

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRR 2002-2015 (O&M)  
Date of decision: 28.11.2017

M/s Kapurthala Rice Mills and another  
.....Petitioners  
versus  
State of Punjab and another  
.....Respondents

CRR 2003-2015 (O&M)

M/s Kapurthala Rice Mills and another  
.....Petitioners  
versus  
State of Punjab and another  
.....Respondents

CRR 2004-2015 (O&M)

M/s Kapurthala Rice Mills and another  
.....Petitioners  
versus  
State of Punjab and another  
.....Respondents

CRR 2005-2015 (O&M)

M/s Kapurthala Rice Mills and another  
.....Petitioners  
versus  
State of Punjab and another  
.....Respondents

CRR 2006-2015 (O&M)

M/s Kapurthala Rice Mills and another  
.....Petitioners  
versus  
State of Punjab and another  
.....Respondents

M/s Kapurthala Rice Mills and another  
versus  
State of Punjab and another

CRR 2007-2015 (O&M)  
  
.....Petitioners  
  
.....Respondents

M/s Kapurthala Rice Mills and another  
versus  
State of Punjab and another

CRR 2008-2015 (O&M)  
  
.....Petitioners  
  
.....Respondents

M/s Kapurthala Rice Mills and another  
versus  
State of Punjab and another

CRR 2009-2015 (O&M)  
  
.....Petitioners  
  
.....Respondents

M/s Kapurthala Rice Mills and another  
versus  
State of Punjab and another

CRR 2010-2015 (O&M)  
  
.....Petitioners  
  
.....Respondents

M/s Kapurthala Rice Mills and another  
versus  
State of Punjab and another

CRR 2011-2015 (O&M)  
  
.....Petitioners  
  
.....Respondents

M/s Kapurthala Rice Mills and another  
versus  
State of Punjab and another

CRR 2012-2015 (O&M)  
  
.....Petitioners

CRR 2002-2015 (O&M)

3

.....Respondents

CRR 2013-2015 (O&M)

M/s Kapurthala Rice Mills and another

.....Petitioners

versus

State of Punjab and another

.....Respondents

CRR 2014-2015 (O&M)

M/s Kapurthala Rice Mills and another

.....Petitioners

versus

State of Punjab and another

.....Respondents

CRR 2015-2015 (O&M)

M/s Kapurthala Rice Mills and another

.....Petitioners

versus

State of Punjab and another

.....Respondents

CRR 2016-2015 (O&M)

M/s Kapurthala Rice Mills and another

.....Petitioners

versus

State of Punjab and another

.....Respondents

CRR 2017-2015 (O&M)

M/s Kapurthala Rice Mills and another

.....Petitioners

versus

State of Punjab and another

.....Respondents

CRR 2018-2015 (O&M)

M/s Kapurthala Rice Mills and another

.....Petitioners

versus

|                                       |                     |
|---------------------------------------|---------------------|
| CRR 2002-2015 (O&M)                   | 4                   |
| State of Punjab and another           | .....Respondents    |
|                                       | CRR 2019-2015 (O&M) |
| M/s Kapurthala Rice Mills and another | .....Petitioners    |
| versus                                |                     |
| State of Punjab and another           | .....Respondents    |
|                                       | CRR 2020-2015 (O&M) |
| M/s Kapurthala Rice Mills and another | .....Petitioners    |
| versus                                |                     |
| State of Punjab and another           | .....Respondents    |
|                                       | CRR 2021-2015 (O&M) |
| M/s Kapurthala Rice Mills and another | .....Petitioners    |
| versus                                |                     |
| State of Punjab and another           | .....Respondents    |
|                                       | CRR 2022-2015 (O&M) |
| M/s Kapurthala Rice Mills and another | .....Petitioners    |
| versus                                |                     |
| State of Punjab and another           | .....Respondents    |
|                                       | CRR 2023-2015 (O&M) |
| M/s Kapurthala Rice Mills and another | .....Petitioners    |
| versus                                |                     |
| State of Punjab and another           | .....Respondents    |

**CORAM: Hon’ble Mr.Justice Kuldip Singh**

Present: Mr.J.S.Bedi, Senior Advocate with  
Mr.Lovkirat S. Chahal, Advocate for the petitioner (s)  
Ms.Monika Jalota, DAG Punjab  
Mr.B.R.Bansal, Advocate for the respondent No.2

- 1. Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

**Kuldip Singh, J.**

By this common judgment, I shall dispose of 22 connected cases bearing CRR Nos.2002 to 2023 of 2015, arising out of the same facts. However, for facility of reference, facts are being mentioned from CRR No.2002 of 2015.

Vide order dated 3.8.2015, all the revision petitions were admitted only on the point of quantum of sentence. Pending the revision petitions, an application under Section 427 IPC was also filed in CRR No.2002-2015 for concurrent running of sentences in all the 22 cases.

Briefly stated, the petitioner Sudesh Kumar is one of the partners in M/s Kapurthala Rice Mills. The Punjab Agro Industries Corporation Limited – complainant entered into an agreement for milling of paddy with M/s Kapurthala Rice Mills on 5.2.2001 and 12/23.11.2001. Later on, on the physical verification, a shortage of 18144.30 qtl. paddy amounting to Rs.1,23,49,736/- was found. In order to pay the amount of the said shortage, present petitioner being one of the partner of the firm issued 22 different cheques for different amounts, as mentioned below, total amounting to Rs.1,23,49,736/- along with partial interest:-

| S.No | CRR No.      | Cheque no. And Date   | Amount of Cheque (in Rs.) |
|------|--------------|-----------------------|---------------------------|
| 1.   | 2002 of 2015 | 708768 dt. 30-06-2002 | 5,00,000/-                |
| 2.   | 2003 of 2015 | 708764 dt. 30-06-2002 | 5,00,000/-                |
| 3.   | 2004 of 2015 | 708769 dt. 30-06-2002 | 5,00,000/-                |
| 4.   | 2005 of 2015 | 708773 dt. 30-06-2002 | 5,00,000/-                |
| 5.   | 2006 of 2015 | 708771 dt. 30-06-2002 | 5,00,000/-                |
| 6.   | 2007 of 2015 | 708758 dt. 30-06-2002 | 5,00,000/-                |
| 7.   | 2008 of 2015 | 708775 dt. 30-06-2002 | 4,60,000/-                |
| 8.   | 2009 of 2015 | 708763 dt. 30-06-2002 | 5,00,000/-                |
| 9.   | 2010 of 2015 | 708770 dt. 30-06-2002 | 5,00,000/-                |
| 10.  | 2011 of 2015 | 708765 dt. 30-06-2002 | 5,00,000/-                |
| 11.  | 2012 of 2015 | 708767 dt. 30-06-2002 | 5,00,000/-                |
| 12.  | 2013 of 2015 | 708772 dt. 30-06-2002 | 5,00,000/-                |
| 13.  | 2014 of 2015 | 708761 dt. 30-06-2002 | 5,00,000/-                |
| 14.  | 2015 of 2015 | 708766 dt. 30-06-2002 | 5,00,000/-                |
| 15.  | 2016 of 2015 | 708762 dt. 30-06-2002 | 5,00,000/-                |
| 16.  | 2017 of 2015 | 072514 dt. 30-12-2002 | 6,21,612/-                |
| 17.  | 2018 of 2015 | 072512 dt. 26-12-2002 | 6,00,000/-                |
| 18.  | 2019 of 2015 | 072513 dt. 28-12-2002 | 6,00,000/-                |
| 19.  | 2020 of 2015 | 072510 dt. 20-12-2002 | 6,00,000/-                |
| 20.  | 2021 of 2015 | 708760 dt. 30-06-2002 | 5,00,000/-                |
| 21.  | 2022 of 2015 | 708759 dt. 30-06-2002 | 5,00,000/-                |
| 22.  | 2023 of 2015 | 072511 dt. 23-12-2002 | 6,00,000/-                |

All the above said cheques were dishonoured on presentation due to 'insufficient funds'. Regarding 22 cheques, 22 different criminal complaints under Section 138 of Negotiable Instruments Act, 1881 were filed by The Punjab Agro Industries Corporation Limited – complainant, in which, learned Judicial Magistrate First Class, Kapurthala, held the petitioner

guilty and sentenced him to undergo Rigorous Imprisonment for 1 ½ years and fine of Rs.5,000/-, in default of payment of fine to further undergo Rigorous Imprisonment for two months in each of the complaints vide judgment of conviction and order of sentence dated 8.10.2013. However, in appeal learned Additional Sessions Judge, Kapurthala vide judgment dated 16.5.2015 reduced the substantive sentence from Rigorous Imprisonment for 1 ½ years each to Rigorous Imprisonment for one year each, while remaining part of the sentence was maintained. Application of the petitioner filed under Section 427 IPC for concurrent running of sentence was also dismissed. With the result that he is to undergo consecutive sentence in all 22 cases which will come to the total sentence for 22 years.

After hearing learned counsel for the parties and carefully perusing the case file and lower Court file I am of the view that it was one financial transaction. The paddy was given for milling to the firm M/s Kapurthala Rice Mills in which Sudesh Kumar was one of the partner along with two other partners. Some shortage was found, for which, 22 different cheques along with partial interest, were issued.

Perusal of the aforesaid detail shows that 17 cheques were issued on 30.6.2002 for different amounts and other cheques were issued in the month of December 2002 on different dates. Complainant split up the case regarding each cheque and filed separate complaints for each cheque.

I am of the view that since, it was one financial transaction, for which, different cheques were issued and the complainant has chosen to file separate complaints for each cheque, therefore, it being one financial transaction, the sentence in all the 22 complaints are hereby directed to run concurrently. In this regard, I am supported by Apex Court authority passed

in the case of Shyam Pal vs. Dayawati Besoya and another, 2016(4) R.C.R. (Criminal) 790.

Learned counsel for the petitioner has also prayed for showing leniency in the sentence. It is stated that for paddy milling, a separate arbitration agreement was also executed. Arbitration clause has been invoked by the complainant company. It is further argued that there were three partners, one partner has died and other was a lady. Share of the petitioner comes to 33.34 percent. During the pendency of the petitions, the petitioner has handed over two demand drafts for Rs.21 lakhs each totaling Rs.42 lakhs being 33.34% share of his cheque amount to learned counsel for the complainant as reflected in order dated 3.8.2015 passed by this Court. Therefore, merely because he has signed the cheques on behalf of the firm for all the partners, he cannot be penalized for non-payment of the share of other partners. Learned counsel for the petitioner has further stated that the petitioner is now 71 years of age. He has also referred to the documents placed on file to show that he is suffering from Triple Vessel Disease. He is diabetic and is in bad shape. It is further stated that he has already undergone coronary bypass surgery, which was done on 18.12.2014, as per discharge certificate summary (Annexure P3), issued by the Fortis Escorts Hospital, Amritsar.

Therefore, a prayer has been made that in view of the fact that he has already paid Rs.42 lakhs of his share and keeping in view his advanced age and failing health and the fact that the complainant has already invoked the arbitration agreement to recover the balance amount from the assets of the firm, a lenient view should be taken and the petitioner should be sentenced to period already undergone by him.

The request has been vehemently opposed by learned counsel for the complainant.

After considering the contention of learned counsel for the petitioner and the fact that the petitioner is a diabetic, suffering from Triple vessel Disease and has undergone heart bypass surgery and also considering the fact that he has paid his share of Rs.42 lakhs and the fact that arbitration case is already pending for recovery of the amount on account of shortage of milled paddy, the sentence awarded by the Courts below is reduced to the period already undergone by him. However, fine in each case is enhanced from Rs.5,000/- to Rs.15,000/- each payable to the complainant.

Bail bonds and surety bonds stands discharged.

All the petitions are partly allowed to the above noted extent.

Photocopy of this order be placed on the connected case files.

**28.11.2017**

*gk*

**(Kuldip Singh)**  
**Judge**

|                             |     |
|-----------------------------|-----|
| Whether speaking/ reasoned: | Yes |
| Whether Reportable:         | No  |