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**(2006) 3 RCR(Criminal) 10**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Criminal Revision No. 2372 of 2002

Surinder Singh Aneja

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** March 29, 2006

**Acts Referred:**

Penal Code, 1860 (IPC) " Section 120B, 409

**Citation:** (2006) 3 RCR(Criminal) 10

**Hon'ble Judges:** M.M. Aggarwal, J

**Bench:** Single Bench

**Advocate:** Surender Singh Aneja, Mr. B.S. Bhalla, Ranjit Singh, Parkash Chand Goya and Mr. Dinesh Goyal, for the Appellant; H.S. Shergill, A.A.G., Punjab, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

M.M. Aggarwal, J.

Against order dated 25.1.2002 of Special Judge, Sangrur, above-said three petitions had been filed by persons

against whom charges were directed to be framed by the Special Judge Sangrur for offence under Sections 409/120-B IPC and 13(1)(c) read

with Section 13(2) of Prevention of Corruption Act.

2. Criminal Revision bearing No. 2372 of 2002 was filed by Surinder Singh Aneja who was Manager Construction and other Criminal Revision

bearing No. 1856 of 2002 by Ranjit Singh who was S.O. of the Punjab Tourism Development Corporation Limited and third petition bearing No.

1299 of 2002 was filed by Parkash Chand Goyal who was a Government Contractor.

3. The facts of the case are that work for construction of Tourist Complex at Nidampur was allotted to Parkash Chand Goyal, Government

Contractor on 27.11.1989. Work was to be completed within nine months but was completed actually in 1991. A certificate in this respect was

issued by the Executive Engineer, Punjab Tourism Development Corporation Limited, Chandigarh on 9.4.1991 but since the payments of the work

were not being made and there was arbitration clause, the contractor sought for the arbitration. Shri V.P. Duggal, Chief Engineer (Retd.) PWD,

Punjab, who was appointed Arbitrator, had given his award on 9.8.1995 and the matter was decided in favour of the Contractor. This award was

challenged by the Punjab Tourism Development Corporation by filing objections. These objections were dismissed by Civil Judge (Senior

Division), Sangrur on 2.6.1997. Appeal was filed which was also dismissed by Additional District Judge, Sangrur on 4.9.1998. A revision filed

against the judgment of Additional Sessions Judge, Sangrur was dismissed by the High Court on 12.7.2000. Even an SLP filed in the Supreme

Court was also dismissed.

4. Meanwhile, case FIR No. 123 dated 20.9.1994 under Sections 409/120-B IPC and Section 13(1)(c) read with Section 13(2) of Prevention of

Corruption Act had been registered at Police Station North U.T. Chandigarh. After investigation, challan against the petitioners were presented.

Contractor had applied for discharge and dropping of the proceedings. His prayer was dismissed vide order dated 25.1.2002 and then charges

were framed against all the accused (now petitioners).

5. The charges as framed are that the accused-petitioners had entered into a conspiracy to do an illegal act by illegal means to misappropriate

government material i.e. Cement and Steel which had been entrusted to the accused for purposes of utilization in the construction and, therefore,

they had committed offence u/s 409 read with Section 120-B IPC. Whereas Surinder Singh Aneja, being Manager Construction and Ranjit Singh,

S.O., being public servants, were entrusted with the government store of cement and steel meant for construction of Punjab Tourism Complex

which they dishonestly misappropriated and, thereby had committed offence u/s 13(1)(c) read with Section 13(2) of Prevention of Corruption Act, 1988.

6. On behalf of Parkash Chand Goyal, it had been argued that Contractor had completed the work. Even completion certificate was issued. Since

his payment were not being made, therefore, the matter had been taken for arbitration and Arbitrator had given award in favour of the Contractor.

That objections filed by the Punjab Tourism Development Corporation had been dismissed and that the award was made rule of the Court. The

matter was finally settled by the Civil Court and, as such, it could not be said that contractor had committed any offence.

7. On behalf of Surinder Singh petitioner, it was argued that a regular enquiry had been held and then it was found that Rs. 34,285.92 would be

required for removing the shortcomings in the construction work in respect of Tourist Complex at Nidampur. Then the Managing Director of the

Punjab Tourism Development Corporation had held vide order dated 19.8.1999 that punishment of dismissal from the services was not proper

and it was proper to effect recovery of Rs. 17,000/- each from these two persons. There is report of Kulbir Singh, Executive Engineer, Provi.

Divn. No. 2/PWD B&R, Patiala dated 30.7.1999 that there was no major defects and defects could be removed. That Rs. 9,755/- had been

spent for removing the defects and Rs. 24,500/- will be required to remove the defects which had subsequently developed. There were no major

cracks visible in the walls and roofs of the buildings.

8. It had been argued on behalf of the respondent-State, that accused petitioners in conspiracy with each other had misappropriated Cement and

Steel and there had been defective building which had developed cracks which required repairs. The petitioners as such had committed the offence

and they are being rightly prosecuted.

9. The fact remains that the contractor had taken the matter of non-payment of bills to the Arbitration. The Arbitrator had decided in favour of the contractor. Objections filed had been dismissed and award was made rule of the Court. The matter, as such, had been decided by the Civil Court finally in favour of the contractor.

10. As far as the other two petitioners are concerned, they were employees of the Punjab Tourism Development Corporation and public servants.

Regular departmental enquiry had been held against them and then it was found that shortcomings could be removed just by spending a sum of

about Rs. 34,000/-. The Managing Director of the Corporation had come to the conclusion that Surinder Singh and Ranjit Singh petitioners should

not be dismissed from service and recovery of Rs. 17,000/- each be effected from them. When the matter in between the Contractor and

Corporation had been finally decided by the Civil Court and after regular enquiry, penalty of recovery of the amount stated to be required for

removing the defect had been imposed on the employees, then continuing prosecution will just amount to an abuse of process of the Court,

especially when there is no independent evidence with the respondent regarding misappropriation of cement or steel.

Under these circumstances, the abovesaid petitions are accepted. Impugned order dated 25.1.2002 of Special Judge, Sangrur is set aside.

Petitioners shall stand discharged.

Petitions allowed.