IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

250-C **CRM-A-1911-2019 (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.

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HARNARESH SINGH GILL, J. (ORAL)

CRM-A-1911-2019

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. 000017 dated 13.08.2014 amounting Rs.35 lakh of HDFC Bank, Karnal in favour of the applicant and the accused assured that if he fails 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 issued by the accused as a security and the applicant had failed to prove any legal liability to pay, against the respondent, whereas the applicant on the basis of testimony of the witness had succeeded in proving the guilt of the accused beyond shadow of reasonable doubt; that as observed above, as per Section 139 of the Act is an example of reverse onus clause and therefore once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter it is for the accused to rebut such presumption by leading evidence; that even if a blank cheque has been given towards a liability or even as a security, in that eventuality, when the liability is assessed and quantified and the cheque is filled up and presented to the bank, the person who had drawn the cheque cannot avoid the criminal liability arising out of Section 138 of the Act.

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 he has not been supplied with any paddy by the applicant-complainant as per the agreement dated 18.12.2012. DW-1 Pranav Aggarwal, the Manager Depot, FCI, in his testimony has specifically stated that the respondent-accused, Proprietor of M/s Dhartiputra Exports, has not supplied any rice to FCI in the year 2012-13 as per the record but in cross-examination, he stated that as per record, three lots of paddy had been supplied by M/s Dhartiputra Exports on behalf of

DFSC to FCI and not on behalf of HAFED, he has also stated that HAFED and DFSC are two independent agencies and they are not connected with each other. After taking into consideration the evidence and record, learned trial Court concluded that the applicant-complainant has failed to prove on record the supply of any paddy to the accused as per the agreement dated 18.12.2012, therefore, no legal liability can be ascertained and further fastened to the accused. It has also been considered by the learned trial Court that no plausible evidence has been placed on record by the applicant-complainant that as to why the complainant Department accepted the cheque of Mahaluxmi Rice Mills, when the agreement in question had been executed with M/s Dhartiputra Exports. Thus, on account of non-fulfilling the essential ingredients, the complaint was dismissed and respondent-accused was acquitted.

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.

Since the testimony of DW-1 Pranav Aggarwal, the Manager Depot, FCI, stands unrebutted and the cheque in question is of Mahaluxmi Rice Mills, whereas the agreement was executed with M/s Dhartiputra Exports, 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-23830-2019

Prayer in the application filed under Section 5 of the Limitation Act is for condonation of delay of 121 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 121 days in filing the application, therefore, the present application is dismissed.

(HARNARESH SINGH GILL)
16.11.2022 **JUDGE**
Mangal Singh

Whether reasoned/speaking? Yes/No
Whether reportable? Yes/No