In the High Court for the States of Punjab and Haryana
At Chandigarh

CRM-M-21169-2021 (O&M)
Date of Decision:-18.11.2021

M/s Gaurav Galla Bhandar … Petitioner

Versus

State of Haryana ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. Arun Gupta, Advocate,
for the petitioner.

Mr. Rajiv Sidhu, DAG, Haryana.

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GURVINDER SINGH GILL, J.(Oral)

1. The petitioner assails order dated 4.3.2021 (Annexure P-4) passed by learned Additional Sessions Judge, Kurukshetra vide which a revision petition filed by the petitioner against order dated 29.12.2020 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Kurukshetra, has been dismissed.

2. Original Special Power of attorney has been filed by learned counsel for the petitioner today in Court, which is taken on record.

3. A few facts necessary to notice for disposal of this petition are that FIR No.309 dated 21.11.2020 at Police Station Krishna Gate, Thanesar under Section 420 of Indian Penal Code came to be lodged on the broad allegation

that 2 trucks loaded with bags containing paddy had been caught at ‘M/s Guru Nanak Rice Mills, Salarpur Road, Kurukshetra’ and it was suspected that the said paddy had been purchased with intention of causing loss to government by purchasing the same at a lower price from some other State so as to cause gain to ‘M/s Guru Nanak Rice Mills’.

4. The learned counsel for petitioner has submitted that ‘M/s Gaurav Galla Bhandar’ is a trading firm based in State of Bihar and that the paddy in question had been sent from Bihar to Kurukshetra for the purpose of its sale to ‘‘M/s Guru Nanak Rice Mills’ but the same came to be seized by the officials of Food & Supply Department, Haryana even before the same could be sold. It has further been submitted that infact originally the said paddy was to be sold to ‘M/s Shivam Agro Industries, Asandh Road, Jundla, District Karnal, Haryana’ and an invoice had been raised in its favour but since the Proprietors of ‘M/s Shivam Agro Industries’ rejected the paddy, the petitioner’s firm was trying to sell it to some other customer in open market as it was not practicable to take back the said paddy to Bihar.

5. Learned counsel for the petitioner has further submitted that, in any case, since the petitioner admits that the paddy belongs to him as is also the case of the prosecution in para No.3 of the reply, he may be given *superdari* of the same as the same is a perishable item and cannot be stored for long without risk of the same getting damaged. Learned counsel has submitted that although an application for seeking *superdari* of the said articles/food grain was filed before the Court of learned Judicial Magistrate 1st Class, Kurukshetra but the same was declined vide order dated 29.12.2020 (Annexure P-3) and a revision petition against the said order also came to be

dismissed by learned Additional Sessions Judge, Kurukshetra vide impugned order dated 4.3.2021 (Annexure P-4).

6. Learned counsel for the petitioner has submitted that since the identity of the recovered paddy is not in dispute and since paddy is a perishable item and on account of long storage, its quality is likely to deteriorate causing irrepairable loss to petitioner, the same may be released to the petitioner on *superdari*.

7. Opposing the petition, learned State counsel has submitted that although *prima facie* the prosecution had found that it is the petitioner, who is owner of the paddy in question but somehow since the petitioner is not coming forward to join investigation, some kind of doubt has been created regarding the invoices (Annexure P-1) as the original of the same have never been shown/given to the police. It has been submitted that the invoice, which has been given to the police, is a different invoice and is not the one, which is annexed as Annexure P-1. Learned State counsel has submitted that since huge loss was sought to be caused to the State exchequer by inter-state sale without paying Market Fee, no case for release of paddy on *superdari* is made out. It has further been submitted that the paddy, in any case, has been safely kept in the godown of Food Corporation of India (FCI).

8. Learned State counsel has further submitted that under privisions of Rule 30(5) of Haryana Agricultural Produce Markets (General) Rules, 1961, certain limitations have been imposed regarding sale of agriculture produce, which has been brought from other States. Learned State counsel has submitted that while the market selling price of paddy at the given time was ₹1920/- per quintal but the petitioner was trying to sell the same at the rate of

₹1,440/- per quintal and that too without paying any market fee either in State of Bihar or in State of Haryana.

9. I have considered rival submissions addressed before this Court.

10. It is a case where 2 trucks loaded with paddy were seized. While one of the truck was found to be containing 538 bags, the other truck was loaded with 518 bags of paddy, total weighing 475 quintals of paddy. It is not disputed that no market fee had been paid in respect of the bags of paddy either in State of Bihar or in State of Haryana as according to the learned counsel for the petitioner the sale was yet to be made.

11. Rule 30(5) of Haryana Agricultural Produce Markets (General) Rules, 1961, which provides for exemption from payment of market fee, when agricultural produce is sought to be sold in another State, reads as follows:

> "The agricultural produce brought for processing from within the State (or from out side the State) and for which market fee has already been paid in any market in the State (or out side the State) shall be exempt from payment of market fee second time:
>
> Provided that the dealer who claims exemption from the payment of fee leviable on any agricultural produce brought for processing shall make declaration and give certificate to the committee in Form L-II duly attested by the Secretary of the Committee where fee has already been paid, within fourteen days of the bringing of agricultural produce within the notified market area and complies with the provision of sub rule (2):
>
> Provided further that there shall be no exemption from payment of market fee second time on any agricultural produce brought for processing from outside the State if the Form L-II is not submitted within a period of fourteen days by the dealer/licensee."

12. The petitioner is admitting that no market fee was ever paid in respect of the paddy in question either in Bihar or in Haryana.

13. As per the reply filed by the State, the petitioner by way of unauthorized sale of paddy in State of Haryana which had been brought from State of Bihar was going to defraud the State exchequer and to cause loss to the State exchequer to the tune of ₹28,000/- approximately. The agriculture produce i.e. paddy, which has been seized by the police, is certainly likely to deteriorate in case the same is kept stored for a long duration and its qualiity would come down drastically in case the same is not kept safely. Though the learned State counsel has submitted that the bags of paddy have been safely kept in the godown of FCI, but this Court cannot lose sight of the fact that the paddy in question was seized in the month of November, 2020 and the matter is still at its nascent stage and is still under investigation, whereas the investigation and trial, if any, is likely to consume time. In these circumstances, this Court is of the opinion that no useful purpose would be served by keeping the bags of paddy stored at the godown of FCI and the same deserve to be released to the petitioner, who *prima facie* appears to be the owner of the same.

14. Consequently, the instant petition is accepted and the impugned orders dated 4.3.2021 (Annexure P-4) passed by learned Additional Sessions Judge, Kurukshetra and order dated 29.12.2020 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Kurukshetra are hereby set aside. The bags of paddy seized by the State/Food & Supply Department, Haryana in the instant case are ordered to be released to the petitioner subject to the following conditions:

1. The petitioner shall furnish a surety bond before Trial Court/Illaqa Magistrate for an amount of ₹10 lakhs, specifically indemnifying that in case it is found at a later stage that the paddy in question did not belong to him and belongs to somebody else, the petitioner would pay the loss sufferred by such person, who is found to be the original owner.

2. The petitioner shall deposit an amount of ₹50,000/- with the Trial Court/Illaqa Magistrate concerned, which shall be invested in some FDR in some Nationalized Bank, so as to take care of the alleged evasion of the market fee. The Trial Court/Illaqa Magistrate shall ensure that the said FDR is not got encashed without any order from the Court. Specific directions in this regard be issued to the Manager of the Bank concerned. An order as regards entitlement of the proceeds of the said FDR i.e. whether the State or the petitioner shall be passed by the Trial Court at the time of final disposal of the trial and the proceeds of the said FDR shall be given to the person entitled after such judgment attains finality.

3. Though the petitioner does not dispute the identity of the paddy bags and does not dispute that the same were being transported by him but since there are some other accused in the present case, it is directed that 3 bags from each of the 2 lots recovered from 2 trucks be retained by the State/Food & Supply Department and be stored securely, so that in case they are ever required to be produced before the Trial Court for any purpose, the same may be produced.

15. The petition stands disposed off accordingly.

18.11.2021 **(Gurvinder Singh Gill)**
pankaj **Judge**

Whether speaking /reasoned Yes / No

Whether Reportable Yes / No