

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

CRM-A-1311-2019 (O&M)

Date of decision: 16.11.2022

The Haryana State Coop. Supply @ Marketing Federation Limited

...Applicant

Versus

Ram Pal

...Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Mr. Kapil Aggarwal, Advocate for the applicant.

HARNARESH SINGH GILL, J. (ORAL)

CRM-A-1311-2019

The present application under Section 378(5) Cr.P.C. has been filed by the applicant seeking special leave to appeal against the judgment dated 10.08.2018 passed by the learned Judicial Magistrate 1st Class, Karnal, vide which the complaint under Section 138/142 of the Negotiable Instruments Act, 1881 (for short 'the Act'), has been dismissed and respondent-Ram Pal, has been acquitted of the charge framed against him.

Brief facts of the case are that the applicant/complainant Haryana State Coop. Supply @ Marketing Federation Limited (**HAFED**) deals in supply and marketing of agricultural product and, thus, it had a business terms with the accused-respondent; that on 18.12.2012, an agreement was executed between the applicant-complainant and accused-respondent for milling of paddy (Rice) as per the terms and conditions of Haryana Government Policy

for the year 2012-2013 and 42029.75 quintals of paddy was purchased by the accused from the applicant besides gunny bags, wooden crates and tarpaulin; that the accused was required to return 67% of CMR (Rice) of total quantity of paddy but he along with his associates had delivered only 8620 quintals of Rice to Food Corporation of India (FCI) on behalf of the applicant (HAFED) up to 30.09.2013 against due Rice i.e. 27351.74 quintals and a balance of 18731.74 quintals of rice was due to be delivered by him; that the applicant contacted the accused many times to deliver the balance Rice or to deposit its cost i.e. Rs. 6,87,24,831/- but nothing was done by him; that on incessant request of the applicant, in the month of August-2014, the accused issued a cheque bearing No.000007 dated 13.08.2014 amounting Rs.2.15 crore of HDFC Bank, Karnal in favour of the applicant and the accused assured that if he failed to deliver the balance rice, the amount could be recovered by presenting the cheque for encashment; that when after a long time, on presentation, the cheque could not be encashed due of 'insufficient funds', a legal notice was issued to the accused on 08.09.2014 and that thereafter, a complaint under the Act was filed, which was dismissed by the learned Judicial Magistrate 1st Class, Karnal, vide judgment dated 10.08.2018.

Thus, the applicant preferred this leave to appeal against the acquittal of the accused-respondent.

Learned counsel for the applicant submits that the learned Judicial Magistrate 1st Class, Karnal, dismissed the complaint on the account that the cheque was presented for encashment after the expiry of its validity period i.e. three months as the validity of cheque was upto 02.07.2014 but

was presented on 20.08.2014 when the cheque has become stale and it has ceases to be a negotiable instrument by ignoring other evidence and facts of the case.

I have heard the learned counsel for the applicant and have also gone through the documents on record.

Perusal of judgment dated 10.08.2018 would itself reveal that the case of the applicant is that the accused delivered only 8620 quintal of paddy to Food Corporation of India on behalf of the applicant, out of due rice i.e. 27351.74 quintals and the defence of the accused is that the present complaint is not maintainable as the cheque in question has been presented after the period of its validity. After taking into consideration the evidence and record, learned trial Court concluded that the applicant-complainant has failed to prove its case against the accused and the accused has rebutted the presumption under Section 139 of the Act raised against him. The burden to prove its case was upon the complainant. The cheque in question is of dated 02.04.2014 but in the complainant it is stated that the cheque is dated 13.08.2014, which is wrong as the cheque itself speaks volumes about its date. The cheque was required to be presented within the period of its validity i.e. till 02.07.2014 but the cheque was presented for encashment on 20.08.2014, after expiry of its validity. The cheque has become stale and it has ceases to be a negotiable instrument. The complaint was dismissed for being not maintainable as per the provisions of Negotiable Instruments Act.

Moreover, as per the settled law, the applicant is to establish its case beyond the shadow of reasonable doubt, which has not been done in the

instant case. There seems no illegality in the judgment dated 10.08.2018 passed by the learned Judicial Magistrate 1st Class, Karnal.

In view of the above, there being no merit in the present application, the same is dismissed. Special Leave to appeal is declined.

CRM-20519-2019

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 111 days in filing the application for leave to appeal.

As per the contents of the application, the accused was acquitted by the learned trial Court vide order dated 10.08.2018 and thereafter, the applicant contacted some private Advocate for filing the appeal but in the meantime the applicant contacted the office of learned Advocate General Haryana for filing the present appeal. The Advocate was engaged through the office of learned Advocate General Haryana but in the meantime, the District Manager, Karnal, who filed the complaint, had been transferred and therefore, the authority letter was again sought for filing of the appeal through the new District Manager and because of this, the delay occurred in filing the application.

This Court does not deem it a fit ground to condone the delay of 111 days in filing the application, therefore, the present application is dismissed.

(HARNARESH SINGH GILL)
JUDGE

16.11.2022
Mangal Singh

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No