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

**CRM-A-1352 of 2019**
**Date of decision: 27th July, 2023**

Punjab Agro Food Grains Corporation Ltd.

Applicant

Versus

M/s Guru Ram Dass Rice Mills and others

Respondents

**CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr. Karan Singla, Advocate for the applicant.

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**AVNEESH JHINGAN, J (Oral):**

1. This application under Section 378(4) Cr.P.C. is filed seeking leave to appeal against judgment of acquittal dated 26.2.2019 in complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act').

2 The relevant facts are that the applicant entered into Custom Milling Agreement with the respondent-firm. As per clauses of the agreement, the miller was obliged to supply the milled rice as per the schedule. In case of delay, miller was liable to pay interest and penalty if any imposed by the Government. A cheque bearing No. 219790 dated 15.5.2014 amounting to Rs.11,25,065/- was issued by respondent-firm (M/s Guru Ram Dass Rice Mills, Ferozepur City) which on presentation, was returned vide memo dated 17.5.2014 with the remarks “Exceeds Arrangement and Drawer's signatures incomplete/Joint Operation”. After

issuance of notice, complaint under Section 138 of the Act was filed.

3. The respondent took defence that there was no liability to be discharged and the blank cheque issued for security in pursuance to the custom milling agreement was misused.

4. The applicant failed to produce the custom milling agreement, documents to substantiate that the paddy was entrusted to the respondent-firm (No account books were produced) and that there was delay in delivery of rice. CW1 in his deposition stated that the cheque in question was on account of milling and *Bardana,* in cross examination it was admitted that in complaint there is no mention that the amount was payable on account of milling and *Bardana.* It was further stated that the miller had given in writing that the cheque amount was for *Bardana* but no such document was produced. Perusal of the custom milling policy pertaining to the years 2012-13 and 2013-14 revealed that the applicant used to obtain un-dated and post-dated cheques in its favour as security. This substantiated the defence taken by the respondent.

5. After perusing the evidence, the court concluded that the applicant failed to discharge the onus for proving the pre-requisites under Section 138 of the Act.

6. Learned counsel for the applicant submits that the respondents were wrongly acquitted and evidence was not properly appreciated.

7. There cannot be a quarrel on the proposition that under Sections 118 and 139 of the Act, the presumption is in favour of the holder of the cheque but it is rebuttable. In the case in hand, CW1 admitted that no specific averment in the complaint was made that there was legally

enforceable debt on the date of presentation of the cheque. No evidence was adduced to prove that cheque was for amount accruing on account of delay in milling the rice. The accused was successful in rebutting the presumption and to substantiate that the cheque was for security purpose.

8. The scope of interference by this court in the order of acquittal is limited. There cannot be re-appreciation of evidence. The view taken by the court below is plausible one. There is no legal or factual error in the impugned judgment, much less perversity.

9. No case is made out for grant of leave to appeal.

10. The application is dismissed.

**[AVNEESH JHINGAN]**
**JUDGE**

**27th July, 2023**
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1. Whether speaking/ reasoned : Yes / No
2. Whether reportable : Yes / No