

In the High Court of Punjab and Haryana, at Chandigarh

1. Criminal Revision No. 2247 of 2010

State of Punjab

... Petitioner(s)

Versus

Pawan Kumar

... Respondent(s)

AND

2. Criminal Revision No. 2631 of 2010

Punjab State Civil Supplies Corporation Limited

... Petitioner(s)

Versus

Pawan Kumar

... Respondent(s)

Date of Decision: 14.09.2015

CORAM: Hon'ble Mr. Justice Ajay Tewari.

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Ms. Amarjit Kaur Khurana, Additional Advocate General, Punjab for the petitioner (In CRR-2247-2010).

Mr. Rakesh Gupta, Advocate
for the petitioner (In CRR-2631-2010).

Mr. Parveen K. Kataria, Advocate
for the respondent.

Ajay Tewari, J.

These two revision petitions have been filed against the concurrent orders of acquittal passed by the trial Court and the Appellate Court in favour of the accused. For decision of the petitions, the facts are being taken from Criminal Revision No. 2247 of 2010. The crux of the dispute is that the respondent was entrusted paddy for milling but he misappropriated some of it.

Learned counsel for the petitioner has taken me through the judgments of the Courts below as well as the records. At the conclusion of lengthy arguments, learned counsel for the petitioner have had to admit that even the version given by the prosecution is discrepant. There is no clarity on how much paddy was entrusted to the respondent by the Food Corporation of India (hereinafter referred to as "FCI") and how much was lifted by him from other mills. Consequently, there is no clarity on how much rice had to be returned to the FCI against the paddy lifted from it and how much rice had to be returned to the FCI in the account of other mills. Learned counsel has argued that in the affidavit Ex. PM, the respondent has clearly admitted that there is rice due towards FCI from him. However, the perusal of Ex. PM reveals that no quantity is mentioned. That apart it is not disputed that even after the execution of affidavit Ex. PM rice was deposited with the FCI. Even the amount of rice allegedly misappropriated has been mentioned differently at different places by the witnesses of the prosecution, saying in one breath that it was 123 quintals and in the another that it is 6616 quintals.

Learned counsel for the petitioner has argued that the entire basis for the acquittal is the mistaken legal impression that if there is an arbitration clause, criminal proceedings cannot be resorted to.

Learned counsel for the respondent has argued that even though he does not dispute the legal proposition that in such a case both criminal proceedings and civil proceedings can be launched, yet in

the present case, it was not this mistaken impression alone which has led to the acquittal of the respondent but the discrepancies which have been pointed out above. He has relied upon Ex.D1, Ex.D2 & Ex.D3 to show that the respondent has returned 18257 quintals of rice. He has also argued that both the Courts below have noticed that there was an arrangement whereby advance rice had to be deposited before paddy was lifted and he has concluded by arguing that apart from the legal facet, the Courts below have also relied upon the discrepancies pointed out above to come to the conclusion that guilt of the accused has not been established beyond doubt.

I find the arguments of learned counsel for the respondent more weighty. There is no clarity in the prosecution case about how much rice was actually due from the respondent. Different witnesses of the prosecution have given different amounts. There is no explanation or accounting for the documents Ex.D1, Ex.D2 & Ex.D3.

Keeping in view all the facts and circumstances, I feel no reason to take a view different than that taken by the Courts below. Consequently, even though it is held that one of the basis taken by the Courts below viz. the supposed bar of criminal proceedings where whether arbitration proceedings are pending is incorrect yet the judgment of acquittal in criminal case is not liable to be interfered with. Thus, both the revision petitions are dismissed.

**(Ajay Tewari)
Judge**

September 14, 2015
"DK"