

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

**Criminal Revision No.1345 of 2015
Date of Decision:-17.11.2015**

Punjab Agro Food Grains Corporation Limited

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

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:- Mr. Anupam Singla, Advocate
for the petitioner.

Mr. Sultan Singh Gill, Deputy A.G., Punjab.

Mr. N.G. Sharma, Advocate for
Mr. R.S. Rangpuri, Advocate
for respondent No.2.

HARI PAL VERMA J.

The petitioner has filed the present petition for enhancement of sentence. Vide judgment dated 23.12.2014 learned Sessions Judge, Sri Muktsar Sahib, while maintaining the conviction of the respondent-accused, has reduced the sentence of 2-½ years awarded by learned Magistrate to one year under Section 406 IPC. Learned Additional Chief Judicial Magistrate, Sri Muktsar Sahib vide judgment dated 6.8.2013 while convicting the respondent-accused under Section 406 IPC had awarded

sentence of rigorous imprisonment for a period of 2-½ years along with fine of Rs.2,000/-.

Briefly stated an FIR No.35 dated 1.3.2008, under Sections 420/406 IPC, was registered against the respondent-accused at Police Station Sadar, Muktsar. As per the allegation against the respondent-accused, he has misappropriated the paddy. The Food Supply Department / Departmental Committee had allotted the paddy to the Punjab Agro to get it custom milled from M/s J.B. Industries, Muktsar for the year 2007-2008, for which the Punjab Agro has stored the paddy containing 49808 bags (17432.80 Qtl.) for milling with the miller. However, out of the stored paddy, the miller had delivered 8835.75 Qtls. rice after milling to the FCI in the account of petitioner agency. As per the record, the paddy weighing 24563 bags (8597.05 Qtls.) was required to be stored, but the concerned Inspector had informed the office regarding misappropriation of the remaining paddy by M/s J.B. Industries, vide letter dated 20.2.2008. On the basis of physical verification, conducted by the Committee constituted by the A.D.C., Muktsar, the report was submitted. As per the report, the miller has misappropriated 24563 bags (8597.05 Qtls.) of paddy of Punjab Agro worth Rs.89,57,090/-. Accordingly, the aforesaid FIR was registered.

The police conducted the investigation and accordingly challan under Section 173 Cr.P.C. was presented. As required under law, the accused was supplied complete copies of documents in the light of Section 207 Cr.P.C.

The following point arose for determination of the trial Court:-

“Whether accused Jaspal Singh in the year 2007-2008

in the revenue limit of village Kotli Devon was entrusted with 17432.80 Qtls. paddy being the owner of G.B. Industries, Muktsar, by Punjab Agro Food-grains Corporation for custom milling. Out of said stock, he delivered back 8835.75 Qtls. paddy to F.C.I. in the account of P.A.F.C. and remaining paddy weighing 8597.05 Quintal worth Rs.89,57,090/- which was required to be in his possession has misappropriated by him?"

In order to prove its case, the prosecution has examined PW1 Ram Kishan Arya, Ex-District Manager, who initially filed the complaint. He narrated the whole version as mentioned in the complaint. He submitted that 24563 bags weighing (8597.5 Qtls.) was due towards the accused firm, but on 20.2.2008 at about 9.10 AM, Inspector Jaswant Singh visited the mill premises and found that the aforesaid paddy, which was delivered for custom milling is missing. Similarly, PW2 Neelam Grover, District Manager, Punjab Agro Food Corporation, Muktsar corroborated the version in his examination-in-chief as deposed by PW1- Ram Kishan Arya. PW3 Inspector Jaswant Singh, Punjab Agro Food Grains Corporation, Muktsar, who is signatory to the agreement executed between the complainant and accused firm, has corroborated the whole version in his examination-in-chief and supported the prosecution version as deposed by PW1 and PW2. PW4 Tarsem Goyal, Executive Assistant (G), Punjab Agro Foodgrains Corporation, Muktsar, PW5 Avtar Singh, Tehsildar Bathinda, PW6 Jatinder Singh, PW7 ASI Jagtar Singh and PW8 Inspector Rajanparminder Singh had also supported the prosecution version.

It has been defended on behalf of the accused that on the

basis of cross-examination of PW1, it is clear that there is a dispute between the prosecution and the accused and the matter was required to be referred to the arbitrator. From the perusal of the agreement (Exhibit P-2) it seems that the same has been signed by the respondent-accused Jaspal Singh, and bears the stamp of M/s J.B. Industries. The prosecution has proved on record Ex.P-5, the letter issued by the complainant Department addressed to the Incharge, Police Station, Muktsar dated 7.3.2008, which bears the photo of accused Jaspal Singh showing Jaspal Singh as sole proprietor of M/s J.B. Industries. The arbitration clause in the agreement (Ex.P-2), is not disputed by the defence. However, as in the case ***Trisuns Chemical Industry vs. Rajesh Aggarwal and others, 1999(4) RCR (Criminal) 223 (SC)*** it has been held that existence of the arbitration clause is not bar to initiate criminal proceedings even during the pendency of the arbitration proceedings. In the case in hand the entrustment of paddy has fully been established on record by the prosecution by bringing on record the receipt (Ex.P-3). Thus, in view of ***State of H.P. vs. Karanvir, 2006(3) Criminal Court Cases 701(S.C.)*** the actual manner of misappropriation is not required to be proved by the prosecution. Once entrustment is proved, it is for the accused to prove as to how the property entrusted to him was dealt with by him.

Accordingly, the learned trial Court has held the respondent-accused Jaspal Singh guilty under Section 406 IPC and sentenced him for the period indicated above.

Against the judgment dated 6.8.2013, the accused preferred an appeal. Learned Sessions Judge, Sri Muktsar Sahib vide judgment

dated 23.12.2014 dismissed the appeal, however, modified the sentence from 2 ½ years to one year under Section 406 IPC.

It is in the aforesaid circumstances the petitioner-Punjab Agro Food Grains Corporation Limited filed the present petition seeking enhancement of sentence awarded to the respondent-accused.

Learned counsel for the petitioner has contended that the learned Appellate Court has failed to consider the fact that respondent No.2 had misappropriated the paddy i.e. 24563 bags weighing 8597.5 quintals, and the learned trial Court vide judgment dated 6.8.2013 after apprising the entire evidence had rightly come to the conclusion that respondent No.2 has misappropriated the paddy, owned by the corporation. The fact of causing loss to the State exchequer is a heinous crime and if such like crime is not restricted, such like crime would certainly be on rise. Therefore, in order to give a message to the millers like the petitioner, who are otherwise involved in such like fraud, the punishment awarded by learned Magistrate should not have been interfered with. Merely because the accused has suffered the agony of trial for sufficient long time, is no ground to reduce the sentence. Therefore, the judgment passed by learned Appellate Court is without appreciation of facts and warrant strict interference. Learned counsel for the petitionere has relied upon ***Hazara Singh vs. Raj Kumar and others, 2013 (2) RCR (Criminal) 851*** and ***Deo Narain Mandal vs. State of U.P., 2004 (4) RCR (Criminal) 118*** to state that the prolonged trial itself is no ground to reduce the sentence.

Learned counsel for respondent No.2 has argued that the accused is in custody. He further submits that apart from the fact that as

against the awarded modified sentence of one year, the accused is in custody for the last more than nine months and there is no other case against him except the case emerges from the present storage of custom milling for the KMS 2007-2008. He submits that there is already an arbitration clause between the parties and the parties shall be governed by the provision of the Arbitration and Conciliation Act, 1996. He further submits that the petitioner is suffering the agony of trial since the year 2008 and in this manner he is suffering from the last seven years.

Heard learned counsel for the parties.

As regards the judgments referred by learned counsel for the petitioner in **Hazara Singh's** case (supra) and **Deo Narain Mandal's** case (supra), the same are not attracted in the peculiar facts and circumstances of the case as these judgments deals with the offence relating to the human body, whereas in the case in hand the respondent No.2 is an accused for the offence punishable under Section 406 IPC, which is more or less has civil bearings. Since the dispute is regarding storage of paddy and misappropriation thereof, the referred judgments are not applicable in the facts and circumstances of the present case.

Admittedly, there is an arbitration clause between the parties and therefore, the parties are required to be governed by the Arbitration and Conciliation Act, 1996 and agreement entered thereto. As against the modified sentence of one year, respondent No.2-accused is already in custody for more than nine months and the offence was triable by Magistrate, therefore, taking into consideration the prolong trial and the fact that the parties are governed by the Arbitration and Conciliation Act, 1996, this Court feels that no interference is warranted in the sentence

modified by learned Additional Sessions Judge, Sri Muktsar Sahib.

Accordingly, the present petition is dismissed.

November 17, 2015
Vijay Asija

(*HARI PAL VERMA*)
JUDGE