

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

220

CRR-2424-2014

Date of Decision: April 17, 2018

Nitya Dutt @ Nathi

.....Petitioner(s)

versus

State of Haryana

.....Respondent(s)

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present: Mr. Gopal Sharma, Advocate
for the petitioner.

Mr. Munish Sharma, AAG, Haryana.

Sudhir Mittal, J. (Oral)

The petitioner before this Court is Nitya Dutt @ Nathi son of Risala, resident of Village Pega, P.S. Alewa, District Jind. He is the proprietor of the firm M/s Bala Ji Maharaj Trading Company, which works as a Commission Agent in Cheeka Mandi.

2. As per the case of the prosecution, a complaint dated 20.04.2016 was received in the Police Station from the office of Co-operative Marketing Cum Processing Society Ltd., (hereinafter referred to as Co-operative Society) Cheeka, in which, it was stated that the complainant-Mukhtiar Singh was working as Assistant Accountant in the office of the Co-operative Society. On 18.04.2016 at about 04:30 P.M. , he received an order from the office of the Manager of Co-operative Society, to lodge FIR against M/s Bala Ji Maharaj Trading Company. Vide letter dated

27.03.2016, HAFED, had appointed Ganga Parshad, Manager to purchase wheat. Vide office letter dated 28.03.2016, Gurmail Singh, Assistant Manager, was appointed to record the proceedings of auction and accounts of the Commission Agents. On 08.04.2006, Ganga Parshad purchased about 940 quintals. wheat from M/s Bala Ji Maharaj Trading Company. This transaction was entered in the auction register by Gurmail Singh. The agency submitted Form-1 in respect of 2445 bags of wheat, valued at Rs.8,51,774.42. Similarly on 09.04.2016, about 830 quintals of wheat valued at Rs.6,82,813.04, was purchased. On 14.04.2006, Manager of HAFED/Co-operative Marketing Cum Processing Society Limited went to the agent i.e. M/s Bala Ji Maharaj Trading Company to load the wheat into truck but no wheat was found. Nothing has been supplied to the Co-operative society till date. On 12.04.2006, the Co-operative Society deposited the market fee and cess worth Rs.31,785/-. Moreover, the Commission Agent namely M/s Bala Ji Maharaj Trading Company did not return 1000 bags given to it for supply of wheat. Thus, FIR under section 406, 420 IPC was registered at Police Station Cheeka. Vide judgment dated 14.03.2011, the S.D.J.M. Guhla, convicted the petitioner under Section 406, 420 IPC and vide order of sentence dated 15.03.2011, sentenced him to undergo RI for a period of six months under section 406 IPC and RI for a period of six months and to pay fine of Rs. 5000/-, in default of which to further undergo SI for one month under section 420 IPC. The appeal of the petitioner was rejected vide the judgment dated 24.07.2014 by the Additional Sessions Judge, Kaithal. Hence the revision petition.

3. The revision petition was admitted and sentence of the petitioner was suspended during its pendency. In the interregnum, the petitioner remained in judicial custody for one month and six days.

4. Learned counsel for the petitioner has drawn attention of the Court to the document Ex.P3, wherein it is recorded that 1000 empty gunny bags were entrusted to the petitioner by the Co-operative Society. Reference has also been made to the recovery memo Ex.PW 6/C, wherein it is recorded that the petitioner delivered 1000 empty gunny bags to the investigating agency. Based on this fact, it is submitted that once the empty gunny bags were returned, there was no mis-appropriation involved and therefore, the conviction under section 406 IPC is illegal. It is further submitted that as per the case of the prosecution, the Co-operative Society approached the petitioner itself for purchase of wheat. There is no evidence regarding any active role played by the petitioner to induce the co-operative society to purchase the wheat from his agency. Moreover, there is not even an allegation that the Co-operative Society paid any money to the petitioner for the purchase of wheat. The market fee and cess was paid to the Market Committee and not to the petitioner and thus, it cannot be said that the petitioner induced the Co-operative society to part with property resulting in loss to it and wrongful gain to the petitioner. Thus, according to learned counsel for the petitioner, the ingredients of Section 420 IPC, also do not exist in this case.

5. Learned State counsel has countered the arguments of learned counsel for the petitioner by submitting that the petitioner represented to the co-operative society for purchasing wheat from him. As a result, the co-operative society entrusted empty gunny bags to him and also paid market fee and cess. Thus, both sections 406 and 420 IPC are attracted and the Courts below rightly convicted the petitioner.

6. Having heard learned counsel for the parties and having perused the record, I am of the opinion that the petition deserves to be allowed. The evidence of prosecution itself shows that the petitioner had returned the empty gunny bags. Thus,

entrustment if any, came to an end. Once there was no entrustment, there was no possibility of any mis-appropriation and thus the conviction under section 406 IPC is not sustainable. Further, there is no evidence on record to suggest that the petitioner induced the complainant/co-operative society to purchase wheat from him or from his agency. None of the prosecution witnesses has stated that the petitioner approached the co-operative society for purchase of wheat. It is not even the case of the prosecution that the petitioner was instrumental in initiating the deal. Further, it is also not the case of the prosecution that any money was paid to the petitioner pursuant to the purchase of wheat by the Co-operative Society. Under these circumstances, it is difficult to hold that all the ingredients of section 420 IPC have been established or prove on record.

7. For the aforementioned reasons, the instant revision petition is allowed; the judgment of conviction dated 14.03.2011 and order of sentence dated 15.03.2011, passed by the Sub-Divisional Magistrate, Guhla and the judgment dated 24.07.2014, whereby appeal of the petitioner was dismissed by the Additional Sessions Judge, Kaithal, are set aside and the petitioner is ordered to be acquitted of the charge under sections 406 and 420 of the Indian Penal Code, 1860.

April 17, 2018

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No