(2015) 02 P&H CK 0134

In the Punjab And Haryana At Chandigarh

Case No : Criminal Misc. Nos. M-5432 and 5379 of 2015 (O and M)

Amandeep Rice Mill Gram Udyog Samiti	APPELLANT
Vs	
Punjab State Cooperative Supply and Marketing Federation Limited	RESPONDENT

Date of Decision : 23-02-2015

Acts Referred:
- Arbitration and Conciliation Act, 1996 — Section 9
- Criminal Procedure Code, 1973 (CrPC) — Section 482
- Negotiable Instruments Act, 1881 (NI) — Section 138, 142
- Penal Code, 1860 (IPC) — Section 420

Citation : (2015) 02 P&H CK 0134

Hon'ble Judges : Lisa Gill, J.

Bench : Single Bench

Advocate : Krishan Singh Dadwal, for the Appellant

Final Decision : Dismissed

Judgement

Lisa Gill, J.—This order shall dispose of Crl.Misc. No.M-5379 of 2015 (M/s. Amandeep Rice Mill Gram Udyog Samiti v. Punjab State Cooperative Supply and Marketing Federation Limited) and Crl.Misc. No.M-5432 of 2015 (M/s. Amandeep Rice Mill Gram Udyog Samiti v. Punjab State Cooperative Supply and Marketing Federation Limited).

2. Crl.Misc. No.M-5379 of 2015 has been filed for quashing of complaint No. 18 dated 27.05.2014, under Sections 138/142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the ''Act'') read with Section 420 IPC as well as order dated 06.01.2015 passed by learned Additional Sessions Judge, Fatehgarh Sahib upholding order dated 27.05.2014 passed by learned Judicial Magistrate First Class, Fatehgarh Sahib, vide which the petitioner has been summoned to face trial in the abovesaid complaint.

3. Crl.Misc. No.M-5432 of 2015 has been filed for quashing of complaint No. 10 dated 04.04.2014, under Sections 138/142 of the Act read with Section 420 IPC

as well as order dated 06.01.2015 passed by learned Additional Sessions Judge, Fatehgarh Sahib upholding order dated 04.04.2014 passed by learned Judicial Magistrate First Class, Fatehgarh Sahib, vide which the petitioner has been summoned to face trial in the abovesaid complaint.

4. Brief facts of the case are that, petitioner-Rice Mill has entered into an agreement with the complainant - Corporation for milling and supply of rice to the Food Corporation of India. Complainant supplied 2,92,507 bags of fine quality paddy weighing 1,02,362.445 for the year 2012-13 to the petitioner-Rice Mill. Petitioner was required to supply the entire paddy after milling upto 18.01.2014. Physical verification of the premises was conducted on 20.01.2014. A shortage of 1,18,084 bags of paddy was detected and an amount of Rs. 8,17,55,840/- was found due towards the petitioner. The cheques in question were issued in discharge of the liability as mentioned above. The cheques were dated 05.02.2013, 15.02.2013, 25.02.2014, 15.03.2014 and 25.03.2014. On specific instructions of the petitioner, the cheques were presented to the Bank for encashment but they were dishonoured with the remarks "Exceeds arrangement". Legal notice had been duly sent which was neither replied nor the payment was made. Hence, the present complaint has been filed.

5. Learned counsel for the petitioner submits that entire proceedings including complaints and summoning orders as well as order dated 06.01.2015 passed by the learned Additional Sessions Judge, Fatehgarh Sahib deserve to be set aside because it is a matter of record that all the six cheques in question were issued as security. Thus were not meant to be encashed on the day they were issued. Hence, offence under Section 138 of the Act is not made out in this case. He relies upon the decision of Hon''ble Supreme Court in Indus Airways Pvt. Ltd. and Others Vs. Magnum Aviation Pvt. Ltd. and Another, .

6. It is further submitted that the respondent has already resorted to the remedy of arbitration. Therefore, the present complaint is an abuse of process of law. Furthermore, the respondent has an efficacious remedy of filing a civil suit for recovery of the said amount.

7. I have heard learned counsel for the petitioner and gone through the file.

8. It is mentioned in para 16 of the complaint that petition under Section 9 of the Arbitration and Conciliation Act was withdrawn by the complainant in view of the statement dated 13.12.2003 given by the President of petitioner firm i.e., Jang Singh. The said statement reads as under:-

"I am President of M/s. Amandeep Rice Mill Gram Udyog Samiti village Bhalla Nicha custom milling for the period 2012-2013 regarding paddy crop was allotted to our mill. The milling period has already been extended by Punjab Govt. vide letter dated 10.12.2013 for period of 30 clear working days from the date of issue of the letter. Moreover I have already handed over post-dated cheques to the petitioner regarding the balance rice and paddy out of which three cheques has already been encashed and my firm has already given two wagons of rice to the petitioner. I undertake to clear the rice within the extended period. My aforesaid post-dated cheques be treated as a security till the clearance of the balance rice towards my firm failing which the said cheques may be used by the petitioner for affecting recovery of balance amount of rice. The respondent firm shall not dispose of the property owned by it till extended period of milling." 9. Keeping in view the aforesaid statement, the argument of learned counsel for the petitioner that Section 138 of the Act shall not be attracted in this case, is untenable. In the case of M/s. Indus Airways Pvt. Ltd. and others referred to above, the factual position was that the purchasers/appellants in that case had placed two purchase orders for supply of certain aircraft parts with the respondents and for advance payment, two post-dated cheques were issued. However, the supply of goods was not made. Intimation regarding cancellation of the purchase order was sent to the supplier and the supplier was requested to return both the said cheques. It is thereafter the two cheques were presented for encashment and were returned on the ground that the purchasers had stopped payment.

10. It is in this situation that the Hon''ble Supreme Court has held that where the cheques were issued by way of security and were not liable or meant to be encashed, Section 138 of the Act is not attracted. Purchase order was cancelled with due intimation to the supplier but still the cheques were presented.

11. In the present case, there is a specific undertaking by the President of the petitioner-Mill that the cheques can be encashed in case the rice in question is not supplied by a particular date. It is not a situation where the petitioner did not receive any goods and the cheques were not meant to be encashed. It is a matter of record that the petitioner-Mill was entrusted with the paddy in question for milling. After milling, the requisite quantity of rice was not supplied within the stipulated period. Specific undertaking has been given on behalf of the Mill that the said cheques can be encashed in case rice is not supplied by the stipulated date. Rice is admittedly not supplied within this period and some of the cheques are encashed while others are dishonoured.

12. In case the interpretation sought to be put forth by the petitioner is accepted, an extremely anomalous situation would arise where the miller appropriates the paddy, does not supply the rice and still has the temerity and audacity to say that the cheques are not meant to be encashed thereby, not attracting Section 138 of the Act.

13. The judgment of Hon''ble Supreme Court referred to above in M/s. Indus Airways Pvt. Ltd. and others is clearly distinguishable on the facts and circumstances of this case.

14. So far as the question of resort to arbitration proceedings being a bar to proceedings under Section 138 of the Act is concerned, the Hon''ble Supreme Court in Sri Krishna Agencies Vs. State of A.P. and Another, has held that a complaint under Section 138 of the Act cannot be quashed on the ground that

the complainant has already resorted to arbitration proceeding.

15. In view of the above, I find no infirmity or illegality in the impugned order dated 06.01.2015 passed by the learned Additional Sessions Judge, Fatehgarh Sahib upholding orders dated 04.04.2014 and 27.05.2014 passed by the learned Judicial Magistrate First Class, Fatehgarh Sahib which would warrant interference by this Court in exercise of jurisdiction under Section 482 Cr.P.C.

16. Both the petitions are consequently dismissed being devoid of merit.