

Nand Kumar Singh

Vs

State of Bihar

Criminal Appeal No. 96 of 1992

(S. R. Pandian, M. Fathima Beevi JJ)

04.02.1992

JUDGEMENT

S. RATNAVEL PANDIAN, J.:-

1. Leave granted.

2. This appeal is preferred by one Nand Kumar Singh questioning the correctness of the judgment rendered by the Patna High Court in Criminal Appeal No. 709/ 83 dismissing the appeal preferred by the appellant herein against the judgment of the Special Judge in Special Case No. 5 of 1979. As the 9 detailed facts of the case are well set out in the impugned judgment of the High Court, we feel that it is not necessary to reiterate the same, but suffice to refer to a few facts relating to the case of the appellant herein.

3. This appellant along with one Dip Narain Singh (arrayed as accused Nos. 2 and 1 respectively before the Trial Court) took their trial before the Special Judge (C.B.I.) South Bihar, Patna, in that the appellant stood charged under Section 420, IPC and further along with Dip Narain Singh (hereinafter referred to as 'accused D. N. Singh') under Section 120B read with Sections 420, 468, IPC and 5(2) read with 5(1)(d) of the Prevention of Corruption Act. Dip Narain Singh apart from the combined conspiracy charge, independently stood charged under Sections 420, 468, 477A of the IPC and 5(2) read with 5(1)(d) of the Prevention of Corruption Act and also under Section 104 of the Insurance Act.

4. While accused D. N. Singh was functioning as a Development Officer at Branch No. 2 of the Life Insurance Corporation of India (hereinafter referred to as 'the LIC') at Patna Branch during the year 1970-71, the appellant was working as an agent of LIC under D. N. Singh. Accused D. N. Singh introduced proposal No. 06640573 on the life of one Prabhat Kumar Prasad (hereinafter referred to as 'P. K. Prasad') (PW 15) for Rs. 50,000/- in the month of February, 1966. P. K. Prasad paid a sum of Rs. 61.71 on 30-3-1966 towards the first premium. Policy No. 29967691 (Ext. 28) was issued to him. This policy was continued for about 1-1/2 years and thereafter discontinued. An amount of Rs. 240.96 bearing the accumulation of premium instalments which was paid towards the lapsed policy was kept unadjusted in the said policy in the Divisional Office of LIC, Patna.

5. In the year 1970 accused D. N. Singh introduced two fake proposals Nos. 43172513 dated 16-5-70 (Ext. 6) and 43221513 dated 7-7-70 (Ext. 61/41) each for a sum of Rs. 30,000/- on the life of P. K. Prasad without his knowledge and consent and by forging his signature in both the proposal forms giving two different addresses of the said P. K. Prasad. In both the proposal forms, the Agent's confidential report (Exts. 5 and 5/ 1), Moral Hazard Report (Exts. 4 and 4/ 1) and personal

statement of P. K. Prasad are all said to be under the signature of D. N. Singh. Accused D. N. Singh taking advantage of the unadjusted amount of Rs. 420.96 of P. K. Prasad submitted a fake and forged authority letter (Ext. 87) to the Divisional Office, LIC, Patna in the name of P. K. Prasad. On the basis of the said forged authority letter, the Divisional Office of LIC Patna accepted the said proposals without the deposit of the first premium. On the review slip of the Branch, policy No. 30168958 was issued. In the review slip and proposal form the accused D. N. Singh had shown in column of deposit particular as BOC No. 31359 of the old lapsed policy No. 2996789 1. Accused D. N. Singh submitted another fake and forged authority letter dated 7-7-70 purporting to be of P. K. Prasad in proposal No. 43321513 (Ext. 6/ 1) giving the reference of BOC No. 31359 of the same old lapsed policy of 1966 for transfer of the said amount in the new proposal (Ext. 6 / 1). The review slip was accepted by the Divisional Officer, LIC, Patna on the basis of fake and forged authority letter. An amount of Rupees 240.96 was transferred to Branch No. 2 of LIC, Patna out of which Rs. 230.40 was adjusted towards the first premium of proposal No. 43221.513 (Ext. 6). The accused D. N. Singh submitted a forged certificate (Ext. 8) regarding the date of birth of P. K. Prasad purporting to be of B.D.O. Revealganj Block. By the above illegal method, the Divisional Officer, Patna was induced to issue two policies in respect of the said two proposals on the basis of fake and forged documents. According to the prosecution, the appellant herein who was the brother-in-law of the accused D. N. Singh and who was functioning as an agent under the organisation of the accused D. N. Singh received the first premium commission in respect of both the fake policies amounting to Rs. 50 . 38 and Rs. 58.35. The appellant also received bonus commission in respect of the said two policies amounting to Rs. 43.45. The accused D. N. Singh further received incentive bonus, conveyance allowance and other credit. On the basis of the above facts and circumstances, the prosecution has charged the accused D. N. Singh and this appellant as having entered into a criminal conspiracy to get undue pecuniary benefits and credit for themselves and cheated the LIC by misusing their official capacity and induced the LIC to issue the two policies on the life of P. K. Prasad causing a wrongful loss to the LIC and wrongful gain to themselves. It was on the basis of these allegations, the charges were framed against the accused D. N. Singh and appellant as mentioned supra. The accused D. N. Singh and the appellant pleaded not guilty. The defence of accused D. N. Singh is that he never forged the two questioned proposals, but he has signed the Agent's Confidential Report and received the first premium and bonus commission in respect of the two questioned proposals and added that he had not forged the signatures. The Trial Court found the accused D. N. Singh and the appellant herein guilty under Section 120B read with Sections 420, 468, IPC and under Section 5(2) read with 5(1)(d) of the Prevention of Corruption Act and convicted them thereunder. In addition to that, the accused D. N. Singh and the appellant were convicted under various provisions of IPC and P. C. Act and sentenced. Coming to the question of sentence, the trial Court sentenced the appellant for 3 years R. I. under Section 420, IPC, but passed no separate sentence against him for the conviction under Section 120B read with Sections 420, 468, IPC and under Section 5(2) read with 5(1)(d) of the P. C. Act.

6. Being aggrieved by the judgment of the Special Judge, the appellant along with accused D. N. Singh preferred an appeal before the High Court in Criminal Appeal No. 709/83 which appeal was dismissed by the High Court by a common judgment, covering 3 other appeals in which the present appellant did not appear as a party. Hence this present appeal by the appellant.

7. Mr. Gobind Mukhoty, Sr. Advocate appearing on behalf of the appellant contended inter alia submitting that the High Court having held that it was the act of accused, D. N. Singh who had forged the signature of P. K. Prasad as well as of the appellant on the Agent's Confidential Report and having held that it was the act of accused D. N. Singh which gave wrongful loss to the LIC has erred in holding that wrongful gain was obtained by the appellant; that the appellant cannot be said

to have cheated the LIC since there is absolutely no acceptable evidence that the appellant had fraudulently or dishonestly induced the LIC to deliver any property and thereby obtained a wrongful gain and caused wrongful loss to the LIC; that for the wrongful loss said to have been caused by accused D. N. Singh without the knowledge and consent of the appellant, the appellant cannot be held to have committed the offence of cheating and that the Courts below ought to have taken into consideration the departmental enquiry report wherein charges similar to the criminal indictment were inquired into and the petitioner was exonerated and confirmed to the post of Development Officer in LIC; that when payment of commission is made to an agent, it is not reflected therein against which policy the commission is being paid and that therefore the conviction recorded as against the appellant cannot be sustained under any of the provisions of the Act under which he was charged.

8. PW 1 who was the Sectional Head of Eastern Railway, Danapur speaks about the specimen writings and signatures of the appellant and accused D. N. Singh found in Exts. 1 to 1/ 3 1. PWs 2 and 3 (Stenographers in LIC) speak about the sanction order in respect of the prosecution of D. N. Singh and the appellant respectively. PW4 is a tailor by profession before whom specimen writings of D. N. Singh under Exts. 1/32 to 1/48 had been taken. PW 5 had proved the signatures and writings of D. N. Singh on the applications under Exts. 3 to 3/ 1. PW 6 who was the then Administrative Officer of LIC has stated that the appellant and D. N. Singh are related and that the two Moral Hazard Reports (Exts. 4 and 4/ 1) are the writings and signatures of D. N. Singh. He has also proved the writings and signatures of D. N. Singh on Exts. 7 and 8 on both the policies. PW 8 has deposed that the writing in Exts. 11 to 11 / 5 are the writings of D. N. Singh. According to PW 10, who was the then Manager of United Commercial Bank, Patna in 1970-71, on 25-11-1970 and 5-12-1970 and Rs. 1916.95 and Rs. 263.87 were credited in the S.B. A/ c of the appellant and cheques were debited in the LIC account and that the pay-in-slip (Exts. 13 and 13/ 1) were returned by the appellant. PW 12 has spoken to the fact that a sum of Rs. 240.96 was lying in policy No. 2996789 which amount was adjusted in policy No. 30168958 as per authority letter and that the two proposals submitted to the branch office were sent to the Divisional Office where they were accepted by the Divisional Manager and that the sum of Rs. 240.96 were lying in the suspense account and after transfer were adjusted in favour of the new policy. According to PW 13 on the basis of the Ext. 14 of accused D. N. Singh incentive bonus was given to him relating to policy No. 30168598 and that D. N. Singh was given additional conveyance allowance on credit of policy No. 30169330 and the commission of bonus were made on the basis of the two policies. With reference to Exts. 8 and 8 / 1 the certificates said to have been issued by the Block Development Officer, it is stated by PW 14 that the signatures on the certificates are not that of the Block Development Officer, B. Nath nor was there any seal of the said office.

9. PW 15 is the policy holder P. K. Prasad. It is his evidence that the proposal of policy No. 29967891 was introduced, by one Smt. Lila Sinha, the agent and wife of his friend and the Development Officer was accused D. N. Singh and that there are signatures and writings of accused D. N. Singh on Ext. 6/7. He has further deposed that he had deposited Rs. 61.71 as first premium and got the policy and that after some time the said policy was discontinued and Rs. 240 / 96 was lying in suspense account and that he had not received back that amount and that no policy was issued to him and that neither the appellant nor accused D. N. Singh had approached him for this policy. He has also denied that signatures on Exts. X/ 5 and X/ 6 on the personal statement. He has further stated that neither he filled up the policy form nor he authorised anyone to do so and nor he had any knowledge about this policy. He denied of having applied to LIC that Rs. 240.96 be converted into a new policy and that he had been produced before Dr. Rajendra Mishra. He also denied his signature for policy No. 30169330 nor having any talk about the same with accused D.

N. Singh or the appellant. PW 16 who is the cashier in LIC has proved the writings of accused D. N. Singh on proposal form and the transfer of Rs. 240.96 to policy No. 3016933. PWs 17 to 20 who are the then Administrative Officers and Senior Divisional Manager of LIC, Patna respectively speak about the appellant receiving the first premium commission and bonus commission and the sanction order. Four defence witnesses were examined of whom DW 4 is none other than the accused D. N. Singh himself. He stated that he had filled up the alleged proposals and confidential report and that the agent had signed it and with the moral hazard report, that the medical examination was done by the Medical Officer, that the amount of suspense account was adjusted to the new policy only according to the rules and that in the departmental enquiry the appellant was found to be innocent, but there was no departmental enquiry against the appellant in respect of the two policies. He totally denied of having falsified or forged any document.

10. From the above evidence, it is clear that it is the prosecution case that accused D. N. Singh forged the signatures of PW 15 on the proposals by giving two different addresses and that in both the proposal forms, (Ext.6/11) Agent Confidential Reports (Exts. 5 and 5 / 1), moral hazard reports (Exts. 4 and 4/ 1), personal statement of two proposals (Ext. 6/ 12) are under the writings and signatures of accused D. N. Singh and that the accused D. N. Singh taking advantage of the unadjusted amount of Rs. 240.96 of P. K. Prasad (PW 15) in the suspense account of LIC had submitted a fake and forged authority letter (Ext. 87) to the Divisional Office of LIC Patna and accepted the proposal without depositing the amount of first premium. It is a further case of prosecution that the review slip of the branch office was accepted and the said amount was adjusted at the branch and policy No. 30168958 (Ext. 28/ 1) was issued and that in the review slip of proposal form accused D.N. Singh himself had shown in the column of "deposit particulars" as BOC No. 31359 on 28-5-1966 of old policy No. 29967891 and that D. N. Singh further submitted another faked and forged authority letter dated 7-7-1970 purporting to be of P. K. Prasad in proposal No. 43221513 (Ext. 6/ 1) giving the reference of BOC No. 31359 of the same old lapsed policy of 1966 for transfer of the same and unadjusted amount of Rs. 240.96 in the new proposal.

11. The Special Judge with reference to the evidence let in by the prosecution particularly the evidence of the expert PW 18, who has produced his opinion with reasons (under Ext. 23 to 23/ 1 10) has observed as follows:

"He has proved the writings and signature of accused D. N. Singh which includes the forged signature of P. K. Prasad and that of Agent on proposal forms with personal statement (Exts. 6 and 6/ 1) Agent confidential reports (Exts. 5 and 5/ 1) extract of age proof certificate (Ext. 8) Moral Hazard reports (Exts. 5 and 5 / 1) and authority letter(Ext. 7)....."

(Vide para 17 of its judgment).

12. Further in para 21 of its judgment the following observation was made :-

"◆◆◆..Thus it is clear that accused D. N. Singh forged the signature of Prabhat Kumar Prasad and also in the Agent's confidential report for his own benefit as well as for the benefit of accused N. K. Singh◆◆◆"

13. The High Court also evidently agreeing with the above observation of the Special Judge (made in paragraph 2 1) has held that "it s clear that both the appellants have cheated the Life Insurance Corporation of India by preparing these two fake and forged policies and received premium

commission, bonus, incentive bonus and other credits by adopting illegal and corrupt means and abusing their position and they got pecuniary advantage and benefits."

14. What the prosecution has now succeeded in establishing the case as against the appellant is that the appellant and accused D. N. Singh had received bonus commission, incentive bonus and conveyance allowance as permissible to them in accordance with the law in respect of these policies and that the appellant had been given the first premium commission, bonus commission and medical fee. Reliance has been placed on the evidence of PW 13 who has proved the signature of the appellant on the bills for commission (Ext. 6/ 13).

15. The questions are (1) whether both the Trial Court and the High Court are correct in drawing the conclusion that this appellant is also a party for cheating the LIC simply because he received the premium commission, bonus etc. and (2) whether the appellant was a party along with accused D. N. Singh in conspiring and then forging the policies. From the evidence which we have extracted above, it is manifest that the appellant has not been a party either for any conspiracy or for forging the documents and making use of the same, but it is a case of the prosecution that it was the accused D. N. Singh who forged the signature of P. K. Prasad as well as the appellant on the Agent's Confidential Report and used the documents which ultimately resulted the LIC sustaining some wrongful loss. The bonus commission, the incentive bonus etc. permissible to the appellant in accordance with the law in respect of the two policies were credited to his account only in the normal course. Further there is no acceptable evidence that the accused D, N. Singh did all with the knowledge and consent of the appellant. In these circumstances, as rightly pointed out by the learned counsel Mr Gobind Mukhoty the present appellant cannot be held liable for any of the offences with which he now stands convicted, in the absence of any reliable evidence that the accused D. N. Singh did everything with the consent or knowledge of the appellant. Evidently, this must have been the reason for exonerating the appellant from any liability in the departmental inquiry. Reading of the judgment of the High Court gives an impression that the learned Judge of the High Court who delivered the judgment clubbing the case of the appellant along with other three cases in which accused D. N. Singh appeared as an appellant probably has been carried away by the abundant materials that are available as against D. N. Singh and fastened the appellant with the criminal charges indicated. But when the evidence is analyzed and carefully examined confining the same with reference to the Special Case No. 5 of 1979 giving rise to Criminal Appeal No. 709 of 1983 before the High Court, we are of the firm view that the evidence is not sufficient to sustain the conviction as against the appellant.

16. Under these circumstances, we set aside the conviction recorded as against this appellant and the sentence imposed therefor and acquit him.

17. Before parting with the judgment, we would like to observe that our observations made in this Appeal with reference to the evidence as against the accused D. N. Singh shall not have any bearing in any other proceedings that may be pending as against accused D. N. Singh because D. N. Singh is not a party before us and we were constrained to deal with the evidence, adduced by the prosecution against him also because of the charge of conspiracy and joint trial.

18. In the result the appeal is allowed. Appeal allowed.

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