

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

CRR-186-2012

Date of decision:-7.12.2017

Food Corporation of India

...Petitioner

Versus

Shri Hira Lal and others

...Respondents

CORAM : HON' BLE MR. JUSTICE H.S. MADAAN

Present : Mr.Sumeet Goel, Advocate and
Ms.Varsha Gupta, Advocate
for the petitioner.

Mr.Mikhil Kad, Advocate for
Mr.Ashok Arora, Advocate
for the respondents.

H.S. MADAAN, J.

Accused Hira Lal, Kasturi Lal, Vinod Kumar, Ashok Kumar and Smt.Indu faced the trial by Sub Divisional Judicial Magistrate, Ajnala, who vide his judgment dated 22.10.2008 acquitted the accused of the charge framed against them giving them benefit of doubt. The appeal preferred against that judgment was dismissed by Learned Additional Sessions Judge, Amritsar vide judgment dated 2.9.2011. As such, complainant Food Corporation of India has brought the present revision petition.

Briefly stated facts of the case as per prosecution story are that District Manager, F.C.I. Amritsar had addressed a written complaint dated 29.1.1998 to SHO, Police Station Ajnala for the purpose of registration of case against Hira Lal, Kasturi Lal, Vinod

Kumar, Ashok Kumar and Smt.Indu, partners of the firm M/s Ajnala Rice Mills, Ajnala on the allegations that a storage-cum-milling contract was entered into between Food Corporation of India, Amritsar and M/s Ajnala Rice Mills and in pursuance thereof a quantity of 14328-60-000 quintal of all varieties of paddy were stored and entrusted to the accused in their mill premises; that as per the agreement, the accused were responsible for the quality; that the miller was to deliver the resultant rice as per terms and conditions agreed in the agreement and as per rate of yield specified by Food Corporation of India. But the accused failed to deliver the quantity of rice against the balance quantity, in that way rice to the extent of 96-14-800 quintals had been misappropriated by the accused, therefore legal action be taken against them.

On the basis of said written complaint, formal FIR No.40 dated 13.3.1998 for the offence under Section 406 IPC was registered with Police Station Ajnala. The matter was investigated.

After completion of the investigation and other formalities, challan against the accused was prepared and filed in the Court.

On presentation of challan in the Court of Area Magistrate, Ajnala copies of documents relied upon in the challan were supplied to the accused free of costs as provided under Section 207 Cr.P.C.

Learned Sub Divisional Judicial Magistrate, Ajnala finding that charge for offences under Section 406 IPC was disclosed against the accused, charge-sheeted the accused for the said offence, to which, they pleaded not guilty and claimed trial. The case was then fixed for evidence of prosecution.

To bring home guilt to the accused, the prosecution

examined as many as ten witnesses as under:

- PW1 - Budh Ram, TAI, Food Storage Depot, Rayya
- PW2 - Swatantar Kumar, District Food Supplies Officer
- PW3 - Darshan Kumar, AG-1, Depot, FCI Jandiala
- PW4 - Manmohan Bhutt, AG-II, FCI Depot Ajnala
- PW5 - P.S. Lugani, Asstt. Administrator Audits, Patiala
- PW6 - Ramesh Chander Gupta, Asstt. Manager, FCI Rani Ka Bagh, Amritsar
- PW7 - Tilak Raj AG-III, Rani Ka Bagh, Amritsar
- PW8 - Manjit Singh, AG-I FCI, Amritsar
- PW9 - Amar Singh, Dealing Assistant, Rani Ka Bagh, Amritsar
- PW10 - Lachhman Singh, Retired Police Officer

Thereafter, the prosecution evidence was closed by Court order.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

In defence evidence the accused examined Manmohan Bhatt, Assistant Grade-I as DW1 and Sh.R.P. Loomba, Advocate, District Courts, Amritsar as DW2.

After hearing arguments, learned Sub-Divisional Judicial Magistrate, Ajnala vide judgment dated 22.10.2008 acquitted the accused of the charge framed against them. The appeal preferred against the judgment dated 22.10.2008 was also dismissed by learned Additional Sessions Judge, Amritsar vide judgment dated 2.9.2011,

which left the petitioner – complainant aggrieved and it has filed the present revision petition.

I have heard learned counsel for the parties besides going through the record.

A perusal of the judgment passed by the trial Magistrate goes to show that the reasons given in arriving at the conclusion that the prosecution had failed to prove its charge against the accused beyond shadow of reasonable doubt are as follows:

- (i) The witnesses examined by the prosecution were not definite as to how much shortage in supplying rice by the accused firm was there and that there were variations in their statements with regard to the shortage.
- (ii) There is a huge gap between notice Ex.D1 served upon the complainant firm and application moved to Station House Officer for registration of criminal case against the accused.
- (iii) The payments were released to the accused firm in the year 1996 and if there was some dispute regarding shortage of rice to be supplied by the accused firm, the payment would not have been released, thus giving rise to a presumption that by that time the entire rice was supplied.
- (iv) It being established on record that in fact Sh.S.S. Gill was Incharge of Ajnala area at that time and he was in knowledge of entire facts of the case but he was not

examined as a prosecution witness.

(v) Sh. Budh Singh, TA-I, Food Storage Depot, Rayya appearing as PW1 had been declared as a hostile witness since he had stated that he did not have any concern with the dispute and remaining witnesses examined by the prosecution were not having any personal knowledge regarding the case.

(vi) The defence evidence was found to be plausible.

Whereas learned Additional Sessions Judge, Amritsar while dismissing the appeal against the judgment passed by the trial Magistrate had noticed that:

None for the witnesses examined by the prosecution could produce any type of authenticated evidence in the shape of documentary evidence showing as to how much paddy was stored/entrusted to Ajnala Rice Mills and how much resultant rice was delivered by them and that prosecution was trying to establish that on the basis of photocopies of acknowledgements Ex.P1 to Ex.P16 and that signatures of accused could not be proved on those documents. The original of alleged balance sheet Ex.P18 had not been produced. The record on the basis of balance sheet had been prepared was not produced/proved.

The lower Appellate Court has referred to judgment **Punjab State Civil Supplies Corporation Versus Deepak Kumar and others, 2007(2) RCR (Criminal) 550(DB)** wherein it was observed that where

Government has entrusted paddy to the accused for dehusking and accused had failed to return rice after shelling as per agreement, the agreement provided an arbitration clause, then no offence under Section 406 IPC was made out.

Learned counsel for the petitioner referred to **Johar and Ors. Versus Mangal Prasad and Anr., AIR 2008 Supreme Court 1165,** wherein it was observed as under:

Revisional jurisdiction of the High Court in terms of Section 397 read with Section 401 of the Code of Criminal Procedure is limited. The High Court did not point out any error of law on the part of the learned Trial Judge. It was not opined that any relevant evidence has been left out of its consideration by the Court below or irrelevant material has been taken into consideration. The High Court entered into the merit of the matter. It commented upon the credentiality of the Autopsy Surgeon. It sought to re-appreciate the whole evidence. One possible view was sought to be substituted by another possible view.

As per the ratio of this authority, a revision against judgment of acquittal is though not barred but jurisdiction is severely restricted.

After hearing the rival contentions, I find that law is well settled that the revisional jurisdiction of this Court is quite limited. This Court is to interfere only if there is an illegality or infirmity apparent on the face of the judgment/order passed by a Court below or the same is perverse. Merely because another view in the matter is possible, no

inference with such judgment is to be done.

There is no illegality or infirmity in the judgments passed by the Courts below. Such judgments cannot be termed as perverse since it come out to have been passed in the light of settled principles of criminal jurisprudence.

Finding no merit in the revision petition, the same stands dismissed.

Necessary intimation be sent to the quarter concerned.

7.12.2017

Brij

**(H.S.MADAAN)
JUDGE**

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No