

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

CRR No.1526 of 2006

Date of Decision: April 17, 2023**FCI****...Petitioner****Versus****Satwant Singh and others****...Respondents****CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA**

Present: - Ms. Jatinder Jit Kaur, Advocate and Mr. Ish Puneet Singh, Advocate for the petitioner.
Mr. Impinder Singh Dhaliwal, Advocate for respondents No.1 to 3.
Mr. Parneet Singh Pandher, AAG, Punjab.

DEEPAK GUPTA, J.

This revision is directed against the judgment dated 23.12.2005 passed by learned Additional Chief Judicial Magistrate, Amritsar, whereby the respondents- accused have been acquitted in a case arising out of FIR No.220 dated 11.06.1992 registered at Police Station Sadar Amritsar, under Section 406 IPC.

2. FIR was lodged on the complaint of District Manager, Food Corporation of India, Amritsar, as per which during the month of January, 1991, 6614 bags weighing 4286 quintals of paddy crop belonging to FCI was stored in the mill premises of M/s Free India Rice Mills, Sangrana Sahib owned by the accused, for the purpose of getting the same milled into rice. Agreement dated 27.12.1990 was executed containing terms and conditions of contract for milling. After taking into account 2% driage allowance, the miller was required to deliver the resultant rice to the FCI which should have been in the ratio of 69% of the quantity of the paddy. It was alleged that accused misappropriated 1657 bags i.e. 1055 quintals 50 kg and 942 grams of paddy belonging to the FCI and, thus, committed offence under Section 406 IPC.

3. Investigation was carried out. Challan was filed. Accused were charge-sheeted under Section 406 IPC. After holding trial, acquittal was recorded by learned Additional Chief Judicial Magistrate, Amritsar by observing that prosecution had failed to prove the entrustment of the quantity of the paddy bags as was being alleged by it and rather, the rice paddy bags stored in the mill of the accused were under the custody of the Food Corporation of India officials, which was proved in an internal inquiry conducted by FCI itself. With these findings, acquittal was recorded, against which this revision was filed.

4. It is contended that whole quantity of paddy bags was stored in the mill premises and so millers were the custodian of the whole paddy and without looking at this aspect, the trial Court has recorded acquittal on the basis of presumption that officials of the Corporation were having the custody of the stocks, though there was no control of these officials over the stock kept by the accused, which remained with M/s Free India Rice Mills. It is further contended that civil suit for recovery of ₹4,61,849/- along with interest has already been decreed on 19.11.2005 and that evidence of the prosecution has not been properly appreciated. Prayer for reversing the acquittal is made and to convict the respondent- accused.

5. Refuting the aforesaid contentions, it is submitted by learned counsel for the respondent- accused that civil suit for recovery was initially decreed ex-parte, which was later on set aside. Suit was then contested and vide judgment dated 01.08.2019 passed by learned Additional Civil Judge (Senior Division), Amritsar - titled Food Corporation of India Vs. M/s Free India Rice Mills, Tarn Taran Road, Amritsar and others, (PBAS02-000010-1994) has since been dismissed. He has placed on record attested copy of that judgment. It is further contended that internal Committee of the

complainant FCI conducted the investigation in the matter and held its officials to be responsible being negligent in storing the paddy. That report dated 28.12.1994 was produced by the accused in defence as Ex.DW3/A, which has been rightly relied upon by the learned trial Court for recording finding of acquittal. Prayer for rejecting the petition is accordingly made.

6. I have considered submissions of both the sides and perused the record.

7. Before proceeding further, it may be noted that there is double presumption of innocence in favour of the respondent- accused. The initial presumption of innocence is on account of the basic principle of criminal law that an accused is presumed to be innocent till proven guilty. Secondly, said presumption is reinforced by the finding of acquittal recorded by the trial Court after trial based on the evidence. In these circumstances, onus is heavy on the petitioner to show the illegality or impropriety of the finding recorded by the trial Court.

8. Further, Section 405 of IPC reads as under: -

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “criminal breach of trust”.

9. As is evident from the afore-said provision, following ingredients must be proved to constitute the offence of criminal breach of trust –

(A) entrusting a person with property or with any dominion over property;

(B) that the person entrusted

(a) dishonestly misappropriated or converted that property to his own use, or

(b) dishonestly used or disposed of that property or willfully suffered any other person to do so in violation,

(i) of any direction of law prescribing the mode in which such trust is to be discharged,

(ii) of any legal contract made, touching the discharge of such trust.

10. Thus, in order to prove the offence of criminal breach of trust, prosecution is firstly required to prove the entrustment of the property or with dominion of the property with the accused. In the present case, as per prosecution allegations, 6614 bags weighing 4286 quintals 60 kg paddy were stored in the mill premises of M/s Free India Rice Mills, Sangrana for the purpose of milling. Although, it is proved on record that above-said quantity of paddy was once stored in the mill premises of the accused but prosecution utterly failed to prove the dominion of the accused over the said property. Rather, the own inquiry as conducted by Shri S.C. Sood and Shri P. Janardhanan, the Assistant Managers consisting of the Investigating Committee concluded their inquiry in the report Ex.DW3/A in the following terms: -

“After considering the all above facts from the statements

and records of the Distt. Office/ARDC S. Sahib, the committee has arrived at the conclusion as to that: -

1. *The concerned authorities of FCI, Distt. Office has not taken due initiative to clear the Mandi well in time and stored the paddy in a quite unsafe Private miller's premises, while considering the quantity of just 9674 B/s when there were several alternative local depot, without following the proper procedure for hiring of storage space and without giving required suitable direction and ensuring the implementation of the even such insufficient directions to safe guard the FCI interest, without proper records of the action in the files, thus been the contributing to prime factor for the losses.*
2. ***S/Sh. Darshan Kumar AG. I(D) and P.P. Singh AG. II(D), by virtue of having been the custodians of the physical charge of the stocks have not ensured the liquidation of paddy from the miller premises at the first instance and they have been quite negligent about the safety of FCI interest just only with obtaining of an affidavit from the party. Besides they have not shown the records such as weighbridge Register wherein tampering has been alleged, without following the proper procedure of controlling the issues of paddy by maintaining proper stipulated records. Thus, they have made themselves responsible for the misappropriation that has taken place.***
3. *Sh. Sobran Singh Am(D), who has been the supervisory officers of the depot did not adopt the proper procedure for hiring of the private open complex even for the storage of a meagre quantity of 9674 B/s of paddy and simply complied with*

the District Office orders with one question. He also did not ensure proper watch & ward arrangement except to obtain an affidavit. Further he did not ensure the issue of paddy from the millers premises or taken any action against the officials for not paying any heed to his direction in the said matter. Thus, he has shown utter lack of supervision.”

11. The afore-said inquiry was duly proved on record as Ex.DW3/A. When learned counsel for the petitioner was confronted with the aforesaid inquiry report conducted by its own officers, learned counsel was at loss of words.

12. It will not be out of place to mention that the civil suit filed by the petitioner – complainant – FCI for recovery, on the same allegations, has already been dismissed by the Civil Court despite the fact that burden of proof in the civil suit is of much lesser degree compared to the criminal case.

13. Having regard to the findings as above, no illegality or irregularity can be found in the findings of acquitted recorded by the trial Court, as the finding is based upon proper appreciation of evidence. There is absolutely no reason to upset the well-reasoned judgment of acquittal recorded by the trial Court. Prosecution utterly failed to prove the entrustment of the paddy bags, which was allegedly misappropriated. As such, finding no merit in the present revision petition, the same is hereby dismissed.

April 17, 2023
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(DEEPAK GUPTA)
JUDGE

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