

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

CRR-1988-2013 (O&M)
Date of Decision: 07.02.2020

Punjab State Warehousing Corporation, Chandigarh

.....Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: Hon'ble Mr. Justice Harnaresh Singh Gill

Present: Mr. Kulbhushan Raheja, Advocate,
for the petitioner

Mr. Kirat Singh Sidhu, DAG, Punjab.

Mr. Arun Kumar Bakshi, Advocate,
for respondent No.2.

Harnaresh Singh Gill, J.

The Present petition has been filed by complainant-Punjab State Warehousing Corporation, Chandigarh, against the judgments passed by the Courts below, whereby the accused-respondents were acquitted of the charges framed against them.

Accused-respondent Nos. 2 to 4 were tried for the offences under Sections 406, 409, 420, 120-B IPC with the allegations that they were entrusted with 11087 bags of paddy weighing 6567.94 quintals for milling by the complainant-Punjab State Warehousing Corporation, but

they did not deliver the requisite bags and misappropriated 2418 bags weighing 1378.26 quintals in the year 1997-98 and 11519 bags of paddy weighing 7487.35 quintals for their own use in the year 1998-99 and thus, had cheated the complainant.

During the trial, accused-respondent No.3 Bhupesh Kumar was declared as a proclaimed offender.

Learned trial Court, on the basis of the evidence led, arrived at a conclusion that there was no evidence on record to show that any shortage was found on the physical verification of the paddy bags; that none of the witnesses stated that the physical verification had been done in their presence; that the verification report Ex.PW5/D prepared by Surjit Singh was denied by the witness(es), having been signed in his presence, nor the record relating to the preparation of such report was produced; that the entrustment was not proved nor was proved the factum of the stock being short and that even the Investigating Officer himself did not conduct the physical verification of the stocks. Thus, while finding that the ingredients of Section 405 IPC i.e. entrustment, demand, refusal and misappropriation, were not proved on record, it was held that the prosecution had failed to prove its case beyond the shadow of reasonable doubt and accordingly, the accused-respondents were acquitted of the charges framed against

them vide judgment dated 23.09.2010 passed by the learned Judicial Magistrate, Ist Class, Fatehgarh Sahib.

In the appeal against the said judgment, the learned Sessions Judge, Fatehgarh Sahib, upheld the judgment of acquittal. It was held that though the entrustment of the paddy which would be in truck-loads may not have been in the physical presence of the witnesses, yet the prosecution did not place on record any document showing acknowledgement on the part of the respondent of their having received the paddy in question. It was held as under:-

“16. Though it can well be said that entrustment of paddy which would be truck-loads may not have been in the physical presence of aforesaid witnesses, but the prosecution could have at least produced on record some document showing acknowledgement on part of the accused of their having received the paddy in question. However, no such document is forthcoming. Though learned Public Prosecutor drew the attention of this Court to the agreement which had been entered into between PSWC and the firm of the accused i.e. PW-5/A, but the agreement does not show handing over of paddy to the accused. In fact, the handing over would have taken place after the agreement had been entered into. Not even a single document on record shows any receipt or acknowledgement on part of the accused or their firm regarding entrustment of the paddy to the accused. In the absence of any such evidence, no such offence under Section 406 IPC can be said to be made out. Similarly, the alternative charge in respect of offence under Section 420 IPC would also fail as the

prosecution has failed to establish the delivery of paddy to the accused.”

Admittedly, the complainant did not file any appeal before the learned Sessions Judge. Further, it is not disputed that the State did not file any revision against the judgment of acquittal.

Along with the revision petition, the petitioner has filed CRM-30129-2013 seeking permission to file the revision. Besides, CRM-30127-2013 has also been filed seeking condonation of 299 days’ delay in filing the revision petition.

I have heard learned counsel for the parties and have also gone through the record of the trial Court, with their able assistance.

Learned counsel appearing for the petitioner contends that both the Courts below erred in law in utterly ignoring the fact that in the instant case, the respondents had misappropriated huge number of paddy bags, which fact was duly established from the testimony of the witnesses examined by the prosecution. It is further contended that as the FIR in this case was registered on the basis of secret information, it was incumbent upon the Courts below to appreciate the evidence in the right perspective.

However, I do not find any merit in the said argument. As noticed above, both the Courts have recorded

their findings based on the evidence on record. It could not be pointed out that there was any misreading of evidence. Even in the cases, where the FIR is registered on the basis of secret information, the investigating agency has to collect the evidence so as to bring home the guilt of the accused, which has not been done in the case in hand. Thus, no fault could be found with the findings recorded by the Courts below.

Apart from that there is delay of 299 days in filing the present revision petition. The only ground taken in the application seeking condonation of delay is that the counsel for the petitioner did not inform it about the disposal of the appeal. However, the facts remain that there was no appeal filed by the complainant before the appellate Court. Rather, it was the State of Punjab, which had filed the appeal. Thus, no case is made out to condone the delay.

In view of the above, the present revision petition is dismissed on merit as also being barred by limitation.

07.02.2020
ds

(Harnaresh Singh Gill)
Judge

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No