

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDGIARH

CRA-S-528-SBA of 2004

Date of decision : August 22, 2017

State of Punjab

....Appellant

Versus

Darshan Lal and others

.....Respondents

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

Present : Mr. Vikram Bishnoi, Assistant Advocate General, Punjab.

Mr. Arihant Jain, Advocate
for the respondents.

T.P.S. MANN, J.

The State of Haryana has filed the present appeal for challenging the judgment dated 4.9.2003 passed by learned Additional Sessions Judge, Fast Track Court, Sangrur vide which the accused, who are respondents herein, stood acquitted of the charge under Section 406 IPC.

The accused, alongwith Anish Joshi, were charged for the aforementioned offence. During the pendency of the trial, Anish Joshi died and proceedings against him were abated. The trial proceeded against the remaining accused, i.e. the respondents. Vide judgment and order dated 13.12.2000, learned Additional Chief Judicial Magistrate, Barnala convicted them for the aforementioned offence and sentenced them to undergo rigorous imprisonment for three years and to pay a fine

of Rs.5,000/- each and in default of payment of fine, to further undergo imprisonment for six months.

Aggrieved of their conviction and sentence, the accused preferred an appeal which came to be allowed by the lower appellate Court vide impugned judgment dated 4.9.2003. Not satisfied with the passing of the impugned judgment of acquittal, the State preferred the present appeal.

According to the prosecution, during the year 1994-95, Punjab State Civil Supplies Corporation, hereinafter referred to as 'PUNSUP', had given 61216 bags of paddy to M/s Shiv Shakti Rice Mills, Barnala for shelling and after shelling the rice was to be delivered to the Food Corporation of India, hereinafter referred to as 'the FCI', in the account of PUNSUP. Out of the paddy entrusted, the sheller supplied rice weighing 13504 bags of paddy and deposited the value of 21088 bags of paddy amounting to Rs.55,98,500 in the account of PUNSUP as per the policy. In this way, the firm failed to supply the rice weighing 3622 quintals, 15 kgs., 600 grams equivalent to 8487 bags of paddy. This paddy was not found in the firm. Therefore, the firm owners had misappropriated 8487 bags of paddy amounting to Rs.38,62,770/-. Another amount of Rs.1,62,654/- was also due from the firm regarding cost of Bardana and quality cut. In this way, the firm was liable to pay Rs.40,25,424/-. Therefore, they misappropriated the paddy to the tune of Rs.40,25,424/-. Accordingly, the District Manager, PUNSUP sent letter Ex.PA to the Senior Superintendent of Police,

Barnala and on its basis, the FIR case was registered against the accused, who were partners of the firm.

At the trial, the prosecution examined PW1 O.P. Kumar, Accounts Officer, PUNSUP, PW2 Sinderpal, Senior Clerk, PW3 Harbilas, Senior Assistant in the Office of PUNSUP, Sangrur, PW4 Girdari Lal, PW5 Amarjit Singh, PW6 ASI Shri Gopal and PW7 SI Sohan Lal.

In their statement recorded under Section 313 Cr.P.C., the accused denied the circumstances appearing against them in prosecution evidence and pleaded that they had been falsely implicated. They also claimed that the matter had been referred to the Arbitrator, which was still pending.

In their defence, the accused examined DW1 Nika Singh, DW2 Raj Singh, DW3 Harbilas Singh, Senior Assistant (Accountant), PUNSUP, DW4 Harkirat Singh, DW5 Harjit Singh, DW6 Gian Chand and DW7 L.D. Kalra.

Learned trial Court convicted and sentenced the accused. However, the said judgment of conviction and sentence was set aside by learned Additional Sessions Judge, while accepting the appeal filed by the accused.

This Court has heard learned State counsel and learned counsel for the accused/respondents, besides examining the record.

It is not in dispute that the PUNSUP had supplied paddy to M/s Shiv Shakti Rice Mills, Barnala of which the accused were

partners, for the purpose of shelling. As per the copy of agreement Ex.PG, entered into between the parties, the paddy was to be kept in joint custody of PUNSUP and the firm. Further, the firm was responsible for the safe custody of paddy so lifted till the delivery of rice after shelling the paddy. The firm was to make good the losses that may be incurred in paddy and rice during transit/shortage at 1½ times the economic costs of the converted variety of paddy and rice towards the shortfall. Clause 5(iii) of the agreement Ex.PG made it clear that in case there was shortfall in the recovery of rice, the firm was to pay to the PUNSUP the costs of paddy equivalent to the shortfall at the rate of 1½ times the economic costs of paddy. Clause 17 of the agreement further provided that all the disputes and differences arising out of or in any manner touching or concerning the agreement shall be referred to the sole arbitration of Managing Director or any person appointed in this behalf. Thus, it is clear that firm was responsible to pay shortage of rice at the rate of 1½ times the costs of paddy and in the event of any dispute arising between the firm and the PUNSUP, the matter was to be referred to the Arbitrator.

In Kailash Verma Vs. Punjab State Civil Supplies Corporation and another, 2005(1) RCR (Criminal) 727, the Hon'ble Supreme Court of India while dealing with an identical matter wherein the accused did not return the rice as per agreement and referring to the judgment in the case of Bal Kishan Das Vs. P.C. Nayar, 1991 Supp. (2) SCC 412 held that no offence was made out under Section 406 IPC

as the matter was purely of civil nature and the Corporation therein had initiated steps for arbitration proceedings in view of arbitration clause in the agreements.

Learned State counsel has submitted that merely because civil claim was also maintainable did not mean that criminal complaint could not be maintained. In this regard, he has placed reliance on the judgment of the Hon'ble Supreme Court in Lalmuni Devi Vs. State of Bihar, 2001(1) RCR (Criminal) 228, and S.W. Palanitkar Vs. State of Bihar, 2001(4) RCR (Criminal) 572 and M/s Medohi Chemicals and Pharma Private Limited Vs. Biological E. Limited, 2000(2) RCR (Criminal) 122. However, the aforementioned case law is not applicable to the facts and circumstances of the present case as they related to criminal offences under Sections 419, 420, 467, 120-B IPC, whereas in the present case, the offence alleged to have been committed by the firm was under Section 406 IPC only.

In view of the above, no fault can be found with the impugned judgment passed by the learned lower appellate Court whereby the accused stood acquitted of the charge under Section 406.

The appeal is without any merit and, therefore, dismissed.

(T.P.S. MANN)
JUDGE

August 22, 2017
satish

Whether speaking/reasoned : YES / NO
Whether reportable : YES / NO