

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1718-MA-2015
Date of Decision: 28.11.2015

State of Punjab

...Appellant

Versus

Baljit Singh & Another

...Respondents

Coram: Hon'ble Mr. Justice Hemant Gupta
Hon'ble Mrs. Justice Raj Rahul Garg

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters? Yes
3. Whether the judgment should be reported in the Digest?

**Argued By: Ms. Manjari Nehru Kaul, Additional Advocate General,
Punjab, for the State of Punjab.**

Raj Rahul Garg, J.

1. This appeal is directed against the judgment dated 23.02.2015 rendered by learned Additional Sessions Judge, Fazilka whereby respondents-accused Baljit Singh alias Babbu son of Harbhajan Singh and Gurbir Singh son of Gurbachan Singh were acquitted of the charges framed against them by way of accepting their appeal against their conviction recorded by learned Sub Divisional Judicial Magistrate, Abohar.

2. Initially, FIR No. 10 dated 04.01.2003, under Sections

379/409 of the Indian Penal Code (for short 'IPC') was registered against 8 persons including present respondents-accused. Daljit Singh son of Niranjan, Parkash Chand son of Jagdish Rai, Baldev Singh son of Arjan Singh, Hem Raj son of Mohan Lal, Heera Bahadur Chowkidar son of Tulsi and Lachhman Dass son of Chamba Ram were acquitted by the learned Sub Divisional Judicial Magistrate, Abohar vide judgment dated 31.03.2012 whereas respondents-accused Baljit Singh and Gurbir Singh were held guilty for committing offence punishable under Section 406 IPC and were punished accordingly. Against aforesaid judgment of conviction dated 31.03.2012, respondents-accused filed appeal before the court of learned Additional Sessions Judge, Fazilka which was decided in their favour on 23.02.2015 and they were ordered to be acquitted. Against this judgment, State of Punjab has come up in this appeal before this Court.

3. Brief facts of this are like this; that in the year 2002-2003, respondents-accused, being Directors of Sri Pashupati Rice Mills, entered into an agreement dated 18.10.2002 with PUNSUP. In pursuance of that agreement, 68336 bags weighing 23917.60 quintals paddy was issued to the aforesaid mill against receipt dated 19.11.2002. 67436 bags weighing 23602.60 quintals of grade-I paddy were issued in the name of aforementioned directors of the aforesaid mill whereas remaining 900 bags were sent to the aforesaid mill through PUNSUP from Mallanwala PUNSUP Center for which receipt was yet to be issued. However, the

aforesaid rice mill had supplied only 500 bags weighing 247.50 quintals of the paddy i.e. 1040 bags weighing 364 quintals in the PUNSUP account. On 30.12.2012, Parkash Chand, Inspector, Bachan Lal, Field Officer, Baldev Singh, PDC, officials of the PUNSUP informed the District Manager, PUNSUP that upon physical verification of paddy they found that a large quantity of paddy was missing. On 31.12.2002, District Manager along with Deputy District Manager as well as the police officials of the police station Abohar visited the premises of the rice mill and found that the gate of the was locked. Through the holes, it was found that one stack of paddy was lying in its premises and remaining stacks were missing. In this manner, when the officials of the PUNSUP conducted the physical verification of the paddy, only 3820 and 277 bags of paddy were taken into police possession whereas remaining 65000 bags weighing 35 Kgs, each of paddy, were found missing. Thereafter, on the complaint of District Manager, PUNSUP, Ferozepur, the FIR of this case was registered against the accused. During the course of investigations, officials of PUNSUP namely Daljit Singh Gill, Baldev Singh, Parkash Chand, Hem Raj, Lachhman Dass, Heera Bahadur and the owners of the rice mill namely Gurbir Singh and Baljit Singh were found to be accused as in connivance of these officials and directors of the rice mill, the paddy purchased from Malout has not reached the rice mill completely. Thus, after completion of investigations, the challan was put in the Court against the accused.

4. All the accused were charge-sheeted for committing offence punishable under Sections 409/379/120-B of IPC read with Section 7 of the Essential Commodities Act. After taking entire prosecution evidence, statements of accused, under Section 313 Cr.P.C., were recorded wherein respondents-accused i.e. Baljit Singh and Gurbir Singh while denying each prosecution allegation pleaded their false implication. They took the plea that FIR has been falsely registered against them by the accused DM Daljit Singh in connivance with the other accused Parkash Chand, Baldev Singh, Bachan Lal, Hira Bahadur and Lachhman Dass in order to save their own skin. Since this Court is not going into the question of acquittal of other co-accused, therefore, there is no need to mention about their defence taken in their statements under Section 313 Cr.P.C.

5. After hearing both the counsel for the parties and appraising the entire material coming on record, the learned Additional Sessions Judge, Fazilka accepted the appeal of the present respondents-accused and set aside the judgment of conviction recorded against them and they were ordered to be acquitted of the charges for which they faced trial.

6. We have heard Smt. Manjari Nehru Kaul, Additional Advocate General, Punjab and also appraised the entire material on record.

7. This is an appeal against acquittal. Interference in an appeal against acquittal is called for only if the judgment under appeal is perverse or based on misreading of the evidence. Merely because the appellate court is inclined to take a different view, is no reason calling for

interference.

8. Smt. Manjari Nehru Kaul, Additional Advocate General, Punjab argued that the respondents-accused have committed criminal breach of trust as they being directors of the Sri Pashupati Rice Mill misappropriated the paddy stock delivered to them for custom milling as per the agreement Ex. PW7/A. Receipt, Ex. PW7/B, shows the receipt of paddy stock from PUNSUP by the respondents-accused. Sri Pashupati Rice Mill was entrusted with 68336 bags of paddy which given to them for custom milling. Out of aforesaid bags, 66436 bags were released from the Malout, District Sri Muktsar whereas 900 bags were released from Mallanwala Purchase Center. Whereas accused have delivered only 1040 bags weighing 340 quintals rice after milling and 67366 bags were yet to be milled. When the officials of the PUNSUP conducted the physical verification, they found 3820 bags of the paddy whereas 63516 bags weighing 35 Kgs, each, were found missing. Learned Additional Advocate General, Punjab referred physical verification report Ex. PW7/D. Thus, with this evidence on the file, learned Addl. AG, Punjab wanted that leave to appeal be granted in favour of the state.

9. From the available record and after perusing the impugned judgment, it is evident that agreement Ex. PW7/A was entered into between the accused and the PUNSUP. Clause 22 of the agreement is regarding settlement of dispute through arbitration. In view of this arbitration clause, PUNSUP itself preferred the arbitration proceedings.

As such, Sh. P.C. Singal, District & Sessions Judge (Retired) was appointed as sole Arbitrator. Arbitration proceedings were duly conducted and thereafter award dated 31.03.2005, Ex. D5, was passed against accused-firm for an amount of Rs. 1,77,26,213/- with future interest @ 21% per annum w.e.f. 01.10.2003. From all this, it is evident that for violation of any such terms of the agreement Ex. PW7/A, the forum for settlement of dispute, chosen by the parties, was through arbitration. This clearly indicates that the dispute is of civil nature. The learned Additional Sessions Judge with the help of case law deeply gone into the matter in question and came to the conclusion that in case where exists a clause in the agreement to refer the matter to the arbitrator, in those cases the matter purely falls in the category of civil nature and no criminal case is made out. It is also the settled proposition of law that simple breach of contract would not attract the penal provisions contained in the IPC. In the case in hand, there is no material on the file to show that right from the very inception of the agreement, the respondents-accused had the intention to misappropriate the paddy stock or to cheat PUNSUP in any manner.

10. The learned appellate court has also gone into this matter very minutely while discussing that even the physical verification report Ex. PW7/D cannot be termed as legal as at the time of physical verification no notice was given to the directors of Sri Pashupati Rice Mill Ltd. nor they were joined at the time of physical verification or finding aforesaid shortage in the stock.

11. For the reasons recorded above, finding the matter in question purely of civil nature and further finding no merit in this appeal as the impugned judgment cannot be termed as perverse or based on misreading of evidence; the leave to appeal sought for by the appellant-State is declined.

12. Dismissed.

(Hemant Gupta)
Judge

(Raj Rahul Garg)
Judge

28.11.2015
Waseem Ansari