104 IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

(1) CRM-M-63951-2023 (O&M)
Date of Decision: 08.01.2024

Sonali Verma ....Petitioner

Versus

State of Haryana and another ....Respondents

(2) CRM-M-64800-2023 (O&M)

Satya Rani ....Petitioner

Versus

State of Haryana ....Respondent

CORAM: HON'BLE MR.JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Amit Jhanji, Senior Advocate assisted by
Ms. Nandita Verma, Advocate &
Mr. Vivek Goyal, Advocate,
for both the petitioners.

Mr. Kiran Pal Singh, AAG Haryana.

MAHABIR SINGH SINDHU. J.

This order shall dispose off above two petitions filed under Section 438 Cr.P.C seeking pre-arrest bail in FIR No. 428 dated 18.11.2023 registered under Sections 406, 420 & 120-B of Indian Penal Code (offence under Section 409 IPC added later on), Police Station, Butana, District Karnal.

Status report dated 07.01.2024 filed by way of affidavit of Sh. Subhash Chander, HPS, DSP, Indri, Karnal on behalf of respondent No.1-State is taken on record. Copy supplied to the other side. Registry to tag the same at appropriate place.

2. The FIR in question was registered on the complaint moved by Sh. Ashok Kumar, Inspector, Food Civil Supplies & Consumer Affairs, Paddy

Incharge, P.R. Centre, Nilokheri, District Karnal against (i) Sh. Bishamber Lal son of Hans Raj (Proprietor); (ii) Smt. Satya Rani (petitioner in CRM-M-64800-2023) and (iii) Smt. Sonali Verma (petitioner in CRM-M-63951-2023). It is alleged that all three accused have neither delivered 15196.7455 quintals of rice to the Food Corporation of India; nor the amount was deposited by them. The physical inspection of the mill was conducted by the department on 14.10.2023 and it was found that there was no paddy/rice in their premise.

CONTENTIONS ON BEHALF OF PETITIONERS

3.1 Learned Senior counsel contends that M/s KD Overseas Nilokheri is a partnership firm, engaged in the business of rice milling since 2017 and both the petitioners viz. Sonali Verma & Satya Rani are partners. Petitioner Sonali Verma is an inactive partner and she had given an affidavit to the Department of Food, Civil Supplies & Consumer Affairs that other partner will sign all the papers on behalf of the firm. Even she did not sign the agreement dated 07.10.2022 executed between the complainant and the firm.

3.2 While referring to representation(s) dated 29.09.2023 (P-5) and 02.10.2023 (P-6), contended that despite their best efforts, petitioners could not deliver the desired quantity of rice as per specification because of the reason that as per agreement the paddy having moisture content of 17% was to be supplied to the millers; but the paddy stocks, having moisture content(s) of 24% to 28% was purchased by the government from farmers and the same was entrusted to the petitioners.

3.3 Further, submits that there is variation in the alleged shortfall of quantity, inasmuch as in the FIR, the shortage has been shown to be 1519 Metric Tons; in the Notice dated 05.10.2023 (P-8), the same is mentioned as 1475 MT; whereas, list (P-9) reflects 1069 MT.

3.4 Learned Senior counsel also contended that against the alleged outstanding amount of Rs.6,80,40,753/-, the immovable properties worth Rs.30 crore have already been attached by the department; thus no criminal action is required against them.

3.5 Further contended that *mens-rea* in the present case is completely missing; hence, no offence of cheating is made out and moreover, it is not the case of prosecutions that no rice at all was supplied by the petitioners; rather allegations are of shortfall and reasons for the same have duly been explained by the petitioners.

3.6 Also contended that it is a case of civil nature, but has been given the colour of criminal action and above all, before registration of the FIR in question, petitioners have already invoked the remedy of arbitration under clause 25 of the agreement; hence their arrest would not serve any purpose.

CONTENTIONS ON BEHALF OF THE STATE

4.1 Contended that as per agreement dated 07.10.2022, total 46687.5 quintals paddy was entrusted to the petitioners and after custom milling, 31280.625 rice was to be delivered to the FCI; but petitioners supplied only 16084.4495 quintals of rice; thus the balance of 15196.7455 quintals rice is yet to be supplied by the petitioners and the market value of same would be approximately Rs.6 crore.

4.2 Also contended that as per physical verification of the premises of K.D. Overseas, carried out on 14.10.2023, it was noticed that there was no paddy and/or rice in the mill; thus, the petitioners have committed criminal breach of trust and cheated the department while siphoning of the remaining paddy.

4.3 Learned State counsel after referring to Clause 4(iv) of the agreement dated 07.10.2022, contended that once paddy had been accepted by the miller, then they cannot raise any grievance regarding its quality or quantity on the ground of higher moisture.

4.4 Also contended that after calculation, two types of rice were to be supplied by the miller; therefore, there is slight variation in the figure of the alleged shortfall against the petitioners, hence the same would be inconsequential.

4.5 Again refereeing to Clause 11(v) of the agreement dated 07.10.2022, it is contended that miller was under obligation to furnish a certificate that guarantor is not his family member. However, in the present case, in the affidavit (R-4), petitioner Satya Rani falsely claimed that guarantor is not her family member; rather as a matter of fact, the guarantor (Sh. Bishamber Lal Verma) is none else, than the husband of Satya Rani (petitioner) and father-in-law of Sonali Verma (another petitioner); therefore, from the very beginning, fraud was committed by the petitioners and as such, their intentions were *malafide*.

4.6 Also contended that properties attached by the department have already been pledged by the owners/petitioners with other departments; thus, even in case of any auction, the department is not going to gain anything, except inviting the futile litigation.

5 Heard learned counsel for the parties and perused the paper-book.

6 Before proceeding further it is necessary to take note of certain factual position of paddy/rice and which are as under:-

1.	Total paddy entrusted to the petitioners	46687.5 quintals
2.	Rice which was to be delivered after milling	31280.625 quintals
3.	Actual delivery of rice made by the petitioners	16084.4495 quintals
4.	Alleged shortage	15196 quintals

7 Although, learned senior counsel has argued that on account of high moisture, desired quantity of rice could not be delivered by the petitioners; but the same cannot be accepted in view of the clause 4 (iv) of the agreement dated 11.10.2022, which specifically says that "*the paddy so received by the Miller/Second Party shall be considered to be correct in terms of quantity and quality and no dispute shall be entertained after such acceptance with regard to the quality and quantity of the paddy received by the Miller/Second Party.*" Hence the argument to that extent is rejected.

8 So far as the contention regarding variation in the shortfall is concerned, the same is also not helpful in view of the fact that even after taking into consideration the lowest figure, still there would be a shortfall at the hands of petitioners. Moreover, police file clearly indicates that as per physical verification report dated 14.10.2023, no paddy and/or rice was available with the petitioners; hence the remaining quantity has, obviously been misappropriated by them.

9 As the clause 25 of the agreement dated 11.10.2022 is material, therefore, the same is also reproduced here as under:-

> *"All the minor disputes relating to interest, penalty, holding charges, milling charges and differences arising out of interpretations or in any manner touching or concerning this agreement whatsoever shall be referred to the sole arbitrator of the Director Food, Civil Supplies & Consumer Affairs, Haryana/Managing Director of the Agency or any person appointed by them in this behalf. There will be no objection to any such appointment that the person appointed is or was an employee of Food, Civil Supplies & Consumer Affairs Department, Haryana/Agency and he had expressed views on all or any of the matter in dispute or difference. The award of such arbitration shall be final and binding on both the parties to this contract. It is a*

term of this contract that in the event of transfer, vacation of office or being unable to act for any reason of a person appointed as an arbitrator by the Director, Food, Civil Supplies & Consumer Affairs, Haryana/Managing Director at the time of such transfer, vacation of office, death or inability shall appoint another person to act as an arbitrator. Such a person shall be entitled to proceed with reference from the stage where it was left by his predecessor.

Provided that any demand for arbitration in respect of any claim(s) of the Miller/Second Party, under the contract shall be in writing and made within one year of the date of completion or expiry of the period of contract. If the demand is not made within the period, the claim(s) of the Miller/Second party shall be deemed to have been waived off and released of all liabilities under the contract in respect of thees claims. The cost for and in connection with arbitration shall be the discretion of the arbitrator who may make suitable orders in his award.

Subject as aforesaid, the Arbitration and Conciliation Act, 1996 shall apply to the arbitration provided under this clause. ***However, the cases of fraud, theft or misappropriation etc. on the part of second party are not covered under this clause and in such cases legal proceedings as deemed fit will be initiated by the First party against the second party as well as against the sureties.****"*

A perusal of the above extract clearly reveals that "*the cases of fraud, theft or misappropriation etc. on the part of Second party are not covered under this clause.*" Thus, mere invoking of the arbitration proceedings at the hands of petitioners cannot be treated as an interdict against the initiation of criminal proceedings by way of present FIR.

10 Apart that, as per clause 11(v) of the agreement dated 07.10.2022, the guarantor should not be a family member of the contracting party; but in the present case, it is a matter of record, that guarantor (Bishamber Lal) is the

husband of petitioner Satya Rani and father-in-law of Sonali Verma; therefore, from the very beginning, their intentions were not *bonafide*.

11 In such a scenario, to know the truth about the misappropriation of paddy and/or shortfall of the rice, would be a matter of thorough investigation and for that purpose, custodial interrogation of the petitioners is very much necessary.

12 In view of the above, there is no option except to dismiss the petition(s).

13 Ordered accordingly.

14 Before parting with this order, it is necessary to observe that the official/officer from the department neither monitored the timely delivery of rice; nor carried out any inspection (except on 14.10.2023); thus, their connivance cannot be ruled out in the matter.

15 A copy of this order be sent to the Secretary, Food, Civil Supplies and Consumer Affairs Department, Haryana for information and necessary action at their end.

16. Needless to say that observations made above be not construed as an expression of opinion on the merits of the case in any manner.

17. Pending application(s), if any, shall also stand disposed off.

18. A photocopy of this order be placed on the file(s) of connected case(s).

08.01.2024 **(MAHABIR SINGH SINDHU)**
SN **JUDGE**

Whether speaking/reasoned : Yes/No
Whether Reportable: Yes/No