

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

CRR-2028-2022

Date of Decision: November 23, 2023

PUNJAB AGRO FOODGRAIN CORPORATION LIMITED.

.....Petitioner

Versus

MANGAT RAI AND ANOTHER

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Anupam Singla, Advocate for the petitioner.

None for respondent No.1.

Mr. I.P.S. Sabharwal, DAG, Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. This revision is preferred against the judgment dated 27.09.2019 passed by learned Sessions Judge, Barnala whereby, the appeal preferred by the petitioner against judgment of acquittal dated 10.05.2018 passed by learned Judicial Magistrate, Barnala vide which the respondent No.1 was acquitted in FIR No. 44 dated 28.08.2012 under Sections 420/406/120-B IPC registered at Police Station Tallewal was dismissed.

2. Brief facts of the case are that Respondent no. 1-accused, being owner of Aggarwal Rice Mill, Bhotna, had entered into an agreement for custom milling of paddy with the petitioner and agreed to deliver 22254.28 quintal of rice as per 67% out turn ratio as per the agreement. However, he only delivered 2697.50 quintals of rice and

owes another 19556.78 quintals of rice to the petitioner. A physical verification of the stock of the said mill of respondent No.1 was carried out on 05.04.2012 and it was found that 83398 bags (35 kg each) of paddy i.e. the remaining outstanding quantity towards respondent No.1 has been misappropriated by him. The petitioner, vide letter dated 12.05.2012, informed Respondent No.1 that in case he fails to deliver the remaining quantity of rice, he will have to deposit Rs. 3,91,99,661/- in lieu of the same and a deadline of 30.06.2012 was issued. The accused failed to deliver the remaining quantity or deposit the said amount causing the petitioner to register an FIR against him.

3. Learned counsel for the petitioner assails the impugned judgment on the ground that the Lower Appellate Court has wrongly acquitted the respondent No.1 merely on the ground that the original agreement was not proved on record, even though the execution of the same has not been denied by him. He further asserts that the Lower Appellate Court erred in holding that the physical verification report proving the misappropriation needed to be signed by respondent No.1.

4. Furthermore, learned counsel for the petitioner asserts that it is an admitted fact that respondent No.1 was convicted in a complaint filed under Section 138 of the Negotiable Instruments Act, 1881 by the petitioner upon dishonouring of cheques issued by him qua the misappropriated paddy.

5. Having heard the learned counsel for the petitioner and after perusing the record, this Court finds no ground to interfere in the

finding of acquittal recorded by learned trial Court and Lower Appellate Court.

6. It is a trite law that mere production of document is no proof of its execution. The trial Court has rightly observed that the release orders vide which the paddy procurement was entrusted to the accused has neither been produced nor proved on record. Furthermore, the prosecution has not examined any officials of the appellant to prove the receipts, in question. It also remains unproven that the said receipt bears signatures of the accused. Therefore, in view of the failure of the prosecution, to prove the receipt and release order, the learned trial Court and Lower Appellate Court have correctly dismissed the prosecution case.

6. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the accused should prevail over the other pointing towards his guilt. Furthermore, the trial Court has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (See **H.D. Sundara and others Vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram v. State of H.P., 1973 (2) SCC 808 and Chandrappa and others v. State of Karnataka, (2007) 4 SCC 415**). A Division bench of this Court in the judgment passed in **State of Haryana Vs. Ankit and others** passed

CRM-A No.3 of 2022 decided on 06.07.2023 has held that presumption of innocence further gets entrenched on acquittal of the accused by trial Court.

7. A two Judge Bench of Hon'ble Supreme Court in case of **Chandrappa (supra)** has laid down the parameters with regard to the power of appellate Court while dealing with an appeal against an order of acquittal. Speaking through Justice C.K. Thakker, the following was held:

"42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court."

8. In view of the facts and circumstances of the case, this Court finds that the defence has been successful in making serious dent in the case of the prosecution and that the prosecution has miserably failed to establish its version beyond reasonable doubt. Learned counsel for the appellant has failed to point out any perversity or illegality in findings recorded by the learned trial Court and the Lower Appellate Court which warrants interference by this Court. Resultantly, the instant petition is dismissed.

23.11.2023
tejwinder

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned	YES/No
Whether Reportable	Yes/No