

(2014) 07 SHI CK 0230

High Court of Himachal Pradesh

Case No: Criminal Appeal No. 55 of 2013

Jai Chauhan

APPELLANT

Vs

CBI

RESPONDENT

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**Date of Decision:** July 9, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313 - Penal Code, 1860 (IPC) - Section 120-B, 201, 302, 420, 468

**Hon'ble Judges:** Dharam Chand Chaudhary, J.**Bench:** Single Bench**Advocate:** Satyen Vaidya, Advocate, for the Appellant; Sandeep Sharma, Assistant Solicitor General of India, for the Respondent**Final Decision:** Allowed

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**Judgement**

Dharam Chand Chaudhary, J. ♦ Accused Jai Chauhan is in appeal before this court against his conviction and sentence punishable under Section 201 of the Indian Penal Code passed by learned Special Judge CBI, Shimla in Sessions Trial No. 28-S/7 of 2009 on 31.12.2012. He was tried for the commission of offence, punishable under Sections 120-B, 420, 468, 471 and 201 of the Indian Penal Code alongwith his co-accused V.K. Sharma (since deceased). The accused is a contractor by profession. He was awarded the construction work of Badhal link road under "Pardhan Manatri Gram Sarak Yojna" by the office of Chief Engineer, HPPWD (South), Shimla. He had to furnish bank guarantees, i.e. performance security to the tune of Rs. 6,45,026/- and additional security amounting to Rs. 25,000/-, to claim the payment in advance. His co-accused deceased V.K. Sharma, was the Manager of Rohroo branch of UCO Bank. The accused approached said V.K. Sharma for issuance of bank guarantees. They both hatched criminal conspiracy and in furtherance of such conspiracy deceased accused V.K. Sharma issued the bank guarantees without processing the matter as per the prescribed procedure and charging commission etc. Thus, both of them cheated the bank and thereby caused loss to the bank and obtained wrongful

gain to themselves. The convict produced the alleged forged bank guarantees in the office of Executive Engineer, HPPWD, Rohroo, a pre-requisite to the award of the work.

2. At a later stage, some suspicion arose qua authenticity and genuineness of the bank guarantees. The PWD authorities, therefore, sought clarification from deceased V.K. Sharma in this behalf. He in turn informed the department that the bank guarantees were genuine allegedly knowing fully well that the same were fake and fictitious. On further inquiry got conducted by the Public Works Department through Head Office of the UCO Bank, it transpired that such bank guarantees were never issued by Rohroo Branch of the Bank. The bank authorities, therefore, reported the matter to Central Bureau of Investigation. On the basis of the report so lodged, FIR Ext.PW15/A came to be registered against the convict and his co-accused V.K. Sharma in CBI Police Station, Shimla.

3. On completion of the investigation, charge sheet was filed against the convict and his co-accused. Charges were framed against both of them to which they pleaded not guilty and claimed trial. Accused V.K. Sharma, however, died during the pendency of the trial.

4. On conclusion of the trial, no case under Sections 120-B, 420, 468 and 471 IPC was found to have been made out against the accused. He, however, has been convicted under Section 201 IPC and sentenced to pay fine to the tune of Rs. 1,00,000/-, failing which to undergo simple imprisonment for four months.

5. The accused-convict has challenged the findings of conviction in the present appeal on the grounds, inter alia, that there is no cogent and reliable evidence warranting his conviction under Section 201 IPC, particularly when he has been acquitted under Sections 120-B, 420, 468 and 471 IPC. The findings of conviction under Section 201 IPC, therefore, are stated to be recorded erroneously and on the basis of surmises and conjectures.

6. The complainant-CBI, however, has not preferred any appeal against the acquittal of the accused for the aforesaid offences.

7. Shri Satyen Vaidya, learned counsel representing the convict-accused, has strenuously contended that when no offence under Sections 120-B, 420, 468 and 471 IPC was found to have been committed by the convict, no findings of conviction could have been recorded against him under Section 201 IPC also, as according to Mr. Vaidya when no offence was committed, there was no question of screening himself or someone else, by destroying the evidence, which in the case in hand is the bank guarantees. It has also been pointed out from the record that otherwise also, there is no legal and acceptable evidence, suggesting that the disputed bank guarantees were in possession of the convict and he intentionally and deliberately concealed the same from the Investigating Agency.

8. On the other hand, Shri Sandeep Sharma, learned Assistant Solicitor General of India, while inviting the attention of this Court to the evidence as has come on record by way of testimony of PW3 B.C. Pardesi and PW-10 Madho Ram and also the documentary evidence viz. the application dated 18.2.2008 Ext. PW3/G allegedly submitted by the accused to the Executive Engineer concerned for return of the bank guarantees and also the receipt dated 23.2.2008 Ext. PW3/H whereby he had received back the bank guarantees Ext. PW3/B and PW3/C, has urged that learned trial Judge on proper appreciation of the evidence has rightly convicted the accused under Section 201 IPC and that the findings so recorded do not call for any interference.

9. On analyzing the rival submissions and also going through the record, the question which arises for determination in this appeal is, whether in the given facts and circumstances of the case and the evidence available on record, the prosecution has been able to bring the guilt home to the accused or not. Before adjudicating upon this question, it is deemed appropriate to make reference to Section 201 IPC, which reads as follows:

"201. Causing disappearance of evidence of offence, or giving false information to screen offender

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false."

10. The plain reading of Section 201 IPC makes it crystal clear that to constitute an offence under this Section it must be proved that it was known to the accused that an offence has been committed and he has caused to disappear the evidence relevant for the purpose of the commission of the offence intentionally to screen the offender from legal punishment or gives any information with respect to the offence knowing fully well that the same was false.

11. Adverting to the case in hand, an effort has been made by the prosecution to make out a case that the fake and fictitious bank guarantees, which he managed to issue through his co-accused V.K. Sharma, were in his possession, however, he deliberately and intentionally failed to produce the same during the course of investigation to screen himself and also his co-accused from legal punishment. The only evidence pressed into service to prove the commission of the offence has come on record by way of the testimony of PW 3 B.C. Pardesi, the then Executive Engineer, HPPWD, Jubal Division. His testimony goes to show that two bank guarantees were furnished by the convict before him. He has also deposed that on finding the bank guarantees being not genuine, the accused was asked to furnish fresh bank guarantees which were furnished by him. He has also proved letter Ext. PW3/G

whereby the accused had made request for return of the old bank guarantees and the receipt thereof Ext. PW3/H.

12. Another material witness examined in this case is PW-10 Madho Ram, Auditor in HPPWD, Jubal Division. No doubt, according to him, the accused had submitted application Ext. PW3/G for return of the bank guarantees and the same were returned by him to the accused vide receipt Ext. PW3/H, however, when cross-examined, he admits the availability of register having been maintained to make entries with respect to the receipt and return of the bank guarantees. According to him, no entries with respect to the return of bank guarantees to the accused were made in this register. He also admits that the procedure prescribed for return of the bank guarantees was not followed in this case.

13. If coming to Ext. PW3/G, the same is an application purportedly submitted by the accused to the Executive Engineer concerned with a prayer to take on record the fresh bank guarantees and return the old one. What action has been taken on this application, nothing can be made out from the record. On the other hand, register Ext. PW3/J, no doubt speaks about the submission of the fixed deposit receipts, but there is no entry indicating that these FDRs were submitted in lieu of old bank guarantees. The signature of the accused is also not available on this document in token of the receipt of disputed bank guarantees. Moreover, no such incriminating circumstance has been put to the accused in his statement recorded under Section 313 Cr.P.C.

14. If coming to the Expert opinion, the same is Ext. PW14/A. A perusal of application Ext. PW3/G reveals that the signature of accused thereon has been marked as Q23. The report Ext. PW14/A, however, reveals that there is no opinion with respect to the signature marked Q-23. Also there is no proof that the bank guarantees were returned and received only by the accused. Therefore, when there is no opinion with regard to the purported signature of the accused marked as Q23, the report Ext. PW14/A of the Hand Writing Expert is hardly of any help to the prosecution case.

15. As regards the other point that in view of the acquittal of the accused with respect to the commission of substantive offence punishable under Sections 120-B, 420, 468 and 471 IPC no findings of conviction under Section 201 IPC could have been recorded, It would not be improper to conclude that the conviction of an offender under Section 201 IPC can be ordered even if he has been acquitted for the commission of substantive offence. The law on this point is no more res integra, as it has been held so by the Apex Court in several judicial pronouncements, including [Sukhram Vs. State of Maharashtra](#), , which reads as follows:

"6. Bearing in mind this factual and legal backdrop, we are of the opinion that the High Court was not justified in convicting appellant A-2 for having committed a major offence punishable under Section 302 IPC. Nonetheless, it is well settled that notwithstanding acquittal of the said appellant of the offence under Section 302 IPC,

his conviction under Section 201 IPC is still permissible. (See: Constitution Bench decision in [Kalawati and Another Vs. The State of Himachal Pradesh](#), ; AIR 1953 SC 131]). Therefore, the question that remains to be examined is regarding the correctness of the conviction of appellant, A-2 for offence under Section 201 IPC."

16. Otherwise also, the acquittal of an offender can be due to variety of reasons, mainly on account of the failure of the prosecution to produce evidence to establish his involvement for the commission of the offence beyond all reasonable doubt. The present is also a case of like nature, because learned trial Judge on appreciation of the evidence has arrived at a conclusion that no case for the commission of substantive offence, punishable under Sections 120-B, 420, 468 and 471 IPC is made out against the convict beyond all reasonable doubt and as such he has been acquitted of the said charge. He, however, could have been convicted under Section 201 IPC independently, irrespective of his acquittal qua the substantive offence he committed, of course subject to availability of cogent and reliable evidence.

17. As discussed above, in view of there being no legal and acceptable evidence, suggesting the involvement of the accused for the commission of offence, punishable under Section 201 IPC, he has been erroneously convicted. Hence, the findings of his conviction and sentence being not supported by the evidence available on record deserve to be quashed and set aside.

18. In view of what has been stated hereinabove, the present appeal succeeds and the same is accordingly allowed. Consequently, the findings of conviction and sentence under Section 201 IPC recorded against the accused are quashed and set aside and he is acquitted of the said charge. The amount of fine deposited in the trial court be refunded to the said accused as per procedure prescribed therefor.

Appeal stands disposed of accordingly.