

204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR No.188 of 2012

Date of Decision: February 04, 2015

State of Punjab

.... Petitioner

vs.

Naresh Kumar and another

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr. Nikhil K. Chopra, Deputy Advocate General, Punjab.

Mr. Ravinder Rana, 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)

Challenged in the present revision is the judgment dated 23.05.2011 passed by learned Addl. Sessions Judge, Patiala, affirming that of Judicial Magistrate 1st Class, Nabha, vide which the accused-respondents were acquitted of the offences punishable under Section 406 of the Indian Penal Code, 1860 (in short 'IPC') and Section 7 of the Essential Commodities Act, 1955, pertaining to FIR No.44, dated 15.03.2003, registered at Police Station Sadar Nabha, District Patiala.

Suffice to say that 39924 bags of the paddy were given to the accused-respondents by PUNSUP for milling. At the same time, the firm of the accused had deposited requisite security and also entered into an agreement with the PUNSUP. Later on, when the

premises of the accused firm M/s Shiv Bhola Rice Mills owned by the accused was physically inspected, it was found that 4395 bags of paddy were short.

After recording the evidence of both the parties, learned Judicial Magistrate 1st Class, Nabha came to the conclusion that there was an arbitration agreement between the parties and that the interest of the complainant was secured by guarantee bonds as well as surety bonds. Therefore, it was held that the loss, if any, is under the civil law and the accused were acquitted.

In appeal, the learned Addl. Sessions Judge, Karnal, held that the dispute is of the civil nature and, therefore, the appeal of the State was dismissed.

Before this Court, there are concurrent findings of both the courts below, acquitting the accused giving sufficient reasoning. To prove the offences punishable under Section 406 IPC, it must be proved that the misappropriation was with the dishonest intention. In this case, 39924 bags of paddy were handed over to the accused for milling by the PUNSUP. These were in the joint custody of the PUNSUP and the accused and later on shortage was found. The interest of the PUNSUP was secured by taking surety and guarantee and monetary loss could be made good from the said security. However, it has to be proved that the said shortage was with dishonest intention. The shortage can be attributed to many reasons

including loss due to moisture, breaking or any other reasons. Since, dishonest intention is not coming, therefore, there can be no fault found with the findings recorded by both the courts below.

Learned counsel for the revisionist has produced the authorities of this Court in cases of ***“Aamrit Lal vs. State of Punjab”, 1997(3) R.C.R. (Criminal) 210, “ Manjit Singh vs. State of Punjab”, 2002(1) R.C.R. (Criminal) 702, “Pawan Kumar vs. State of Haryana” 2006(2) R.C.R. (Criminal) 162 and “Mohinder Singh vs. The State of Punjab and another” 2012(3) R.C.R. (Criminal) 632.***

A perusal of the aforesaid authorities shows that in these cases, the matter was regarding the quashing of the FIR and charges. In this case, full fledged trial has taken place and ingredients of criminal misappropriation have not been proved. Accordingly, I do not find any ground to interfere in the judgments of both the courts below.

The present revision petition is accordingly dismissed.

February 04, 2015
sarita

(KULDIP SINGH)
JUDGE