

In the High Court of Punjab & Haryana at Chandigarh.

CRM-M-3642-2012 (O&M)

Date of decision: 21.03.2018

Parvinder Singh

..... Petitioner.

vs.

State of Haryana and another

..... Respondents.

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr.Harkesh Manuja, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

ARVIND SINGH SANGWAN,J.(ORAL)

Prayer in this petition is for quashing of FIR No.513 dated 25.11.2010 under Sections 406 and 420 of Indian Penal Code (for short 'IPC') and Sections 7-10-55 of Essential Commodities Act (for short 'E.C.Act'), registered at Police Station Samalkha alongwith all other consequential proceedings arising therefrom.

Brief facts of the case are that the impugned FIR (Annexure P1) was got registered at the instance of one D.K.Singla, District Manager, Confed, Panipat with the allegations that the petitioner was appointed as a Transport Contractor (IPDS). On 24.10.2010, Anil Kumar Bishnoi, Storekeeper/In-charge APL Wheat Samalkha intimated that on 23.10.2010, 1689.23 quintals of wheat was sent to the depot holder under Freight on Road (F.O.R.) delivery through the petitioner, who was a Transport Contractor, but he did not deliver 569.15 quintals of wheat to the depot holder and rather unloaded the same at his godown, situated at New Mandi,

Samalkha. As per the instructions of the Government, the wheat was to be transported from Bapoli Warehouse directly to the depot holders, but the petitioner in order to misappropriate the same, unloaded the same in his godown and, therefore, it was requested to register the FIR.

On registration of the FIR, investigation was carried on and later on, the report under Section 173 Cr.P.C. was submitted before the trial Court. The trial Court has framed the charges under Sections 406 and 420 of IPC and Section 07-10-55 of the E.C. Act and the case was fixed for prosecution evidence.

Counsel for the petitioner has submitted that on the face of it, the FIR does not make out any offence punishable under Sections 406 or 420 IPC or under Section 7 of the E.C. Act and, therefore, the same is liable to be quashed on the following grounds:

(a) that a show cause notice was issued to the petitioner by the Haryana State Federation of CONFED on 25.11.2010 (Annexure P10) in which it was stated that Anil Kumar Bishnoi, Storekeeper, informed the Headquarter that the petitioner while transporting the wheat to the depot holder, unloaded 569.15 quintals of wheat in his godown at New Grain Market, Samalkha and thus violated the rules which provided that the wheat, after loading from the godown should be unloaded directly at the work place of the depot holder. Learned counsel for the petitioner submitted that it is clear from the show cause notice that APL was prepared on 16.11.2010 for 1880 quintals from Panipat, and 3250 quintals from Haryana Warehousing Corporation (HWC), Bapoli, and the same was valid till 23.11.2010, and the petitioner was granted 8 days' time to lift 5130 quintals wheat and supply to the depot holder, therefore, the explanation

was called from the petitioner for violating the guide lines of the Government before registration of FIR.

(b) in reply to the show cause notice, the petitioner has explained that since he was to complete the transportation work within specified time, the petitioner lifted the wheat on 23.11.2010 at 7.30 P.M. from Bapoli and since it was night time, on asking the depot holder, the petitioner was informed that the same be unloaded at the godowns in the Grain Market, Samalkha, because in the villages, due to low height of the electricity wires, open drain etc., the villagers will raise an objection if the truck enters into the village at night time. Therefore, he unloaded the goods from the truck in the same manner as it was uploaded from HWC, Bapoli and on the very next day i.e. 24.11.2010, he had supplied the same to the depot holder, who had raised no objection and never filed any complaint.

(c) a perusal of the show cause notice and reply given by the petitioner shows that the same was accepted by the CONFED and at no point of time any depot holder has raised an objection regarding the delay or shortage or quality in delivery of wheat.

(d) that it is not the case of the prosecution that the petitioner has either substituted the wheat lifted by the petitioner from HWC, Bapoli or has not delivered the same to the depot holder with less weight. Therefore, in the absence of any allegation in the FIR that the petitioner has either substituted the wheat with some other variety of wheat or has supplied less quantity of wheat, neither the offence under Section 406 nor the offence under Section 420 is made out.

(e) that pursuant to the show cause notice and reply given by the petitioner, no departmental action was taken against him. He further

submits that the stand taken in the reply dated 17.07.2012 is that when SDM visited the godown of the petitioner, he had directed the District Manager, D.K.Singla as well as Storekeeper/in-charge Anil Kumar Bishnoi to seal the godown. However, both these officials, in conspiracy with the petitioner directed him to immediately supply the wheat to the depot holder. But, surprisingly, no action was taken against the said two officials of CONFED, despite the fact that it is alleged that they were hand in glove with the petitioner. Thus, the story projected against the petitioner is totally false.

(f) that the only allegation against the petitioner in FIR is that since the petitioner has unloaded the wheat bag at his godown during night time and delivered the same to the depot holder on the next day i.e. 24.11.2010, he has committed the offence of embezzlement which is not proved on the face of it.

(g) that despite the fact that a show cause notice was issued to the petitioner and reply was submitted, but without waiting the outcome of the said show cause notice, the FIR has been registered in a haste, just to falsely implicate the petitioner. He further submits that the FIR has been registered with the allegation that the petitioner has not followed the guidelines of the Government that as and when the wheat is lifted from the godown, the same be delivered to the depot holder on the same day and, therefore, for mere violation of the guidelines, no offence under Sections 406 or 420 can be made out especially in view of the fact that in pursuance to the show cause notice issued by the CONFED, no penal action was taken and the FIR has, in fact, been registered at the behest of the SDM.

(h) that the depot holders to whom the wheat was assigned

have not filed any complaint against the petitioners about the quality or quantity of the wheat and, therefore, it is not the case of the prosecution that the petitioner has either substituted the wheat or supplied less quantity of wheat.

(i) that even subsequently when the petitioner has sought the information under the R.T.I. Act on 06.08.2011 from Anil Kumar Bishnoi Storekeeper, regarding lifting of wheat, it was informed that total 5130 quintals APL wheat was lifted and was distributed to the depot holder and thus the complainant has certified in the information (Annexure P12) that there is no shortage of wheat, therefore, the offence under Sections 406 and 420 is not made out.

(j) that it is own case of prosecution that the petitioner, on the direction of the District Manager/Storekeeper has delivered the wheat at the work place of the depot holder and, therefore, no offence is made out.

(k) that in the reply filed by DSP, Samalkha dated 17.07.2012, it is stated when SDM, Samalkha visited the godown of the petitioner at 2:00 P.M. on 23.11.2010 and found the wheat bag lying in the godown of the petitioner but later on, the petitioner succeeded in supplying the said wheat to the depot holder in connivance with D.K.Singla, District Manager, Confed and Anil Kumar Bishnoi, Storekeeper, Confed. It is further stated in Para No. 11 of this affidavit that SDM, after visiting the go-down of the petitioner, directed the District Manager and Storekeeper to seal the godown and take legal action against the petitioner but the said official instead of sealing the go-down, in compliance of the directions given by the SDM, Samalkha, instructed the petitioner to supply/deliver the wheat to the depot holder and, therefore, the petitioner while following instructions has

not committed any offence.

(l) that in a similar reply dated 17.09.2014 filed by way of affidavit of Deputy Superintendent of Police, Samalkha on behalf of respondent No.1-State, except for pleadings the violation of the guidelines nothing is stated how the offence under Sections 406 and 420 IPC is made out.

(m) that even in the reply filed by way of affidavit dated 24.09.2014 of D.K.Singla, General Manager, CONFED (since retired), it is nowhere stated that the petitioner has either misappropriated the wheat or has committed any cheating with the department.

(n) that the prosecution of the petitioner jointly under Sections 406 and 420 of IPC with Section 7 of the E.C. Act is not maintainable as Sections 420 and 406 IPC cannot be tried in a summary manner under Section 260 Cr.P.C. whereas offence under Section 7 of the E.C.Act is to be tried by a Special Court. Counsel for the petitioner has relied upon **2003 (1) RCR (Criminal) 788 titled as S.C.Sharma and another vs. State of Haryana and others** and **2006 (1) RCR (Criminal) 9 titled as M/s Bansal & Deol Fertilizer and another vs. State of Punjab.**

In reply, learned State counsel on the basis of affidavits filed by DSP, Samalkha and on instructions from the Investigating Officer has submitted that charges have already been framed and the case is now fixed for prosecution evidence, therefore, this petition is not maintainable.

It is further submitted that the petitioner has intentionally and deliberately unloaded the wheat bag at his godown instead of directly delivering the same to the depot holder and has, thus, violated the guidelines of the Government and has committed the offence under

Sections 406 and 420 IPC.

It is worth noticing here that this petition was filed in 2012 and the proceedings were stayed on 18.11.2014 after effecting service upon the respondents and on 27.04.2015, two questions were framed with a direction to the State counsel to apprise the Court which are as under:-

(i) Whether delivery of wheat to the depot holders forms part of terms and conditions of contract between the transport contractor and the department?

(ii) Whether there exists any complaint in respect of supply of some inferior quantity of wheat by the depot holders?

In reply to the said query, the State counsel has submitted that the delivery of wheat to the depot holders forms part of terms and conditions of the contract between the transport contractor with the petitioner and the department i.e. CONFED and in reply to the second query whether there exists any complaint in respect of supply of some inferior quality of wheat by the depot holder, the learned State counsel, on the basis of two replies filed by way of affidavit of DSP, Samalkha and on instructions from the Investigating Officer has submitted that no such complaint has been received by the depot holder.

After hearing counsel for the parties, I find merit in the present petition for the following reasons:-

(a) perusal of the show cause notice issued to the petitioner shows that the Storekeeper gave information to his Head Office that the petitioner has violated the administrative instructions which provide that the Contractor appointed at CONFED, after loading the wheat from his godown, should unload the same directly at the work place of the depot holders and the petitioner has violated these guidelines/rules, as he

delivered the same on the next day and in the intervening night, he has unloaded the same at his godown. The petitioner, in reply to the show cause notice, has explained that he had to complete the transportation work upto 25.11.2010 and he loaded the wheat on 23.11.2010 at 7:00 P.M. Since it was night time and the work place of the depot holders was in the villages, they have directed the petitioner not to deliver the same at night as the villagers raised objection due to low height of electricity wires and open drains etc. It is further stated in the reply that on the very next day, the petitioner has delivered the wheat to the depot holders. During the entire investigation, no depot holder lodged any complaint that either the wheat was substituted or inferior quality of wheat was supplied or less weight of supply was made by the petitioner. Therefore, in the absence of any complaint by any of the depot holders regarding quantity or quality of the wheat, mere violation of the instructions to unload the wheat on the same day, does not constitute any offence under Sections 406 and 420 IPC.

(b) the show cause notice as well as the FIR registered simultaneously shows that sufficient time was not granted to the petitioner to explain his version and without deciding the action to be taken in pursuance to the show cause notice, the FIR was registered. Therefore, the registration of the FIR, was made in a haste. Perusal of FIR further shows that the SDM on visiting the godown of the petitioner, had directed the District Manager as well as Storekeeper to seal the godown. It is further alleged in the FIR that these two employees instead of sealing the godown, directed the petitioner to immediately deliver the wheat to the depot holders. Therefore, the petitioner, while acting on the instructions of aforesaid two officials, has even otherwise followed their guidelines.

Needless to say that against none of these two employees to whom the SDM alleges that they have conspired with the petitioner, thereby issuing of a direction to supply the wheat immediately to the depot holders, no legal action was taken. Therefore, the version given in the FIR does not constitute any offence on the face of it.

(c) a bare perusal of the FIR further shows that neither the offence of embezzlement nor cheating is made out specially in view of the fact that during investigation it could not be proved that the petitioner has either usurp, mis-utilized or embezzled the wheat which he lifted from the godown and rather it is own case of the prosecution that the same was delivered to the depot holders on the next day. As observed earlier, no depot holder has made any complaint about the poor quality or less quantity of the wheat.

(d) a perusal of the reply filed by DSP admits that the petitioner had supplied the wheat to the depot holders on the next day though it is alleged that it was done in connivance with the District Manager and Storekeeper against whom no action was taken. In the subsequent reply filed by the DSP, in response to the two queries put up by this Court on 27.04.2015, nothing is stated about the non-delivery of wheat as per the terms and conditions of contract and, therefore, no reasoning is given by the DSP as to how the offences under Sections 406 and 420 IPC are made out. However, it is admitted by the Investigating Officer, present in the Court, that no complaint from any depot holder was ever received.

(e) Even in the separate reply filed by D.K.Singla, General Manager, CONFED, it is nowhere stated that the petitioner has either misappropriated the wheat or has committed any cheating with the

department.

(f) In the judgment of this Court in S.C.Sharma' case (supra), it is held that:-

9. *Under Section 260 Criminal Procedure Code, 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 Criminal Procedure Code, which could also be tried in a summary manner. So far as the offence under Section 161 Indian Penal Code is concerned, it is punishable with imprisonment for three years, whereas the offence under Section 420 Indian Penal Code is punishable with imprisonment for 7 years. However, the offence under Section 427 Indian Penal Code is punishable with imprisonment for two years. Thus, neither the offence under Section 161 Indian Penal Code nor the offence under Section 420 Indian Penal Code could be tried in a summary manner, whereas the offence under Section 427 Indian Penal Code could be tried in a summary manner. Offences under Sections 34 and 149 Indian Penal Code are not substantive offences. With regard to the offence under Section 120-B Indian Penal Code, 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 Indian Penal Code 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 Indian Penal Code, 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 Indian Penal Code. 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 Indian Penal Code 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.”

Therefore, the prosecution of the petitioner under Sections 406 and 420 IPC with Section 7 of the E.C.Act is not maintainable.

(g) As per the judgment of Hon'ble Supreme Court titled as **State of Haryana and others vs. Ch. Bhajan Lal and others, 1991 (1) RCR (Criminal) 383**, it is held as under:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of

the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*
- (3) 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 and make out a case against the accused.*
- (4) Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*
- (5) Where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act*

(under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The present case squarely falls within the parameters laid down by Hon'ble Supreme Court as from the bare reading of FIR, no offence under Sections 406 and 420 IPC is made out.

In view of the same, the present petition is allowed.

FIR No.513 dated 25.11.2010 under Sections 406 and 420 of Indian Penal Code (for short 'IPC') and Sections 7-10-55 of Essential Commodities Act (for short 'E.C.Act'), registered at Police Station Samalkha alongwith all other consequential proceedings arising therefrom are, hereby, quashed.

21.03.2018.
smriti

(ARVIND SINGH SANGWAN)
JUDGE

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