

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-2878-2015 (O&M)

Date of decision: 08.02.2018

Harish Kumar

... Petitioner

Vs.

State of Punjab and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Atinder Pal Singh Jaurkian, AAG, Punjab.

Mr. Ankur Jain, Advocate for
Mr. C.S. Bakshi, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J. (ORAL)

Prayer in this petition is for quashing of FIR No.86 dated 22.08.2014 under Section 406 of the Indian Penal Code (for short 'IPC'), registered at Police Station Budhlada, District Mansa and the subsequent proceedings arising therefrom.

Learned counsel for the petitioner submits that the FIR was got registered by Inspector Raj Mittal, PUNGRAIN, Budhlada with the allegations that the petitioner being the proprietor of M/s Friends Rice Mill, Budhlada was allotted the job of rice milling in the year 2013-14. At the time of physical verification, it was found that about 2495 bags (873.25 qtls) of paddy were short in the premises of the rice mill, value of which is about Rs.11.75 lacs. Counsel for the petitioner further submits that subsequently, the petitioner has

cleared the outstanding paddy after rice milling to the PUNGRAIN, as the period for this purpose was extended upto September 2014 and subsequent to registration of the FIR, the entire outstanding milled rice towards the petitioner has already been cleared. It is thus submitted that FIR has been registered in a haste without waiting the expiry of period, during which the petitioner was authorized to retain the custom milled rice and hand over the same to PUNGRAIN. It is further submitted that the sole basis of registration of FIR was a physical verification report.

Reply by way of affidavit of District Manager, PUNGRAIN, Mansa on behalf of respondents No.1 & 2 has already been filed and in para 4 of the preliminary submissions, it is stated that the last date of milling was 30.06.2013 as per the agreement and since the miller was still to deposit 213.46 qtls of rice, the last date for receipt of rice was extended by FCI upto September 2014 and the remaining rice was delivered by the concerned miller. In para 3 of this reply on merits, it is stated as under: -

“That the contents of this para of application are admitted to the extent that the petitioner has deposited the entire amount of paddy after milling. But it is relevant to clarify that even upto last date of milling i.e. 30.06.2013 as per the agreement between the miller and the agency, the miller was still to deposit the 213.46 qtls of rice. But subsequently last date for the receipt of rice was extended by the FCI so only in September 2014 the remaining rice was deposited by the concerned miller. Rest of the contents of this para are denied as wrong as in the month of January 2014, 13623 bags of paddy were still standing balance against the miller that should be lying stored in the premises of mill. But it is important to

mention here that there were only 10908 bags of paddy available at the time of physical verification conducted on 03.02.2014 and shortage of 2715 bags of paddy at that time was there and that was dishonestly misappropriated. The report of physical verification conducted on 03.02.2014 is annexed as Annexure R-5.”

It is admitted by respondents No.1 & 2 that upto the extended period i.e. September 2014, the petitioner has cleared the entire outstanding milled rice to the respondents.

Separate reply by way of affidavit of SI/SHO, Police Station Budhlada, District Mansa has been filed and in para 3 of this reply, it is stated as under: -

“That it is worth to mention that after receipt of the copy of this petition, a request was made to the District Manager, PUNGRAIN, Mansa to know the current status. The District Manager, vide its letter No.A-2-2017/7565 dated 12.12.2017 mentioned that the petitioner has deposited the entire provisional milling bill amount of paddy after milling by adjusting Rs.57800/- from levy security on 12.11.2014. The copy of the letter is Annexure R-1.”

In view of the letter dated 12.12.2017 issued by District Manager, PUNGRAIN, Mansa to the Investigating Officer, it is clarified that the petitioner has deposited the entire provisional milling bill amount of the paddy by adjusting Rs.57800/-.

Learned counsel for respondent No.2, on instructions from Inspector Raj Mittal, PUNGRAIN, Mansa as well learned State counsel, on instructions from HC Jagdev Singh, have not disputed the factual position and

submitted that they have no objection in case the present FIR is quashed.

The Apex Court in the case of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) Supreme Court Cases 335**, has held that where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence against the accused, the extraordinary power under Article 226 or the inherent powers under Section 482 Cr.P.C. can be exercised by the High Court either to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

In view of the fact that the petitioner has cleared all the outstanding paddy/its cost during the extended period granted by FCI i.e. upto September 2014, the FIR, which has been registered prior thereto during subsistence of the agreement between the petitioner and PUNGRAIN, was a premature action of the respondents and therefore, this petition is allowed and FIR No.86 dated 22.08.2014 under Section 406 IPC, registered at Police Station Budhlada, District Mansa and all the subsequent proceedings arising therefrom are hereby quashed qua the petitioner.

[ARVIND SINGH SANGWAN]
JUDGE

08.02.2018

vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No