

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

CRM-M-39631-2018 (O&M)
Date of decision: 29.11.2018

Anil Kumar

..Petitioner(s)

VERSUS

State of Haryana

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJ SHEKHAR ATTRI

Present: Mr. Piyush Kant Jain, Advocate.
for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

RAJ SHEKHAR ATTRI, J.(Oral)

The present petition has been filed under Section 438 Code of Criminal Procedure for grant of anticipatory bail to the petitioner in case FIR No.236 dated 25.6.2018 registered for the offences punishable under Sections 406 and 420 of Indian Penal Code, at Police Station Naraingarh, District Ambala.

Briefly stated, it is the case of the prosecution that the FIR was registered on the application of District Manager, Haryana Agro Industries Corporation (in short, "Corporation") on the allegations that the agreement (Annexure P-4) was executed between the Corporation and the accused on 31.10.2013 and in pursuance thereof, the Corporation had handed over 4328.56 metric ton paddy to M/s Sandeep Rice Mill, Village Bakhtua, Tehsil Naraingarh, District Ambala. The receipt was duly issued by said Rice Mill. As per agreement, said Rice Miller has to supply 2900 metric ton custom milled rice on behalf of the Corporation to Food Corporation of

custom milled rice (CMR). Hence, it failed to deliver 795.37 metric ton of CMR to Food Corporation of India. Thus, the said rice miller had caused a total loss of ₹ 4,29,83,951/-. Thus, the partners/owners of the said rice miller violated the terms and conditions of the agreement.

I have heard the learned counsel for the parties and gone through the record.

It has been argued that the matter is purely of civil nature and even there was an arbitration clause and further that the arbitration award has been passed and, therefore, the criminal proceedings should not be continued.

On the other hand, learned State counsel has argued that the petitioner has caused huge loss of more than ₹ 4,29,83,951/- and he failed to return the entrusted paddy as well as custom milled rice as per his undertaking by way of agreement executed between the parties.

This Court has given its thoughtful consideration to the rival contentions of the parties and gone through the material available on record.

The matter is not purely of civil nature because 4328.56 metric ton paddy was entrusted to M/s Sandeep Rice Mill and the petitioner is the partner/owner thereof. The petitioner undertook to return 2900 metric ton custom milled rice. Thus, both paddy or custom milled rice, as agreed between the parties was an entrustment. The petitioner has converted the entrusted paddy for his own use.

It has been observed by Hon'ble Supreme Court in **Ravindra**

Kumar Madhanlal Goenka and another v. M/s Rugmini Ram Raghav

“12. This Court in the case of *Indian Oil Corpn. v. NEPC India Ltd.*, 2006(3) RCR(Criminal) 740 : 2006(2) Apex Criminal 637 : [2006(6) SCC 736], at page 747 has observed as under :

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few - *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, 1988(1) RCR(Criminal) 565 , *State of Haryana v. Bhajan Lal* (supra), *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* (supra), *Central Bureau of Investigation v. Duncans Agro Industries Ltd.* 1996(3) RCR(Criminal) 60 : 1996 AIR 2452 (SC), *State of Bihar v. Rajendra Agrawalla*, 1996(1) RCR (Criminal) 530 : 1996(8) SCC 164, *Rajesh Bajaj v. State NCT of Delhi*, 1999(2) RCR(Criminal) 160 : 1999(3) SCC 259, *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.*, 2000(2) RCR(Criminal) 122 : 2000(3) SCC 269, *Hridaya Ranjan Prasad Verma v. State of Bihar*, 2000(2) RCR (Criminal) 484 : 2000(4) SCC 168, *M. Krishnan v. Vijay Singh*, 2001(4) RCR(Criminal) 405 : 2001(8) SCC 645 and *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque*, 2004(4) RCR(Criminal) 937 : 2005(1) Apex Criminal 74 : 2005(1) SCC 122. The principles, relevant to our purpose are: (i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or

genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence. (v)

A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

"13. The appellant has placed reliance on a decision of this Court in the case of *Uma Shankar Gopalika v. State of Bihar [2005(10) SCC 336]*, at page 338, wherein this Court has observed as follows :

"7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120B Indian Penal Code and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Criminal Procedure Code which it has erroneously refused."

It has been further observed by Hon'ble Supreme Court in **State of Punjab v. Pritam Chand and others**; 2009 (3) RCR (Criminal) 376 as under : -

"4. Section 406 Indian Penal Code deals with punishment for criminal breach of trust. In a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or used or disposed of the property or willfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to carrying out of the trust.

5. Criminal breach of trust is defined in Section 405 Indian Penal Code. The ingredients of offence under Section 405 are (i) entrusting any person with property or with dominion over the property, (ii) the person entrusted (a) dishonestly misappropriated or converted to his own use the property or (b) dishonestly used or disposed of the property or willfully suffered any other person so to do in violation (i) of any direction of law prescribing mode in which such mode is to be

discharged or (ii) of any legal contract made touching the discharge of trust.

6. In *Rajesh Bajaj v. State NCT of Delhi, 1999(2) RCR (Criminal) 160 : (1999(3) SCC 259)* it was held as follows :

"10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions. One of the illustrations set out under Section 415 of the Indian Penal Code [Illustration f] is worthy of notice now :

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats."

In this view of the matter, the petitioner is also criminally liable. State wants to recover the paddy or custom milled rice.

In view of the above, custodial interrogation of the petitioner is necessary and he is not entitled to the concession of pre-arrest bail.

Dismissed.

However, nothing expressed above shall affect the merits of the case.

November 29, 2018
Paritosh Kumar

(RAJ SHEKHAR ATTRI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No