IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-D-1205-DB-2015 (O&M)

Date of decision: 11.05.2016

Food Corporation of India

..... Appellant

Versus

State of Punjab and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE T.P.S. MANN
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of the local papers 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?

PRESENT: Mr. Sumeet Goel, Advocate
for the appellant.

RAMENDRA JAIN, J.

CRM-25721-2015

Heard.

Sufficient cause has been shown to condone the delay in filing the appeal. The application is, therefore, accepted. The delay of 999 days in filing the appeal is condoned.

CRA-D-1205-DB-2015

Respondent No. 2-Rajesh Kumar was booked and tried under Section 409 of the Indian Penal Code (IPC) and Section 7 of the Essential Commodities Act (for short 'the Act') on the complaint of District Manager, Food Corporation of India, Faridkot, (for brevity 'Corporation') on the allegations that M/s Deepika Enterprises, Moga, in which respondent No. 2 was one of the partners had misappropriated 5098 bags of paddy weighing 3842-59-800 quintals having worth ₹ 33,66,923/- delivered to it for dehusking and thus, in this way had committed breach of trust in connivance with his other partners namely, Kiran Gupta, Mangat Rai and Rakesh Kumar. However, during investigation Kiran Gupta wife of respondent No. 2 was found innocent. Mangat Rai could not be arrested and thus, proclamation proceedings qua him were initiated. Rakesh Kumar brother of respondent No. 2 died during investigation. Hence, final report under Section 173 Cr.P.C. was filed only against respondent No. 2.

2. On appraisal of evidence, the learned Additional Chief Judicial Magistrate, Moga did not find himself fully convinced with the prosecution story and thus, acquitted respondent No. 2 under Section 7 of the Act, but convicted him under Section 409 IPC and sentenced to undergo rigorous imprisonment for two years and to pay fine of ₹ 1000/-, vide judgment of conviction and order of sentence dated 13.09.2011.

3. Being aggrieved, respondent No. 2 filed an appeal before the learned Sessions Judge, Moga, in which he was acquitted under Section 409 IPC also vide judgment dated 26.10.2012.

4. The appellant-Corporation, has preferred the present appeal against the impugned judgment dated 26.10.2012.

5. Learned counsel for the appellant-Corporation contended that the impugned judgment is based on surmises and conjectures. The trial Court and the learned Sessions Judge have wrongly acquitted

respondent No. 2 simply on the ground that the agreement entered into in between M/s Deepika Enterprises, Moga and the appellant-Corporation was not signed by him, though he was vicariously liable and responsible for all the acts done on his behalf by his brother Rakesh Kumar another partner. In support of his contentions, learned counsel for the appellant has relied upon ***Sham Sunder Vs. State of Haryana, 1989(4) SCC 630.***

6. After giving our thoughtful consideration to the submissions made by learned counsel for the appellant, we find no merit in the instant appeal for the reasons to follow.

(i) Admittedly, the appellant-Corporation at any point of time did not challenge the acquittal of respondent No. 2 under Section 7 of the Act. That apart, it woke up after a great slumber and filed the present appeal after 999 days against the impugned judgment dated 26.10.2012, passed by the Ist Appellate Court. Though the delay of 999 days has been condoned, but the above conduct of the appellant-Corporation in not adopting the legal recourse well in time certainly amounts to delay and latches on its part. In other words, it is definitely guilty of gross negligence.

(ii) Adverting to the merits of the case, the alleged agreement entered into between M/s Deepika Enterprises, Moga and the appellant-Corporation was not signed by respondent No. 2, rather it was signed by Rakesh Kumar, another partner of the firm. The prosecution could not prove on the record that any material on behalf of the appellant-Corporation was ever received by respondent No. 2. PW-1 Pritam Singh testified that 5098 bags of paddy weighing 3842-59-800 quintals was entrusted to M/s Deepika Enterprises, Moga in the year 1994-95 for the purpose of custom milling against receipt Ex. P-1 signed by Rakesh Kumar (since deceased). Similarly, 51300 bags weighing 3316.55 quintals and further 19.86 quintals of paddy was received by Rakesh Kumar aforesaid, vide receipts Ex. P-2 and Ex. P-3, respectively. Hence, it is evident on the record that respondent No. 2 neither signed the agreement nor ever received any paddy.

The moot question to be looked into is whether all the partners of a firm are liable to be prosecuted, in case, the offence is committed by a partnership firm?

There is no provision in criminal law holding vicarious liability of a partner for an act done by another partner of a firm, though the same can be held under civil law.

(iii) The facts and circumstances of ***Sham Sunder's case (supra),*** relied upon by learned counsel for the appellant-Corporation are quite distinguishable from the facts of present case and thus, no benefit whatsoever of the same can be given to the appellant-Corporation. In that case, there were four partners in firm M/s Patina Lal Prem Nath Rice Mills, Shahpur, who purchased huge quantity of paddy from the open market in intervals, but failed to supply the requisite rice to the Government as per levy rules. Consequently, all the partners of the aforesaid firm were booked, tried and convicted for contravention of the provisions of the Haryana Rice Procurement (Levy) Order, 1979 read with Section 7 of the Act. In appeal, this Court upheld their conviction and sentence. The partners further approached the Hon'ble Apex Court in appeal and after considering the matter in dispute, the Hon'ble Supreme Court held that:

> "the documents produced in the Court by the prosecution did not indicate even remotely that all the partners were doing the business of the aforesaid firm. There was no other evidence on record on this aspect. With these tidbits, it was impossible to hold that when the offence was committed, all the partners were conducting the business of the firm. Since, Lajpat Rai accused No. 3 was conducting the business of the firm, therefore, he was not liable to escape from his liability. Therefore, his conviction cannot be disturbed, but conviction of other partners is absolutely uncalled for".

In view of above settled proposition of law, respondent No. 2 cannot be held liable for the act done by Rakesh Kumar (deceased).

(iii) Admittedly, as per arbitration clause in the agreement, the appellant-Corporation had gone into arbitration and the Award has also been passed in its favour. During the course of arguments, learned counsel for the appellant-Corporation disclosed that execution of arbitration Award is in progress. From this angle too, it can safely be concluded that liberty of a person cannot be vexed twice. Since, as discussed above, the arbitration Award has come in favour of the appellant-Corporation, therefore, the proper remedy for it is to execute the same instead of running after respondent No. 2 on criminal side, more particularly, when it has failed to prove on record that any agreement was entered into or any receipt(s) was ever executed by him.

7. We have gone through the impugned judgment and found no illegality or perversity in the same.

8. The instant appeal, being completely devoid of any merit is dismissed.

(T.P.S. MANN)
JUDGE

(RAMENDRA JAIN)
JUDGE

May 11, 2016
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