

**(2008) 06 JH CK 0020**

**Jharkhand High Court**

**Case No:** Criminal Appeal (S.J.) No. 153 of 2008

Dr. Shailendra Kumar Sinha

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision:** June 20, 2008

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 294
- Penal Code, 1860 (IPC) - Section 120B, 409, 420, 465, 467
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2)

**Citation:** (2008) 3 JCR 427

**Hon'ble Judges:** Rakesh Ranjan Prasad, J

**Bench:** Single Bench

**Advocate:** K.P. Singh and S.N. Prasad, for the Appellant; Rajesh Kumar, for the Respondent

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**Judgement**

R.R. Prasad, J.

Heard learned Counsel appearing for the appellant and learned Counsel appearing for the C.B.I on the matter of bail.

1. Learned Counsel appearing for the appellant submits that the appellant having been convicted u/s 120B read with Sections 420/409/467/468/471/477A of the Indian Penal Code as well as under Sections 13(2) read with Sections 13(1) (c) and (d) of the Prevention of Corruption Act and also under Sections 420/467/468/471/465/477A of the Indian Penal Code simplicitor as well as under Sections 13(2) read with Sections 13(1) (c) and (d) of the Prevention of Corruption Act simplicitor was awarded maximum sentence for six years on the allegation that the appellant, being posted at relevant point of time as T.V.O. (Traveling Veterinary Officer) in the District Animal Husbandry Department, Chaibasa, in conspiracy with the other accused did give certificate regarding receipt of materials/medicine/fodder without receiving those materials facilitating the suppliers to receive money without supplying the

medicine/fodder, but the C.B.I. has utterly failed in proving the fact that the appellant without receiving the materials gave certificate of receipt. On the contrary, so many prosecution witnesses such as, P.W. 41, P.W. 106, P.W. 86 and P.W. 130 have admitted that the materials which were supplied by the suppliers to the office of the District Animal Husbandry, Chaibasa were distributed, but the court below did not appreciate this fact in right perspective. Moreover, the job of the appellant was only to receive the consignment purchased by the Officers of District Animal Husbandry and after receiving the materials, the appellant used to make entry of the same in the stock register and then the materials were used to be sent to different blocks which fact the prosecution witness have admitted, but the C.B.I. never produced the stock register, though necessary application for calling for the said stock register had been filed before the trial court and in fact the trial court had also passed the order directing the C.B.I. to produce the same, but the C.B.I. failed to produce the register and still the appellant was convicted on the basis of some oral evidences and also documentary evidences some of which were taken into evidence u/s 294 Cr.P.C. behind the back denying an opportunity to the appellant for challenging its genuinity and as such the order of conviction and sentence is quite bad in law.

2. Learned Counsel further submits that none of the witnesses examined by the prosecution has come forward to prove that this appellant had meeting of the mind with the other accused for committing the offence alleged and as such any conviction of the accused under Sections 120B/420/467/468/471 of the Indian Penal Code is quite bad and further in absence of any evidence regarding receiving of illegal gratification attracting the offence under Sections 13(2) read with Sections 13(1) (c) and (d) of the Prevention of Corruption Act, the appellant's conviction for the said offence is also bad and, therefore, under these situations, the appellant deserves to be admitted to bail.

3. As against this, learned Counsel for the C.B.I. submits that this is one of the cases in which the appellant in conspiracy with other accused persons got the allotment letter manufactured and then the officials of the District Animal Husbandry Department issued supply orders to different suppliers for supplying the materials/medicine/fodder, but the suppliers without supplying the materials/medicine/fodder to the extent which they claimed took payment putting the State exchequer to great loss and so far this appellant is concerned, he has given so many certificates of receiving the materials/medicine/fodder, though in fact, he had never received the materials in the quantity for which he had given receipt and this would be evident from the evidence of P.W. 24, P.W. 25, P.W. 26, P.W. 33 and some of the witnesses such as P.W. 45 and P.W. 73 have said that the medicines which the suppliers claimed to have supplied were never manufactured by the Company, still the appellant put endorsement over the bills of receiving of those medicines which amply proves that the appellant was very much in league with the other accused and by giving false certificate the appellant facilitated the

other accused to take payment without supplying the materials and thereby put the State exchequer to great loss.

4. Regard being had to the facts and circumstances of the case, I am not inclined to enlarge the appellant on bail. Hence, the prayer for grant of bail to the appellant is, hereby, rejected at this stage.

5. However, the appellant would be at liberty to renew his prayer for bail after serving half of the sentence of maximum sentence imposed against him.