

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

206

CWP-18130-2015

Date of decision: 12.12.2022

SATNAM SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Sandeep Arora, Advocate
for the petitioner.

Mr. Saurav Verma, Addl. A.G. Punjab.

VINOD S. BHARDWAJ, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari seeking quashing of the order dated 23.04.2015 (Annexure P-9) passed by the respondent No.4.

2. Briefly summarized, the facts of the present case are that the petitioner had been allotted a Depot in village Jharaudi, Block Macchiwara, Teshil Samrala, District Ludhiana vide PDS No. 614. As per petitioner, 2700 bags of wheat had been allotted to him during the period from June, 2014 to September, 2014 for distribution. He had distributed 950 bags of wheat to the beneficiaries upto 31.08.2014 when his depot was cancelled by the respondent authorities. He was directed to hand 584 bags to one Satnam Singh and another 945 bags were ordered to be delivered to Kabil Singh. In this way, 2479 bags had been duly accounted for. An FIR No. 174 dated 04.09.2014 was registered against the petitioner alleging commission of offence under

Section 406, 420 of the IPC at Police Station Macchiwara, District Khanna for embezzlement of 247 bags of wheat. The petitioner approached this Court by averring that there were only 221 bags that were remaining and that the said bags were available in the stock of the petitioner, however, the respondent-department was purposefully not receiving the same or verifying the said stock. A representation Annexure P-7 dated 02.03.2015 was claimed to be sent by the petitioner to the District Controller, Food and Civil Supplies, Ludhiana. As no action was allegedly taken, the petitioner filed CWP-5704 of 2015 which was disposed of vide order dated 27.03.2015 directing the respondent-department to take a decision on the representation Annexure P-7 and to pass a reasoned and speaking order thereupon. Pursuant to the said order, the impugned order dated 23.04.2015 has been passed.

3. Written statement on behalf of respondents No.1 to 5 has been filed wherein the respondents have adopted a specific stand that a complaint was received by the respondent-department on 04.09.2014 pertaining to embezzlement of wheat stock meant for distribution amongst the poor card holders. A preliminary enquiry and inspection of the depot was conducted wherein only 584 bags were found available out of the total stock of 750 bags stored by the department at the depot of the petitioner. 166 bags were found short on physical verification. Upon detection of the said shortage, the above FIR was got registered. During the investigation, the police recovered 246 bags of wheat filled in private ordinary plastic bags in the godown situated at Kuka market point taken on rent by the petitioner. The said recovered stock of wheat

was shifted to Pungrain godown at Machhiwara by the police authorities on the same day. It has further been averred in the written statement that the stock of the petitioner at another distribution point in Lakhowali was also physically examined on 17.09.2015, where out, of 1000.25 quintals (equal to 1950) bags only 945 bags were found. A shortage of 81 bags at the said distribution point was reported. A show cause notice was thereafter served upon the petitioner to which he submitted his reply and also moved a representation. An enquiry was marked to the District Food & Supplies Officer, District Samrala and the said officer submitted his report on 04.12.2014 wherein it was concluded by the enquiry officer that stock of wheat was found short with the petitioner Depot holder at both the sale points and that 246 bags of wheat, filled in private bags, were thereafter recovered by the police. The said recovered wheat which belonged to the Government was attempted to be embezzled by shifting the same in private bags and by substituting the same by some other wheat stock which is now being represented as the wheat supply obtained by the petitioner under the PDS. The order impugned was thus defended to be rightly passed.

4. Rejoinder to the written statement was filed by the petitioner reiterating his above stand and controverting the stand adopted by the respondent-department. It is, however, not disputed by the petitioner that upon conclusion of the investigation, a final report under Section 173 Cr.P.C. had been filed against the petitioner and that he is facing trial and a charge has already been framed against him.

5. Learned counsel appearing on behalf of the petitioner has reiterated the submission noticed above and has argued that the

respondent-department and the authorities are not lifting the stock which was available with the petitioner and have never conducted the physical verification of the said stock. A false case has been registered against the petitioner and that the wheat in question was never embezzled or attempted to be misappropriated by the petitioner. He further contends that the petitioner has been regularly pursuing the departmental authorities for taking possession of the said stock, however, for inexplicable reasons, the needful has not been done.

6. Per contra, learned State counsel has argued that the plea taken by the petitioner is a plea of defence. A physical verification was duly conducted by the department and an enquiry into the complaint as well as the representation submitted by the petitioner was conducted by the District Food & Supplies Officer, Samrala. He had specifically reported in his enquiry report that the petitioner had transferred the government supply of wheat in his private bags for the purposes of misappropriation and embezzlement thereof. The stock which is now being projected as a Government stock is in fact not the stock of the State Government and the government stock was recovered by the Investigating Agency after the registration of the FIR and the same had been transferred to the godown of the PUNSUP. He submits that filing of the present petition is a ploy to create a defence and to thus seek a declaration that the stock in question is the Government stock. He contends that in any case, the averments of the petitioner have also been investigated into and that the investigating agency never found any substance in such averment. The petitioner had all opportunity to convince the investigating agency about the above stock being that of

the Government and having failed to establish his defence attempt is being made filing of the present petition. It is also contended that it would be always open to the petitioner to prove his case before the Illaqa Magistrate and to establish that the stock lying in possession of the petitioner was in fact the stock of the Government. The plea of defence is now being sought to be crystallized by seeking directions and portraying as if such directions are intended to protect the interest of the department.

7. I have heard learned counsel appearing on behalf of the respective parties and have gone through the record of the present case.

8. The dispute in the present case relates to the identification of the wheat that had been recovered. While the state agencies contend that the wheat supplied by it under the Public Distribution System had been shifted by the petitioner in his own private bags for embezzlement and misappropriation thereof, the petitioner on the other hand, claims that the said stock is available. The respondent-authorities deny their ownership over the said stock and have contended that the actual stock belonging to the state agencies was duly recovered by the investigating agency during the course of investigation.

9. It is not in dispute that a criminal case had been registered and investigated. All the evidence, including the version of the petitioner would have been duly considered by the Investigating Agency not finding any substance in the version of the petitioner a charge-sheet under Section 173 Cr.P.C. had been find against the petitioner. Even charge stands framed against petitioner. Hence, the petitioner failed to establish his case before the Investigating Agency

that the stock released by the State was intact. The present attempt is seemingly an endeavour to seek a stamp of approval from the High Court that the said stock is indeed the Government stock. There has been verification on two occasions i.e. by the departmental authorities as well as the Investigating Agency and both of them have not accepted the version of the petitioner. The identification of the stock is now a disputed question of fact to be decided by the trial Court after consideration of the respective evidence.

10. Any direction at this stage to the respondent authorities to claim title over the said wheat would have prejudicial impact on the case set up by the respondent State in the ongoing criminal proceedings.

11. It would thus not be appropriate for a writ Court to pass any comment or judgment on the case property and inter se the title over the property recovered viz-a-viz. the property lying in stock of the petitioner.

12. The present petition is accordingly dismissed at this stage. Liberty is, however, granted to the respective parties to take all pleas before the competent Court at an appropriate stage.

(VINOD S. BHARDWAJ)
JUDGE

DECEMBER 12, 2022

Vishal sharma

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