

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: 28.07.2015

1. CRM-A-1307-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

2. CRM-A-1308-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

3. CRM-A-1309-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

4. CRM-A-1310-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

5. CRM-A-1311-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

6. CRM-A-1312-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

7. CRM-A-1313-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

8. CRM-A-1314-MA-2014

Punjab State Co-op. Supply & Marketing Federation Ltd.

... Applicant

Vs.

M/s Arti Rice & General Mills and ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. A.P.S. Mann, Advocate and
Mr. Daman Dhir, Advocate
for the applicant.

Mr. Satish Goel, Advocate
for respondents No.1 & 2.

Mr. Sukhwinder Singh, Advocate for
Mr. Pankaj Bhardwaj, Advocate
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment? YES/NO
2. To be referred to the reporters or not? YES/NO
3. Whether the judgment should be reported in the digest? YES/NO

RAMESHWAR SINGH MALIK, J.

These eight identical applications under Section 378 (4) of the Code of Criminal Procedure ('Cr.P.C.' for short), seeking leave to file appeal against the impugned judgment of acquittal, bearing CRM-A-1307-MA-2014, CRM-A-1308-MA-2014, CRM-A-1309-MA-2014, CRM-A-1310-MA-2014, CRM-A-1311-MA-2014, CRM-A-1312-MA-2014, CRM-A-1313-MA-2014 and CRM-A-1314-MA-2014, between the same parties, are being disposed of together, vide this common order, as all these applications are arising out of similar set of facts. However, for the facility of reference, facts are being culled out from CRM-A-1307-MA-2014.

Brief facts of the case, as noticed by the learned trial Court in paras 2 to 4 of the impugned judgment of acquittal, are that applicant-complainant was a Co-operative Society and the present complaint has been filed on behalf of complaint by Birinder Singh, who being District Manager and principal officer was duly competent and authorized to file the complaint. Accused-respondent No.1-firm is engaged in the business of milling of paddy/rice and respondents No.2 & 3-accused were partners of respondent No.1.

The respondents-accused were issued paddy/rice by the applicant through its District Manager for milling of paddy/rice for the years 1999-2000. Respondent No.1-accused did not mil the paddy/rice as per agreed terms. The rice was stored in the premises of respondent No.1-accused who failed to supply the rice due against respondents-accused.

On 25.02.2001, respondent No.2-accused issued cheque No.702252 for Rs.12,00,000/- drawn at Punjab and Sind Bank, Nabha Branch on account of security against the shortage of rice from paddy from crop for the years 1999-2000, stored for custom milling of paddy supplied by the applicant and stored in the premises of respondent No.1-accused. Applicant deposited abovesaid cheque on 28.02.2001 with its banker State Bank of Patiala, Branch Nabha for encashment. The said cheque was given for clearance on 28.02.2001 from respondent No.1 but same was returned back to the applicant un-cashed with memo bearing endorsement "Funds Insufficient" in account of respondent No.1. Applicant approached respondents No.2 & 3 through their employes to make payment of Rs.10 lacs but they flatly refused to make the payment of cheque. On 13.03.2001, applicant got issued a legal

notice to the respondents but same was received back with the report of refusal and intimation to this effect was received on 13.03.2001. Respondents were repeatedly requested for payment of cheque amount but they paid nothing to the applicant.

On the basis of abovesaid allegations levelled in the complaint, accused were summoned. They appeared before the learned Court. Notice of accusation was served upon the accused under Section 138 of the Negotiable Instruments Act ('N.I. Act' for short). Accused pleaded not guilty and claimed trial.

In order to substantiate the allegations levelled in the complaint, the applicant-complainant produced documentary as well as oral evidence. On closing of the evidence of complainant, statement of the accused was recorded under Section 313 Cr.P.C. All the incriminating material brought on record was put to the accused. They denied the allegations, alleged false implication and claimed complete innocence. Accused also led their oral as well as documentary evidence, in their defence.

After hearing the learned counsel for the parties and on perusal of the evidence brought on record, the learned trial came to the conclusion that the complainant-applicant has failed to bring home the guilt against the accused. Accordingly, the complaint was dismissed and the accused were acquitted of the charges framed against them, vide impugned judgment of acquittal dated 26.03.2014. Since the complainant-applicant filed as many as eight identical complaints and all the eight complaints were dismissed by the learned trial Court vide judgment of acquittal of same date i.e. 26.03.2014, these eight applications under Section 378 (4) Cr.P.C. have been filed, at the

instance of the complainant, seeking leave to file appeal against the impugned judgment of acquittal.

Learned counsel for the applicant submits that the applicant has brought on record cogent evidence which was sufficient to record the conviction of the respondents-accused. However, since the learned trial Court failed to appreciate the true factual as well as legal aspect of the matter, the impugned judgment of acquittal is not sustainable in law. He further submits that because of inadvertence on the part of the concerned officials of the applicant-Department, incorrect averments were taken in the complaint to the effect that cheque in question was issued by the accused on account of security against storage of rice, but the said inadvertent averment was explained and clarified during the course of leading evidence. Since the learned trial Court failed to appreciate this material aspect of the matter, impugned judgment of acquittal was based on a misconceived approach and liable to be set aside. He prays for allowing all these eight applications, by setting aside the impugned judgments of acquittal.

Per contra, learned counsel for the respondents-accused submit that it was not an inadvertent mistake but the averments were taken in the complaint correctly to the effect that the accused issued the cheque in question only on account of security against storage of rice and not to discharge their financial liability. They further submit that learned trial Court has rightly appreciated the documentary as well as oral evidence. The impugned judgment of acquittal was based on correct appreciation of evidence and law which deserves to be upheld. They pray for dismissal of all the applications.

Having heard the learned counsel for the parties at considerable

length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this Court is of the considered opinion that keeping in view the peculiar facts and circumstances of the case, noticed hereinabove, no interference is warranted at the hands of this Court, for the following more than one reasons.

A bare reading of the impugned judgment of acquittal would show that the learned trial Court has considered each and every relevant aspect of the matter, before passing the impugned judgment. Documentary as well as oral evidence brought on record by both the parties, was examined, considered and appreciated in the correct perspective, before arriving at a judicious conclusion. Having said that, this Court feels no hesitation to conclude that the learned trial Court committed no error of law, while passing the impugned judgments of acquittal and the same deserve to be upheld.

In view of the nature of controversy involved, the learned trial Court was well-justified in holding that the cheque in question was issued on account of security and not to discharge the existing financial liability. Relevant observations made by the learned trial Court in paras 22 to 27 of the impugned judgment of acquittal, which deserve to be noticed here, read as under: -

“Since complainant has taken the plea that cheque in question was issued on account of security against shortage of rice, so the complainant was under bounden duty to prove any such shortage in the stock of accused No.1. In the present complaint, testimony of CW6 Waryam Singh branch officer of Markfed is very much material evidence as he has appeared in court to depose on

behalf of the complainant department, whereas other evidence available on file is formal in nature as they have deposed regarding procedural aspects only regarding presentation and dishonor of cheque in question.

In the present complaint the vital points of consideration is that whether there was any shortage of paddy/rice in the stocks of accused No.1 for which the cheque in question was issued?, whether the cheque issued on account of security can attract the provisions of Negotiable Instruments Act?

CW6 Waryam Singh has deposed in cross-examination that he has brought physical verification reports of M/s Arti Rice Mills which was conducted on 15.08.2000 to 08.05.2001 and 31.03.2001. He had further deposed that these physical verifications were issued by concerned authorities after physically verifying of stock of paddy and rice. He has further deposed that on 31.03.2001 after physical verification some paddy was found short but rice equivalent to quantity of paddy was present at the spot. He has further deposed that accused has milled paddy without prior permission of the complainant but after calculating of quantity of rice and paddy, total quantity was found intact. Further, accused have examined Paramjit Kaur Assistant Accountant of complainant department as DW3 who has deposed to the effect that physical verification of stocks of Arti Rice Mills was conducted on 15.08.2000, 31.03.2000 and 31.03.2001 and it was found that the stocks of paddy were short

but equivalent quantity of rice derived out of paddy was present. He has further deposed that physical verifications conducted on 15.08.2000 and 31.03.2001 the overall stocks of rice were intact. This witness has further proved copies of physical verification as Ex.D6 to Ex.D8.

Perusal of physical verification report Ex.D8 which is last physical verification conducted on 31.03.2001 shows that in remarks column it has been mentioned that in the sheller 67% of 12267 bags of rice were lying at the spot, so, when this physical verification report is read with cross-examination of CW6 Waryam Singh as well as testimony of DW3 Paramjit Kumar it has clearly come on the record that the equivalent to paddy was present in the sheller and stock was intact. So in view of this, it can be safely held that complainant department has failed to prove any shortage in the stock of accused No.1. Further, it is not case of the complainant department that rice was not supplied to FCI and if supplied how rice was short as no official from the FCI has been examined by the complainant to state on oath in this regard.

Furthermore, it is settled principle that if cheque is issued on account of security, it does not attract provisions of Section 138 of Negotiable Instrument Act. In this regard, Ld. Defence counsel has relied upon the case law Sudhir Kumar Bhalla vs. Jagdish Chand & ors. 2009 (2) Criminal Court Cases 0199, wherein Hon'ble Supreme Court has held that provisions of

S.138 of the Negotiable Instrument Act are attracted only on account of dishonor of cheque issued in discharge of liability or debt, but not on account of issuance of security cheque. Further ld. Counsel has placed reliance upon case law, M.S. Naranyana Menon@ Mani vs State of Kerala & Anr wherein Hon'ble Supreme Court has observed that dishonr of cheque, if issued for security or for any other purpose the same does not come within the purview of S.138 of Negotiable Instrument Act, 1881. Further in case law, The Punjab State Cooperative Supply and Marketing Federation Ltd. vs. M/s Goyual Rice and Oil Mills & ors. 2008 (1) Law Digital. In 0095, Hon'ble Punjab and Haryana High Court has observed that on dishonor of cheque issued as security for future liability which may arise for supply of goods, no offence made out as there was not debt or liability on the date when the said cheques were issued.

So in view of case law cited above, it can be safely concluded that if a cheque is issued on account of security as is in the present complaint, same does not attract provisions of section 138 of the Negotiable Instrument Act, as for the provisions of section 138 of the Negotiable Instrument Act cheque must have been issued for discharge of existing liability or debt. In the present case, first of all complainant itself has mentioned in the pleadings that cheque in question was issued on account of security and further in view of the fact that complainant has failed to prove any shortage in the stock at the

time of physical verification, so it cannot be said that accused were under existing liability or debt at the time of issuance of cheque in question.”

When a pointed question was put to learned counsel for the applicant, as to how the averments taken in the complaint to the effect that cheque in question was issued on account of security against shortage of rice and not in discharge of financial liability, was factually incorrect and whether any action was taken against the erring officers/officials of the applicant-Department, learned counsel for the applicant had no answer and rightly so, it being a matter of record. Under these circumstances, it can be safely concluded that the learned trial Court committed no error of law, while passing the impugned judgments and the same deserve to be upheld, for this reason also.

During the course of arguments, learned counsel for the applicant failed to point out any patent illegality or jurisdictional error in the impugned judgment, so as to enable this Court to take a different view than the one taken by the learned trial Court. Further, it is the settled proposition of law that whenever two views are possible, the view which goes in favour of acquittal, is to be followed by the courts. In this view of the matter, it is unhesitatingly held that the impugned judgment of acquittal is well justified on facts as well as in law and the same deserves to be upheld, for this reason as well.

The view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in the case of **Arulvelu & anr. vs. State represented by the Public Prosecutor and anr. 2009(4) RCR (Cr1) 638**. The relevant observations made by the Hon'ble Supreme Court in para

Nos.39, 40 and 41 in the case of Arulvelu's case (Supra) read as under:

“In Ghurey Lal v. State of Uttar Pradesh (2008) 10 SCC 450, a two Judge Bench of this Court of which one of us (Bhandari, J.) was a member had an occasion to deal with most of the cases referred in this judgment. This Court provided guidelines for the Appellate Court in dealing with the cases in which the trial courts have acquitted the accused. The following principles emerge from the cases above:

- 1. The accused is presumed to be innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent.*
- 2. The power of reviewing evidence is wide and the appellate court can re-appreciate the entire evidence on record. It can review the trial court's conclusion with respect to both facts and law, but the Appellate Court must give due weight and consideration to the decision of the trial court.*
- 3. The appellate court should always keep in mind that the trial court had the distinct advantage of watching the demeanour of the witnesses. The trial court is in a better position to evaluate the credibility of the witnesses.*
- 4. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.*

5. If two reasonable or possible views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused.

40. This Court in a recently delivered judgment State of Rajasthan v. Naresh @ Ram Naresh 2009 (11) SCALE 699 again examined judgments of this Court and laid down that "An order of acquittal should not be lightly interfered with even if the court believes that there is some evidence pointing out the finger towards the accused. This Court has dealt with the scope of interference with an order of acquittal in a number of cases."

41. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two views are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial court is either perverse or wholly unsustainable in law."

The law laid down by the Hon'ble Supreme Court in Arulevlu's case (supra) has also been followed by a Division Bench of this Court in the

case of **State of Haryana v. Aman Kumar and another 2012 (3) RCR (Crl.) 330** and judgment dated 2.11.2012 passed by this Court in **CRM-A-284-MA-2011 (Baljeet Singh v. State of Punjab and others)**.

Reverting back to the facts of the present case and respectfully following the law laid down by the Hon'ble Supreme Court in **Arulvelu's case (supra)**, it is unhesitatingly held that the learned trial Court was well-justified on facts as well as in law, for passing the impugned judgment of acquittal and the same deserves to be upheld, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the present applications are misconceived, bereft of merit and without any substance, thus, these must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, all these eight applications stand dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

28.07.2015
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