

AFR

Court No. - 42

Case :- GOVERNMENT APPEAL No. - 3069 of 2016

Appellant :- State Of U.P.

Respondent :- Nandram And Anr.

Counsel for Appellant :- G.A.

Counsel for Respondent :- Amit Kumar Srivastava

Hon'ble Ramesh Sinha, J.

Hon'ble Vivek Kumar Singh, J.

(Delivered by Hon. Vivek Kumar Singh, J.)

Heard Sri Vikas Sahai, learned A.G.A. for the State-appellant and learned counsel for accused-respondents and perused the material on record.

(1) This application has been filed by the State-appellant against the judgement and order dated 08.02.2016 passed in S.T.No,14 of 2005, arising out of Case Crime number 262/2005 under sections. 406, 409, 420, 120B I.P.C. and 13 (1) (c), 13(1) (d-2) read with section 13(2) Prevention of Corruption Act, PS-Kotwali Sadar, Distt. Shahjahanpur by the learned Additional Sessions Judge/Special Judge(P.C.A.) Court room no. 2 Bareilly whereby the accused-respondents have been acquitted for the offence punishable under the sections referred to above.

(2) A perusal of the record shows that on 28.06.2005, at 17:10 hours, on the basis of complaint made by complainant of the case Vijay Anand Shahi, police Sub Inspector Economic Offences Wing (EOW), Offences Investigation Department, Uttar Pradesh, Lucknow, dated 27.06.2005. submitted at PS-Kotwali Sadar, Shahjahanpur and the case was registered against accused Rajendra Pal, Arun Kumar Mishra, Nirankar Saxena, Ramsnehi Yadav,

Nandram, Ramsewak Prasad Gupta, VK Mishra, and Ratan Singh and other assistant officials, names and address unknown, posted at procurement centres, u/s. 406, 409, 420, 120B IPC and 13 (1) (C), 13(1) (D-2) read with section 13(2) Prevention of Corruption Act.

(3) The investigation was conducted by Economic Offences Wing (EOW), Uttar Pradesh, Lucknow concerning usage of old gunny bags instead of new gunny bags for procurement of wheat in RMS 2004-05 and misuse and misappropriation of money. During the investigation when the documents were obtained from the depot in-charges of Jumoor-A, Jumoor-B and Jumoor-C, state warehouse, Shahjahanpur, their statements were recorded, it was found on record that wheat purchased during RMS 2004-05 in a number of old gunny bags was stored in the aforesaid three depot godowns, which had been sent by the in-charges of procurement centre of the aforesaid procurement institutions for storage.

(4) It was found in the investigation that misusing their post and committing criminal breach of trust against the government, the in-charges of the procurement centres used the old gunny bags instead of the provided new gunny bags for usage, and has misappropriated the new gunny bags in relative number which caused loss of the government wealth. Criminal involvement of the in-charges of the procurement centres, named in this case, along with their accomplices and other officers as well as officials was also found in the form of criminal conspiracy. After analysis of the evidence found during the investigation, their departmental and criminal liability was

fixed. In investigation of this case, the offences u/s. 406, 409, 420, 120B IPC and 13 (1) (c), 13(1) (d-2) read with section 13(2) Prevention of Corruption Act are prima facie found to have been committed.

(5) Total 9 prosecution witnesses namely PW-1 complainant of the case Sub Inspector Vijay Anand Shahi, PW-2 335 CP Bijendra Pal, PW-3 Chiraunjilal, PW-4 VB Tyagi, PW-5 W H Kazmi, PW-6 Dhan Singh Verma, PW-7 Ram Lakhan Verma, PW-8 investigator Parshuram Verma and PW-9 Sompal Singh were examined by the prosecution in order to support its case. Thereafter the prosecution completed its evidence.

(6) After completion of the prosecution evidence, the statements of accused Nandram and Bhagwati Prasad Mishra were recorded u/s. 313 CrPC. In their statements, while denying the entire prosecution story, the accused persons have stated that no old gunny bag was used. They had used such gunny bags as they received. The false report has been lodged against them. The documents were not proved. The false statements have been recorded. Being from the same department, they had made false deposition. Stocks were kept in open. The gunny bags are affected and damaged due to sunlight and water. They are not properly kept and maintained at the farmer procurement level and therefore such statements have been given. No B-class gunny bag has been used.

(7) It has been alleged that new gunny bags were provided to the accused persons for procurement of wheat by the department, but the accused persons did not use new

gunny bags for this purpose, rather they used 2685 and 1720 old gunny bags respectively in criminal conspiracy and misappropriated the relative number of new gunny bags, and they dishonestly committed criminal breach of trust and misappropriation against the government and caused loss to the government by committing criminal breach of trust, committed fraud against the department and the government, and received money other than the valid remuneration by misusing their posts as public servant and dishonestly misappropriating the aforementioned gunny bags for the purpose otherwise.

(8) The main considerable point of this incident is that accused used sacks of class 'B' for wheat storage instead of sacks of class 'A' provided by the Government and misappropriated sacks of class 'A'. No identity regarding 'A' class and 'B' class sacks was produced in file, nor any related order, G.O., letter or written notice has been produced by the prosecution as to what is the real situation of 'A' class and 'B' class sacks or what is their identity. No related scientific or technical criteria was produced during the entire evidence, nor was any document produced in this regard. According to PW 1 'B' class sacks were damaged and these differed in sizes.

(9) According to PW 4 'B' class sack to one which is used once after being filled up and its colour changes. This witness has also stated that guess was made on the basis of vision. According to PW 5 this identity was done visually whether sacks were new or old or 'B' class. According to PW 7 'A' class sacks are fresh and nothing has been stored in these before. 'B' class sack is one that has been used

once and its colour gets changed. According to him in cross examination, sacks the strands of which are unraveled are kept in 'B' class. According to PW 9 Sonpal Singh, any damaged or torn sack falls in 'B' class.

(10) Thus it appears that no rule, document, written notice or letter has been shown in file by the prosecution as to the classification of 'A' class and 'B' class sacks. So far as oral evidence is concerned, there are contradictions in the statements of witnesses of facts how 'A' class sacks and 'B' class sacks are inspected in reality and which are 'B' class sacks. According to PW 1 'B' class sacks were damaged and these differed in sizes. While according to PW 4 'B' class sack to one which is used once after being filled up and its colour has changed. Contrary to it according to PW 5 this identification is done visually whether sack is new or old or 'B' class. According to PW 7 'B' class sack is one that has been used once and its colour gets changed. According to him in cross examination, sacks the strands of which are unraveled are kept in 'B' class. While according to PW 9 Sonpal Singh, any damaged or torn sack falls in 'B' class. It is thus clear that witnesses were not unanimous on the point what were 'B' class sacks in reality and when prosecution is not unanimous on this most important point, it becomes doubtful.

(11) Complainant of the case Vijay Anand Shahi (P.W.1) examined in support of the prosecution story admitted in his cross examination that inspection was allocated to him in the year 2005. When he started the inspection, the purchase of wheat came to an end. The wheat was purchased between April 2004 and June 2004 in a year, the

referred description he was inspecting after 8-10 months had passed since he started the inspection. During that inspection he did not mention any case diary. He had recorded the statements of those he interrogated, but inspection file was neither before the court, nor it was in court file. Thus it is clear from the aforesaid statements of this witness made in his cross examination that this criminal incident took place in the year 2004, while inspection of the incident was initiated by this witness in the year 2005. It also appears from his evidence that this inspection was initiated by him for 8-10 months. No case diary was made by him in this regard. Statements of those who were interrogated are not available on file. It appears that in reality this witness had no opportunity to carry out inspection of sacks related with this incident. According to the prosecution, the sacks that were allegedly found to be of 'B' category, had been sent to warehouse after filling them up with wheat. At that time these sacks could not be produced before this witness for inspection, nor was it possible for this witness to carry out inspection of these sacks. No written statement of witnesses interrogated by this witness during inspection has been recorded in file, nor is any person made witness of the incident, nor they have been examined in evidence. In this way the court below observed that the evidence of this witness appears to be based merely on documentary evidence, which is not credible in any way.

(12) Not mentioning any fact regarding the aforesaid inspection in complaint produced by this witness shows that aforesaid evidence has been furnished by this witness

in order to conceal his mistakes in cross examination. The aforesaid evidence becomes incredible on not being corroborated by evidence furnished in examination-in-chief.

(13) According to this witness, sacks taken in random sampling were submitted in E.O.W. Headquarter but he himself had admitted that no inspection of sacks taken as sample by him was conducted. Sacks taken for sample have not been produced before the Court below by prosecution. The evidence of this witness on this point also does not fall under the category of credibility. According to the statement of PW 1 in cross examination, he took 10 sacks from each warehouse in random sampling. In totality he took 30 sacks but no sample was produced before the court by the prosecution. Thus his statement as to sampling related action does not appear to be true. The court also observed that from perusal of the entire evidence of this witness, prosecution story cannot be considered as proved and thus it is of no importance.

(14) In this matter, in reality the duration in which procurement of gunny bags at the warehouse and their utilization for storage of wheat procured from farmers at wheat procurement centres by the government is shown from month of April to middle of June in year 2004 while the investigation of this matter commenced in the year 2005 when the wheat procurement had ended and the wheat had been stored in the gunny bags at warehouses after procuring gunny bags from Food and Civil Supplies department. The court also observed that the evidence of PW-9 S.M.I. Sonpal Singh is in itself contradictory on

many vital aspects and his evidence rendered untrue by his own testimony and the incident did not occur in the manner as is described by prosecution.

(15) On the perusal of the above mentioned evidences the court below observed that the prosecution failed to prove beyond reasonable doubt on the basis of available evidence that accused persons namely Nandram, B.P. Mishra alias Bhagwati Prasad Mishra and deceased Ramsevak Gupta in the capacity of procurement centre incharge during different dates of Rabi marketing year 2004-05 committed criminal misappropriation as public servant by grabbing new gunny bags provided by the department for wheat procurement on fraudulent and deceitful basis with intention to commit criminal breach of trust as well as cause loss to the government and in furtherance of this criminal conspiracy, they utilized 2865,1785 and 1720 old gunny bags instead of new bags provided by the government for said purpose and misappropriated as much number of new bags for themselves thereby committing criminal breach of trust by causing loss to the government through their fraudulent and deceitful act. Thus prosecution failed to prove the offences under Sec. 406,409,420 and 120B IPC beyond reasonable doubt against accused Nandram and B.P. Mishra alias Bhagwati Prasad Mishra.

(16) The I.O. has neither examined the alleged spot nor has prepared any sketch map during investigation. I.O. has neither prepared sample of any B class bag nor got it examined. Witnesses who were examined on behalf of prosecution stated different different characteristics of B

class gunny bags from which it is not possible to judge as to what kind of bags can be termed as B class gunny bags. The court below next observed that here appeared a serious contradiction in the evidence of witnesses examined on behalf of prosecution. PW-1, Anand Shahi, PW-3 Chirauji Lal, PW-4 B.D. Tyagi, PW-5 W.H. Qazmi, PW-6 Dhan Singh Verma and PW-7 Ramratan Verma were examined in support of prosecution version, however they stated that the responsibility for checking A class and B class bags was squarely with PW-9 S.M.I. Sonpal and some witnesses were not found to be working during the aforesaid period in question. The court also observed that evidence of PW-9 S.M.I. Sonpal is in itself seriously contradictory on numerous vital issues and his own statement rendered false by his own evidence. .

(17) The court below also observed that from the evidence available on file that both PW-1 namely Vijay Anand Shahi who was I.O. of this case at initial stage and also the complainant as well as PW-8 Parshuram who was the present I.O. neither examined any spot nor prepared any sketch map. No case diary was prepared by PW-1 Vijay Anand Shahi nor statement of any witness was recorded by him and no handing over of any such case diary or documents of this case to PW-8 Parshuram by him is visible. The court further observed that the evidence of PW-1 appears to be based solely on documents. Examination of any gunny bag by him cannot be proved by his evidence.

(18) It is also worth mentioning here that on the perusal of the above mentioned evidence regarding offences against

accused persons under IPC it has already been concluded that no offence under Sec. 406, 409, 120B IPC against accused persons can be proved beyond reasonable doubt on the basis of oral and documentary evidences produced by the prosecution. In such circumstances, it has been concluded on the examination of evidence against accused persons that prosecution has failed to prove beyond reasonable doubt on the basis of evidence available that accused persons namely Nandram, B.P. Mishra alias Bhagwati Prasad Mishra and deceased Ramsevak Gupta in the capacity of procurement centre incharge during different dates of Rabi marketing year 2004-05 committed criminal misappropriation as public servant by grabbing new gunny bags provided by the department for wheat procurement on fraudulent and deceitful basis with intention to commit criminal breach of trust as well as cause loss to the government and in furtherance of this criminal conspiracy, they utilized 2865,1785 and 1720 old gunny bags instead of new bags provided by the government for said purpose and misappropriated as much number of new bags for themselves thereby committing criminal breach of trust by causing loss to the government through their fraudulent and deceitful act. The Court blow observed that then in such circumstances charges against accused persons under Sec. 13(1)(c), 13(1)(d-2) read with Sec. 13(2) of Prevention of Corruption act also did not stand prove beyond reasonable doubt.

(19) It has been stated by the accused in their statements under Sec. 313 Cr.PC that no such incident occurred in reality. No old gunny bags were used and they were used

as they were received. Storage was done in open. The condition of gunny bags deteriorated due to exposure to sunlight and water. Their sheen was lost due to lack of maintenance at the level of procurement from farmers due to which such allegations were raised. No B class gunny bags were used. Accused persons produced before the Court an oral witness in their defence for proving this fact.

(20) DW-1 and DW-2 had stated in their oral evidence that in normal course of nature, the capacity of centre is to unload 25 to 50 trucks and this capacity is also dependent on the availability of labour. Gunny bags are kept in a stacked manner for transportation at procurement centre for long periods and sometimes it takes weeks or even months for transportation. Due to exposure to sunlight, gunny bags lying on the upper surface of the stack turn yellow and gather dust due to which they tend to appear dirty. Losses related to gunny bags at the centre which were caused due to deterioration of the bags necessitating them to be categorised as B class are deducted from the concerned contractor and no loss is incurred by the corporation. As per witnesses, the number of gunny bags depend upon the quantity of grains or wheat procured which ranges from 3 to 3.5 lacs or even more bags for a district. According to witnesses, contractors are selected by the department who handle transportation of wheat at the centre and this process takes time due to which bags get spoilt on account of being kept in open. These defence witnesses were cross-examined by the prosecution but it yielded no such fact which gives us a cause to disbelieve their evidence. Thus the version advanced by accused

persons through their statements under Sec. 313 as well as by means of the averments submitted by factual witnesses has been successfully proved by the evidence of defence witnesses.

(21)The court below further observed that the incident in the present case did not unfold in the manner described by the prosecution, rather no such incident occurred at all in reality. Prosecution completely failed in proving that accused persons namely Nandram, B.P. Mishra alias Bhagwati Prasad Mishra and deceased Ramsevak Prasad Gupta committed the offence of criminal misappropriation and criminal breach of trust by usurping new bags provided for wheat procurement by the department in fraudulent and deceitful manner as public servants in the capacity of wheat procurement centre in charge during different dates in the Rabi marketing year 2004-05. The court observed that prosecution has also failed to prove beyond reasonable doubt that accused persons with the intention to cause loss to the state formed a criminal conspiracy to commit criminal breach of trust and misappropriation by using 2865,1785 and 1720 old gunny bags respectively in place of new bags provided by the department and usurped as much number of new bags thereby causing loss to the state. The prosecution evidence was based on documentary evidence but prosecution was unable to produce the original documents on which prosecution witnesses based their evidence and failed to produce before court witnesses who are said to have prepared aforesaid documents or on whose instructions they were prepared. It is visible from prosecution evidence

that the responsibility for checking gunny bags lied squarely on S.M.I. Sonpal and report regarding B class bag was furnished by him, however it is not clear from prosecution evidence as to what was the basis of aforesaid report or on which all documents it was based. Inspection of the bags by him has also not been proved beyond reasonable doubt. It is not clear from prosecution evidence that in reality which bag can be termed as B class bag or what is its characteristics. No bags segregated during alleged sampling were produced before the court. Documents related to sampling were also not produced in court. Any report regarding random checking was not made available on file by the prosecution. No sanction for prosecution obtained by I.O. during investigation against accused persons who were working as public servants from their employer/competent authority was visible on the file as per available evidence. No related prosecution sanction was produced on file nor reason for its absence was provided by I.O. or any witness. The court observed that in such circumstances prosecution has failed to prove charges against accused persons beyond reasonable doubt. Thus accused Nandram and B.P. Mishra alias Bhagwati Prasad Mishra were rightly found fit for acquittal from charges of offences under Sec. 409, 406, 420 and 120B IPC as well as under Sec. 13(1)(c), 13(1)(d-2) read with Sec. 13(2) Prevention of Corruption Act due to benefit of doubt.

(22) The court below also observed that on perusal and examination of oral and documentary evidence produced by the prosecution, it appeared that prosecution has failed

to prove the charges levelled against accused persons beyond reasonable doubt. Thus accused persons namely Nandram and B.P. Mishra alias Bhagwati Prasad Mishra were found to be fit for acquittal from offences under Sec. 409, 406, 420 and 120B of IPC as well as under Sec. 13(1) (c), 13(1)(d-2) read with Sec. 13(2) of Prevention of Corruption Act due to benefit of doubt.

(23) The court below has observed that there are material contradictions in the testimonies of the witnesses which creates doubt in the prosecution story. The court below after scanning and analyzing the entire evidence available on record has recorded its finding that the prosecution has failed to prove its case beyond all reasonable doubts.

(24) Upon specific query by the Court, learned AGA appearing on behalf of the State failed to demonstrate any illegality or infirmity in findings recorded by the court below.

(25) From perusal of the record, we do not find any factual or legal error in the assessment of evidence by the court below while acquitting the accused respondent. Moreover, the view taken by the court below is a possible view. The court below has given cogent, convincing and satisfactory reasons while passing the order of acquittal.

The present appeal preferred by the State fails and is accordingly dismissed.

(Vivek Kumar Singh)

(Ramesh Sinha)

Order Date :- 20.12.2017/IA