

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-5262-2016 (O&M)

Date of decision: September 28, 2016.

M/s Guru Ram Lal Rice Mills and another

... **Petitioners**

v.

Punjab State Civil Supplies Corporation Ltd.

... **Respondent**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Vaibhav Narang, Advocate for the petitioners.

Shri Aman Sharma, Advocate for the respondent.

A.B. Chaudhari, J. (Oral):

Rule. Heard forthwith with the assistance of learned counsel for the parties.

The petitioner was convicted by the trial judge for offence under Section 138 of the Negotiable Instruments Act on account of dishonouring of cheque in the amount of Rs.35.00 lacs. In the appeal before the lower appellate court, he filed an application under Section 391 Cr.P.C. to allow him to lead additional evidence. The application was vehemently opposed by the learned counsel for the respondent. The lower appellate court rejected the application. Hence, this petition.

I have perused the impugned order passed by the lower appellate court, so also the application filed by the petitioner under Section 391 Cr.P.C. for tendering additional evidence. Learned Counsel for the petitioner invited my attention to the inquiry report dated 16.12.2002

conducted by the inquiry officer, to show the following findings:-

“It is correct that District Food and Supply Department and PUNSUP has decided to lift the paddy on the basis of 50:50 as a result of which 6506 gunny bags of paddy has been shifted from mill through private trucks. Before shifting the paddy mill has been informed that shifting will be on the basis of risk and cost through letters. It is correct that accused official has taken cheque of Rs.20 lacs from the mill and it has been handed over to circle office, which thereafter was dishonoured.”

“It become clear from the witnesses and documents proved on record by the prosecution officer despite the fact that paddy of 2001-02 has been given to M/s Guru Ram Lal Rice Mill, Raiyya after purchasing by Shri Narinder Singh N.G.-2, however, its receipt has been received by accused official and he has further verified and recorded the quality of paddy and its quantity in the receipt. On the agreement to milling also there are signatures of accused official. Uptil 15.05.2002 accused official has conducted physical inquiry and has submitted its report at circle office and in those reports he has shown no deficiency. ...”

He submits that when the finding is recorded by the inquiry officer itself, therefore the accused is entitled to make an attempt to take the benefit thereof. He submitted that the application under Section 391 Cr.P.C. in this context ought to have been allowed for the just decision of the case.

Per contra, learned Counsel for the respondent strenuously argued before this Court and submitted that in the first place, there is no plausible reason given by the petitioner for not filing the present inquiry report before the trial court when the same was already available.

According to him, the petitioner having lost the opportunity to place the same before the trial court, cannot be allowed to place the same before the lower appellate court as the proceedings would be obviously delayed. He further submitted that if at all the present petition were to be allowed, the point being short point, the lower appellate court should be asked to record the evidence, rather than sending the matter back to the trial court as it would consume a lot of time.

I have carefully perused the application under Section 391 Cr.P.C. along with the documents filed by the petitioner before the lower appellate court praying for allowing the additional evidence. The aforesaid paragraphs from the inquiry report, quoted above, do convey that the just decision of the case requires tendering of the additional evidence. The reason is that the finding is recorded by the inquiry officer of the complainant itself and the petitioner-accused is certainly entitled to take the benefit of the said finding and the other finding in the last paragraph, quoted above, in the light of the criminal jurisprudence followed by the courts. The assessment of the evidence and the correctness of the claim made by the petitioner based on this inquiry report and findings is a different matter and the court is entitled to martial the evidence which should be produced before it and then either accept the same or reject it. But then, it would not be proper to scuttle the relevant evidence which I see from the inquiry report, to be adduced by way of additional evidence before the court. I therefore, find that for the just decision of the case, it would be proper and in the interest of justice to allow the additional evidence in the form of the

inquiry report and consequent evidence which should be tendered before the court.

The submission that there is a delay on the part of the petitioner in praying for tendering of such evidence, does not appeal to me as I find that it is for the court to find out whether the evidence is necessary for just decision of the case as the ultimate aim of the courts is to find out the truth.

So the next question is whether the lower appellate court should be directed to record the statements itself. Section 391 Cr.P.C. provides that additional evidence can be recorded by the appellate court or the same could be sent to the Magistrate for recording further evidence. Learned Counsel for the petitioners states that the petitioner would examine not more than two witnesses and also would place the inquiry report on the record. I think, the complainant should also not suffer and therefore, it would be in the interest of justice to direct the learned lower appellate court to record the evidence itself. It is made clear that if the petitioner causes delay on this count, the appellate court shall be at liberty punish the petitioner with exemplary costs. Hence, the following order:-

ORDER

- (i) CRM-M-5262-2016 is allowed and the impugned order is set aside;
- (ii) Application under Section 391 Cr.P.C. is allowed;
- (iii) The petitioner is directed to examine only two witnesses and file such documents as are relevant;
- (iv) The lower appellate court shall itself record the additional

evidence and thereafter hear the appeal finally.

Disposed of.

September 28, 2016.

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[**A.B. Chaudhari**]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No