

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

CRR-2247-2013 (O&M)
Date of decision: 28.04.2023

STATE OF PUNJAB

....Petitioner(s)

Versus

GURMINDER SINGH

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Kamalpreet Bawa, AAG Punjab for the petitioner.

Mr. N.S. Goraya, Advocate for the respondent.

AMAN CHAUDHARY. J.

1. Present revision petition has been filed against the judgment dated 17.01.2012 passed by Sub-Divisional Judicial Magistrate, Nabha acquitting the accused-respondent and judgment dated 10.01.2013 passed by the Additional Sessions Judge, Patiala, dismissing the appeal preferred by the State.
2. Succinctly, the facts that led to the present conflict between the opposing parties are that in the year 2004-05, Punjab Agro Food Corporation allotted paddy for shelling to M/s GB Rice Mill owned by the respondent. On 16.10.2004, an agreement to this effect was executed whereby the said firm was allotted 93,335 bags of paddy having 35 kgs each, which were to be stored in the Mill. As per clause No.11, the firm was required to supply the entire rice by March 2005. The paddy was delivered on 18.11.2004 to the Mill, however, the respondent failed to deliver the 9403.92 quintal of rice, amounting to Rs.1,03,04,251/- within stipulated period. The respondent assured the District

Manager of the Corporation on 04.05.2005 that he will deliver deficit rice by 30.05.2005, but again failed to do the same. On 18.06.2005, a physical verification report of the firm was submitted, as per which the respondent had violated the terms of agreement and had kept rice in an unauthorized manner. On 23.06.2005, a complaint was filed by the District Manager against the respondent to SSP for the said violation. Thus, the respondent had caused a loss of Rs. 1,04,00,000/- to the Corporation. FIR No. 135 dated 14.10.2005 was registered under Section 420 and 406 of IPC and Section 7 of the Essential Commodities Act. After investigation, final report under Section 173 CrPC was presented before the Court, to which the accused- respondent pleaded not guilty and claimed trial.

3. The prosecution in order to bring home guilt of the accused, examined as many as ten witnesses. In his statement recorded under Section 313 of CrPC, the accused-respondent denied all the incriminating circumstances appearing against him in the prosecution case and pleaded innocence and false implication. However, he in his defence, did not examine any witness.

4. The trial Court having minutely scrutinized the entire evidence had extensively discussed the same as led by the parties and came to the conclusion that the prosecution has miserably failed to prove its case and thereby acquitted the accused-respondent. Aggrieved appellant preferred an appeal before the Additional Sessions Judge, Patiala, which was dismissed vide judgment 10.01.2013, affirming judgment of the trial Court.

5. Being dissatisfied with the above judgments of the Courts below, the petitioner has preferred the present revision petition.

6. In sum and substance, it is urged on behalf of the petitioner that the Court below has not correctly appreciated the statements of the witnesses or the

evidence led by the prosecution and has thus, erroneously acquitted the accused-respondent. PW-1, Sandeep Talwar proved the agreement between the parties, according to which the paddy was entrusted to the accused-respondent for milling but it was misappropriated. There is sufficient evidence on record to connect the accused with the commission of crime. The ingredients of Sections 420, 406 IPC as well as Section 7 of the Essential Commodities Act are fully proved.

7. Learned counsel for the respondent had contended that the impugned judgments have been rightly passed by the Courts below and there is no illegality or perversity, which would warrant interference by this Court.

8. Heard learned counsel for the parties and perused the record.

9. It would be apposite to refer to the judgment of the trial Court while acquitting the accused-respondent, the relevant paras whereof read thus:

“20.Accused in the present case has been charge sheeted for the commission of offences punishable under section 420 IPC. It is submitted by the prosecution that in the year 2004-05 accused Gurminder Singh was in charge of M/s G. B. Rice Mills and he has cheated the Corporation to the tune of Rs. 10381727/- by not delivering the paddy for the crop year 2004-05. However, section 420 IPC embodies that for the offence of cheating there must be dishonest inducement if a person by deceiving him; the person so deceived should be induced to deliver any property to that person and said act causes harm to the person so induced. In the instant case the, prosecution has not been able to explain and prove any dishonest intention on the part of the accused which is an essential ingredient of offence under section 420 IPC. Further the accused has also placed on record the execution proceeding documents (Ex D1 to Ex D3) on the basis of Award of Sole Arbitrator Sh. G.S. Bhatia. The prosecution has not been able to prove that there was any fraudulent misrepresentation on the part of the accused particularly when civil proceedings have already been initiated. As such, accused facing trial can not be fastened with liability under section 420 IPC.

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23. The accused has also been charged sheeted for

offence under section 406 IPC in the alternative. No doubt, the Corporation has entrusted paddy to the accused for dehusking but the prosecution has not been able to prove the alleged shortage in consignment or loss to the Corporation. Further, clause 23 of the agreement (Ex PW1/A) makes provision to refer matter to sole Arbitrator of Managing Director in case of arising of any dispute with regard to the agreement and Award of said Arbitrator shall be final and binding. Reliance has been placed upon the citation of Hon'ble Supreme Court of India in case titled as **Kailash Verma Vs Punjab State Civil Supplies Corporation & Anr 2005(2) Criminal Court Cases 39 (S.C)** wherein Hon'ble Apex Court has held that when Civil Supplies Corporation was entrusted paddy for dehusking and accused could not return rice as per agreement, and Corporation also initiated steps for arbitration proceedings on the basis of arbitrator clause in the agreement, no offence under section 406 IPC is made out. Hon ble Punjab and Haryana High Court in, **Tarsem Lal Vs State of Punjab 2006(4) Criminal Court Cases, 206(P&H)** has held that such dispute is of civil in nature and therefore, no case under section 406 IPC is made out in such like cases.

24. Further, as per prosecution version accused has committed offence under section 7 of the Essential Commodities Act as he has contravened the rice Control order of the year and breached the agreement by not delivering the rice due. However, same has been opposed by the learned counsel for the accused. Further on perusal of case file and as discussed above, the prosecution has not been able to prove the shortage in rice. The prosecution as well as accused have relied upon the agreement (Ex PW1/A) and paddy was entrusted to the accused vide PW3/A for shelling and both the accused and Corporation were bound by terms and conditions of the agreement. As already discussed, clause 23 of the Agreement in question embodies that in the event of any dispute arising out of this contract; the matter shall be referred to the sole Arbitrator of Managing Director or any person appointed by him on his behalf. Further, as per documents (Ex D1 to Ex D3) the Corporation has already availed the remedy by referring the matter to Sole Arbitrator. As such, the prosecution has not been able to bring on file ever on iota of evidence to prove that accused Gurminder Singh has committed offence under section 7 of Essential Commodities Act and he can not be held guilty for the same.” (emphasis supplied)

10. The appellate Court while dismissing the appeal and affirming the order of the trial Court observed thus:

“21. Adverting to the present case in hand, no doubt the corporation had entrusted paddy to the accused for de-husking, but the prosecution has miserably failed to prove the alleged loss and if any loss is suffered by the corporation, the same is covered by arbitration clause as referred above. So offence U/s. 406/420 IPC is not made out as shortage of rice has not also been proved on record. So ingredients U/s. 7 of the EC act is also proved on file.

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26. From the aforesaid discussion, I am of the considered view that no offence, as alleged by the prosecution, are made out. Hence the learned trial Court has rightly acquitted the accused/ respondent. So, I concur with the findings of learned Trial Court with regard to acquittal of the accused and as such the same are hereby affirmed. There is no merit in the present appeal and the same is hereby dismissed. Trial Court records to be returned back. Appeal file be consigned to Record Room.” (emphasis supplied)

11. As is apparent from the record, that whilst the Corporation entrusted paddy for de-husking to the firm of the respondent and had alleged shortage of rice supplied by the miller. However, the physical verification report produced related to year 2001-2002, in that too, no shortage of rice was found mentioned, as also admitted by PW-3, a member of the committee. As regards, the year 2004-2005 during which the agreement involved in the present case was entered in to and rice was to be delivered, there was no evidence led to prove shortage and thereby misappropriation. In order to attract the ingredients of Section 420 IPC, there must be an intention to deceive from the very inception, which the prosecution miserably failed to prove. Inasmuch as the offence under Section 7 of the Act is concerned, the dispute regarding the agreement being arbitrable, the matter had been referred to the sole arbitrator as is reflective from documents

Exs.D1 to D3. The evidence led, fell short of proving the guilt of the accused-respondent beyond reasonable doubt. Thus, the trial Court having properly appreciated the evidence, arrived at the correct conclusion and took the plausible view, which was rightly affirmed by the lower appellate Court.

12. The arguments addressed by the learned counsel for the petitioner are essentially either relating to a question of fact or an abortive attempt for re-appreciation of evidence on record. Such discourse ordinarily does not fall within the scope and ambit of powers vested in this Court under the revisional jurisdiction.

13. A profitable reference in this regard can be made to the judgments of Hon'ble The Supreme Court of India in **Logendra Nath Jha And Ors. vs. Shri Polailal Biswas**, AIR 1951 SC 316, **K. Chinnaswamy Reddy vs. State Of Andhra Pradesh**, AIR 1962 SC 1788 and **Mahendra Pratap Singh vs. Sarju Singh & Anr**, AIR 1968 SC 707, wherein it has been observed and held that the High Court in its revisional jurisdiction cannot reverse pure finding of fact based on the trial Court's appreciation of the evidence, but for in exceptional cases, where there is glaring defect in the procedure or there is a manifest error or illegality on a point of law or no appraisal of the evidence at all and consequently, there has been flagrant miscarriage of justice.

14. It was held by Hon'ble The Supreme Court that where two views are possible on the same evidence and findings recorded by lower court are not perverse, weightage to the decision of the trial Court should be given. [See **Bhagwan Jagannath Markand vs. State of Maharashtra**, (2016) 10 SCC 537, **Raja vs. State of Karnataka**, (2016) 10 SCC 506, **Sadhu Saran Singh vs. State of U.P.**, (2016) 4 SCC 357 and **Sambasivan & Ors vs. State of Kerala**, (1998) 5

SCC 412].

15. In view of the foregoing discussion, the inescapable conclusion drawn by this Court is that there is no illegality or perversity in the judgments that may call for any interference. Consequently, the revision petition sans merit, is hereby dismissed.

(AMAN CHAUDHARY)
JUDGE

28.04.2023
S.Sharma(syr)

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