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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CRR-1849-2023 (O&M)
Date of Decision: 06.10.2023

Aggarwal Rice Mills, Bhotna ..... Petitioner

Versus

State of Punjab and another ..... Respondents

CRR-1850-2023 (O&M)

Aggarwal Rice Mills, Bhotna ..... Petitioner

Versus

State of Punjab and another ..... Respondents

CRR-1851-2023 (O&M)

Aggarwal Rice Mills, Bhotna ..... Petitioner

Versus

State of Punjab and another ..... Respondents

CRR-1852-2023 (O&M)

Aggarwal Rice Mills, Bhotna ..... Petitioner

Versus

State of Punjab and another ..... Respondents

CRR-1860-2023 (O&M)

Aggarwal Rice Mills, Bhotna ..... Petitioner

Versus

State of Punjab and another ..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Munish Garg, Advocate,
for the petitioner (in all cases).

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JASGURPREET SINGH PURI, J. (ORAL)

1. All the revision petitions are taken up together for final disposal since the complaints under Section 138 of the Negotiable Instruments Act were decided by the learned Chief Judicial Magistrate, Barnala by way of a common order on 01.10.2016. Thereafter, separate appeals were filed and the same were again decided by way of a common order by the learned Additional Sessions Judge, Barnala on 25.07.2023. Now since five revision petitions have been filed, the same are identical in nature and the impugned orders being common orders, these revision petitions shall be disposed of by way of a common order.

2. The controversy involved in the present case is that the respondent/complainant-Punjab Agro Foodgrains Corporation Ltd., Barnala, which is a State Agency for procurement of paddy and thereafter, giving it to the rice sellers for milling, filed five different complaints under Section 138 of the Negotiable Instruments Act against the present petitioner in all the five cases, namely, Aggarwal Rice Mills, Bhotna pertaining to five different cheques of different dates. The subject matter of all the five complaints are that the complainant-Corporation had delivered and stored 94,901 bags of paddy being 33,215.35 quintals rice with the present petitioner-accused, who after milling the same, failed to deliver 19,556.79 quintals rice to the complainant-Corporation. The following five cheques were issued by the petitioner-accused as follows:-

1. Cheque No.141314 dated 7.12.2011 for Rs.50,00,000/-
2. Cheque No.141315 dated 30.11.2011 for Rs.50,00,000/-
3. Cheque No.141312 dated 21.12.2011 for Rs.50,00,000/-

4. Cheque No.141313 dated 14.12.2011 for Rs.50,00,000/-

5. Cheque No.141311 dated 30.12.2011 for Rs.50,00,000/-

3. The aforesaid cheques were presented before the Bank but they were returned with the remarks 'insufficient funds'. Thereafter, the respondent/complainant served the legal notice to the petitioner-accused for making payment within 15 days, but the payment was not made and thereafter, five complaints under Section 138 of the Negotiable Instruments Act were filed against the petitioner-accused. All the five complaints were thereafter clubbed together by way of an order dated 06.05.2014. The learned Chief Judicial Magistrate convicted the petitioner in all the five complaints to undergo rigorous imprisonment for a period of one year and to pay fine of Rs.2,000/- and in default of the same to undergo further rigorous imprisonment for one week. The aforesaid judgment was assailed by the petitioner by way of filing five appeals which were dismissed by the learned Addtional Sessions Judge, Barnala on 25.07.2023.

4. The learned counsel appearing on behalf of the petitioner in all the five cases submitted that both the judgments are liable to be set aside on the ground that the petitioner-Firm had given the five cheques to the complainant-Corporation not in-discharge of any liability but as security cheques which were misused by the complainant-Corporation by presenting the same to the Bank whereas in fact no such paddy was received by the petitioner-Firm and therefore, no liability arose pertaining to the petitioner. He further submitted that the officials witnesses of the complainant, who had deposed before the Court, did not bring any record to show the receipt of the paddy from the complainant to the petitioner-accused and therefore, there

was no handing over any paddy to the petitioner and so far as the cheques which were given by the petitioner to the complainant-Corporation are concerned, the same were only as a security. Learned counsel raised another argument to state that FIR under Section 406 IPC was also registered against the petitioner, but he was acquitted.

5. I have heard the learned counsel for the petitioner and have also perused the Lower Courts Record which was requisitioned by this Court.

6. It is a case of the complainant in the complaint that the petitioner-accused had entered into an agreement with the complainant which has proved as Exhibit C/1 for milling of paddy and in purusuance of the same, 94,901 bags of paddy were delivered to the petitioner-accused for milling purposes but he did not supply the bags of milled rice to the complainant-Corporation and therefore, the cheques which were taken in advance by the Corporation were presented before the Bank which were dishonoured because of being insufficient funds and therefore, five different complaints under Section 138 of the Negotiable Instruments Act were filed.

7. The learned Chief Judicial Magistrate while discussing the evidence on record noted that the complainant has been able to prove its case on the strength of filling the copy of office order dated 11.05.2000 as Ex. C1, copy of agreement dated 05.01.2011 as Ex.C2, original cheques Ex.C3, original memos Ex.C4, legal notice Ex.C5 and postal receipt Ex.C6. Two more documents were also proved by way of Ex.C7 & C8 in one of the complaints i.e. Complaint No.22 dated 18.04.2012 and Ex.C7 is the receipt/certificate given by the petitioner-Firm and duly signed by its proprietor and Ex.C8 is a bill pertaining to a Paddy Crop for the year 2010-

2011 (Account Statement) which shows total recoverable amount from the petitioner-Firm is to be Rs.5,03,30,920/- (approximately Rs.5 crores). The dispute in the present case is pertaining to the milling for the year 2010-2011. The petitioner did not adduce any defence evidence, but his statement under Section 313 of the Cr.P.C. was recorded and he had taken a stand that the cheques were misused without his consent, however, no witness was examined by the petitioner-accused in his defence. It was observed by the learned Chief Judicial Magistrate that the issuance of cheques is not in dispute nor is the factum of dishonour of the same disputed by the petitioner-accused. However, the only defence of the accused is that the Bank cheques were given by him as a security which were misused by the complainant-Corporation and therefore, no liability can be fastened upon the petitioner. The learned Chief Judicial Magistrate also discussed the evidence on record. Ex.C2 would show that there was an agreement between the complainant and the petitioner-accused regarding milling. The learned Chief Judicial Magistrate also discussed the effect of FIR under Section 406 IPC against the petitioner and observed that the pendency of the FIR does not affect the trial of the present case since it does not pertain to criminal breach of trust. The learned CJM observed that there is a statutory presumption under Section 139 of the N.I. Act and as per Section 118 of the N.I. Act unless contrary is proved, it shall be presumed that Negotiable Instrument has been drawn for consideration. However, the statutory presumption could not be rebutted by the petitioner-Firm and therefore, he was held guilty for committing the offence punishable under Section 138 of the Negotiable Instruments Act.

8. Thereafter, on appeal, the learned Additional Sessions Judge, again discussed the evidence and considered the arguments of the appellant. The Appellate Court/Additional Sessions Judge observed that the appellant has not disputed his signatures on the five cheques in question and there is nothing available on record to disprove the accused's signatures on the cheques in question and therefore, a statutory presumption arises in favour of the complainant. The cheques were also returned on the basis of insufficient funds which is also not disputed by the accused. Therefore, the presumption under Section 118, 138 and 139 of the N.I. Act would arise in favour of the complainant and the same could have been rebutted by the accused, but the accused was unable to rebut the same. In this regard, a judgment of the Hon'ble Supreme Court in "***Rangappa Vs. Sri Mohan***", ***2010(3) R.C.R. (Criminal) 164 (S.C.)*** and in "***C. Keshavamurthy Vs. H.K. Abdul Zabbar***", ***2013(3) R.C.R. (Criminal) 944 (S.C.)*** was relied upon by the learned Appellate Court on the point that the presumption under Seciton 139 of the N.I. Act, includes the presumption of the existence of a legally enforceable debt or liability.

9. The learned Appellate Court also observed that in the present case, there is nothing improbable in the evidence given by the complainant and its evidence is further strengthened by the presumptions. The accused on the other hand has chosen not to step into the witness box with a view to rebut the said presumptions available to the complainant and so far as the statutory statement under Section 313 Cr.P.C. is concerned, it is not a substantive evidence of defence but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case of

the accused. In this regard, the learned Appellate Court also referred another judgment of the Hon'ble Supreme Court passed in "*Sumeti Vij Vs. M/s Paramount Tech Fab Industries*", *2021 SCC OnLine.*

10. Thereafter, the learned Appellate Court also observed that the accused did not respond to the statutory legal notices served upon him by the complainant and therefore, failure on his part to even reply to the statutory notice under Section 138 of the N.I. Act leads to the inference that there is merit in the version of the complainant.

11. On the arguments of the accused that the cheques were given only for security purposes, the learned Appellate Court also discussed the same while referring to the various judgments. A judgment of this Court passed in "*Rajni Dhingra Vs. Sanjeev Chugh*", *Law Finder Doc Id #19448845* was referred to in this regard wherein it was held that there is no law that a person drawing the cheque has to necessarily fill it up in his own handwriting and once he has admitted his signatures on the cheque, he cannot escape his liability on the ground that the same has not been filled in by him. In another judgment of this Court in "*Shalini Enterprise and another Vs. Indiabulls Financial Services Limited*", *2013(2) R.C.R. (Criminal) 798*, it was held that there can be no doubt regarding the fact that the security cheque is an integral part of the commercial process entered into between the petitioner and the respondent/complainant. In "*Suresh Chandra Goyal Vs. Amit Singhal*", **Law Finder Doc Id #703202**, it was held that when one party gives a security to the other, implicit in the said transaction is the understanding that in case of failure of the principal obligation, the security may be enforced. The learned Appellate Court also referred to a judgment of

the Hon'ble Supreme Court passed in "***M/s Kalamani Tex Vs. P. Balasubramanian***", 2021 SCC OnLine SC 75, wherein it was held that even if the arguments raised by the accused at face value that only a blank cheque and signed blank stamp papers were given to the respondent, yet the statutory presumption cannot be obliterated. Another judgment of the Hon'ble Supreme Court in "***Sripati Singh (since deceased) Vs. State of Jharkhand***', *2022(1) Civil Court Cases 266*, was referred to by the learned Appellate Court wherein it was held that a cheque issued as security pursuante to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. The learned Appellate Court, therefore, came to the conclusion that the mere fact that the cheque was given for security purpose also would not rebut the statutory presumption since giving of security cheque was permissible under the law. The learned Appellate Court, therefore, dismissed all the five appeals.

12. Learned counsel appearing on behalf of the petitioner also raised argument before this Court that since the cheques were given as security, he cannot be fastened with the liability. However, this Court is of the view that in view of the aforesaid settled law, the argument raised by the learned counsel for the petitioner is not sustainable and particularly in view of the fact that the petitioner does not dispute the signatures on the cheque nor he has disputed that he has given the cheques to the complainant. The petitioner has not chosen to file even reply to the legal notice which was served upon him prior to the institution of the complaints. The petitioner did

not choose to step into the witness box nor did he lead any defence evidence.

13. Another arugment which was raised by the learned counsel for the petitioner was that the complainant was not able to prove that any paddy was handed over to the petitioner-Firm by the complainant-Corporation because no such record having any entries of receiving the same, could be proved on record. However, the aforesaid argument raised by the learned counsel for the petitioner is also not sustainable in view of the receipt/certificate furnished by the petitioner and duly signed by the proprietor which is duly exhibited as Ex.C7 in one of the complaints pertaining to total stock. A perusal of the same would show that he has so certified that for the milling year of 2010-2011, he received 94,901 bags of paddy for custom milling and that the aforesaid paddy is in accordance with the parameters set by the Punjab Government regarding quality and quantity. Thereafter, vide Annexure P-8, the account statement has been exhibited which shows approximately Rs.5 crores which is recoverable from the petitioner. The aforesaid account statement is signed by Assistant Executive (G), Executive (G), Manager (A/Cs) and Senior District Manager of the Punjab Agro Foodgrains Corporation Limited, Barnala. Therefore, it cannot be said that the paddy was not handed over to the petitioner-Firm by the complainant-Corporation, since the petitioner itself through its proprietor has furnished a receipt vide Ex.C7.

14. The scope of revision petition is also very limited. Both the learned Courts below have properly and carefully appreciated the evidence on record and the law.

15. In view of the aforesaid facts and circumstances, this Court is of

the view that there is no illegality and perversity in the impugned judgments and therefore, finding no merit, all the revision petitions are hereby dismissed.

06.10.2023 (JASGURPREET SINGH PURI)
Bhumika JUDGE

1. Whether speaking/reasoned: Yes/No
2. Whether reportable: Yes/No