

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.Appeal No. 529 of 2012

Judgment Reserved 5th July, 2024

Decided on: November 5, 2024

State of HP

.....Appellant

Versus

Chohan Singh & others

.... .RESPONDENTS

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Bipin Chander Negi, Judge

Whether approved for reporting? Yes

**For the Appellant : Mr. Pawan Kumar Nadda,
Additional Advocate General.**

**For the Respondents: Mr. Vinay Thakur, Advocate for
respondents No.1 and 3.**

**Mr. Vishwa Bhushan, Mr.Gurmeet
Bhardwaj and Ms. Anuja Mehta,
Advocates for respondent No.2.**

Vivek Singh Thakur, Judge.

Present appeal has been preferred by State against the judgment dated 1.6.2012, passed by the Special Judge, Kullu H.P. in ***Corruption Case No. 2/2010, titled State of HP vs. Chohan Singh and others***, whereby respondents have been acquitted by the Trial Court in Case FIR No. 3/2008 dated 6.2.2008 registered in Police Station State Vigilance and Anti Corruption Bureau, Kullu, under Sections 420, 467, 468, 471 and 120-B of Indian Penal

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Code (in short 'IPC') and Section 13(2) of the Prevention of Corruption Act, 1988 (in short 'Corruption Act').

2. As per prosecution case, on 25.10.2007, an anonymous complaint was received by the Chairman, H.P. Board of School Education Dharamshala, alleging that respondent Chohan Singh had appeared in 10+1 examination in March, 2004 and he was placed under compartment in subject of English, whereupon he submitted his examination form for supplementary examination to be conducted in September, 2004. The Board issued Roll No. 20073 to him but Chohan Singh did not appear in examination and his result was declared as absent in English and there was last chance for passing the examination in English subject in March, 2005. But instead of passing the examination, he connived with dealing Clerk and by adopting illegal means, he got his roll number changed in the result sheet from 20073 to 20074 with interpolation of marks sheet reflecting 41 marks obtained by him in English against the changed Roll Number.

3. According to complaint, in the gazette of examination result of September 2004, roll number of Chohan Singh was 20073 and against the same roll number, his result was declared. After that, petitioner filed an application for the change/correction of name of his mother under Roll No. 20074 and in connivance with employees of General Administration name of his mother was changed/corrected by Section Officer under his signatures. In

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aforesaid complaint, request was made to take appropriate action. The complaint has been placed on record as Ext.PW22/B.

4. In pursuance to complaint Ext.PW22/B, inquiry was also conducted by the Board through Joint Secretary, wherein Kishan Chand had submitted that since the award list was received under Roll No. 20074, therefore, marks received under this roll number were posted against Roll No. 20073 as no marks were received against the said roll number.

5. A similar complaint was received by the Additional Inspector General of Police, State Vigilance and Anti Corruption Bureau Head Quarter Shimla. It was forwarded by the Deputy Inspector General of Police, State Vigilance and Anti Corruption Bureau Shimla to Sub Inspector Jaspal Singh, State Vigilance and Anti Corruption Bureau Head Quarter Shimla vide communication Ext.PW22/A.

4 Pursuant to aforesaid communication of Additional Director General of Police vide letter Ext.PW17/A, FIR Ext.PW17/B was registered and investigation started.

5 After completion of investigation, challan was presented against the respondents and they were subjected to trial after framing the charge.

6 It was alleged in prosecution case that accused persons cheated the H.P. Board of School Education by dishonestly and illegally showing Chohan Singh to have appeared

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in supplementary examination in September, 2004 for clearing the compartment in English subject against Roll No.20074 which, in fact, was not the roll number of Chohan Singh and Chohan Singh had not appeared in the examination.

7 Further that name of mother of Chohan Singh was Roshana Devi but he wrongly shown himself as son of Churamani and reflected his mother's name as Churamani wrongly in the year 2005 against Roll No. 345919 for 10+2 examination and after tampering the result list fraudulently, he obtained the certificate of passing of 10+1 examination. Respondents Kishan Chand and Laxmi Singh, who were employees of the Board as Senior Assistant and Junior Assistant, had connived with Chohan Singh in issuance of forged certificate in his favour.

8 For aforesaid allegations, respondents were charge sheeted under Sections 420, 467, 468, 471, and 120-B of Indian Penal Code and under Section 13(1)(d) punishable under Section 13(2) of Corruption Act.

9 Defence of the respondents is that though in record of Board Chohan Singh was shown to have been allotted Roll No. 20073 for examination in September, 2004 to appear in the compartment of English subject but in Admit Card sent to him his Roll Number was shown as 20074, and, as such, he appeared in the examination against Roll No.20074 and accordingly, in the award list, Evaluator had posted his marks obtained by him

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against Roll No. 20074, whereas in view of above facts, candidate against Roll No.20073 was shown absent in the record of the Board leading to declaring Chohan Singh failed in English subject in the said examination being absent.

10 It is the case of respondents that name of mother of Chohan singh was recorded as Roshana Devi in the record of the Board as well as in the revenue record but her name was also reflected as Churamani Devi in the record of Panchayat as well as in the record of Election Department in the Voter List prepared from time to time and, therefore, it has been submitted that there is no fraud committed by Chohan Singh in getting the name of his mother corrected as Churamani instead of Roshana Devi.

11 Prosecution had examined 22 witnesses to prove its case. DW1 Susheela Chauhan was examined as defence witness by the respondents/accused.

12 After evaluating the material on record, the Trial Court has acquitted the respondents.

13 Prosecution has produced and proved various documents on record including the complaint, marks list, Panchayat record, inquiry report, admission form, abstract of hand writing, opinion of hand writing expert, mutation, copy of Will, Birth certificate, School Leaving Certificate, Voter card, Copy of Parivar Register, copy of Roll Number register, Result register,

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Middle Class certificate, Matriculation certificate, 10+2 certificate, FSL reports etc. related to respondents.

14 Gazette of the result of September 2004 of supplementary examination (Ext.PW1/A) depicts the roll number of Chohan Singh as 20073 with parents' name as Tek Ram and Roshana Devi showing his absence in English (Code 131) and showing him under compartment of said subject to be cleared by March, 2005. After Roll No. 20073, 20074 is missing and next roll number of one Gulab Singh has been shown as 20075. Similarly, Roll No. 20077 is also missing between Roll Nos. 20076 and 20078. The examination form Ext.PW1/A-4 depicts that Roll No.20073 was issued to Chohan Singh for September 2004 whereas his roll number in annual examination conducted in March, 2004 was 143091.

15 In the modified/corrected result sheet of September, 2004, Ext.PW1/A-5, roll number of Chohan Singh has been corrected as 20074 and roll number of Maya Devi has been corrected from 20076 to 20077 and respondent Chohan Singh has been shown to have obtained 41 marks in English, whereas Maya Devi has been shown to have obtained 26 marks in Economics whereas earlier she was shown absent against Roll No. 20076 and these cuttings have been attested by Assistant Secretary of the Board.

16 Admittedly, respondent Chohan Singh had filled the name of his mother as Roshana Devi in his examination/admission form and said name was reflected in the certificate/marks list issued to him, but later on he filed an application for correction of name of his mother in various marks list and certificates and considering his request supported by documents, Board had changed the name of his mother from Roshana Devi to Churamani. Certain documents have been placed on record by prosecution i.e. admission forms submitted by Chohan Singh Ext.PW1/A-4 and Ext.PW1/C-1, admission register of Primary School Ext.PW18/A-8 and copies of marks list issued by the Board. It is apparent that in the copy of Ration Card Ext.PW14/A-1, name of mother of Chohan Singh has been recorded as Churamani. It is also apparent that name of mother of Chohan Singh was mentioned as Roshana Devi but at the same time, Parivar Register Ext.PW14/A-2 indicates that name of mother of Chohan Singh has been recorded in the Parivar Register of Panchayat as Churamani @ Roshana Devi. Similarly, in the Voter ID Card issued by the Election Commission of India Ext.PW14/A-3, the name of mother of Chohan Singh has been recorded as Churamani Devi.

17 It is also admitted fact that after taking into consideration the request of Chohan Singh and documents submitted therewith, Board had changed the name of mother of

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Chohan Singh from Roshana Devi to Churamani Devi, which is evident from marks list issued by the Board placed on record by the prosecution as Ext.PW10/C and Ext.PW10/D. Application Ext.PW12/A-1 submitted in May, 1991 to the Head Master, Government Primary School, Shalwad, the signature of mother of Chohan Singh is depicting her name as Churamani Devi.

18 In Admission and School Leaving record placed on record as Ext.PW18/A-8, the name of mother of Chohan Singh for Admission No. 268 in Class First has been depicted as Churamani whereas against Admission No.2336 for Class 6th to 8th and Admission No. 2823 for Class 9th and 10th and Admission No.526 for Class 11th and 12th, the name of mother of Chohan Singh has been depicted as Roshana Devi. Therefore, the record produced by prosecution indicates the two names of mother of Chohan Singh i.e. Roshana Devi and Churamani.

19 In the light of aforesaid evidence on record, it cannot be said beyond reasonable doubt that respondents have committed the offence by getting the name of mother of Chohan Singh changed/corrected from Roshana Devi to Churamani, much less with connivance of other co-accused.

20 By referring Gazette Ext.PW1/A and result sheet Ext.PW1/A-5, it has been submitted on behalf of respondents that possibility of mistake by Board in issuing roll numbers to Chohan Singh and Maya Devi cannot be ruled out, rather it appears that

for mention of wrong roll numbers in the Admit Cards of respondent Chohan Singh and Maya Devi, they were shown as absent in respective paper of English and Economics in supplementary examination, whereas their awards were received against Roll Nos. 20074 and 20077, which were the roll numbers mentioned on their Admit Cards which were submitted by them at the time of appearing in examination in the Examination Centre to the Principal/Superintendent of said Centre.

21 The defence on behalf of respondents could have been rebutted and case of prosecution would have been proved by producing the Admit Card, attendance sheet, signatures chart as well as roll number slips issued to Chohan Singh and Maya Devi, and their answer sheets of examination, in reference, conducted in September, 2004 as well as award list prepared by the Evaluator, but no such document has ever been placed on record much less proved on record.

22 PW22 Sushila Jamwal is Investigating Officer in the present case. She has admitted that inquiry was initiated in April, 2007 and during investigation, she had demanded the aforesaid documents but these were not handed over to her. During inquiry by the Chairman of the Board, he had demanded the admission form of March, 2004 and September 2004, roll number issued to the candidates, signatures sheet, result sheet, award list along with answer sheets of the candidates. Therefore, as inquiry was

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pending in the Board, there was no question of weeding off the record of the Board. Though prosecution has placed on record the decision of Board on Item No.4 as Ext.PW1/C-3, depicting that it was decided to destroy the record of the Board after a certain period ranging from one year to five years, but the said document also indicates the decision of Board against Item No. 19 whereby it was directed that cases in which some proceedings were pending or matters were pending consideration, the documents were not to be destroyed till the completion of proceedings. It is also apt to record that in present case, nothing has been placed on record to depict that record pertaining to present case was destroyed by the Board after a period specified in the aforesaid document.

23 The Investigating Officer, in unambiguous terms, has stated that despite demanding, above referred documents were not supplied to her. She has admitted, and rightly so, in absence of these documents, the Chairman of the Board could not have returned any finding on the complaint against accused persons. She has admitted that award list and result sheet were in the custody of one Arjun Singh, Clerk, but the same were not taken in possession.

24 Interestingly, the Investigating Officer has also admitted that she did not take the possession of various documents intentionally which could have proved the innocence

of accused. She has also admitted that result card was prepared on the basis of award list, but she did not verify, during investigation, whether the result was prepared on the basis of award list or not.

25 From the evidence on record, it is also evident that signatures of Laxmi Singh were not found on result sheet and there were signatures of Kishan Chand only. No document has been placed on record indicating that correction of Roll Nos.20073 and 20076 to 20074 and 20077 respectively was contrary to the award list or admit card/roll number slip issued to Chohan Singh and Maya Devi. In absence of such evidence, Laxmi Singh and Kishan Chand cannot be said to have committed any offence by carrying out such correction and issuing certificate/mark list on the basis of such correction.

26 The material evidence, which could have proved the commission of offence by Chohan Singh and other co-accused or their innocence, like Admit Card, Answer sheet, Roll Number Slip, award list have not been brought on record by the Investigating Agency, rather, Investigating Officer has admitted that she did not take possession of certain documents which could have proved innocence of accused persons. Such conduct is highly deprecable. It was laid down by the Hon'ble Supreme Court in ***Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385: 2010 SCC OnLine SC 480*** that the investigation

should be fair without a biased mind. It was held in ***Manohar Lal Sharma v. Principal Secy., (2014) 2 SCC 532: (2014) 4 SCC (Cri) 1: 2013 SCC OnLine SC 1120*** that the police are bound to protect the life and liberty of the citizens and it must search for the truth. This position was reiterated in ***Babubhai v. State of Gujarat [(2010) 12 SCC 254: (2011) 1 SCC (Cri) 336.*** Therefore, the investigating agency was bound to carry out a fair investigation and produce all the material before the Court.

27 In ***Sanjaysinh Ramrao Chavan vs. Dattatray Guabrao Phalke and others, (2015)3 SCC 123*** relied upon by respondents, the Apex Court, referring to judgments passed in ***State of Karnataka vs. L. Muniswamy, (1977)2 SCC 699;*** and ***State of Bihar vs. P.P. Sharma, 1992 Supp (1) SCC 222,*** has reiterated that unmerited and undeserved prosecution is an infringement of the guarantee under Article 21 of the Constitution of India and once it is found that there is no material on record to connect an accused with the crime, there is no meaning in prosecuting him and it would be a sheer waste of public time and money to permit such proceedings to continue against such a person. There can be hardly any dispute in regard to principle of criminal jurisprudence reiterated in this judgment.

28 Every person in a welfare set up of system under democratic republic, is entitled for free and fair investigation. Like colonial era, it is not the duty of Investigating Agency or

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Investigating Officer to frame a person, named in the FIR or in the complaint or otherwise by using all means, legal or illegal, by withholding truth from Court. None should be made to face the trial despite having evidence of innocence in his favour, withholding such evidence from Court. In every case, where there is evidence of innocence of accused, prosecution/Investigating Agency is expected to act fairly and to place on record entire material and thereafter, is required to submit a report of cancellation of FIR or abortion of criminal action initiated against the accused named in FIR/complaint for having sufficient material proving his innocence.

29 Role and duty of Investigating Agency/Prosecutors and other Officers and Officials associated with them is to churn the truth to ensure imparting justice to the aggrieved persons but not to frame any person by hook or crook or all means in order to complete the challan and presented the same before the Court for trial by ignoring the material proving the innocence of accused/suspects. We are living in an independent Democratic Social Welfare Republic, which strives for the protection of the innocent under a Rule of Law.

30 Before parting, we would like to direct the Additional Chief Secretary (Home) to the Government of HP, Director General of Police and Director Prosecution to issue appropriate instructions, impart proper training and conduct orientation

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programmes to all Investigating Officers/Prosecutors/Government Advocates to ensure fair investigation and prosecution in all cases and filing of challans/cancellation reports after taking into consideration the entire evidence/material available against or in favour of accused/person involved on the basis of complaint/FIR against them. The mechanism should also be developed to monitor the conduct of Investigating Officers/Prosecutors/Government Advocates and to take appropriate action for submitting investigation reports/challans in the Court ignoring the entire evidence but presently only selective documents/evidence in order to frame a person, leading to not only unnecessary harassment to such person but also causing sheer wastage of public money, time and energy of not only the persons involved, but also of the Court causing delay in imparting justice in other services, important and genuine matters pending before the Court. Such approach is amounting to dereliction of duty which increases the unnecessary burden on the Courts, which are already over-burdened and are trying to ensure imparting of justice by reducing the pendency of old cases despite callous and indifferent response of State in creating adequate number of Courts for strengthening the Justice Imparting System.

31 From the material on record, as discussed supra, we do not find any sufficient material to convict the respondents for

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commission of offence charged with. Accordingly, appeal is dismissed being devoid of any merit.

Copy of judgment be sent to the Additional Chief Secretary (Home), Director General of Police, Director Prosecutor for necessary action on their part.

(Vivek Singh Thakur),
Judge.

November 5, 2024
(ms)

(Bipin Chander Negi)
Judge