

THE HIGH COURT OF SIKKIM : GANGTOK

Criminal Revision No.1 of 2004

In the matter of an application under section 401 read with section 397 of the Code of Criminal Procedure, 1973.

Sonam Tshering Bhutia
S/o Late Shri Bhalu Bhutia,
R/o Temi Tarku,
A/P Upper Chandmari,
East Sikkim **Petitioner**

Versus

State of Sikkim **Respondent**

For the petitioner : Shri D. K. Singh, Advocate.

For the respondent : Shri J. B. Pradhan, Additional
Public Prosecutor.

PRESENT: THE HON'BLE SHRI JUSTICE R. K. PATRA, CHIEF JUSTICE.


Date of hearing and judgment : 27th April, 2004.

J U D G M E N T

R. K. PATRA, C.J.

This revision is directed against the judgment dated 31.12.2003 of the learned Sessions Judge, Special Division-II, Sikkim at Gangtok in Criminal Appeal No.4 of 2002 upholding the conviction and sentence under sections 380/403/420/ 467/471 IPC passed by the learned Chief Judicial Magistrate (East and North) at Gangtok in Criminal Case No.184 of 2000.

2. The case of the prosecution is, that the petitioner was a head peon in the office of Art and Culture, Government of Sikkim and in that capacity misappropriated stationeries worth



Rs.3,57,166.00 supplied by the Sikkim Consumer Cooperative Society to the Department of Art and Culture by presenting false supply orders to the said Cooperative Society.


3. The prosecution examined a number of witnesses and exhibits.

4. The plea of the petitioner is one of denial.

5. On the basis of the evidence adduced in the case, the learned trial Judge found the petitioner guilty of the offences mentioned above and sentenced him to undergo imprisonment for different periods. Against the said judgment and conviction he preferred Criminal Appeal No.4 of 2002 in the Court of the Sessions Judge, Special Division - II Sikkim at Gangtok and the learned Sessions Judge by the impugned judgment dated 31.12.2003 confirmed the conviction and sentence passed by the learned trial Judge.

6. Shri Singh, learned counsel for the petitioner submitted that the petitioner has been found guilty solely on the basis of the report of the Government Examiner of Questioned Documents, Exhibit 29, but the expert who submitted the said report was not examined and his report was proved by the Investigating Officer which is not permissible. By referring to sub-section 4 of 293 Cr.P.C., he submitted that report of those Government Scientific experts mentioned therein can be admitted into evidence without they being examined, but in the instant case the hand writing expert was the Deputy Government Examiner and the said expert is not one of the experts mentioned in sub-section 4 of 293 Cr.P.C. Shri Pradhan, learned Additional

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Public Prosecutor, on the other hand, submitted that the conviction of the petitioner is not based solely on the report of the hand writing expert. There is also other evidence on record which justifies his conviction.

7. I have perused the impugned judgment and on its close scrutiny it appears that the learned Sessions Judge has not discussed the evidence on record at all. In paragraph 7 of the judgment he has referred to the arguments of the Public Prosecutor who seems to have submitted before him that for different offences committed by the petitioner, there is evidence of certain PWs and separate documentary evidence.

8. It may be stated that as an appellate court, the learned Sessions Judge is required to assess and consider the evidence on record independently. As a court of appeal, he has to remember and keep in view that the presumption of innocence of the accused continues and therefore, he is to satisfy himself that the judgment of the trial judge is correct. It is the bounden duty of the appellate court which may be the final court of fact, to go through the evidence for himself, to assess it in proper perspective and to come to an independent finding. On careful examination of the impugned judgment, I have no hesitation to hold that the learned Sessions Judge has failed to discharge his duty as an appellate court. As indicated above, he has simply summarized the submissions made before him by the learned Public Prosecutor and has not cared to examine and scrutinize the evidence for himself. For the reasons aforesaid, the impugned

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judgment is vulnerable and, therefore, the appeal needs rehearing by him.

9. There appears to be force in the submission of the learned counsel for the petitioner with regard to the report submitted by the Deputy Government Examiner and Assistant Government Examiner of Questioned Documents. Section 293 Cr.P.C. dispenses with the proof of certain documents unless the court itself thinks it necessary to be proved. Sub-section 4 thereof provides that the said section applies to those Government Scientific experts mentioned therein. So far as hand writing expert is concerned, the Director of the Finger Print Bureau has been mentioned as the expert. It means that if the report is submitted by the Director of Finger Print Bureau, the same may be admitted into evidence without he being formally examined. But in the present case, Exhibit 29 was not made by the Director of Finger Print Bureau. Therefore, it is necessary that hand writing expert who prepared Exhibit 29 should be examined to prove the contents thereof, in the interest of justice. The learned Sessions Judge is directed to summon the expert and examine him as a witness. For this, prosecution will take necessary steps. After he is examined, the learned Sessions Judge will give adequate opportunity to the defence to cross-examine the witness. The evidence of the said witness will form part of the record and available to be considered along with other evidence already on record.

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10. In the result, the impugned judgment of the learned Sessions Judge dated 31.12.2003 is hereby set aside. The matter



is remitted to him for fresh disposal according to law and keeping in view the observations made herein.

11. The revision is accordingly allowed.


(R. K. Patra)
Chief Justice
27.04.2004

Dictation taken
&
typed by me

Aunku Tshering Lepcha