the balance of shortage and excess of the goods found in the store. He stated that at the time of verification, appellant, Inspector Hanumant Singh and his staff was also present. Balance list Ex.P/1 was signed by both of them. Ajit Lal (PW5), another technical assistant of the Lokayukta Department, corroborating the version of Dilip Kumar Ghosh, stated that on 16.2.83, he, Ghosh and Inspector Hanumant Singh had conducted physical verification of the Central Store of Bargi Project and had found some property short and some articles in excess. Articles were recorded in Ex.P/1 which was signed by the appellant as well as by himself. According to him, Ex.P/1 was prepared after inspecting the accounts of Central Store and ledger stock. Same facts were narrated by Inspector Hanumant Singh (PW7). According to him, on the instruction of Superintendent of Police, Lokayukta, he along with technical assistants of the department had checked the receipts and issue of the Central Store which was under the charge of Sub-Engineer S.K.Batham. He had prepared the chart Ex.P/1 in respect of the goods found short and surplus in the store which was signed by the appellant and other persons.

11. S.K.Mishra (PW10), Inspector in Lokayukta office, Jabalpur conducted further investigation in the case after transfer of DSP Vaidya. He again checked and compared the shortage and excess of goods found in the Receipt Sub-division of the store on the basis of stock registers and the indents. He too prepared a report (Ex.P/21) indicating that in receipt section, goods worth Rs.27159/- were short and the goods worth Rs.21780/- were excess. He stated that at the time of physical verification by the Lokayukta team, appellant was Sub-Engineer and was incharge of the Sub-division. He

prepared his report after examining the stock registers, measurement books, indent registers and also the list prepared by Lokayukta team after physical verification. He submitted his report Ex.P/24 on 23.12.1987. He, however, admitted that he did not go to the spot and calculated the balance on the basis of record.

12. Learned counsel for the appellant argued that there were inconsistencies in the list Ex.P/1 prepared by Lokayukta team and the list Ex.P/24 prepared by S.K.Mishra (PW10), therefore, it was not established that the goods of the store were misappropriated by the appellant. He also argued that it was not proved beyond doubt that the property which was said to be missing in the store was entrusted to him.

13. It is to be noted that the balance indicated in Ex.P/1 was recorded on the basis of articles found short or in excess in the store. Ex.P/1 was prepared by Inspector Hanumant Singh with the assistance of two technical assistants of Lokayukta department viz. Dilip Kumar Ghosh (PW1) and Ajit Lal (PW5). This verification was done by them in presence of the appellant as well as other officers of the department. Report Ex.P/1 was signed by the appellant also. Thus, it can be inferred that the balance described in the said report was accepted by the appellant. Had there been any mistake or confusion in the said report, appellant would have certainly endorsed his objection on it. It is also significant to note that appellant did not adduce any evidence to show that the verification proceeding conducted by the Lokayukta team and the verification report Ex.P/1 was not correct or that he made any complaint in this regard to any of his superior officers.

14. Report Ex.P/24 was neither prepared by S.K.Mishra (PW10) in presence of any officers of the Bargi Dam Project nor with the assistance of any technical advisor. In these circumstances, in our opinion, learned trial Court was justified in not giving much significance to this report. Apart from that, report Ex.P/24 did not altogether efface the evidence of report Ex.P/1 because even according to it shortage of goods worth Rs.27159/- and excess of goods worth Rs.21780/- was found. Therefore, the veracity of the evidence of Dilip Kumar Ghosh (PW1), Ajit Lal (PW5) and Inspector Hanumant Singh (PW7) and their verification report Ex.P/1 is not diminished in any manner.

15. We are not impressed by the argument advanced by the learned counsel for the appellant that prosecution failed to establish that the property found short in the store was entrusted to appellant. It would be relevant to quote here the provision of section 409 of the Indian Penal Code:-

"409. Criminal breach of trust by public servant, or by banker, merchant or agent.- Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

16. In *Onkar Nath Mishra v. State (NCT of Delhi)* [2008(2) SCC 561], Hon'ble Apex Court observed that in the commission of the offence of criminal breach of trust, two distinct parts are

involved. The first consists of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused. The second is a misappropriation or dealing with the property dishonestly and contrary to the terms of the obligation created. In *Jaikrishnadas Manohardas Desai vs. State of Bombay* (AIR 1960 SC

889), Hon'ble Apex Court observed: "4....to establish a charge of criminal breach of trust, the prosecution is not obliged to prove the precise mode of conversion, misappropriation or misapplication by the accused of the property entrusted to him or over which he has dominion. The principal ingredient of the offence being dishonest misappropriation or conversion which may not ordinarily be a matter of direct proof, entrustment of property and failure in breach of an obligation to account for the property entrusted, if proved, may in the light of other circumstances, justifiably lead to an inference of dishonest misappropriation or conversion. Conviction of a person for the offence of criminal breach of trust may not, in all cases, be founded merely on his failure to account for the property entrusted to him, or over which he has dominion, even when a duty to account is imposed upon him, but where he is unable to account or renders an explanation for his failure to account which is untrue, an inference of misappropriation with dishonest intent may readily be made." In *Supdt. and Remembrancer of Legal Affairs v. S.K.Roy* [1974(4) SCC 230], the Apex Court observed: "12. To constitute an offence under section 409 IPC, it is not required that misappropriation must necessarily take place after the creation of a legally correct entrustment or dominion over property. The entrustment may arise in 'any manner whatsoever'. That manner may or may not involve fraudulent conduct of the accused. Section 409 IPC, covers dishonest misappropriation in both types of cases; that is to say, those where the receipt of property is itself fraudulent or improper and those where the public servant misappropriates what may have been quite properly and innocently received. All that is required is what may be described as 'entrustment' or acquisition of dominion over property in the capacity of a public servant who, as a result of it, becomes charged with a duty to act in a particular way, or, at least honestly."

17. In the instant case, it has been clearly established that at the time when stock in the store of Bargi Dam Project was checked, appellant was incharge of the same. In his statement under section 313 of the Code of Criminal Procedure, he admitted that Executive Engineer had directed him to take charge of Sub-Engineer late Shri Thomas, but, since, no charge was handed over to him by anybody, on the direction of Executive Engineer he had started working. Apart from that, from the evidence of D.C.Bisen (PW3), Sub-Engineer S.K.Dubey (PW2) and Purushottam Dubey (PW8), it stood established that on the date of raid i.e. on 14.2.1983 appellant was Sub-Engineer in the Receipt Sub-division of the store division of Awanti Bai Sagar Project. Even if appellant had not taken over charge in technical manner yet, since he had acquired dominion over the store it cannot be held that the property kept in the store was not entrusted to him. The fact of having large amount of goods been found in the store in excess of the stock recorded in the relevant documents, clearly indicated that the surplus/excess goods could have been converted to personal use or misutilised by the appellant.

18. We are, therefore, of the opinion that the appellant being a public servant dishonestly or fraudulently misappropriated or otherwise converted for his own use the property entrusted to him or which was under his control as a public servant and that he has rightly been held guilty by the

trial Court and convicted under section 409 IPC and section 5(1)(c) read with section 5(2) or section 13(1)(c) read with section 13(2) of the Prevention of Corruption Act, 1988. Accordingly, the conviction of the appellant on both the above counts is affirmed.

19. As far as the question of sentence is concerned, learned counsel for the appellant submitted that the incident in question pertains to year 1983 i.e. it occurred about 27 years ago; now appellant has attained the age of about 61 years. He is an old and infirm person. Learned counsel produced the certificate issued from CHL-Apollo Hospitals, Indore, indicating that appellant underwent Coronary Artery Bypass Grafting (Open Heart Surgery) on 7.2.2006. He has suffered enough humiliation and has already lost his job, therefore, his sentence of imprisonment on both the counts deserves to be reduced. Learned counsel for the appellant placed reliance on the view expressed by the Apex Court in *State of Maharashtra vs. Rashid B. Mulani* [2006(1) SCC 407].

20. Learned counsel for the respondent submitted that the offences proved against appellant are of serious nature. Offence under section 409 I.P.C. is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and section 5(2) of the Prevention of Corruption Act, 1947 provides that the imprisonment shall not be less than one year but it may extend to seven years and fine.

21. Learned counsel for the appellant submitted that since incident in question occurred in the year 1983, the provision of new Act i.e. Prevention of Corruption Act, 1988 would not be applicable. Provision attached to section 5(2) of 1947 Act provided that the Court may for any special reasons impose a sentence of imprisonment of less than one year.

22. It is true that a corrupt official is a menace to the society, he brings the Government and the society at large into disrepute. Public servant, therefore, once he is found guilty of corruption deserves no indulgence from the Court, however, in *Rashid B. Mulani* (supra) Apex Court observed :-

"19. In regard to sentence, we find that the incident occurred about 19 years ago. The matter was pending for about 3 years before the Special Judge, and about 8 years before the High Court and, thereafter, for 8 years before this Court. The accused was hardly 32 years old when the incident occurred and now more than 50 years old. The accused was a Talathi coming from a poor background with a family to support. In the circumstances, while restoring the conviction, we reduce the sentence from one year to four months both under section 161 IPC and section 5(2) read with section 5(1)(d) of the Act. Both the sentences to run concurrently."

23. In our opinion, in the instant case, the fact of long pendency of the matter before the Courts, the age of the appellant and the fact that he has undergone open heart surgery in the year 2006, amount to special reasons to impose a sentence of imprisonment to appellant less than one year. Accordingly, the sentence of rigorous imprisonment for two years awarded to appellant on each count is reduced to rigorous imprisonment for a period of four months. Sentence of fine on both counts is affirmed. Both the sentences to run concurrently. Appellant, who is on bail, shall surrender

within a period of one month to serve out the sentence.

24. Appeal partly allowed.

(Rakesh Saxena)
Judge

(Smt. Sushma Shrivastava)
Judge

b

1HIGH COURT OF MADHYA PRADESH : JABALPUR

?Criminal Appeal No.1946/2000

S.K.Batham

-Versus-

The State of Madhya Pradesh.

1 JUDGMENT

?For Consideration

Rakesh Saxena
JUDGE
/03/2010

Hon'ble Justice Smt. Sushma Shrivastava

JUDGE
/03/2010

POST FOR ___/03/2010

(Rakesh Saxena)
JUDGE
___/03/2010

