

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

**CRM-M No.8587 of 2014 (O&M)
Decided on: 10.03.2021**

Shubhranshu

....Petitioner

Versus

Central Bureau of Investigation

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. Atul Lakhanpal, Sr. Advocate
with Mr. Arjun Lakhanpal, Advocate
and Mr. Kamal Gupta, Advocate
for the petitioner.

Ms. Shubhra Singh, Advocate
for the respondent – CBI.

ARVIND SINGH SANGWAN J.

Prayer in this petition is for quashing of FIR No.RCHG2006A0001 dated 07.01.2006 (Annexure P1) registered at Police Station CBI, ACB, Chandigarh under Sections 120-B read with Section 420 of the Indian Penal Code (in short 'IPC'), 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, Sections 16/19 of the Prevention of Food Adulteration Act, 1954 qua the petitioner and all other subsequent proceedings arising therefrom including the final report dated 28.11.2008 (Annexure P2), order dated 06.04.2013 vide which charges were framed (Annexure P4) as well as the charge-sheet dated 22.04.2013 (Annexure P5).

The petitioner was posted as Area Manager/'District Manager' at the relevant time, when the raid was conducted by the CBI, followed by the prosecution of the petitioner and other accused persons.

Learned senior counsel for the petitioner has argued that

the CBI, ACB, Chandigarh, on the basis of a source information conducted a joint operation with Food Corporation of India (in short 'FCI') officials by way of surprise check at FCI godown at Bathinda and Ferozepur, Districts of Punjab and collected Rice sample, which were got analyzed by the Central Grain Analysis Laboratory, ICAR, Krishi Bhawan, New Delhi. As per the report, 11 samples from Guniana Centre were found Below Rejection Limit (BRL) and 09 samples were found beyond PFA limit i.e. not fit for human consumption. Similar was the situation for the samples collected at FCI, Jalalabad and therefore, the impugned FIR was registered on the allegation that the FCI officials in connivance with the Rice Millers, who were named in the FIR, have accepted poor quality of Rice as 'Grade A' Rice and have caused huge financial loss to the Public Exchequer and has played fraud with the State. It is also stated by CBI that in the investigation the FCI officials in furtherance of the criminal conspiracy with the Rice Millers had consciously accepted sub-standard Rice at FCI, Guniana and FCI, Jalalabad, by making fake entry in the record, showing the Rice to be of a uniform specification and on completion of the investigation, 02 charge-sheets were filed, one for Guniana Centre and the second for Jalalabad Centre.

Learned senior counsel for the petitioner has submitted that the Food Corporation of India was established in the year 1964 under an Act of Parliament for watching the interest of the farmers and consumers with a guarantee that their produce will be purchased by the FCI or the State agencies that the Minimum Support Price (MSP), if the private traders do not come forward to purchase the same on MSP. The

FCI has its network of godowns in the country for storing the food grains and on account of shortage of space, the food grains are also stored in the godowns of Punjab State Warehousing Corporation (PSWC) as well as the godowns of other State agencies.

Learned senior counsel for the petitioner has further submitted that FCI delivers the Rice stocks to the millers/State agencies for milling the same and handing back to FCI for supply to the consumers and for that purpose, the FCI has employed technical staff including the quality control checking staff. It is also submitted that the Rice/stocks, which is delivered to the millers of the State agencies for milling purpose is inspected by the technical assistance of Category III post and for the acceptance of the Rice stock with the specification provided by the FCI, 'Assistant Manager (Quality Control)' now designated as 'Manager (Quality Control)' are posted in each and every godowns of FCI to test or check the quality of the stocks on the basis of day-to-day report of technical assistance. An officer of the rank of 'Deputy Manager (Quality Control)' is posted at District level, which is now designated as 'Assistant General Manager (Quality Control)' and the administrative work over the godowns is looked after by an 'Area Manager', earlier designated as 'District Manager'. Counsel for the petitioner has laid much emphasis on the argument that the job of the Area Manager, i.e. the petitioner who is not technically qualified for verification of the quality of the food grains, is only to look after the administrative work.

Counsel for the petitioner has further referred to the Instructions dated 28.09.2004 issued by the FCI, defining the duties of

various officers for inspection, sampling and analysis procedure to be followed in the acceptance/purchase of Rice stock during Kharif Marketing Season for the year 2004-05.

Clause (6) of the Instructions provide that a register will be maintained for recording the Moisture Contents at the time of acceptance of Rice at the depot which will be jointly signed by TA/AM (QC) and AM(D) deputed for procurement/acceptance of Rice and a separate register will be maintained for that purpose.

Clause (17) of the Instructions provide that in order to ensure acceptance of Rice conforming to laid down specifications only, super inspection shall be conducted. For a reference, Clause (17) of the Instructions, is reproduced below:-

“17. In order to ensure acceptance of Rice conforming to laid down specifications only, the following super inspection shall be conducted:-

<i>Sr. No.</i>	<i>At the level of the Officer</i>	<i>% of Test Check</i>
<i>1.</i>	<i>Assistant Manager (QC) concerned</i>	<i>25% Rice consignments accepted by each TA at each depot on day to day basis.</i>
<i>2.</i>	<i>Deputy Manager (QC) concerned</i>	<i>10 Rice consignments accepted by each TA on fortnightly basis at each depot.</i>
<i>3.</i>	<i>District Manager concerned</i>	<i>2% Rice consignments accepted by each TA on fortnightly basis at each depot.</i>

4.	<i>JM (QC) of region</i>	<i>10 depots during each month spread over at least 3 (three) FCI districts by drawing / analyzing samples of Rice of at least two different consignments accepted under the supervision of different Ams (QC). Inspection to be carried out in such a way that all the procurement Districts of the region are covered once in 3 (three months).</i>
5.	<i>SRM</i>	<i>At least 4 (four) depots every month spread over at least two FCI district by drawing / analyzing samples from two different consignments at each depot.</i>
6.	<i>Manager (QC)/JM (QC), Zonal Office</i>	<i>A minimum of two depots in different procuring regions each month by drawing / analyzing samples of at least two different consignments of Rice already accepted. Next month different Regions and different Districts should be covered.</i>

If any consignment is found not conforming to the specifications by the Inspecting Officer, necessary disciplinary action should be initiated against the delinquents expeditiously under intimation to the Headquarters.”

It is relevant to note that at the end of the list, it is specifically stated that the 'District Manager' shall have overall responsibility for procuring the Rice stocks as per laid down specifications in his District.

Learned senior counsel for the petitioner has also argued that the petitioner being the 'District Manager', was not responsible for the quality control of the Rice, which was found to be of sub-standard quality and was not meeting the criteria under the Prevention of Food Adulteration Act as it was found that the Rice Millers, who were named

in the FIR and are the co-accused, had supplied poor quality of Rice by terming it as 'Grade A' Rice causing huge financial loss to the Public Exchequer.

Learned senior counsel for the petitioner has also submitted that the challan was filed by CBI, based on the analysis result of Central Grain Analysis Laboratory (CGAL) showing the Rice stock beyond PFA limit under Sections 16/19 of the Prevention of Food Adulteration Act read with Section 120-B, 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act against the Rice Millers, officials of FCI including the petitioner.

Learned senior counsel for the petitioner has further submitted that in fact, no challan was filed against the other FCI officials and Rice Millers, whose stock was not found beyond PFA limit but was found Below Rejection Limit (BRL) as it is stated in the challan that the FCI officials, who conspired and accepted Rice beyond PFA standards are being charge-sheeted whereas the FCI officials who accepted Below Rejection Limit (BRL) Rice, departmental action has been recommended against them and the Rice Millers are blacklisted for future purposes for not dealing with FCI.

Learned senior counsel for the petitioner has further argued that the Prevention of Food Adulteration Act cannot be made applicable to the petitioner as the samples drawn were not got analyzed by the Public Analyst and no prosecution under Section 20 of the Act was taken from the State Government or Central Government.

It is next argued that the prosecution is launched by the CBI and not by the authority duly approved by the State Government of

Central Government and therefore, the FIR is liable to be quashed. It is also submitted that the application filed by the petitioner for discharge was not considered while passing the impugned order dated 06.04.2013 vide which charges were framed against the petitioner and the other accused persons.

Learned senior counsel for the petitioner has also submitted that in fact that the petitioner while checking the Rice stock has himself declared that some of the stock was found to be beyond prescribed limits of PFA Act and therefore, he cannot be prosecuted. Learned senior counsel has laid much emphasis on the point that the petitioner being District Magistrate on administrative side cannot be held liable for the poor quality of Rice, which is the job assigned to the District Magistrate (Quality Control). The petitioner also filed written synopsis as apart of the arguments and has tried to justify his action by way of referring to various records which cannot be looked into, at this stage.

It is worth noticing that this petition along with some other petitions were filed in the year 2013-14 and in some of the cases, proceedings before the trial Court was stayed and, therefore, the entire trial was stayed.

It has been held by the Hon'ble Supreme Court in “***Asian Resurfacing of Road Agency Pvt. Ltd. and another vs CBI***” passed in Miscellaneous Application No.1577/2020 in Criminal Appeal No.1375-1376 of 2013, that ***the cases which are at trial stage, proceedings are stayed by the higher Court, stay will automatically be lapsed after six months unless extended by passing a speaking order***

and the trial Courts may, on expiry of above period, resume the proceedings without waiting any other intimation unless express order extending stay is produced before the trial Court.

Counsel for the respondent has argued that the petitioner – Shubhranshu, who was the then 'District Manager', FCI Bathinda along with the co-accused A.K. Gupta, the then Incharge, 'District Manager (Quality Control)', FCI Bathinda, have checked the stock on 30.07.2005 by making a joint test check, which were stored in stack and the same was not as per the guidelines/procedure laid down by the FCI (Hq.). It is further submitted that as per the FCI guidelines, the initial test check in capacity of 'District Manager'/'District Manager (Quality Control)' is different from surprise check conducted by them.

Counsel for the respondent has further argued that the investigation revealed that as per the acceptance register of stack wise and the analysis register in respect of Rice of FCI, Guniana, the contract Nos.545/546/547 of Stack No.1612, were not accepted on this date and in the inspection report of the petitioner ('District Manager') and A.K. Gupta ('District Manager (Quality Control)', have shown, who inspected the same on 30.07.2005 but on that day, the Rice consignments were not accepted or stacked in the godowns.

Counsel for the respondent has also submitted that the petitioner has misrepresented the fact that he declared the inspected Rice stack No.A2 and B17 as beyond the prescribed limit of PFA Act whereas in the report and the memorandum issued to Assistant Manager (Quality Control) and the concerned T.A., the petitioner has used the word 'BRL Rice' and no further action, blacklist the Rice Millers, who

continued to supply Rice beyond PFA limit to FCI, Guniana, which show the connivance of the petitioner with the Rice Millers. It is further stated that the offence under Sections 420 and 120-B IPC is clearly made out against the petitioner as the petitioner in conspiracy with the FCI officials and other accused Rice Millers, have cheated the FCI by facilitating sub-standard Rice consignments showing the same within uniform specification as per his inspection note.

Counsel for the respondent has further submitted that the offence under Section 13(1)(d) of the Prevention of Corruption Act is also *prima facie* made out against the petitioner as he has misused his official position for pecuniary gains for himself by facilitating the accused Rice Millers in accepting the sub-standard Rice which was unfit for human consumption. It is also argued that since sufficient evidence has come on record as per the challan/report submitted under Section 173 Cr.P.C., the petition deserves to be dismissed.

In reply, learned senior counsel for the petitioner has referred to the judgment dated 04.04.2014 passed in CRM-M No.22629 of 2013 and other connected cases, vide which 03 FIRs including the present FIR registered against one of the co-accused K. Siva Parsad, was quashed by this Court and thus, argued that on similar footing, the FIR against the petitioner be also quashed.

After hearing the counsel for the parties, I find no merit in the present petition, for the following reasons:-

(a) All the arguments raised by the petitioner are primarily, based on appreciation of evidence, which is yet to be proved during the course of trial.

(b) A perusal of the FIR and the report under Section 173 Cr.P.C., reveals commission of prima facie offence against the petitioner and the other accused persons.

(c) The argument raised by learned senior counsel for the petitioner that it was the duty of technical assistance or the Deputy Manager (Quality Control) to check the acceptance of the Rice conforming the specification of the guidelines, relied upon by the petitioner is not correct as a perusal of the guidelines itself show that the petitioner being the 'District Manager' along with the 'District Manager (Quality Control)' are jointly responsible for the entire work. Even the Instructions relied upon by the petitioner itself show that it is provided that the overall responsibility of procuring the Rice as per the specification rest with the 'District Manager' i.e. the petitioner and therefore, the argument that the petitioner cannot be fastened any liability being 'District Manager' on administrative side, cannot be accepted even as per the own Instructions, relied upon by the petitioner.

(d) A perusal of the inspection note prepared by the petitioner as 'District Manager', FCI Bathinda and A.K. Gupta, the Incharge, 'District Manager (Quality Control)', FCI Bathinda, also support the allegation in the FIR that the petitioner has made fake

inspection/joint inspection on 30.07.2005 whereas on those dates, the Rice consignments were not accepted/stacked in the godowns and therefore, the petitioner was found to be an active conspirator along with the other accused and the Rice Millers being the 'District Manager' of FCI Bathinda, during the relevant period.

(e) Even as per the Instructions, relied upon by the petitioner, it is stated that to have proper check of the Rice stack accepted by each TA at the depot, 5% and 2% of the samples of Rice consignment accepted by each depot of each FCI district will be collected by the 'District Manager' and SRM, respectively for analysis at District/Regional Lab., to verify the result of the concerned TA for taking action which may be deemed to be necessary and therefore, the argument raised by learned senior counsel for the petitioner that it is not the duty of the petitioner to keep a check on the quality control and he was only assigned the administrative duties, is without any substance.

(f) A perusal of the judgment dated 04.04.2014 passed in CRM-M No.22629 of 2013, vide which the FIR qua one of the accused K. Siva Parsad, was quashed, show that the FIR was quashed on two counts, firstly that K. Siva Parsad, being an I.A.S. officer of the rank of Joint Secretary was held entitled to the protection under

Section 6-A of the DSPE Act read with Clause 10.6 of CBI Manual and secondly, that he was not directly Incharge of the quality control wing in the SRM office as he was posted as Senior Regional Manager in Punjab. Both the pleas are not available to the petitioner and therefore, the said judgment is of no help to the petitioner.

In view of the above, finding that the case of the petitioner do not fall in the category of the cases, which can be quashed, in view of the judgment of Hon'ble Supureme Court “*State of Haryana vs Bhajan Lal*”, 1991(1) RCR (Criminal) 833, I find no ground to quash the FIR or the subsequent proceedings arising therefrom including the impugned order dated 06.03.2014 vide which charges have been framed against the petitioner as it is well settled principle of law that at the time of framing of charge, the trial Court will look into the allegations in the FIR and the report under Section 173 Cr.P.C. and finding a *prima facie* case, the trial Court has rightly framed the charges against the petitioner and accordingly, the petition is **dismissed**.

Since the proceedings of this case remain stayed before this Court for a period of more than 06 years and the FIR pertains to the year 2003, the trial Court is directed to conclude the trial expeditiously preferably within a period of 02 years from the date of receipt of certified copy of this order.

(ARVIND SINGH SANGWAN)
JUDGE

10.03.2021

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Whether speaking/reasoned
Whether reportable:

Yes/No
Yes/No