
(2020) 11 JH CK 0024

Jharkhand High Court

Case No: Criminal Revision No. 361 Of 2014

Lakhpatri Murmu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Nov. 4, 2020

Acts Referred:

Indian Penal Code, 1860 & Section 409#Code Of Criminal Procedure, 1973 & Section 313, 428

Citation: (2020) 11 JH CK 0024

Hon'ble Judges: Anubha Rawat Choudhary, J

Bench: Single Bench

Advocate: Pankaj Kumar, Bibhuti Sahay

Final Decision: Dismissed

Judgement

1. Heard Mr. Pankaj Kumar, learned Amicus appearing on behalf of the petitioner.

2. Heard Mr. Bibhuti Sahay, learned A.P.P. appearing on behalf of Opposite Party-State.

3. This criminal revision petition is directed against the judgement dated 28.02.2014 passed by the learned Additional Sessions Judge-1st, Jamtara in

Criminal Appeal No. 02 of 2014 whereby and whereunder the judgment of conviction and the order of sentence passed by the learned trial court was

upheld and the appeal was dismissed.

4. The petitioner had preferred the criminal appeal against the judgment of conviction and the order of sentence dated 21.12.2013 passed by the

learned S.D.J.M., Jamtara in G.R. Case No. 178 of 2011 / T.R. No. 75 of 2013 arising out of Kundahit P.S. Case No. 10 of 2011 dated 14.03.2011,

whereby and whereunder the petitioner was convicted under Section 409 of the Indian Penal Code and was sentenced to undergo rigorous

imprisonment for 03 years and also to pay a fine of Rs.10,000/- and in default, to undergo further rigorous imprisonment for three months and the

benefit of Section 428 of Cr.P.C. was given to the petitioner.

Arguments on behalf of the petitioner

5. The only point argued by the learned amicus appearing on behalf of the petitioner is with regard to evidence of P.W.-4. The learned Amicus, by

referring to the evidence of P.W.-4, who was the Junior Engineer, submitted that on the one hand this witness has stated that as per his assessment,

the construction was only to the extent of Rs. 62,700/- and the construction was done upto the plinth level, but on the other hand, during his cross-

examination, this witness has stated that he cannot say what was the length and width of the said construction work and also did not check how much

foundation was given in the said construction work and that he cannot say about the labour cost of per square feet and the estimated cost of the

construction work.

6. The learned amicus further submitted that in view of the evidence of P.W.-4 that he did not physically measure the work, the conviction of the

petitioner by holding that the petitioner did not execute work to the extent he had withdrawn money from the bank cannot be sustained in the eyes of

law and it cannot be said that the prosecution has proved the case against the petitioner beyond all reasonable doubts. The learned amicus submitted

that in view of the evidence of P.W.-4, the petitioner should be given benefit of doubt. He also submitted that so far as the remaining amount is

concerned, the same was admittedly lying in the bank account of the school. He further submitted that the impugned judgments are perverse and are

fit to be set-aside.

Arguments on behalf of the Opposite Party-State

7. The learned counsel appearing on behalf of the Opposite Party-State, on the other hand, submitted that the evidences of P.W.-4 as well as P.W.-7

are required to be read and he has extensively referred to the evidence of P.W.-7 as recorded in the impugned judgment and submitted that apart

from Exhibit-4, there were other materials on record to show that at best the construction was done till the stage of plinth level and the amount

withdrawn from the bank was much more. He also submitted that there is no explanation for the amount of Rs. 1,53,460/- out of the amount

withdrawn and the petitioner did not lead any defence evidence to justify the use of the money which he had taken out from the bank. He further

submitted that there is no explanation as to why the remaining amount said to be lying in the bank account of the school was not returned to the

Government in spite of repeated request having been made for the same. He submits that the petitioner was entrusted with the money in the capacity

of secretary and was accountable for the same.

Findings of this Court

8. The prosecution case is based on Letter No. 72/2011 dated 14.03.2011 sent by the Informant namely, Mahendra Ravidas, Block Education

Extension Officer, Kundahit (since deceased) addressed to the Officer-in-charge, Kundahit P.S. alleging inter-alia that the petitioner was working as

Secretary of Upgraded Primary School, Dudhapani and an amount of Rs. 4,29,000/- was entrusted for construction of additional class room under

Sarva Shiksha Abhiyan, Jamtara, but the petitioner did not perform the construction work in proper manner and did not complete the work within time

and the local villagers had objected about the said works. It was further alleged that the money was kept in Santhal Pargana Gramin Bank bearing

A/C No.1264 and an amount of Rs. 2,12,387/- was left in the said account and the balance was withdrawn by the petitioner. It was further alleged

that in spite of sending information to complete the work within time and also to deposit the remaining amount, the petitioner neither gave any

information about non-construction of the work, nor turned up to explain any reason and therefore, as per the direction of the Deputy Commissioner,

Jamtara, a meeting was held on 09.03.2011 to lodge a case against the petitioner and accordingly, the instant case was lodged.

9. On the basis of the written report, the case was registered as Kundahit P.S. Case No. 10 of 2011 dated 14.03.2011 under Section 409 of the Indian

Penal Code against the petitioner and after completion of investigation, charge-sheet was submitted and cognizance of the offence was taken against

the petitioner under the same section. On 13.07.2011, charge was framed against the petitioner under Section 409 of the Indian Penal Code which

was read over and explained to him in Hindi to which he pleaded not guilty and claimed to be tried.

10. This Court finds that the prosecution examined altogether eight witnesses in support of its case. P.W.-1 is Debishwar Murmu, P.W.-2 is

Parmeshwar Hembram, P.W.-3 is Sonali Mandal, P.W.-4 is Gangaram Mandal, Junior Engineer, P.W.-5 is Birendra Nath Gorain who is the Branch

Manager of Vananchal Gramin Bank, Khajuri, P.W.-6 is Om Prakash Gandhi who is the Accountant of Kundahit Block, P.W.-7 is Siyawar Prasad,

D.S.E. and P.W.-8 is Bishwanand Singh who is the Investigating Officer of the case. This Court further finds that the Informant of the case namely,

Mahendra Ravidas has not been examined by the prosecution as he had died.

11. The prosecution has exhibited certain documents. Exhibit-1 to 1/20 are C.C. of withdrawal receipts of the petitioner and Debishwar Murmu,

Exhibit-1/21 to 1/35 are C.C. of withdrawal receipts of the petitioner, Exhibit-2 is Ledger Book of A/C/ No.1264 of Upgraded Primary School,

Dudhpani, Exhibit-3 is signature of the Informant on written application, Exhibit-3/1 is attested copy of list of schools where construction work started

in 2006 to 2007 through Sarva Shiksha Abhiyan, Jamtara, Exhibit-3/2 is entire written report, Exhibit-3/3 is forwarding letters, Exhibit-4 is Xerox and

attested copy of measurement book, Exhibit-5 is the estimate of the construction work (apparent from evidence of P.W-7) and Exhibit-6 is the formal

F.I.R. On 23.09.2013, the statements of the petitioner were recorded under Section 313 of Cr.P.C. wherein he simply denied the allegation. The

petitioner did not lead any defence evidence.

12. This Court further finds that the learned trial court discussed the oral and documentary evidences adduced on behalf of the prosecution and

summarized its findings in Para-15 of its judgment which reads as under:

15. Heard. Perused the evidence of the prosecution witnesses and also the exhibited documents adduced from the side of prosecution. In order to

prove the charge U/s 409 of the IPC the prosecution has to prove the following facts that (i) the accused is a public servant, (ii) he was entrusted with

property of which he was duty bound to account for and (iii) the accused has misappropriated the said Government money. So far the time, place and

manner of occurrence is concerned, from the evidence of P.W.-1, it reveal the fact that accused Lakhpati Murmu was posted as a Headmaster of

Utkramit Primary School, Dudhpani and at that time, construction work of the said school was to be done and this fact is also corroborated by P.W.-2

and P.W.-3. From the evidence of P.W.-6, it brought on record that in the light of the letter bearing letter no.72 dated 14.03.11 which was written by

the Block Education Extension Officer Sri Mahendra Ravi Das (since deceased) and the same is marked as Ext-3/2 and from perusal of Ext-3/2, it

revealed the fact that accused Lakhpati Murmu was entrusted to construct a Classroom within Utkramit Primary School, Dudhpani as Secretary of

that school and also revealed the fact that in this regard on the basis of order of D.C., Jamtara, an amount of Rs. 4,29,000/- was entrusted for the

construction work under 'SARVA SHIKSHA ABHIYAN, JAMTARA' and even after given information about the construction work, it was found

from the account book maintained in the name of Utkramit Primary School, Dudhpani only an amount of Rs. 2,12,000/- left in the account and this fact

is also corroborated not only from the evidence of P.W.-5 and P.W.-7, but also from Ext-1-series and Ext-2. From perusal of Ext-1 to Ext-35

(containing 36 entries) shows the fact that different amount of money on different dates was withdrawn in between 09.02.07 to 06.04.10 by

withdrawal form from Santhal Pargana Gramin Bank bearing account no. 1264 and from the Ext-2, it also revealed the fact that account no.1264 was

running at Santhal Pargana Gramin Bank in the name of Utkramit Primary School, Dudhpani which was operated by Secretary and President of

School Education Association. From the perusal of the evidence of P.W.-7 and also from the Ext-4, it reveal the fact that measurement of existing

construction work of classroom which was done at Utkramit Primary School, Dudhpani only an amount of Rs. 62,700/- of construction work was done

by the accused Lakhpati Murmu though he was entrusted of Rs. 4,29,000/- and from Ext-2, it revealed the fact that an amount of Rs.2,12,837/- was

left in the account book and the remaining amount was misappropriated by the accused and in this regard, the defence has also not challenged this fact

that he was not entrusted the aforesaid construction work which was carried on at Utkramit Primary School, Dudhpani at the relevant point of time

under 'Sarwa Shiksha Abhiyan' though from Ext-3 in serial no.88, it shows that the construction of two rooms was ordered by D.C., Jamtara where

the construction of classrooms of other 94 schools was to be given by the then D.C. and not only this fact estimated cost of construction of additional

class room was given and the same was revealed from Ext-5 which clearly established the fact that total estimated cost for construction work of two

additional class rooms of Rs.4,29,000/- and the said estimate was given by Assistant Engineer, Jharkhand Education Project Counsel dated 23.06.06.

from the evidence of P.W.-8, it also brought on record that he investigated the case, found the entire allegation against the accused to be true and

accordingly, submitted charge-sheet.

13. This Court further finds that the learned appellate court also considered the oral and documentary evidences adduced by the prosecution, analysed

the same, also considered the arguments of both the parties summarized its findings in Para- 7 which read as under:

7. In the instant case, from the evidence of prosecution, it reveals that the accused Lakhpati Murmu

was posted as Headmaster of Upgraded Primary School, Dudhpani and he was also the Secretary of the said school and at that time, construction

work of the said school was to be done. From the evidence of P.W.-6, it reveals that in the light of the letter bearing no. 72 dt. 14.03.2011 which was

written by the then B.E.E.O. Mahendra Ravidas (Ext.3/2), the instant case was lodged and it further revealed the fact that accused Lakhpati Murmu

was entrusted to construction of two class room in the said school and for which, by the order of D.C., Jamtara, an amount of Rs.4,29,000/- was

entrusted to him for the construction work. It also revealed from the prosecution witness that even after given information about the construction

work, it was found from A/C book maintained in the name of the said school that only an amount of Rs.2,12,387 was left in the said A/C. Ext-1-series

and Ext-2 show that the different amount of money on different dates was withdrawn in between 9/2/2007 to 6/4/2010 by withdrawal form, from

Santhal Pargana Gramin Bank bearing A/C No.1264. the said A/C No. was operated by Secretary and President of the said school. Ext-4 goes to

show the fact of measurement of existing construction work of class room, which was done at Upgraded Primary School, Dudhpani. The Ext.-4 also

goes to show that only the construction work of valued of Rs.62,700/- was done by the accused Lakhpati Murmu, though he was entrusted of Rs.

4,29,000/-. From Ext.-2, it is evident that only an amount of Rs. 2,12,837/- was left in the said A/C and the remaining amount was misappropriated by

the accused persons, Ext.-3 goes to show that the construction of two rooms was ordered by D.C., Jamtara where the construction of class room of

other 94 schools was to be given by the then D.C. and not only this, estimated cost of construction of additional class rooms was also given and the

same was also revealed from Ext.-5, which clearly established the fact that the total estimated cost for construction work of two additional class room

was of Rs. 4,29,000/- and the said estimate was given by Engineer, Jharkhand Education Project Council.

14. After going through the entire records of the case and considering the arguments advanced on behalf of the petitioner, this Court finds that the

petitioner was admittedly posted as the Headmaster of Utkramit Primary School, Dudhpani and he was working as the Secretary of the school and he

was entrusted with the total estimated cost of Rs. 4,29,000/- for the construction of two additional class rooms in the school under Sarva Shiksha

Abhiyan, Jamtara. Different amount of money on different dates was withdrawn in between 09.02.07 to 06.04.10 from Account No. 1264 running at

Santhal Pargana Gramin Bank in the name of the school which was operated by the Secretary and President of School Education Association. This

Court further finds that it is the specific case of the prosecution that construction work up to the plinth level was done only to the extent of Rs.

62,700/- but only Rs.2,12,387/- was left in the account and the allegation is that the remaining amount was misappropriated by the petitioner and even

the amount lying in the bank was not returned although the construction work was stopped.

15. The learned amicus appearing on behalf of the petitioner has heavily relied upon the evidence of P.W.-4 to submit that as per his assessment, the

construction was only to the extent of Rs. 62,700/- and that the construction was done up to plinth level, but during cross-examination, this witness has

not been able to disclose the length and width of the construction work and also did not check how much foundation was given in the construction and

he had no idea about the labour cost etc. and the estimated cost of construction work. By referring to the evidence of P.W.-4, the learned amicus has

tried to impress upon this Court that the construction having been done only to the extent of Rs. 62,700/- as stated by P.W.-4, has no basis at all.

16. On the other hand, the learned counsel appearing on behalf of opposite party-State has submitted that the evidence of P.W.-4 cannot be

considered in isolation and it has to be read along with the evidence of P.W.-7 and he has heavily relied upon the evidence of P.W.-7 to submit that

apart from the evidence of P.W.-4 there are evidences on record to suggest the extent of construction and its value. The estimate of the work has

been exhibited along with the measurement book having entry of the construction done on the spot.

17. This Court finds that there is consistent evidence on record that the construction was done up to the plinth level and also the fact there was some

objection from the side of the villagers and consequently the construction work could not continue and admittedly the construction of two class rooms

under Sarva Shiksha Abhiyan in the concerned school was stopped and could not be completed. This Court further finds that it is not in dispute that

the estimate of the work was Rs. 4,29,000/- and the estimate of the work was exhibited as Ext.-5. This Court finds that P.W.-7-The District

Superintendent of Education Officer has stated that in the year 2006-07, the petitioner was posted as teacher and produced some documents relating

to construction work of the school and proved measurement book consisting of four pages which disclose that an amount of Rs. 4,29,000/- was paid to

the petitioner and construction to the extent only Rs. 62,700/- was done by the petitioner. The said construction was under the scheme of Sarva

Shiksha Abhiyan which at the relevant time was sanctioned by the Deputy Commissioner, Jamtara as well as District School Superintendent, Jamtara

and accordingly, he produced the documents. This witness has also stated that at serial No.-88 containing three pages duly tallied with the original

record and put it signature and accordingly proved Ext.-3/1. He has stated that in the measurement book Junior Engineer Ganga Ram Mandal had

measured the construction work and accordingly proved his entry in the measurement book which duly tallied with the original record which was

marked as Ext.-4. This witness was also thoroughly cross- examined and he has stated that from the official record measurement book, he came to

know that the petitioner had constructed only to the extent of Rs. 62,700/-. This Court finds that apart from the evidence of P.W.-4 who had assessed

the construction work on the spot and had deposed regarding construction only to the extent of Rs. 62,700/-, there is clear evidence of P.W.-7 based

on measurement book, wherein the work actually executed on the spot has been mentioned only to the extent Rs. 62,700/- against the total estimated

cost of Rs. 4,29,000/-. It has further come in evidence that the amount of Rs. 4,29,000/- was entrusted to the petitioner being the secretary of the

school and deposited in the bank account which was withdrawn by the present petitioner and the president and the withdrawal forms total twenty in

numbers under the signatures of the petitioner and the president and the rest of the forms under the signature of the petitioner were marked as

Exhibit-1 to Exhibit-20 and Exhibit-1/21 to Exhibit- 1/35. It has further come in evidence that Rs. 2,12,837/- was remaining balance in the account book

of the Bank. The investigating officer (P.W-8) of the case has also fully supported the prosecution case who has deposed that the construction was 60

ft. in length and 25 ft. in width consisting of two length; one office including staff room and barandah and the construction was $\tilde{\text{A}}, \tilde{\text{A}}^{1\frac{1}{2}}$ ft. in height.

18. This Court finds that the learned trial court scrutinized the evidences on record and did not convict the petitioner solely on the evidence of P.W.-4

rather the evidence of P.W.-4 as well as other witnesses including the evidences of P.Ws. -7 and 8 was considered along with the documentary

evidences on record to record a finding that the construction was done only to the extent Rs. 62,700/- and the remaining withdrawn money was

misappropriated and the balance money lying in the bank was not returned although the construction work was stopped. In view of the aforesaid facts

and circumstances, this Court is of the considered view that the argument of the petitioner that in view of the evidence of P.W.-4, particularly his

cross- examination, the petitioner is entitled for benefit of doubt, is devoid of any merit and hence rejected.

19. This Court finds that the learned courts below have considered all the evidences on record and have given consistent findings and the petitioner

was in total denial in his statement recorded under Section 313 of Code of Criminal Procedure giving no explanation from his side accounting for the

money which was withdrawn from the account although in the measurement book the construction was recorded only to the extent of Rs. 62,700/-.

20. This Court finds that all the prosecution witnesses have fully supported the prosecution case and the documentary evidences corroborated the oral

evidence of the case. This Court is of the considered view that the prosecution has been able to prove the case against the petitioner beyond all

reasonable doubts.

21. This Court finds that the judgments passed by the learned courts below are well-reasoned judgments and there being no perversity, illegality or

irregularity in the judgments, this Court, under revisional jurisdiction, does not find any reason to interfere with the judgments passed by the learned

courts below.

22. Accordingly, the judgments of conviction and the order of sentence of the petitioner passed by the learned courts below are affirmed and this

criminal revision petition is hereby dismissed.

23. Interim order stands vacated.

24. Bail bond furnished by the petitioner is hereby cancelled.

25. Pending interlocutory application, if any, is dismissed as not pressed.

26. This Court finds that vide order dated 24.09.2020, Mr. Pankaj Kumar, Advocate (Enrolment ID-1970 of 1993) was appointed as an amicus in this

case by this Court who has assisted this Court in final disposal of this case. Accordingly, the Secretary, Jharkhand High Court Legal Services

Committee is directed to reimburse him upon submission of bills.

27. Let the lower court records be immediately sent back to the court concerned.

28. Let a copy of this order be communicated to the learned court below through ""email/FAX"".

29. The office is also directed to send a copy of this order to the Jharkhand High Court Legal Services Committee for needful.