

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

Date of Decision: February 27, 2023

1. CRM-M-24043 of 2017

Gulshan Kumar	Versus	...Petitioner
State of Haryana		...Respondent

2. CRM-M-7330 of 2018

Anil Kumar	Versus	...Petitioner
State of Haryana		...Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. P.S. Ahluwalia, Advocate for the petitioner in CRM-M-24043 of 2017.

Ms. Aarti Sharma, Advocate for Mr. Shalender Mohan,
Advocate for the petitioner in CRM-M-7330 of 2018.

Mr. Parveen Kumar Aggarwal, DAG, Haryana.

DEEPAK GUPTA, J.(Oral)

This order shall dispose of two petitions titled above. Prayer in both the petitions is made to quash FIR No.146 dated 10.08.2016 registered at Police Station Chhapar, District Yamuna Nagar under Sections 7, 10 of the Essential Commodities Act, 1955 as well as offences under Sections 406, 420 and 120-B IPC.

2. The impugned FIR was registered on the complaint of Inspector Sukhchain Singh, Food and Supplies Department, Saraswati Nagar, Mustafabad, as per which on 09.08.2016 at 8:00 PM, secret information was received that in Mustafabad, a truck full of wheat bags was standing in front of Shop No.1 of M/s Karta Ram Gurcharan Dass, Commission Agent. Complainant reached the spot and found 300 bags on the truck and another 300 bags bearing Haryana Government marka in godown of the shop. All

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

the bags were sewed with the machine. On inquiry, the truck driver Rajeev showed him copy of gate pass dated 09.08.2016 and told that he had brought the wheat on truck No. HR55-B-3921 twice from HAFED Godown. He also told that in order to bring this wheat, Gulshan contractor had phoned him in the morning and had instructed him that after getting the wheat loaded in the truck from the HAFED Godown, the same be delivered at the shop of M/s Karta Ram Gurcharan Dass. Gurcharan had also phoned him in the evening to bring the truck of wheat at his shop. It was alleged that aforesaid persons in collusion with each other had committed offences under the provisions of Essential Commodities Act by not sending the wheat from HAFED Godown to the Depot and instead had delivered the same to the shop of commission agent.

3. Investigation was carried out. The wheat bags were taken into possession. Rajeev Kumar, the driver of the truck was arrested on 10.08.2016 and his statement was recorded. On that basis, Gurcharan Dass was arrested on the same day i.e. 10.08.2016. Accused – truck driver Rajeev demarcated HAFED Godown, Mustafabad from where he had loaded 300 bags of government wheat twice on truck No.HR58-B3921 and carried the same to the shop of Gurcharan Singh, Commission Agent. On the basis of disclosure statement suffered by Gurcharan Singh, Commission Agent, accused Anil Kumar, Inspector, HAFED Godown, Mustafabad (petitioner of CRM-M-7330 of 2018) was arrested. The relevant record was taken into possession. Information was collected from District Manager, HAFED, as per which vide R.O. No.80/16 dated

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

22.07.2016, order was received from Manager, Food Corporation of India, Karnal to issue 6000 quintals wheat from Mustafabad under the Government of India, BPL Welfare Scheme. This RO was issued on 22.07.2016 by FCI and validity of lifting the food-grain was 31.07.2016. The whole quantity could not be lifted within time and so the validity period of RO was got extended up to 15.08.2016 for balance quantity by the Food Supply Department, Haryana. It was reported further that food-grain which is purchased and preserved by State Government Agencies relates to the Government of India. The order regarding lifting the food-grain stock from agencies are received from the Government of India through its Nodal Agency i.e. Food Corporation of India and as per the requirement of the FCI, the stocks are issued to the concerned. In the HAFED Godown, Mustafabad, as on 09.08.2016, 11 trucks containing 4420 bags of wheat were got loaded. Proper entries of the whole trucks were made in the HAFED inward/outward Gate register. The delivery of wheat was made to Manager, DFCI Jagadhari by HAFED Staff and Manager DFCI made the delivery to concerned department, i.e. CONFED working under Food and Supply Department of FCI, Jagadhari. Further, Ram Dayal, the Depot Holder was joined the investigation on 28.08.2016 and the stock register and sale register of his depot in Garhi Gausai were taken into possession. It was found that in the stock register, Inspector Sukhchain, Food and Supplies Department, Mustafabad had not given any stock inspection report nor the same bears his signatures. It appeared that stock register was completed with one pen later on, proving the connivance of Ram Dayal. Police report reveals further that contract of

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

shifting the government wheat from HAFED Godown to Government Depot had been given to Gulshan Kumar (petitioner of CRM-M-24043 of 2017) by the CONFED Department. The investigation revealed that said Gulshan Kumar contractor in connivance with the employees of HAFED Mustafabad, CONFED Mustafabad and Gurcharan Singh Commission Agent of Mandi Mustafabad got lifted 300/300 bags of wheat from HAFED Godown, Mustafabad on 09.08.2016 in his truck with driver Rajeev Kumar and instead of taking the wheat to the government Depots, delivered the same to the shop of Gurcharan Singh, Commission Agent. Stock of Garhi Gausai Depot was found to have been got completed in connivance with the employees of CONFED and Ram Dayal Depot Holder.

4. It is submitted on behalf of the petitioner Gulshan Kumar that prosecution case essentially hinges around the supply of wheat bags to the shop of M/s Karta Ram Gurcharan Dass Commission Agent and it was claimed that wheat had to be taken to the Depot but wrongly delivered to the shop of Commission Agent. Petitioner submits that he was not present at the spot nor any wheat was recovered from him. As per the case propounded by the Investigating Agency, it is Rajeev Truck Driver, who was present at the spot and from whose possession, the vehicle and the wheat bags delivered at the shop M/s Karta Ram were recovered. Petitioner has been arrayed solely on the basis of disclosure statement of the co-accused, which is inadmissible. Petitioner submits further that records of Depot were duly checked by the Inspector, Food and Supplies Department, Mustafabad, Yamuna Nagar and no shortage

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

was found. Investigating Agency failed to take into consideration the fact that driver Rajeev was also owner of the vehicle and, so, the petitioner cannot be fastened with any vicarious liability. Learned arguing counsel for the petitioner Gulshan has also referred to ***Preet Kamal Vs. State of Punjab, 2018(4) R.C.R. (Criminal) 938*** in order to contend that a person cannot be convicted on the basis of confessional statement of co-accused. Learned counsel also contends that Investigating Agency has failed to point out as to which order passed under the provisions of Essential Commodities Act has been violated.

5. On behalf of the petitioner – Anil Kumar, similar contention is made to the effect that neither the petitioner was present at the spot nor any recovery was effected from him. Petitioner is working at the post of Inspector in the HAFED Department. There is prescribed procedure in the HAFED Godown, when the vehicle enters from the gate. It is also submitted that FCI vide release 18/16, issued to the CONFED for release of 6600 quintal of wheat to get lot from Mustafabad Godown of HAFED. Copy of release order is Annexure P.3. The same was sent to District Office of HAFED and against this release order, five vehicles were loaded on 09.08.2016 with 2065 bags. Gate pass number was also given. All the gate passes were having truck numbers, number of bags etc. As per the prescribed procedure of the HAFED, when a vehicle enters from the gate, there is inward register and entry is made. After loading of the truck, truck is again measured on electronic weighing machine and then exit is noted in the relevant register after taking the delivery. Petitioner submits that he has no role in the offence. He had issued wheat in

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

accordance with RO No.80/16, which was valid up to 15.08.2016 as it was part of his duty to complete the release order. Petitioner further submits that agreement was between Gulshan Kumar and CONFED as per which wheat was given to the contractor and, therefore, the release order was issued and specific letter was issued to the District Manager for providing wheat to the above-said contractor. FCI is to verify within three days about the delivery of the wheat. District Manager, HAFED, Yamuna Nagar has written the letter to the SHO, Police Station, Thana Chhapar stating therein the aforesaid facts and circumstances and that delivery of wheat was made to Manager, DFCI, Jagadhari vide the HAFED Staff. It is further submitted that after lodging of the FIR, stock was checked and as per the record, there was no financial loss to HAFED because FCI authority had made payment to the HAFED on the basis of dispatch documents. With all these submissions, both the petitioners have prayed for grant of quashing of the FIR.

6. Opposing both the petitions, learned State Counsel has drawn attention towards the disclosure statement suffered by petitioner – Gulshan Kumar made on 20.11.2016 revealing the modus operandi to commit the offence and the collusion of both the petitioners and other co-accused. As per disclosure statement, said Gulshan Kumar is a transporter and had taken contract to deliver BPL food articles to the Depots. As he had also earlier taken contract, so he was well aware about the insides and outsides of the department. In the rainy season, due to moisture, the weight of the wheat in the sack is enhanced. However, the officials and the officers do not show the enhanced wheat and rather they

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

sell the enhanced stock to the commission agent and distribute the gains.

Said Gulshan Kumar disclosed further that RO No.80/2016 was received from FCI to CONFED Department, Yamuna Nagar as per which wheat bags were to be lifted from HAFED Godown. He (Gulshan Kumar) had talked to Inspector Paramjit Singh of CONFED and his clerk Ravi. He then talked to Anil Kumar Inspector HAFED on his mobile on 09.08.2016 for lifting of the wheat bags asking him to send the trucks to Gurcharan Singh Commission Agent. He (Gulshan Kumar) then talked on mobile to Gurcharan Singh Commission Agent in this regard. Then he and Ravi reached Godown, Mustafabad in his car. In the meantime, Inspector Paramjit came and noticed truck No. HR55-B3921 loaded with 300 bags of wheat with its driver Rajeev Kumar earlier known to him. On the asking of Inspector Anil Kumar, truck No.HR55-B3921 was sent to Gurcharan Singh Commission Agent for delivery of the wheat bags without issuing any bill, as he (Gulshan) had already talked on phone with Anil Kumar Inspector. Later on, he confirmed that 300 bags of wheat had already been unloaded at the shop of Gurcharan Singh Commission Agent. In the meantime, truck with another 300 bags reached to the shop of Gurcharan Singh Commission Agent, which was caught hold by Sukhchain Singh, Inspector Food and Supplies. It was further disclosed by Gulshan Kumar that thereafter, Inspector Anil Kumar and other officials deliberated upon the matter and Inspector Paramjit Singh issued a bill for 300 bags of wheat in the name of Ram Dayal, Depot Holder of Garhi Gausai. He (Gulshan) also issued the built and handed over the same to Inspector Paramjit. He also came to know

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

that Inspectors Paramjit and Sukhchain, in order to save the image of the department, obtained signatures of Kamal son of Ram Dayal, Depot Holder regarding the receipt of 300 bags of wheat. Ram Dayal was having some stock earlier. Some stock was arranged by Ram Dayal and some was arranged by officials of the Department from the nearby Depots so as to complete 300 wheat bags with Ram Dayal and in this manner, they completed the record of Ram Dayal. Said Gulshan Kumar confessed that 600 bags of wheat, on the asking of Anil Kumar Inspector, had been transported at the shop of Gurcharan Singh Commission Agent through truck driver Rajeev Kumar, in collusion with Ram Dayal Depot Holder and other officials of HAFED & Food Supplies department.

7. Learned State Counsel submits that the aforesaid disclosure statement of Gulshan Kumar shows the complete modus operandi as to how the fraud has been committed by petitioners & other co-accused with the department in collusion with each other. It is further submitted that after completion of investigation, final report under Section 173 Cr.P.C has already been filed and charges have already been framed and this is not a case fit for quashing the FIR, as it is a matter of trial as to whether the disclosure statement suffered by the petitioner and other co-accused is legally admissible or not or whether they resulted in discovery of any new fact or discovery of any object.

8. In **State Of Haryana And Ors vs Ch. Bhajan Lal 1992 AIR 604, 1990 SCR Supl. (3) 259**, Hon'ble Supreme Court has laid down the guidelines as to in what cases the FIR can be quashed. It will be apt to reproduce the relevant para, which read as under:

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

“8.1. In the exercise of the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide kinds of cases wherein such power should be exercised:

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. Further, in **Municipal Corporation of Delhi v. P.D. Jhunjunwala, [1983] 1 SCR 895 at 897**, it was made clear:

" . . . As to what would be the evidence against the respondents is not a matter to be considered at this stage and would have to be proved at the trial. We have already held that for purpose of quashing the proceedings only the allegations set forth in the complaint have to be seen and nothing further."

10. The facts, which have emerged during the investigation would prima-facie indicate the role of both the petitioners Gulshan as well as Anil. In view of those facts, allegations against the petitioners cannot be stated to be unfounded or false nor it can be stated that they have been falsely implicated. The contention of the petitioner that stock with the depot holder was found to be complete has no merit because as per the investigation, the stock register with depot holder has been manipulated to show the complete stock. Investigation is already complete and charges have already been framed.

11. As far as **Parvinder Singh Vs. State of Haryana and another, - CRM-M-3642 of 2012 (L&M)**, decided on 21.03.2018 by this Court (a coordinate Bench), relied upon by learned counsel for the petitioner is concerned, the facts thereof are quite distinguishable. In that case, petitioner was a transport contractor, who had not delivered 569.15 quintals of wheat to the depot holder and rather, unloaded the same at his own godown. It was found that petitioner had been granted eight days' time to lift the wheat and supply the same to the depot holder. His

**CRM-M-24043 of 2017 &
CRM-M-7330 of 2018**

explanation was to the effect that after lifting the wheat on 23.11.2010, he unloaded the same at his own godown, on the asking of the depot holder, as it was night time because in the villages due to low height of electricity wires, open drain etc., the villagers raise objections if the truck enters into a village at the night time and, thereafter, the said transporter unloaded the goods from the truck in the same manner on the very next day i.e. 24.11.2010 and supplied the same to the depot holder, who had never raised any objection nor filed any complaint. It was in these facts and circumstances that it was held that transporter had not committed any offence. However, in the present case, the petitioner – transporter did not unload the wheat bags in his own godown and rather, instead of unloading the same with the depot holder, unloaded the same at the place of Commission Agent. As such, petitioner cannot be given any advantage of the cited authority.

12. Having regard to the aforesaid discussion, I am of the view that the FIR in question does not deserve to be quashed. As such, both the petitions are hereby dismissed.

February 27, 2023

renu

**(DEEPAK GUPTA)
JUDGE**

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