IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRR-529-2008
Date of Decision:- 21.02.2025

ABHEY KUMAR & ANOTHER

......Petitioners

VERSUS

PUNJAB STATE COOP. SUPPLY MKTG. FED. LTD. & ANOTHER

......Respondents

CRR-530-2008

ABHEY KUMAR & ANOTHER

......Petitioners

VERSUS

PUNJAB STATE COOP. SUPPLY MKTG. FED. LTD. & ANOTHER

......Respondents

CRR-531-2008

ABHEY KUMAR & ANOTHER

......Petitioners

VERSUS

PUNJAB STATE COOP. SUPPLY MKTG. FED. LTD. & ANOTHER

......Respondents

CRR-532-2008

ABHEY KUMAR & ANOTHER

......Petitioners

VERSUS

PUNJAB STATE COOP. SUPPLY MKTG. FED. LTD. & ANOTHER

......Respondents

CRR-533-2008

ABHEY KUMAR & ANOTHER

......Petitioners

VERSUS

PUNJAB STATE COOP. SUPPLY MKTG. FED. LTD. & ANOTHER

......Respondents

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Naresh Jain, Advocate
for the petitioner(s) in all the petitions.

Mr. S.C. Jindal, Advocate and
Mr. Ankur Goyat, Advocate
for respondent No.1.

Mr. Harkanwar Jeet Singh, Asstt. A.G., Punjab
for respondent No.2.

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JASJIT SINGH BEDI, J.

This order shall dispose of five revision petitions bearing CRR-529-2008 (Cheque No.011187 dated 11.05.2000), CRR-530-2008 (Cheque No.011188 dated 22.05.2000), CRR-531-2008 (Cheque No.011189 dated 28.05.2000), CRR-532-2008 (Cheque No.011185 dated 05.04.2000) and CRR-533-2008 (Cheque No.011186 dated 28.04.2000) titled as Abhey Kumar & Another Versus Punjab State Coop. Supply Mktg. Fed. Ltd. & Another as the same are arising out of the same complaint. However, for the sake of convenience the facts have been taken from CRR-529-2008.

2. The present revision petitions have been filed impugning the judgments dated 04.03.2008 passed by the Sessions Judge, Mansa whereby the appeals filed against the judgment of conviction and orders of sentence dated

29.09.2006 passed by the Judicial Magistrate, 1st Class, Mansa have been dismissed.

3. The complaint in the present case came to be registered on 01.07.2000. The judgment of conviction was passed on 29.09.2006 by the Judicial Magistrate, 1st Class, Mansa. The appeals filed against the order of conviction was dismissed on 04.03.2008 by the Sessions Judge Mansa. The instant revision petitions were filed on 12.03.2008 and have come up for final hearing now i.e. after a period of more than 25 years from the date of registration of the complaint.

4. The brief facts of the case are that the complainant-Punjab State Cooperative Supply and Marketing Federation Limited (Markfed) through its District Manager, Mansa filed five complaints under Section 138 of the Negotiable Instruments Act against the accused Abhey Kumar, who was the sole prop. of M/s Jai Durga Rice Mills, Sardulgarh, on the brief allegations that the accused ran a sheller at Sardulgarh under the name and style of M/s Jai Durga Rice Mills. Accused No.1 was the sole prop. of the said business of accused no.2. The sheller of accused No.1 was allotted/ earmarked to the complainant for custom milling of rice crop 1998-99 by D.F.S.C. Mansa vide letter No.A.Z.98/6213, dated 23-10-98. After completion of all the formalities, the complainant delivered 26545 bags of paddy crop 1998-99 of the combined weight of 17254.25 quintals for 2% driage of the quantity of 345.08 quintals, net paddy of the quantity of 16909.17 quintals stood delivered by the complainant to the accused for milling purposes. The accused were to supply milled rice to the FCI in the Central Pool in the Markfed account against the paddy so delivered to them and they had to deliver 11329 quintal rice against

the paddy so delivered to them for milling purposes. The accused delivered milled rice to the tune of 7680.96 quintals to the FCI in the Markfed account leaving residue rice to the quantity of 3648.18 quintals. The accused deposited the costs of 2227.38 quintals of rice with Markfed and there remained outstanding paddy to the tune of 1420.80 quintals of rice against the accused. The accused delivered rice 1420.80 quintals to the FCI in the Markfed Mansa account but dishonestly delivered the documents to M/s Sukhbir Singh & Co. Gurharsahai instead of the complainant. Resultantly, there remained recoverable outstanding of 1420.80 quintals rice against the accused.

5. Both the accused under the signatures of accused no.1 (petitioner) issued five cheques in the name of complainant towards partial discharge of their liability. The details of the cheques are as under:-

Sr. No.	Cheque Nos.	Dated	Amount	Name of Bank
1.	011187	11.05.2000	Rs.2,50,000/-	Punjab National Bank
2.	011188	22.05.2000	Rs.2,50,000/-	Punjab National Bank
3.	011189	28.05.2000	Rs.2,30,000/-	Punjab National Bank
4.	011185	05.04.2000	Rs.1,50,000/-	Punjab National Bank
5.	011186	28.04.2000	Rs.3,90,000/-	Punjab National Bank
Total = 12,70,000/-				

The said cheques were drawn by the accused on their account in Punjab National Bank, Sardulgarh The complainant deposited the cheques with their banker i.e. State Bank of Patiala, Main Branch, Mansa for encashment. Thereafter, the said cheque was transmitted by the complainant's bankers to the bankers of the accused for encashment, but the same was returned dishonoured by the Punjab National Bank, Sardulgarh with the remarks exceed arrangement. On receipt of the dishonour memo from the banker's of the accused, the complainant got issued registered notices to both the accused demanding the cheque amounts. However, the accused did not make any payment to the complainant leading to the filing of five complaints for the dishonour of the cheques.

6. On the basis of the preliminary evidence led by the complainant, the accused were summoned to face trial for the offences under Section 138 of the NI Act vide five different summoning orders.

7. In order to prove the allegations against the accused. Sh. Satinder Chhabra, Retired D.M., Markfed, Mansa appeared as CW-1 on behalf of the complainant and thereafter closed the evidence.

8. Sh. Satinder Chhabra CW-1 deposed that being the principal officer of the complainant society, he had full authority to file the complaint, engage counsel and sign and verify pleadings, give statement etc. He reiterated the averments as made in the complaint. He also proved on file the dishonoured cheques, various forwarding letters, original memos, carbon copies of notices, original post receipts, acknowledgements, award of arbitrator Ex.P-9 and affidavit of accused Ex.P-10 in each of the complaints.

9. After closure of the evidence of the complainant, the statement of the accused were recorded u/s 313 Cr.P.C. wherein the incriminating material was put to them. The accused denied the same and further took a defence that the rice was deposited with the FCI by him vide weight memo No.12 to 16. The complainant had received the monetary amount for the rice from the FCI but had not deposited the same in his account and against law deposited the amount

in some other account. The cheques in question had been issued as security cheques as fully detailed in his reply to the legal notice in each case.

10. Based on the evidence led, the accused/petitioners in each case came to be convicted and sentenced by the Court of Judicial Magistrate, 1st Class, Mansa vide judgments and orders of sentence dated 29.09.2006 as under:-

Offence under Section	**Sentence RI/SI**	**Fine**	**RI/SI in default of payment of fine**
138 NI Act	RI for 06 months	Rs.5000/-	RI for 01 month

11. The accused/petitioners preferred appeals which came to be dismissed by the Court of Sessions Judge, Mansa vide judgments dated 04.03.2008.

12. The aforementioned judgments are under challenge in the revision petitions.

13. During the pendency of the revision petitions, the sentence of the accused/petitioner No.1 was suspended by this Court vide order dated 10.04.2008.

14. The learned counsel for the petitioners contends that admittedly, 1420.80 rice were delivered by the petitioners to the FCI against Contract Nos.12 to 16 dated 23.04.1999. Markfed, Mansa/complainant received the payment from FCI vide Cheque dated 29.06.1999 for an amount of Rs.12,76,549/- against the rice delivered by the petitioners vide Contract Nos.12 to 16. As per letter dated 27.01.2000, a demand was made by the Marked Mansa/complainant for depositing the remaining payment for 2227.38 quintals of rice and the amount was duly deposited. Therefore, it

was apparent that at this stage the account of the petitioners was clear inasmuch as 1420.80 quintals of rice had already been accounted for having been despatched to FCI, Bathinda vide Contract Nos.12 to 16. Had 1420.80 quintals of rice not been accounted for then on 27.01.2000 the complainant would have raised a demand for 3648 quintals of rice approximately (1420.80+2227.8). As per the allegations, D.M., Ferozepur wrote a letter to the DM, Markfed, Mansa that a miller namely, Sukhdev and Company, Gurharsahai had submitted the Contract Nos.12 to 16 to them and claimed payment. However, no such letter has been proved on record by the complainant. As against the aforementioned letter, the amount was transferred by DM, Markfed, Mansa/complainant to DM, Markfed Ferozepur but the details have not been brought on record. In fact, prior to the transfer of the payment from his account to the account of DM, Ferozepur no notice was given to the petitioners. He further contends that Ex.P-9 and Ex.P-10 are not proved in accordance with law having been placed on record after the completion of the cross-examination of the sole witness and even otherwise, only photocopies were brought on record and the objection regarding the admissibility of the same was kept upon. The Arbitration Award dated 26.06.2003 was challenged under Section 34 of the Arbitration and Conciliation Act, 1996 before the ADJ, Mansa and the objection petition was dismissed on 23.10.2008. The Award dated 26.06.2023 and the order dated 23.10.2008 were challenged in FAO No.3718 of 2009 and this Court set aside the Award vide judgment dated 04.08.2000. In his statement under Section 313 Cr.P.C., the accused No.1

took a categoric stand that he had deposited the rice with the FCI vide Contract Nos.12 to 16. The complainant had received the amount equivalent to the rice supplied to the FCI but did not deposit the said amount in the account of the accused but in some other account. The cheques which had earlier been given as security were thereafter filled up without there being any legal liability, got dishonoured leading to the initiation of the prosecution against the petitioners. It is the categoric stand of the petitioners right from the very outset while issuing a reply to the legal notice whereby a demand was made for the statement of account maintained by the DM, Markfed, Mansa. However, the account statement was not supplied to the accused, a fact which had been admitted in the cross-examination of the complainant. He thus, contends that as the requisite payments were made and rice supplied in terms of the contract, the security cheques were misused by the complainant leading to the filing of the complaints without there being any legal liability on the part of the accused towards the complainant.

15. On the other hand, the learned counsel for the complainant contends that though vide Contract Nos.12 to 16, 1420.80 quintals of rice were supplied to FCI, Bathinda, however, the same was supplied on behalf of another firm i.e. M/s Sukhbir Singh & Company, Gurharsahai instead of on behalf of the accused. Therefore, 1420.80 quintals of rice remained to be supplied. In lieu of the said rice, five cheques were issued which came to be dishonoured. Therefore, it was apparent that the cheques had been issued for the discharge of legal liability. Reliance is placed on Ex.P10, an affidavit purportedly issued by the accused No.1 to the effect that if any dispute arose

with the millers at Ferozepur, he would be responsible.

16. I have heard the learned counsel for the parties and gone through the record.

17. As per the allegations, the complainant/Markfed, Mansa provides paddy to the accused/rice mill for shelling the same (converting to rice). The accused after shelling (converting to rice) then supplies the rice to the FCI in the Central pool. On receipt of rice, the FCI deposits the requisite payment with Markfed/complainant who further makes a payment to the accused (miller). As per allegations, though, the accused deposited the rice with FCI, it was on behalf of another entity i.e. M/s Sukhbir & Company, Gurharsahai because of which 1420.80 quintals of rice was outstanding. As the said quantity of rice was unaccounted for, five cheques totaling to Rs.12,70,000/- were issued. The same were dishonoured leading to the initiation of the prosecution.

18. A perusal of the evidence of Satinder Chhabra (CW-1), Retired D.M. Markfed, Mansa would reveal that he has admitted that 1420.80 quintals of rice were delivered by the accused/petitioners with the FCI against Contract Nos.12 to 16 dated 23.04.1999. He has further admitted that FCI issued a cheque for amount of Rs.12,76,549/- to the complainant/Marked against rice delivered by the accused. However, instead of depositing the amount in the account of the accused, the same was sent to DM, Ferozepur for the supply of rice vide Contract Nos.12 to 16 without any intimation to the accused. Further, there is no evidence on record that Sukhdev Singh and Company, Gurharsahai had supplied rice in terms of the

Contract Nos.12 to 16 and claimed payment for the same. The details of payments made by the complainant in the account of Sukhdev Singh & Company, Gurharsahai have also not brought on record. Interestingly, 1420.80 quintals of rice were delivered to FCI, Bathinda by the accused vide Contract Nos.12 to 16 on 23.04.1999. On 27.01.2000, the complainant made a demand from the accused of a payment equivalent to 2227 quintals of rice which payment was made. Had 1420.80 quintals of rice delivered by the accused on their behalf not been accounted for at that stage by the complainant then the demand raised on 27.01.2000 by the complainant from the accused would have been for 3648 quintals of rice (1420.80 and 2227.8). This only goes to show that the complainant itself was clear that the rice supplied vide Contract Nos.12 to 16 was on behalf of the accused and not on behalf of M/s Sukhdev & Company Gurharsahai. The affidavit (Ex.P10) purportedly submitted by accused No.1-Abhey Kumar cannot be read in evidence as only a photostat was brought on record and that too after the cross-examination of the complainant was complete. Be that as it may, the said document does not further the case of the complainant in any manner whatsoever.

19. Further, the Arbitration Award has been set aside by this Court vide order dated 04.08.2010 passed in FAO No.3718 of 2009.

20. In view of the aforementioned discussion, it becomes apparent that though the cheques were signed by the accused No.1, the same were issued as security and there was no legally enforceable debt of the accused when the cheques came to be dishonoured, the entire rice having been

accounted for.

21. In view of the above, I find considerable merit in the present revision petitions and the same are allowed. The judgments dated 04.03.2008 passed by the Sessions Judge, Mansa and the judgments of conviction and orders of sentence dated 29.09.2006 passed by the Judicial Magistrate, 1st Class, Mansa are set aside and the petitioner(s) are acquitted of the charges framed against the petitioner(s).

22. The present revision petitions stand disposed of.

(JASJIT SINGH BEDI)
JUDGE

21.02.2025
Jitesh

Whether speaking/reasoned	***Yes/No***
Whether reportable	***Yes/No***