

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

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**CRR 1054 of 2018 (O&M)
Date of Decision: 13.03.2024**

Gian Chand Saini

...Petitioner

Versus

State of Haryana and another

... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Ranjan Lakhanpal, Advocate, for the petitioner.

N.S.SHEKHAWAT, J. (Oral)

CRM 9993 of 2024

1. The applicant/petitioner has filed the present application with a prayer to recall the order dated 23.08.2023 passed by this Court, whereby, the case was dismissed for non-prosecution.

2. I have heard learned counsel for the applicant/petitioner and for the reasons mentioned in the application, the application is allowed and the main case is restored to its original number.

CRR 1054 of 2018

1. The petitioner has filed the present revision petition against the impugned judgment dated 22.02.2018 passed by the Sessions Judge, Kurukshetra, whereby, judgment of conviction and order of sentence dated 30.06.2016 passed by the Judicial Magistrate 1st Class, Kurukshetra, was upheld and the petitioner was ordered to be convicted for the offence punishable under Section 138 of the Negotiable Instruments Act 1881 (hereinafter to be referred as '**the**

Act') and sentenced to undergo rigorous imprisonment for a period of two years and to pay compensation of Rs. 25,00,000/- to the complainant under Section 357(2) of the Code of Criminal Code within a period of two months. He was also ordered to undergo rigorous imprisonment for a period of two months in the event of non-payment of compensation amount.

2. A complaint under Section 138 of the Act was filed by the Haryana State Cooperative Supply and Marketing Federation Limited (HAFED), Kurukshetra, respondent No. 2 against the present petitioner by stating that the present petitioner/accused was allotted the contract of de-husking paddy for *Kharif* marketing season 2009 by the respondent No. 2. 27228 quintals 10 kilograms paddy was to be shelled by him and rice was to be delivered to the Central pool on or up to 31.3.2010. The time for delivery was then extended to 30.11.2010. After receiving paddy in bulk on or up to 30.11.2010 under the aforesaid contract, petitioner could not deliver rice upto 31.3.2010 and, as such, as per policy of Government and terms settled, petitioner handed over a post dated cheque bearing No.080476 of Canara Bank, Kurukshetra to be realised on or after 26.11.2010 for a sum of Rs.25 lacs against over due liability. Receipt of paddy was acknowledged by him on 24.1.2010. On 31.3.2010, paddy to the tune of 15154.09 quintals equivalent to 10153.24 quintals rice worth Rs.2,84,03,688.90 paise was due from petitioner, who could not deliver rice within time allowed originally, extended up

to 26.11.2010 or thereafter. 8720.55 quintals paddy and other stocks of carrates, tarpaulins, gunny bags were due from the petitioner, cost of which was Rs. 1,66,62,293/-. As per terms settled, balance amount could be recovered from the petitioner by drawing payment from his bank account through cheque. Accused was asked to return the rice or its price, upon which he responded that cheque amount be realized from his bank account. Respondent No. 2 further averred that the cheque was presented to its banker for realization of Rs.25 lacs on 06.12.2010 and was returned vide memo dated 07.12.2010 on account of 'insufficient funds'. Petitioner was orally informed and he asked to re-present the cheque. The cheque was again presented to banker of petitioner on 14.12.2010 but it bounced for the same reasons, vide memo dated 15.12.2010. As per promise, cheque was once again presented to the banker of petitioner on 17.1.2011 but was bounced vide memo dated 18.1.2011. Notice of demand dated 7.2.2011 was issued by the respondent No.2 to petitioner through its counsel Shri Balwant Singh Walia, Advocate but no payment was made. The registered notice was received back undelivered with the report of postman dated 19.2.2011. 15 days time allowed under the notice for payment had since expired and the complaint was presented in time, within 30 days.

3. Learned counsel for the petitioner contends that both the Courts clearly failed to appreciate that respondent No. 2 had lodged one FIR No. 441 dated 01.12.2010 under Sections 406, 420 and

120-B IPC against the petitioner and others. It was clearly mentioned in the FIR that the paddy was supplied to the petitioner, but he had not returned the rice to respondent No. 2 after milling and due to this, respondent No. 2 had suffered huge financial loss, which includes the cheque amount also. Consequently, the petitioner could not be punished twice for the same offence. Still further, there was arbitration clause in the present case and the arbitration award has already been challenged by the petitioner before this Court, which is pending and the petitioner has been wrongly convicted. Learned counsel for the petitioner further contends that there was no existing liability and the provisions of Section 138 of the Act had been wrongly invoked in the present case. Apart from that, the cheque was given as security by the petitioner and the said fact was also admitted by respondent No. 2 in the contract Ex.C-14 and the Courts below had misappreciated the evidence on record. Learned counsel further contends that since there was no liability on the petitioner to pay the amount of Rs. 25,00,000/- and the blank signed cheque, i.e., security cheque had been misused by respondent No. 2, which was proved by DW1 Sumit Arora, Handwriting and Fingerprint Expert.

4. I have heard learned counsel for the petitioner at length and perused the record.

5. It has been held by the Hon'ble Supreme Court in the matter of **“Bhaskarrao and others Vs. State of Maharashtra”**,

2018 AIR (Supreme Court) 2222; 2018 (5) RCR (Criminal) 228 as follows:-

*“14. As the trial court and High Court, having appreciated the evidence on record, has come to diametrically opposite conclusions, mandating herein to observe certain witness statements which may have an important bearing in this case. In the processes of appreciating the evidence at the appellate stage, we need to keep in mind the views of this court as expressed in **Tota Singh and Anr. v. State of Punjab, 1987(2) RCR (Criminal) 35 : 1987 CriLJ 974** -*

"The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW2 and PW6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappraisal, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the Appellate Court is inclined on a reappraisal of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the

lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any court acting reasonably and judiciously and is, therefore, liable to be characterized as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the court below has taken a view which is plausible one, the Appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

15. In *Ramesh Babulal Doshi v. State of Gujarat*, 1997(3) RCR (Criminal) 62 : 1996 CriLJ 2867, this Court observed:

"This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate court answers the above question in the negative the order of acquittal is not to be disturbed."

6. In fact, there is no substance in the arguments raised by the learned counsel for the petitioner that once FIR has been registered against the present petitioner, the respondent No. 2 was not justified in filing a complaint under Section 138 of the Act against the present petitioner. In fact, the FIR in the present case was got registered by respondent No. 2 as the petitioner had cheated HAFED, respondent No. 2. A false assurance was made by the petitioner/accused that after de-husking, the rice shall be given by the petitioner to respondent No. 2. However, the rice was not delivered to respondent No. 2, which led to the filing of the present complaint. Even otherwise, the offence under Section 138 of the Act was non cognizable and could not have been investigated by the police. Still further, it has been held by this Court as well as Hon'ble Supreme Court in number of judgments that the pendency of the arbitration proceedings would be no ground to quash the criminal prosecution. In fact, the Arbitrator had already passed an award against the petitioner, which has been challenged by the present petitioner before this Court. However, the passing of the arbitration award by the Arbitrator in the present case would further strengthen the case of the present respondent. Rather, that will clearly show that the cheque was issued in discharge of the existing liability and separate recovery proceedings for recovery of amount was clearly maintainable.

7. Apart from that, the trial Court has rightly held that vide agreement Ex.C-14, the petitioner had undertaken to deliver the

milled paddy as per the agreed schedule and as per Ex.C-15, he had received the good quality of paddy to the tune of 27228.10 quintals and he was supposed to supply the milled rice to the respondent No. 2 in terms of the agreement Ex.C-14. However, the said rice was not returned after milling and the respondent No.2 had to present the cheque, which was handed over by the present petitioner in terms of the agreement Ex.C-14. Even, the testimonies of DW1 Sumit Arora, Handwriting and Fingerprint Expert was of no use to the petitioner as he had admitted the terms of the agreement Ex.C-14.

9. From the above referred discussion and the law laid down by the Hon'ble Supreme Court, it can be safely concluded that the impugned judgments passed by the Courts below are based on sound reasons and there does not seem to be any illegality or perversity in the appreciation of the evidence.

10. Sequally, the revision petition sans merit and is accordingly ordered to be dismissed.

11. All pending applications, if any, are disposed off, accordingly.

13.03.2024
amit rana

(N.S.SHEKHAWAT)
JUDGE

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