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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**
(251)
CRR-1936-2008 (O&M)
Date of Decision: 01.08.2024

Punjab Agro Industry Corporation Limited through its District Manager
... Petitioner

Versus

Dev Raj Sharma and anr. ...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Somesh Gupta, Advocate,
with Mr. Kuldeep Singh, Advocate, for the petitioner.

Mr. H.S. Saggu, Advocate, for respondent No.1.

Mr. Prabhdeep Singh Dhaliwal, AAG, Punjab.
for respondent No.2.

JASJIT SINGH BEDI, J.

The present revision petition has been filed against the impugned judgment dated 17.03.2008 passed by the Judicial Magistrate Ist Class, Sangrur whereby the accused-respondent has been acquitted.

2. The allegations against are that during the crop year 1998-99, M/s New Sharma Rice Mill, Bhawanigarh was allotted to Punjab Agro Industries Corporation Limited for milling of its paddy, when Dev Raj Sharma partner of the said firm entered into an agreement for milling of 5316 MT on 12.01.1999. The PAIC delivered 81780 bags weighing 53157 Qtils. of paddy to M/S New



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Sharma Rice Mill, Bhawanigarh and from whom the resultant rice to the tune of 34902.88.620 Qtls. was due, but the said mill delivered only 15951.35 Qtls. of rice up to 12/99 and in this way there should have been 44405 bags weighing 28863,25 Qtls. of paddy in the stock. On asking, the miller promised that he would deposit the whole rice latest by 31.12.1999. However, the miller had failed to deliver the resulted rice. When the physical verification of the mill was carried out only 9700 bags of paddy in the yard of New Sharma Rice Mill in six stacks were found and in this way, there was a shortage of 34705 bags of paddy Weighing 22558.25 Qtis. Thus, the miller embezzled the paddy of the PAIC to the tune of 34705 bags. The said allegations were made in the application dated 13.1.2000 that was addressed to the Senior Superintendent of Police, Sangrur. After the registration of the FIR, necessary investigation was conducted and upon completion of the investigation, accused was challaned under Section 406 IPC and challan was presented in the Court. made in was the addressed Police, application dated to Sangrur. the After Senior the of registration of the FIR necessary investigation was conducted and upon completion of the investigation accused was challaned under section 406 IPC and challan was presented in the court.

3. On appearance of the accused, he was supplied with the copies of documents as required under section 207 Cr. P.C.

4. Charge was framed against the accused-respondent No.1 under Section 406 IPC.



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5. In order to prove its case prosecution examined Harminder Singh Stenographer Punjab Agro Industries, Sangrur as PW1, Balkar Singh AFSO Food and Supply as PW2, SI Sukhram Singh SHO Police Station Lehra as PW3, Swaran Singh as PW4, Lal Chand as PW5, Narinderjit Singh as PW6, and Inspector Gurmukh Singh Vigilance as PW7. Apart from leading oral evidence prosecution produced into evidence certain documents i.e. Photocopy of application Ex.P1, photocopy of report Ex. P2, copy of receipt Ex.P3, photocopy of statement. Ex. P4, copy of letter Ex. P5, copy of agreement Ex. P6, memo of recovery of record Ex. P7, copy of order dated 2.2.2000 Ex. P8 regarding lodging of FIR, endorsement Ex.P9, original power of attorney Ex. P10, copy of partnership deed Ex. P11, memo Ex. P13, original entry Ex. P14, letter dated 13.10.1998 Ex. PW5/A, list of allotment Ex. PW5/B and then learned APP for the State closed the prosecution evidence.

6. Thereafter statement of the accused-respondent No.1 under section 313 Cr.P.C. was recorded wherein all the incriminating evidence appearing against the accused was put to him. He denied the allegations and pleaded false implication.

7. The Trial Court came to the conclusion that there was no evidence of the accused-respondent No.1 having executed any receipt regarding receiving of paddy. Further, as there was an Arbitration Clause, the registration of the FIR itself was bad in law. On these two counts, the



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impugned judgment came to be passed acquitting the accused-respondent No.1 on 17.03.2008.

8. The instant petition has been filed against the aforementioned judgment of acquittal.

9. The learned counsel for the petitioner contends that the findings of the Trial Court are based on conjectures and surmises and are not sustainable in the eyes of law. There was sufficient evidence to show that the paddy had, in fact, been delivered to the accused-respondent No.1. Merely because an Arbitration Clause was available did not mean that the FIR in question could not be registered. In fact, the accused-respondent No.1 had filed a quashing petition CRM No.28146-M of 2005 which came to be dismissed as withdrawn on 17.11.2006. As the offence was established beyond reasonable doubt, the impugned judgment was liable to be set aside.

10. The learned counsel for respondent No.1 (acquitted accused) contends that no fault could be found with the judgment of acquittal inasmuch as there was absolutely no evidence of the paddy being entrusted to him. Therefore, the present petition was liable to be dismissed.

11. The learned State counsel for respondent No.2-State contends that the evidence on record was sufficient to establish that paddy had been entrusted to respondent No.1 which had been defalcated by him.



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Therefore, the judgment of acquittal dated 17.03.2008 was liable to be set aside.

12. I have heard the learned counsel for the parties.

13. As regards the case being one of a civil nature and an FIR not being maintainable in a case there there is an Arbitration Clause, it may be pointed out that the legal position is otherwise. Civil proceedings and criminal proceedings can go on simultaneously and therefore, the mere presence of an Arbitration Clause does not mean that an FIR cannot be registered. To this extent, the findings arrived at by the Trial Court are erroneous.

14. However, a perusal of the record would reveal that the prosecution has relied upon a receipt dated 10.11.1998 which mentions the receipt of 81780 bags of paddy weighing 53157 Qtls. from the Punjab Agro Industries Corporation Limited for the milling year 1998-99. However, the said receipt has not been proved to be executed by the accused-respondent No.1 as PW-6 Narinderjit Singh who was the then District Manager of the Punjab Agro Industries Corporation when appeared as PW-6 disclosed that Dev Raj had not given them any receipt relating to the receipt of paddy nor was the receipt given in his presence. Thus, execution of the receipt by the accused-Dev Raj regarding delivery of paddy to him exclusively is not proved. Harminder Singh, Stenographer while appearing as PW-1 only produced the receipt Ex.P3. From the record, the aspect of entrustment specifically to the accused-



respondent No.1, thus, is not established. In view of the aforementioned facts and the entrustment itself not being proved, the question of breach of trust does not arise.

15. In view of the above discussion, I do not find any merit in the present petition. The same stands dismissed.

(JASJIT SINGH BEDI)
JUDGE

August 01, 2024
sukhpreet

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No