

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM No.M-33211 of 2013

Date of Decision: February 04, 2015

State of Punjab

.... Petitioner

vs.

Kewal Krishan Uppal and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Ashish Sanghi, Deputy Advocate General, Punjab.

Mr. G.C. Dhuriwala, Advocate for the respondents.

1. Whether Reporters of Local Newspapers may be allowed to see the judgment?

2. To be referred to the Reporters or not?

3. Whether the judgment should be reported in the Digest?

Kuldip Singh J.(Oral)

State of Punjab has filed this petition under Section 482 of the Code of Criminal Procedure, 1973, for the quashing of the order dated 31.10.2012 passed by learned Addl. Sessions Judge, Tarn Taran, vide which the revision filed by the respondents-accused was allowed and accused were discharged of the charges framed against them.

The brief facts which need to be reproduced for the disposal of the petition are that a complaint was moved by the District Manager, Agro Industries Corporation Limited, Amritsar to the effect that an agreement dated 03.11.2000 was executed between the complainant and M/s. Sanjay Food Products through its proprietor Sanjay Uppal (respondent No.2) for custom milling of paddy. Kewal

Krishan Uppal (respondent No.1) is the attorney of said Sanjay Uppal. Total paddy Grade 'A' 144239 bags weighing 61039.37 quintals was entrusted to M/s Sanjay Food Products, Bhikhi Mandi under custom milling policy of Punjab Government for the year 2000-01. It was stated that the paddy weighing 11778.40 quintals was transferred to other districts from the aforesaid rice mill for custom milling. 10958.50 quintals of paddy was delivered that resultant rice weighing 7122.66 quintals were transferred to Food Corporation of India in PAIC account. It was found that on the inspection done on 18/19.09.2001, shortage of 17484.70 quintals paddy was detected. It was further stated that accused-respondents had deposited cheques of ₹55,00,000/- as security against the rice vide letter dated 22.10.2001. The cheques were presented and dishonoured by the bank due to 'insufficient funds'. It was stated that the value in respect of misappropriation of Grade 'A' paddy is worked out to be ₹1,07,12,836/-.

After the completion of the investigation, challan was presented. Learned Sub Divisional Judicial Magistrate, Patti charge-sheeted the accused-respondents under Sections 120-B, 406 and 420 of the Indian Penal Code, 1860 (in short 'IPC').

The revision was preferred by the accused-respondents before the learned Addl. Sessions Judge, Tarn Taran, who accepted the revision and discharged the accused-respondents.

I have heard learned counsel for the parties and have also carefully gone through the case file.

A perusal of the impugned order shows that learned Addl. Sessions Judge, Tarn Taran, discharged the accused-respondents mainly on the ground that the dispute is of the civil nature and no criminal case could be registered. Reference was also made to the arbitration agreement between the parties. Therefore, it was held that the case is of the civil nature and same is liable to be referred to the Arbitrator. Therefore, the offences punishable under Sections 120-B, 406 and 420 IPC are not made out.

I am of the view that learned Addl. Sessions Judge, Tarn Taran, misconstrued the law on the point. The law point whether the criminal and civil proceedings can go side by side was considered by the Hon'ble the Supreme Court in case of **"State of Punjab vs. Pritam Chand and others"**, 2009(3) R.C.R. (Criminal) 376, where there was an arbitration agreement between the parties. It was held that the agreement providing for referring the dispute for the Arbitration is not an effective substitute for the criminal prosecution. When the disputed act is an offence, the Hon'ble Apex Court observed as under:

"4. Section 406 IPC deals with punishment for criminal breach of trust. In a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or used or disposed of the property or willfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to

carrying out of the trust.

5. Criminal breach of trust is defined in Section 405 IPC. The ingredients of offence under Section 405 are (i) entrusting any person with property or with dominion over the property, (ii) the person entrusted (a)dishonestly misappropriated or converted to his own use the property or (b)dishonestly used or disposed of the property or willfully suffered any other person so to do in violation (i) of any direction of law prescribing mode in which such mode is to be discharged or (ii) of any legal contract made touching the discharge of trust.”

The Hon’ble Apex Court relied upon the authority of **“Trisuns Chemical Industry v. Rajesh Agarwal and Ors., 1999(4) RCR (Criminal) 223** and observed as under:

*“9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in **State of Haryana v. Bhajan Lal. (1992 Supp (1) SCC 335)**”*

The law on the point was followed by this Court in **“Mohinder Singh vs. The State of Punjab and another” 2012(3) R.C.R. (Criminal) 632, “Swaran Singh vs. State of Punjab”, 2011 (1) R.C.R.(Criminal) 901, “Aamrit Lal vs. State of Punjab”, 1997**

(3) R.C.R. (Criminal) 210, and “Pawan Kumar vs. State of Haryana” 2006(2) R.C.R. (Criminal) 162.

Therefore, it follows that even if there is an arbitration agreement between the parties, the criminal prosecution could be launched. The case was at the stage of framing of charges and the evidence was yet to be recorded. Therefore, it cannot be said that no offence is made out. It is further noticed that the cheques given by the accused as security were dishonoured for want of ‘insufficient funds’, which points to their criminal intention.

It being so, the impugned order passed by learned Addl. Sessions Judge, Tarn Taran is illegal and perverse and is set aside. Consequently, the order dated 11.02.2010 passed by the learned Sub Divisional Judicial Magistrate, Patti framing of the charges against the accused-respondents under Sections 120-B, 406 and 420 IPC is restored. Leaned Sub Divisional Judicial Magistrate, Patti, is directed to summon the original file and proceed with the trial expeditiously.

The petition is allowed accordingly.

February 04, 2015
sarita

(KULDIP SINGH)
JUDGE