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

CRM-M-32970-2017(O&M)
Date of decision: 14.12.2017

Bhim Sain and another ...Petitioners

Versus

State of Punjab and another ...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. J.K.Singla, Advocate
for the petitioners.

Ms. Rajni Gupta, Sr. DAG, Punjab
for respondent No.1.

Mr. Anupam Singla, Advocate
for respondent No.2.

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ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of FIR No.03, dated 17.01.2013, under Sections 406 of IPC and Section 7 of Essential Commodities Act, registered at Police Station Sadar Rampura, District Bathinda (Annexure P-1) as well as the subsequent proceedings pending in pursuance thereof including the order dated 05.01.2015 (Annexure P-10) and Annexure P-11 charge sheet, vide which, charges were framed against the petitioners.

On 07.09.2017, the following order was passed by this Court:-

> *" Learned counsel for the petitioners submits that petitioners have initially filed CRM-M-13951-2014 in which following orders was passed:*
>
> > *"After arguing for some time, counsel for the petitioners prays for withdrawing the petition with liberty to the petitioners to take all the pleas available to them at the appropriate stage. Dismissed as withdrawn with liberty aforementioned."*

Learned counsel for the petitioners further submits that at that stage case was still at the investigation stage and later on petitioners came to know that respondent No. 2-complainant vide its letter dated 15.10.2013 (Annexure P-8) has recommended the cancellation of the FIR on the pretext that petitioners had delivered the whole rice due against the short paddy and has also settled the milling account with the Corporation.

Learned counsel for the petitioners further submits that during the cross-examination, PW-1 Sawinder Singh, Inspector, Punjab Agro Food Grains Corporations Mansa, PW-3 Rupinder Singh, Inspector, Punjab Agro Food Grains Corporation, Bhikhi and PW-4, Balwinder Pal Singh, Senior District Manager Punjab Agro, Sri Muktsar Sahib have admitted that the aforesaid letter was issued by respondent No. 2-complainant for cancellation of the FIR. He further submits that since the petitioners have withdrawn the aforesaid petition on 24.4.2014 with liberty to take all pleas available at appropriate stage, present petition seeking quashing of the FIR No. 03 dated 17.1.2013 under Section 406 IPC and Section 7 of the Essential Commodities Act, registered at Police Station Sadar Rampura, District Bathinda (Annexure P-1) along with subsequent proceedings has been filed in view of the statements made by the aforesaid witnesses, wherein, they have admitted that there was no shortage of paddy on the part of the petitioners and cancellation of the FIR was recommended.

Notice of motion for 26.9.2017.

Process dasti as well.

Representative of respondent No. 2-Punjab Agro Food Grains Corporation Limited is directed to file a specific affidavit regarding issuance of letter dated 15.10.2013 in which a request was made to Senior Superintendent of Police, Bathinda for cancellation of the FIR."

Thereafter, respondent No.2/complainant – Punjab Agro Food Grains Corporation Limited filed an affidavit dated 25.09.2017 of District Manager, wherein, it was stated as under:-

> *" That thereafter, the petitioners had given Bank Guarantee No. 01/2013-2014 dated 11.04.2013 and Bank Gurantee No.6/2013-14 dated 17.07.2013 for an amount of Rs.40 lacs on the ground that in case they fail to deliver the resultant rice in lieu of shortage of Paddy, then in that eventuality respondent No.2 can encash the Bank Gurantees to recover the cost paddy found short during Physical Verification. However, the petitioners had completed the milling and had also delivered the resultant rice in lieu of shortage of Paddy also. As a result thereof, respondent No.2 vide letter Annexure P-7 recommended the allotment of the aforesaid Mill for Crop Year 2013-14 and has also recommended cancellation of FIR vide letter dated 15.10.2013 (Annexure P-8)."*

Reply by way of affidavit of Deputy Superintendent of Police, Sub Division Rampura Phul, District Bathinda on behalf of respondent No.1-State has also been filed and as per this reply, it is submitted that after investigation of the case, the challan was submitted before the trial Court and with regard to recommendation of respondent No.2, it was simply stated in para No.1 of this affidavit that respondent No.2 has no power to ask for cancellation of the FIR.

Learned State counsel, on instructions from ASI Manvinder Singh has also stated that the case, at the stage, is for recording of the prosecution evidence and some witnesses have already been examined.

Learned counsel for the petitioners submits that the petitioner is a proprietor of M/s Shri Tej Ram Rice Mill, Rampura and was authorized by respondent No.2-Complainant,vide agreement dated 10.12.2012 for custom milling of paddy for the year 2012-13. It is further submitted that petitioner No.1 for the General Power of Attorney of the Mill is to perform day-to-day functions and the agreement dated 10.12.2012 was executed between petitioner No.1 and respondent No.2. It is further submitted that as per this agreement, total 39807 bags of paddy were stored on 19.12.2012 and thereafter, without any intimation when a check was conducted by the staff of respondent No.2, a physical verification report dated 19.12.2012 was prepared, in which, it was found that 7234 bags of paddy was less in the premises of the Mill and therefore, it was recommended that the FIR be got registered against the petitioners.

Counsel for the petitioners further submits that the physical verification report was done at the time, when the petitioner was not there at the spot and there was no shortage of the paddy as it was under the milling process and the petitioner was required to hand over the rice after milling up to 31 March, 2013 as per the agreement dated 10.12.2012, and still four months time was there for handing over the resultant rice.

Counsel for the petitioners further submitted that as per the agreement, the petitioners had completed the milling work for the Crop year 2012-2013 and has also furnished a bank guarantee. He further submits that after registration of the FIR, during the period when the agreement was still in subsistence, on the asking of the respondent-complainant, the petitioner has given additional bank guarantee that in case, he fails to comply with the terms and conditions of milling work, the same can be adjusted towards the amount of bank guarantee. However, prior to the date, he has delivered the resultant rice to FCI in the account of respondent No.2.

Learned counsel for the petitioner has relied upon the certificate (Annexure P-7) issued by Punjab Agro Foodgrains Corporation Limited, Bathinda certifying that since the M/s Tej Ram Rice Mill, Rampura has completed the milling work of the crop year 2012-13 and no rice is pending pertaining to the crop Year 2012-13, the Mill is eligible for allotment of crop Year KMS 2013-14. He further relied upon the letter dated 15.10.2013 submitted by respondent No.2 to Senior Superintendent of Police, District Bathinda for cancellation of the FIR, in view of the fact that the FIR was got registered against the Mill for shortage of Paddy for the crop Year 2012-13 and since the party has delivered the whole rice against the shortage of paddy and has settled the milling account with the Corporation, the FIR be cancelled.

In the light of aforesaid facts, vide order dated 07.09.2017, the respondent No.2 was directed to file a specific affidavit as noticed above.

Counsel for the petitioners has further submitted that the offence under Section 7 of the Essential Commodities Act is not made out against the petitioners and the prosecution of the petitioners under Section 406/409 of IPC along with Section 7 of the Act is otherwise not maintainable as the same cannot be tried by the Special Court. Learned counsel for the petitioner has relied upon ***2003 (1) RCR (Criminal) 788 tilted as "S.C. Sharma and antoher Vs. State of Haryana and others"*** wherein this court has held as under:-

> *"9. Under section 260 cr.p.c., it is provided that a court may try an offence in a summary way where the offence is not punishable with death, imprisonment for life or imprisonment for a term exceeding two years, meaning thereby that the offences punishable upto two years may be tried in a summary manner. Besides that certain offences have been specifically mentioned in section 260*

cr.p.c., which could also be tried in a summary manner. So far as the offence under Section 161 IPC is concerned, it is punishable with imprisonment for three years, whereas the offence under Section 420 IPC is punishable with imprisonment for 7 years. However, the offence under Section 427 IPC is punishable with imprisonment for two years. Thus, neither the offence under Section 161 IPC nor the offence under Section 420 IPC could be tried in a summary manner, whereas the offence under Section 427 IPC could be tried in a summary manner. Offences under Sections 34 and 149 IPC are not substantive offences. With regard to the offence under Section 120-B IPC, it also bears the same punishment which is the punishment provided for the main offence. In this view of the matter, only the offence under Section 427 IPC could be tried in a summary manner. So far as the present petitioners are concerned, there is absolutely nothing on record to show that they had committed offences under Section 427 IPC, inasmuch as, there is absolutely no material on record to show that the accused petitioners had committed any mischief which was punishable under Section 427 IPC. So far as other offences are concerned, as referred to above, under section 12-aa(2) of the essential commodities act, 1955, as applicable at the relevant time, the Special Court was competent to try other offences alongwith an offence under the essential commodities act only if those offences were triable in a summary way. In this view of the matter, the substantive offences under Sections 420 and 161 IPC could not be tried by the Special Court alongwith the offence under Section 7 of the essential commodities act.

10. From the perusal of the above, in my opinion, it would be clear that criminal complaint and all subsequent proceedings taken thereon against the accused

> *petitioners, including the summoning orders, are abuse of the process of law and are liable to be quashed in both the cases.*
>
> *11. For the reasons recorded above, both the petitions are allowed and the criminal complaint, summoning order and all subsequent proceedings taken thereon against the petitioners are quashed. Petitions allowed."*
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> *A similar view has been taken by this Court in* ***2011 (1) RCR (Criminal) 102, Rakesh Kumar Vs. State of Haryana*** *and by the Division Bench of* ***Andra Pradesh in 2004 (3) RCR (Criminal) 81.****"*

After hearing learned counsel for the parties, I find merit in the petition. Since the FIR was got registered during the subsistence of the agreement dated 10.12.2012 vide which the petitioner was granted time to complete the agreement upto 31.03.2013, it is not disputed by respondent No.2 as per No Objection Certificate (Annexure P-7), vide which, the Mill was granted permission for allotment of next crop year 2013-14 considering the performance of the Mill for the year 2012-13 as well as the letter dated 15.10.2013 (Annexure P-8) vide which respondent No.2 itself has made a request for the cancellation of the FIR, as the petitioners have delivered the whole rice. Respondent No.2, in the affidavit dated 25.09.2017, has again reiterated that the petitioners have given additional bank gurantee also for ensuring that in case, the Mill fails to deliver the resultant rice, respondent No.2 can encash the bank gurantee to recover the cost of paddy. However, it is a matter of fact that the petitioner has delivered the resultant rice well within the period which shows that there was no mens-rea on the part of the petitioner to commit any offence and therefore, under Section 406/420 IPC, face the FIR is not made out. In the light of the judgment relied upon by the petitioners in **SC Sharma's case (supra),** the joint prosecution of the petitioners under Section 7 of the Essential Commodities Act with Section 406/409 of IPC is not sustainable.

For the reasons stated above, from a bare perusal of the FIR and the affidavit submitted by respondent No.2, no offence is made out under Section 406/409 of IPC or under Section 7 of the Essential Commodities Act.

However, since the FIR pertains to the year 2013 and the some prosecution witnesses have already been recorded, the petitioner is directed to deposit a costs of Rs.10,000/- with the District Legal Services Authority, Bathinda.

Accordingly, the present petition is allowed. FIR No.03, dated 17.01.3013, under Sections 406 of IPC and Section 7 of Essential Commodities Act, registered at Police Station Sadar Rampura, District Bathinda along with all the consequential proceedings, arising therefrom including the order dated 05.01.2015, framing charges under Section 409 and Section 7 of Essential Commodities Act, are ordered to be quashed qua the petitioners.

(ARVIND SINGH SANGWAN)
JUDGE

14.12.2017
Hemlata

Whether speaking/reasoned Yes / No
Whether reportable Yes / No