

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(i)

CRR No.4677 of 2015 (O&M)

Rajesh Kumar

...Petitioner

VERSUS

Punjab Agro Food Grain Corporation and another

...Respondents

(ii)

CRR No.4681 of 2015 (O&M)

Rajesh Kumar

...Petitioner

VERSUS

Punjab Agro Food Grain Corporation and another

...Respondents

(iii)

CRR No.4683 of 2015 (O&M)

Rajesh Kumar

...Petitioner

VERSUS

Punjab Agro Food Grain Corporation and another

...Respondents

(iv)

CRR No.4684 of 2015 (O&M)

Rajesh Kumar

...Petitioner

VERSUS

Punjab Agro Food Grain Corporation and another

...Respondents

Date of Decision: January 13, 2016

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Rajesh Gupta, Advocate
for the petitioner.

Mr.Karan Singla, Advocate
for respondent No.1.

Ms.Shivali, Asstt. Advocate General, Punjab
for the respondent-State.

INDERJIT SINGH, J.

This judgment shall dispose of four above-mentioned connected cases as the matter in dispute is same in all the cases. All the above-mentioned criminal revision petitions have been filed by the petitioner Rajesh Kumar against respondents Punjab Agro Food Grain Cooperation and State of Punjab, challenging the judgment of conviction and order of sentence dated 16.04.2015 passed by learned Judicial Magistrate Ist Class, Patiala, in four complaint cases separately, whereby the accused-petitioner was convicted and sentenced under Section 138 of the Negotiable Instruments Act and to undergo rigorous imprisonment for a period of one year and to pay compensation of ₹5 lacs in each case and also challenging the judgment dated 26.11.2015 passed by learned Addl. Sessions Judge, Patiala, vide which appeals filed by petitioner against the judgments dated 16.04.2015 was dismissed.

The brief facts are taken from CRR No.4677 of 2015.

As per the facts of the case, the complaints were filed by Punjab Agro Foodgrain Cooperative Ltd. against P.R. Gram Udyog Samiti through its Secretary and Rajesh Kumar, Secretary under Section 138 of the Negotiable Instruments Act. It is mainly stated in the complaints that complainant deals in the work/business of procuring paddy at the support price as one of the procuring agency

for the custom milling of paddy and delivers the milled rice to Food Corporation of India. The complainant gets the paddy milled from the rice mills allotted to it through District Food and Civil Supplies Controller. An agreement has been executed by accused Rajesh Kumar for himself and for and on behalf of P.R.Gram Udyog Samiti regarding the milling of paddy but the accused failed to mill the paddy as per the settled terms and conditions. The total recoverable amount from the accused by the complainant till 28.02.2013 was ₹1,06,77,392/-. Accused had issued four cheques dated 05.03.2013 for an amount of ₹26,69,348/- each, drawn on Punjab & Sind Bank, Samana, in favour of the complainant, which on presentation for encashment, were returned unpaid with the remarks 'opening balance insufficient'. Legal notice was served upon the accused. When the payment was not made, then the complaints were filed.

After appreciating the evidence, learned JMJC, Patiala, convicted and sentenced the accused-petitioner in each case as stated above . Appeals against the judgments dated 16.04.2015 were filed, which were dismissed by learned Addl. Sessions Judge, Patiala, vide judgment dated 26.11.2015.

Aggrieved from the above-said judgments, the above-mentioned revision petitions have been filed by the petitioner.

Notice of motion was issued in all the petitions and learned counsel for respondent No.1 as well as learned State counsel appeared and contested the petitions.

At the time of arguments, learned counsel for the petitioner

argued that there is mortgaged property of the petitioner with the complainant and the complainant can sell the property and can recover the amount and the revision petitioner cannot be convicted. He further argued that the cheques have been issued on the asking of the complainant and these are to be treated as collateral security and on the basis of these cheques, the revision petitioner cannot be convicted.

After hearing learned counsel for the parties as well as learned State counsel and after going through the record, I find that the fact regarding existing liability and issuance of cheques by the petitioner is not disputed. If there is some mortgaged property as security with the respondent-complainant, then, in no way, it can be held that no offence is made out under Section 138 of the Negotiable Instruments Act. Admittedly, the cheques were issued by the present revision petitioner, which were dishonoured and the cheques were issued in discharge of existing liability. The complainant is supposed to demand the money and if the cheques were issued on the asking of the complainant for payment of that money, no benefit can be given to the accused-petitioner on this ground. The proceedings under Section 138 of the Act are criminal proceedings. These are not civil proceedings where the complainant can ask for adjustment by selling the mortgaged property etc. and to recover the amount. The findings given by learned Courts below are correct, as per evidence and law. The offence under Section 138 of the Negotiable Instruments Act has been duly proved by the complainant by leading cogent evidence.

In the revision petition, this Court is not to re-appreciate the evidence like a Court of an appeal. This Court is only to see whether the findings given by the Courts below are perverse or against the law or whether the Courts below have misread any evidence or have not considered any material evidence. Nothing has been pointed out as to how the findings given by the Courts below are perverse. Nothing has been pointed out as to which material evidence has been misread or which material evidence has not been considered by the Courts below.

In view of the above discussion, I find that the impugned judgments and order passed by the Courts below are correct, as per law and do not require any interference from this Court.

Therefore, finding no merit in all the revision petitions, the same are dismissed.

As regarding the criminal misc. applications filed by the petitioner in each case for concurrence of sentence in all cases, I find that the cheques in question have been issued regarding one and same transaction. Therefore, the applications i.e. CRMs No.348, 364, 409 and 423 of 2016 are allowed and it is ordered that the sentences in all the above-mentioned cases will run concurrently.

January 13, 2016
Vgulati

(INDERJIT SINGH)
JUDGE