

233

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

CRR-1365-2010

DECIDED ON: 30.08.2022

PUNJAB STATE WAREHOUSING CORPORATION

.....PETITIONER

VERSUS

STATE OF PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sameer Sachdeva, Advocate
for the petitioner.

Mr. Shubham Kaushik, AAG, Punjab.

SANDEEP MOUDGIL, J.

CRM-26199-2010

Prayer in this application is for condonation of delay of 177 days in filing the petition.

For the reasons mentioned in the application, the same is allowed.
Delay of 177 days in filing the petition is condoned.

CRR-1365-2010

1. Aggrieved of the order of discharge of the accused/respondents, dated 07.08.2009, passed by the learned Judicial Magistrate Ajnala, this revision petition has been filed.

2. The brief facts of the case are that on 20.04.2005 Major Singh, Junior Assistant, Raj Godown, Lingam, Amritsar, and Jagmohan Sharma, Senior Assistant, Raj Godown, Chhehreta, moved an application to SHO, Police Station Jhander to the effect that Modern Enterprises was handed over the crop for milling in the year 2004-2005 by Food and Supply Department

respondents for milling purpose. In return to this about 80864 bags of paddy was milled out but remaining 32726 bags of paddy were balance towards the mill. Sh. Mangat Ram, helper, deputed in the sheller on behalf of FCI as usual went to the Sheller on that day and informed that neither owner of the Sheller nor any other employee was present. Sukhdeep Singh owner and Parminder Singh Cheema and Sonu, private partners of the Sheller on intervening night of 19.04.2005 and 20.04.2005 in connivance with each other had mis-appropriated the rice. The rice was badly lying scattered on the floor and it could not be measured, though approximately 5300 bags were there. Thus. Sukhdeep Singh and his private partners Parminder Singh Cheema and Sonu had mis-appropriated about 30426 bags of paddy valuing about Rs. 78,17,992/-.

3. That on the basis of said complaint dated 20.4.05 by the petitioner-Corporation, FIR under Section 406/420 IPC was registered and after completion of investigation, challan under Section 173 Cr.P.C., was presented in the Court. However, respondent/accused has been discharged by the Court below.

4. Learned counsel for the petitioner contends that the impugned order was passed by the learned Court below without application of judicious mind. He contends that in the present case, on account of dishonest intention, the accused have misappropriated the paddy entrusted by the complainant/appellant to them, who after misappropriating the same had fled away. He asserts that the learned Court below has wrongly concluded that the matter is of purely civil nature and requires an arbitration reference by the petitioner-Corporation. He further submits that no plausible or cogent reason has come forward to exhibit as to why the accused have been let off at the state of framing charge. He submits that it is illegal and highly unjust

quantity of paddy costing to the tune of nearly Rs.80 lacs had been misappropriated. He further asserts that the approach of the learned Court below, thus, is totally erroneous and misconceived with regard to discharge of accused at charge stage. It is submitted by learned counsel for the petitioner that the impugned order dated 07.08.2009, passed by learned Court below is based on conjectures and surmises, and it suffers from material irregularity and illegality and as such, is liable to be set aside.

5. On the other hand, learned State counsel has argued that offence under Section 420 IPC is made out against the accused, who by violating agreement dated 30.09.2004, misappropriated the paddy crop handed over by FCI for milling to M/s Modern Enterprises being owned by Sukhdeep Singh and other accused being the private partners of the said firm.

6. I have heard learned counsel for both the sides and also gone through the case file. This Court is of the considered view that there is no illegality or infirmity in the order dated 07.08.2009, passed by learned Court below.

7. This Court is conscious of the admitted fact that the agreement dated 30.09.2004 was entered into between the Managing Director, Punjab State Warehousing Corporation and the firm-M/s Modern Enterprises, which has been signed by Sukhdeep Singh as sole proprietor of M/s Modern Enterprises. There is no document to show Parminder Singh and Jaswinder Singh as partners and in fact neither it was signed by them nor paddy crop in question was entrusted to them in any capacity. Their names found nowhere mentioned except in the application on the basis of which FIR has been registered alleging that Parminder Singh and Jaswinder Singh are private partners helping Sukhdeep Singh sole proprietor of M/s Modern Enterprises. There is no document on file or taken into possession during investigation showing that Parminder Singh and Jaswinder Singh are partners in the firm,

the offence U/s 420 IPC against Parminder Singh and Jaswinder Singh.

8. Even further in the light of Clauses 5, 12 and 23 of the agreement dated 30.09.2004, accused Parminder Singh and Jaswinder Singh cannot be held liable for mis-appropriation and the matter ought to have been referred to the arbitration, if so advised, but no criminal offence is certainly attracted in this case as it can be easily concluded after having a glance on the aforesaid clause.

“ 5. "The delivery of paddy shall be made on book weight to the miller. In case paddy is delivered from storage depot of the PSWC it will be transported by the miller at his cost. Paddy will be in the joint custody of PSWC and the miller, till its milling is completed and rice delivered to Food Corporation of India.

12. In case miller causes any loss to the stored paddy stocks because of misappropriation theft etc. or if the rice manufactured by him does not confirm to the specifications, he will be liable to make good the entire loss at value intended custom milled rice and interest at 12% from the date it becomes payable from FCI till the date of actual realization.

23. All the dispute and difference arising out of or in any manner touching or concerning this agreement whatsoever (except as to any matter the decision of which is expressly provided for the contract) shall be referred to the sole arbitration of the Managing Director or any person appointed by him in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of PSWC or that he had to deal with the matter to which the contract relates and that in the course of his duties such as employee of the PSWC had expressed views on all or any of the

matter is dispute or difference. The award of such arbitration shall be final and binding on the parties to this contract. It is a term of this contract that in the event of the arbitrator being transferred or vacating his office or being unable to act for any reason, the managing director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as arbitrator. Such a person shall be entitled to proceed with reference from and the stage where it was left by his predecessor.

Provided further that any demand for arbitration in respect of any claim(s) of the Miller, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract. If the demand is made within the period, the claim(s) of the Miller shall be deemed to have been waived off and released of all liabilities under contract in respect of these claims.”

9. The essence and ingredient of Section 406 IPC is the entrustment of property has to be in exclusive possession of the accused, whereas Clause 5 referred hereinabove makes it crystal clear that there was no exclusive possession of the paddy with Sukhdeep Singh, which was joint admittedly with Punjab State Warehousing Corporation-petitioner and the miller.

10. The case law further relied upon by the accused-respondents in **‘Kailash Verma versus Punjab State Civil Supplies Corporation and Another’, 2005(2) SCC 571**, supports the proposition as adjudicated by the Hon’ble Apex Court in an identical circumstances and similar set of facts that the Government Department entrusting paddy to accused for de-husking and it is not returned by the accused after milling as per agreement, it will be

attracted.

11. In view of the above, the present petition is, therefore, dismissed, having no merits.

(SANDEEP MOUDGIL)
JUDGE

30.08.2022
Poonam Negi

Whether speaking/reasoned: *Yes/No*
Whether reportable: *Yes/No*