

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

(i) CRM No.A-1787-MA of 2014 (O&M)

M/s Jain Rice Mills

...Applicant

Versus

M/s B.G.Rice and General Mills and others

...Respondents

(ii) CRM No.A-1788-MA of 2014 (O&M)

M/s Jain Rice Mills

...Applicant

Versus

M/s B.G.Rice and General Mills and others

...Respondents

Date of decision: September 20, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Veneet Sharma, Advocate
for the applicant.

Mr.P.S.Ahluwalia, Advocate
for respondents No.1, 2 and 5.

Ms.Kaavya Jariyal, Advocate for
Mr.B.S.Jaswal, Advocate
for respondents No.3 and 4.

INDERJIT SINGH, J.

Both the above-mentioned cases are taken up together for
decision as the point for determination in both the cases is the same.

Applicant has filed these applications under Section 378(4)

Cr.P.C. seeking permission for leave to appeal against M/s B.G. Rice and General Mills and other respondents, challenging the judgments dated 26.10.2012 passed by learned Sub Divisional Judicial Magistrate, Baba Bakala, whereby the accused-respondents were acquitted.

It is mainly stated in the applications that accompanying appeals are likely to succeed on the grounds taken therein. It is, therefore, prayed that leave to file appeals be granted to the applicants.

From the record, I find that complaints were filed by applicant against M/s B.G. Rice & General Mills and other accused under Section 138 read with Section 142 of the Negotiable Instruments Act. The material facts are taken from CRM No.M-1787-MA of 2014.

The brief averments of the complaint as noted in the judgment passed by learned SDJM, Baba Bakala, are as under:-

“2. Succinctly, M/s Jain Rice Mills, having its Head Office at Rayya, is running the business of selling, storing, purchasing of paddy, rice and Bardana etc., under the name and style of M/s Jain Rice Mills, G.T. Road, Rayya. The firm is registered one and one Sh.Raman Kumar, is partner of the firm, who is fully authorized by the firm and other partners to act on behalf of the firm and other partners M/s BG Rice & General Mills is also registered firm, which has its Head Office at Pheruman Road and dealing with paddy, rice selling and storing Bardana etc. It is further averred that all the accused are the partners of the firm and accused no.2 Mahesh Bawa, is its Managing partner and all the other partners, at the time of commission of offence, were Incharge and responsible to the firm for the conduct of the business of the firm and all the partners are liable for the commission of offence.

3. It is further alleged that accused firm approached the complainant, for the purchase of Rice and negotiation for the same took place on 10.8.2006 and deal was finalized and accused issued one cheque amounting to Rs.8,00,000/- in advance, as part payment. It is further alleged by complainant that M/s BG Rice & General Mills approached through Mahesh Singh Bawa for the purchase of Rice Grade 'A' Parmal on 10.08.2006 to which complainant agreed and on 13.08.2006, complainant sold rice vide invoice on 94, 95, 96, 97, 98, 99 in total 841 Qtls 85 kgs. worth Rs.8,93,037/-.

Thereafter, another consignment was sent on 14.8.2006, vide invoice nos.100, 101, 102 & 103 in total 550 Qtls 85 kgs., worth Rs.5,84,342/- grant totaling Rs.14,77,379/-. The said rice were transported to M/s BG Rice Mills, through Truck no.PAT-1024. Accused no.2, in discharge of the part liability on behalf of the firm and other partners, issued one cheque bearing no.947892, on behalf of the firm under his signatures on 10.08.2006, issued by Punjab & Sind Branch Sharifpura, Amritsar amounting to ₹6,75,000 (9478891 amounting to ₹8,00,000/- in other case). On the assurance and allurements made by all the accused, complainant presented the said cheque for encashment, through his banker i.e. State Bank of Patiala Branch Rayya, in his account no.SBP Rayya-55103137769 for encashment on 18.8.2006. The said cheque was returned to drawer by banker of the accused, with the memo dated 30.8.2006, with the remarks "Not Drawn". However, again on the assurance of accused, complainant presented the cheque to the banker of the accused for encashment, through his bank State Bank of Patiala, Branch Jallianwala Bagh, Amritsar, in account no.55019910896, but the same was again returned to complainant on 4.10.2006 with the remarks "Account Closed". Thereafter, complainant issued a legal registered notice with AD on 27.10.2006 upon the accused, through his counsel but the accused had not replied the abovesaid notice or made the payment of the cheque in question, as such, necessity arose to file the instant complaint, hence, this complaint."

The accused took the defence that cheque Ex.C1 does not relate to accused no.1 firm, rather, cheque in question belongs to BG Rice and General Mills, which was the proprietorship concern of sole proprietor Mahesh Singh Bawa, which is a separate legal entity. It is also the case of the accused that cheque in question has not been issued by the accused firm and complainant has filed false complaint against the accused persons. No such transaction regarding purchase of rice took place with accused no.2 and 5. It was argued by learned defence counsel that cheques in question were lost in the year 1998, due to which accused no.2 had lodged DDR on 24.09.1998. It is further the case of the accused that M/s B.G. Rice Mills had stopped the working since 2002 upto year 2005. The account of M/s

B.G. Rice Mills was also closed by accused on 26.2.2002 because of closure of business of the mill.

Learned SDJM, Baba Bakala after appreciating the evidence, acquitted the accused-respondents vide impugned judgments dated 26.10.2012.

Aggrieved from the above-said judgments, present appeals along with applications for grant of leave to appeal has been filed.

Notice of the applications was issued. Learned counsel for the private respondents appeared and contested the application.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that copy of the DDR has been placed on record and proved by the witnesses. This DDR has been got recorded on 24.09.1998 with the police by accused No.2 by specifically giving cheque numbers of both these cases along with other cheque numbers that these blank signed cheques have been lost but the complainant has stated that the cheques have been given to the complainant in the year 2006.

It is admitted at the time of arguments that accused got registered FIR against the complainant, though, learned counsel for the complainant states that complainant has been acquitted in the FIR case. There is no explanation as to why accused would get registered DDR eight years earlier to the issuance of the cheques. Again, it is also not believable that eight years earlier, the accused thought to purchase rice etc. from the complainant, nor it can be, in any way, presumed that they have conspired eight years earlier to get register a false DDR. This DDR alone falsified the case of the complainant.

The accused have raised probable defence, which has been duly supported by the defence evidence. The other plea that account was closed and application was given and other facts, need not to be discussed in detail. Furthermore, the perusal of the cheques show that these are of the series of year '19__', which means that these cheques were issued before the year 2000.

In view of the above discussion, I find that the impugned judgments dated 26.10.2012 passed by learned SDJM, Baba Bakala, are correct, as per law and evidence and do not require any interference from this Court. No ground is made out for grant of leave to appeals and therefore, both the applications stand dismissed.

September 20, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No