IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1515-SBA-2003
Reserved on : 14.07.2023
Pronounced on : 20.07.2023

Punjab State Civil Supplies Corporation ......Appellant

Vs.

M/s Kultar Singh & Brothers and others ......Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Anil Kumar Sharma, Advocate for the appellants.

Shri Sanjeev Manrai, Sr. Advocate with
Ms. Neha, Advocate for the respondents.

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ANOOP CHITKARA J.

Criminal Complaint	No. 62-2/11-8-97 under Section 138 of the Negotiable Instruments Act, District Ferozepur

Feeling aggrieved by the trial court's judgement, dismissing the complaint on merits, and acquitting the accused/respondent, the complainant has come up before this Court by filing the above-mentioned appeal.

2. The Punjab State Civil Supplies Corporation (starting now referred to as PUNSUP) is a company registered under the Indian Companies Act and is owned by the Government of Punjab. District Manager PUNSUP is the head and controlling of PUNSUP in Ferozepur District. PUNSUP had been set up to purchase, supply, and distribute essential commodities, undertake, and promote trade and maintain prices in the market. It also procures paddy to supply rice for the central pool. The PUNSUP purchases paddy from the market and gets it shelled from various rice shellers, and rice millers are to supply the rice to the Food Corporation of India on behalf of PUNSUP. In the year 1995-96, PUNSUP, through its District Manager Ferozepur, entered into an agreement with the

accused firm M/s Kultar Singh and Brothers Rice Mills owners, Mandi Guru Har Sahai, for the shelling of paddy of PUNSUP to deliver the rice after shelling to Food Corporation of India on behalf of PUNSUP.

3. PUNSUP and the accused respondent executed the agreement on 11.10.1995. In pursuance of the said agreement accused firm received 36275 bags weighing 23578 quintals of fine quality paddy and 2870 bags weighing 1865.50 quintals of common variety paddy till December 1996, and proper receipts for receiving the paddy were issued by Kultar Singh and Sudarshan Singh (partners of the said firm). In total, the accused firm was entrusted with 39145 bags weighing 25444.25 quintals of paddy crop for the year 1995-96. As per the terms of the agreement, the firm was to deliver to the Food Corporation of India on behalf of the complainant 16033.55 quintals of fine quality rice and 1268.54 of common rice of specification as laid down by Punjab Government Rice Procurement Control Order 1978 as amended from time to time and other order and notification issued by the Punjab Government. The rice yield was 68% in the case of boiled rice/Sella and 67% in raw rice. Since the firm has a Sheller plant, the yield of rice is fixed at 68% on the actual weight of the paddy delivered. The firm had so far delivered 16750 bags weighing 15859 quintals of fine quality rice. The balance of rice due from the accused firm becomes 180-80 quintals of fine quality rice and 1268.54 quintals of common variety rice. The accused firm was required to deliver the complete rice until 28.02.1996, which was subsequently extended till 31.08.1996. As per the terms of the agreement, if the firm fails to supply the rice within the stipulated period or in case of non-delivery of rice, the complainant shall be entitled to recover the amount @ 1 ½ times the economic costs of the paddy. The value of the un-delivered rice comes to Rs.13,98,128/- plus interest and other penal charges @ 1 ½ times the economic costs of rice. After that, the firm paid a sum of Rs.1,00,000/- by a draft dated 01.06.1997. After deducting this amount, the recoverable amount came to Rs.12,98,128/-.

4. Out of the amount mentioned above, the firm made a part payment of Rs.3,00,000/- vide two cheques bearing Nos.623006 and 878400 dated

30.06.1997 amounting to Rs.1,50,000/- each (Branch Punjab National Bank Kohal Singh wala Ferozepur) duly signed by Kultar Singh and Sukhdarshan Singh partners of Firm M/s Kultar Singh & Bros., Rice Mills owner, Mandi Gurharsahai. When these cheques were presented for encashment before the concerned branch of Punjab National Bank, the bank returned the same vide a memo dated 01.07.1997 with remarks "referred to the drawer". After that, on 12.07.1997, the complainant sent a registered notice under Section 138(B) of the Negotiable Instruments Act 1881 (after this referred to as NIA).

5. The accused replied to the notice on 29.07.1997 and admitted the receipt of the notice on 19.07.1997. The stand of the accused based on the reply was that these cheques were given as a cost of rice crop for the year 1996-97 whereas they owed only a sum of Rs.58,000/- and the matter was subjudice, and also a complaint made by the complainant under Section 409 IPC to the police is under investigation, and they were not supposed to pay the amount described above of Rs.3,00,000/- for the liability for the year 1995-96. They further stated that if the amount of cheques were treated as the cost of rice crop liability of the accused Firm for the year 1996-97 and they were ready to pay the same.

6. Upon receiving this reply, the complainant filed a complaint before the Court of Magistrate in District Ferozepur. The contents of the complaint are similar to the contents of the notice, and as such, they are not being reproduced for brevity. The trial Court issued a notice of the accusation against the accused on 07.04.1998. They pleaded not guilty and claimed to be tried.

7. In a nutshell, as per the complaint and version of the complaint, Annexure P-1 is an agreement which is on a usual format and is dated 11.10.1995 between PUNSUP and M/s Kultar Singh & Bros, and in the agreement, the firm has been called Miller. The payment terms have been mentioned in this agreement, and it pertains to the harvest for 1995. PW1 brought the Court the original agreement and tendered its copy as Annexure P-1. On failure of the respondent-accused to deliver agreed quantity to deliver the agreed quantity of rice as per the

agreement, PUNSUP assessed an amount of Rs.13,98,128/- plus interest and other penal charges @ 1 ½ times the economic costs of the paddy. The abovesaid cheque was issued to discharge the liability, which stands dishonored. PW1 also identified the signatures of the accused, having been conversant with them while dealing with them in the rice-selling trade.

8. After analyzing the evidence of the parties vide judgment dated 20.05.2022, the trial Court dismissed the complaint and acquitted the accused of the charges. Hence, the present appeal.

9. On the other hand, the accused/respondent had taken stand from the initial stage that the cheque was for liability of the amount for the agreement of the year 1996-97, and they were ready and willing to pay the amount if the complainant agreed to adjust that amount for the liability of the year 1996-97.

10. I have heard the rival contention of the counsel for the parties and gone through the record.

11. It would be appropriate to reproduce the most relevant portion of examination-in-chief of PW-1 dated 14.05.1998, which reads as follows:-

> *"As per the terms of the agreement if the firm fails to de liever rice then Punsup is entitled to recover 1 ½ times the economic cost of paddy, the complainant is entitled to recover a sum of Rd, 13,98, 128/-from the accused firm. Accused firm had paid a sum of Rs. 1,00,000/-on 1-6-97. Out of the above mentioned amount the accused firm made a part payment of Rs. 3,00,000/-vide two cheques dated 30-6-1997 of Punjab National Bank, Koha Singh Wal a Branch, which were signed by Kultar Singh and SudarshanSingh accused. I have seen the original che que s, the photostate copy of the same are Exh. P-9 and Exh.P-10."*

12. The stand of PUNSUP through PW1 is that the accused had made a part payment of the amount mentioned above out of Rs.13,98,128/- through two cheques of Rs.1,50,000/- each, which bounced and led to the filing of the complaint against them. In cross-examination, the accused counsel expressly

referred to page 7, the concluding page of the agreement, and stated that the date was not mentioned. He further referred to the word 'Six' interpolated 'Five'. As per the complainant, the agreement in question is dated 11.10.1995 (Ex. P1). A reference to Annexure D3, which is a copy of Ex. P1, forwarded to the police by the complainant himself, reveals that the year is mentioned as 1996 and not 1995. Thus, the stand of the accused is that, in fact, the agreement on which the prosecution's case is based bears the date 11.10.1996, and the number 'Six' was tempered and made into the number 'Five.' Even PW1, in his cross-examination, admitted that earlier in the year number 'Six' was written and which was later changed to the number 'Five.' He did not explain why the number 'Six' was changed to 'Five.' The moot question is whether the cheques were issued according to this agreement or whether this agreement relates to the year 1996 or 1995. It is undisputed that the firm was in regular trading with PUNSUP, and there was certainly more than one agreement, which reflects from agreement Ex.DW1-B, which bears 18.10.1994.

13. The stand of the complainant in the notice issued under Section 138(B) of NIA as well as in the complainant is that the cheques were given to honor the liability in terms of agreement for the supply of the year 1995. Whereas the agreement referred to originally had the year 1996, which was tendered into as 1995, which is temporary. PW1 did not offer any explanation for such tempering.I have also looked in these documents and its bare perusal of P1 reveals that the number 'Six' has been overwritten with 'Five.'

14. The complainant’s case is that the cheques were issued for paddy pertaining to the crop year 1995-96. However, the case of the accused is that the agreement was for the year 1996-97, and the complainant placed reliance upon those cheques for the crop year 1995-96, which had no relevance, and the cheques given for the next year as advance, and security were wrongly utilized. To support their contention, they had also referred to another cheque of Rs.1,50,000/- which was never presented, which shows their bona fide. A reference to the statement of DW2-Baldev Singh, Inspector for PUNSUP, reveals

that the cheques in question, i.e., for Rs.8,78,400/- and Rs.6,23,200/- were for paddy year 1996-97 as security.

15. Further, PW1, in his cross-examination, admitted that there was another cheque dated 24.05.1997 issued by the firm in favor of the PUNSUP; however, such cheque was never presented for encashment and further states that he did not remember why such a cheque was not presented for encashment. Then he assumed the cheque might not have been given for encashment because the accused-Firm might have paid the amount. Later, he admitted that such a cheque of Rs.1,00,000/- was not encashed, and a draft of Rs.1,00,000/- was given by the used firm after the issuance of such cheque. He further admitted that such dispute was regarding payment of the firm for the years 1995-96. The defense also examined the witness in their favor; however, the material contradiction in the statement of PW1 and tempering in the agreement.

16. Appellant-complainant stands in para 3 of the complaint wherein PUNSUP states that there was a deadline to recover rice up to 28.02.1996, which was further extended to 31.08.1996. However, the cheque bears the date as 30.06.1997, i.e., the date after ten months from the deadline, even though there is no correspondence on record to show that the parties were negotiating during that period, which proves the stand of the respondent.

17. It is not the complainant's case that the cheques were given without agreement or for another cause. The presumption under Section 118 of NIA is a reputable presumption, and once the stand of the complainant is that these cheques were given for the crop of paddy for the year 1995-96, it would pertain on them to prove and link issuance of such cheques for the year, and this is not established. In fact, there is a tempering on the agreement where the year '1996' has been made as '1995', showing the agreement for the next year instead of the previous year. Even a reference to the cheques reveals that they bear the dates of 30.06.1997, and for this reason, an effort was made to link it to the paddy year 1997, whereas the agreement was for the paddy year 1995-96. Thus, the

complainant has filed to prove the existence of any legally enforceable debt, and instead, the accused has been able to prove that the version of the complaint is doubtful for which the accused are entitled to benefit, and it is being extended to them. Therefore, no ground is made out to interfere with the well-reasoned judgment of the trial Court.

18. The appeal is dismissed. Bail bonds, if any, furnished by the respondents stand discharged. All pending application(s), if any, stand closed.

(ANOOP CHITKARA)
JUDGE

20.07.2023
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Whether speaking/reasoned: Yes
Whether reportable: **No**.