(2020) 03 DEL CK 0084

In the Delhi High Court

Case No : Criminal Revision Petition No. 619 Of 2019, Criminal Miscellaneous Application No. 11151, 34909, 34910 Of 2019

Gopal Taneja APPELLANT

Vs

State And Others RESPONDENT

Date of Decision : 03-03-2020

Acts Referred:
Indian Penal Code, 1860 — Section 188, 406
Code Of Criminal Procedure, 1973 — Section 200, 452
Seeds Act, 1966 — Section 13(1)(b), 13(1)(c), 13(3)
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2020) 03 DEL CK 0084

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Mohit Chaudhary, Kunal Sachdeva, Balvinder Singh Suri, Amit Gupta, Anurag Jain

Final Decision : Disposed Of

Judgement

Vibhu Bakhru, J

1. The petitioner has filed the present petition, inter alia, impugning an order dated 24.04.2019 (hereafter â??the impugned orderâ??) passed by the

Learned ASJ, Rohini in CR No. 293/2018 captioned â??Pramod Lohiya v. State and Anr.â??, whereby the Learned ASJ had directed the petitioner

to deposit a sum of Rs. 1,50,96,000/- with interest on account of sale proceed of seeds that were released to the petitioner on superdari.

2. The petitioner is the managing director of M/S Gangotri Quality Seeds Private Limited (hereafter â??Gangotriâ??), which deals in agricultural

seeds. Respondent nos. 2 and 3 are the proprietors of M/s Srijee Agro Food and Srijee Agro Traders respectively. They are grain merchants and commission agents and have their godown in Libaspur, Delhi.

3. The petitioner states that he had purchased 8,000 quintals of sarso seeds and had executed two agreements dated 02.11.2017 with M/s Srijee

Traders to pledge the said seeds on certain terms and conditions as incorporated therein. The petitioner further states that he entered into two further

agreements dated 06.11.2017, in continuation with the earlier agreements. The copies of the said agreements, which have been placed on record,

indicate that Gangotri had entered into one agreement dated 02.11.2017 for pledging 4,000 quintals of black sarso seeds with Srijee Agro Food. The

same also indicates that Gangotri had purchased the said seeds @ Rs. 4,000/- per quintal and Srijee Agro Foods (sole proprietorship concern of

respondent no.2) had agreed to finance 50% of the value (that is, at the rate of Rs. 2,000/- per quintal) on interest and expenses at the rate of 1.25%

per month. The seeds were required to be stored in the godown of Srijee Agro Food (leased by Srijee Agro Food) at Rajat Wali Gali, Libaspur, Delhi.

In addition, the agreement also indicated that the petitioner/Gangotri had provided certain cheques to respondent no.2 and had undertaken to clear the

same. A similar agreement dated 02.11.2017 was entered into by Gangotri company in respect of 4,000 quintals of black sarso seeds with Srijee

Traders (sole proprietorship concern of respondent no.3). Subsequently, the petitioner/Gangotri entered into two further agreements dated 06.11.2017

with Srijee Agro Food and Srijee Traders, agreeing to handover the release order after securing the same from National Seeds Corporation.

Gangotri/petitioner also agreed to be fully responsible for sending the sarso seeds to the godown at Libaspur, Delhi.

4. Thus, in terms of the said agreements, the petitioner/Gangotri had agreed to avail finance from respondent nos. 2 and 3 for the aggregate quantity of

8,000 quintals of black sarso seeds and pledge the same.

5. On 06.03.2018, the wife of the petitioner (Smt. Deepa Taneja) entered into another agreement with Srijee Traders (respondent no.3)

acknowledging that there was an amount pending to be paid to respondent no.3 and agreed to pledge certain seeds. The petitioner also claims that in

February, 2017, he had pledged 400 quintals of arhar seeds and in November, 2017, he pledged 9,600 quintals of mustard (sarso) seeds.

6. The petitioner claims that during the proceedings before the Special Court

regarding sealing/de-sealing of godown, respondent no.2 had filed an

application enclosing two agreements dated 02.11.2017 and 06.11.2017. However, certain pages of the said agreements were manipulated. The

petitioner claimed that he had also made a complaint with the PS S. P. Badli on 14.12.2018 in this regard.

7. On 29.08.2018, the police, along with the Seed Inspector, Balam Singh went to the godown of the respondents and had found that the petitioner and

the respondents were present there. The Seed Inspector had asked them to open the same, but on their request, agreed to inspect the godown on a

later date and sealed the godown with their official seals.

8. The Seed Inspector visited the godown in question on 06.09.2018 and found that the seals on the locks of the godown were broken but the locks

were intact. It is stated that thereafter, the Agriculture Department broke open the locks in presence of the police officials. The petitioner claims that

on entering the godown, the petitioner found that the quantity of seeds was less than as provided to respondent nos. 2 and 3. The Agriculture

Department took the inventory of the seeds and found 3750.24 quintals of sarso seeds.

9. The Seed Inspector filed a FIR, being FIR No. 0710/2018, under Section 188 of the IPC, registered with PS Samaypur Badli, reporting that the

official seals were broken and it was apprehended that the expired seeds had been removed from the godown. The Seed Inspector also seized the

seeds.

10. On 07.09.2018, a complaint under Section 200 of the Cr.P.C was filed by the Seed Inspector for commission of offences under Section 13(1)(b),

13(1)(c) and 13(3) of the Seeds Act, 1966 and Sections 3 and 7 of the Essential Commodities Act, 1955.

11. The said complaint was taken up by the learned MM on 10.09.2018 and the Court expressed a prima facie view that offences, as alleged,

appeared to have been committed. The Court was also informed that 3,774 quintals of seeds had been seized under Section 13(3) of the Seed Control

Order, 1983; however, the same had not been lifted from the godown as there was no place to store them. The godown had been sealed and the keys

were in possession of the Seed Inspector. The keys were produced and the learned MM directed that the same be handed over to the Joint Director, (Agriculture) Development Department.

12. Thereafter, Gangotri filed an application, through the petitioner, for release of the seeds on superdari. The respondents also filed applications for de-sealing of the godown and to protest against the application filed by Gangotri.

13. The said matter was taken up before the learned MM on 18.10.2018. On that date, the Seed Inspector filed a report of the samples obtained from Seed Testing Laboratory, Barwala. The report indicated that germination was found to be 85-86% and the purity of the seeds was 97-98%. Since, the said parameters were within the specified limits, the allegation that the seeds had expired was not established. In view of the above, the learned MM directed that the godown be de-sealed and the keys be handed over to the rightful owner. It was contended on behalf of Gangotri that the seeds which were stored in the godown, be handed over to it, as it held a valid licence (and not respondent nos. 2 or 3). This was countered by respondent nos. 2 and 3 and it was contended that the seeds had been pledged by Gangotri and therefore, the possession of the seeds could not be handed over to any other party.

14. The learned MM did not enter into this controversy between the petitioner/ Gangotri and respondent nos.2 and 3 and held that since the matter before it related to a complaint for an offence under the Seeds Act, 1966, the Court did not have the jurisdiction to pass any order in respect of any other dispute. Since, it was found that the seeds were not invalid, the learned MM directed that the godown be de-sealed and the keys be handed over to the rightful owner of the godown (namely, respondent nos.2 and 3). It was also made clear that any observation made in this order would not affect the merits of the claim of both the parties (namely, the petitioner/Gangotri and respondent nos.2 and 3) and the order was limited to de-sealing the godown.

15. In terms of the order dated 18.10.2018 passed by the learned MM in Seed Inspector v. Srijee Traders, the Seed Inspector proceeded to the godown on 01.11.2018 to hand over the keys. However, respondent no.2 was not present and therefore, the keys could not be handed over. He submitted a report to the aforesaid effect to the learned MM, which was considered by the learned MM on 03.11.2018. Contentions were advanced on behalf of the petitioner/the company that the goods in question be handed

over to it, however, this was not acceded to by the learned MM and it

was directed that the keys be handed over to the rightful owner after preparation of the inventory by the Joint Director. And, in case the rightful

owner refuses to accept the same, the keys be retained in the custody of the Joint Director, Agriculture, Government of Delhi and the expenses would

be borne by the rightful owner.

16. On 05.11.2018, the Seed Inspector was present at the godown and opened the same in presence of respondent no.2. According to the Seed

Inspector, the seeds lying in the said godown were there, as they were on the date of the sealing (06.09.2018). However, according to the Seed

Inspector, respondent no. 2 refused to undertake inventory of the seeds. Hence, the godown was re-sealed and a report to the aforesaid effect was

submitted to the learned MM.

17. In the meanwhile, on 26.10.2018, FIR No.0826/2018, under Section 406 of the IPC, was registered with PS Samaipur Badli at the instance of the

petitioner. He alleged that respondent nos. 2 and 3 had misappropriated the goods pledged by him. The petitioner also alleged that they were intending

to misuse the cheques given by him.

18. In the said matter (FIR No. 0826/2018), a status report was filed before the learned MM, which indicated that the petitioner had reported that

about 5,800 quintals of mustard seeds and 400 quintals of arhar seeds had been misappropriated by respondent nos.2 and 3 and the matter was being

investigated.

19. On 08.11.2018, the learned MM (in proceedings relating to FIR No.0826/2018) passed an order directing the IO to seize the seeds considering the

perishable nature of those goods. However, the learned MM also clarified that the order was not a reflection as to the status of ownership of the said

goods, which was a matter to be considered after investigation.

20. On 12.11.2018, Gangotri/the petitioner made an application to the learned MM in FIR No.0826/2018, seeking release of the seeds seized by the

Investigating Officer on superdari.

21. The petitionerâ??s application was considered by the learned MM on 14.11.2018 and the learned MM directed that the seized mustard seeds be

released to â??its registered/rightful ownerâ?, subject to furnishing of an Indemnity Bond of the value of the goods, which was to be ascertained by a

certified valuer. The Court also gave other necessary directions relating to taking photographs of the seeds from various angles and for the same to be

properly valued. It is relevant to note that respondent nos. 2 and 3 were not heard and no notice was issued to them. The order was passed based on

the no objection communicated by the concerned IO.

22. It is stated that in terms of the said order, the petitioner filed an Indemnity Bond in the sum of Rs. 1,50,96,000/-.

23. The respondents filed a revision petition before the Sessions Judge, challenging the order dated 14.11.2018 passed by the learned MM.

24. On 24.04.2019, the revision petition filed by the respondents was considered by the ASJ 02, North. The ASJ noted that the Learned MM did not

have any jurisdiction over the dispute in question since the matter was already sub judice before the Special Seeds Court, which was constituted under

the Seeds Act, 1966. The Court took note of the orders dated 18.10.2018 and 03.11.2018, which were passed by the Special Seeds Court with

reference to the present dispute. The Sessions Court noted that the powers of the MM were circumscribed by the Special Act.

25. The ASJ held that the order dated 14.11.2018 was a unilateral order and was passed only in the presence of the petitioner and his counsel and on

the basis of the reply of the IO. The said order dated 14.11.2018 had been passed in gross violation of the audi alteram partem principle.

26. The learned ASJ noted that the petitioner had admitted to selling the seized mustard seeds subject to the execution of an Indemnity Bond ofR s.

1,50,96,000/-. The ASJ held that on the basis of the principle of restitution, the petitioner could not be allowed to avail of the benefits of the illegal order

dated 14.11.2018 and directed the petitioner to deposit the sum of Rs. 1,50,96,000/-, along with interest at the rate of 9% per annum, on account of the

sale proceeds of seeds that were released to the petitioner on superdari.

27. The petitioner has filed the present revision petition impugning the order dated 24.04.2019. The petitioner contends that he is not required to

compensate the respondents, since the respondents have committed breach of trust by misappropriating 5,800 quintals of mustard seeds and 400

quintals of arhar.

28. This Court has heard learned counsel for the parties.

29. It is clear from the above that the order dated 14.11.2018 passed by the learned MM is, ex facie, in violation of the principles of natural justice.

The goods (mustard seeds) were lying in the godown, which were in possession of respondent nos.2 and 3. There is no dispute that the

Gangotri/petitioner had pledged the mustard seeds to respondent nos. 2 and 3. Respondent nos.2 and 3 had also partly financed the said goods.

Undisputedly, respondent nos. 2 and 3 had a lien on the said goods. The said lien could not be defeated in the manner as has sought to be done.

Plainly, respondent nos.2 and 3 could not have been deprived of their rights without hearing them.

30. It is also relevant to note that FIR No.0826/2018 was registered at the instance of the petitioner in respect of goods that were allegedly

misappropriated by respondent nos.2 and 3. However, there is no dispute that the mustard seeds lying in the godown were pledged to respondent nos.2

and 3.

31. This Court is also informed that respondent nos.2 and 3 have initiated proceedings relating to dishonour of cheques issued by the company/the

petitioner.

32. The learned counsel appearing for the petitioner contended that learned judge ought not to have passed any order for directing that the sale

proceeds of the mustard seeds be paid to respondent nos.2 and 3, since by virtue of Section 452 of the CrPC, a final order for disposal of the property,

which is in custody of the court, can be passed only at the conclusion of the trial.

33. The learned counsel appearing for respondent nos. 2 and 3 states that the respondents would have no objection if the amount is deposited with the

Court. The claim of Gangotri/petitioner with regard to the goods in question (seeds) is yet to be adjudicated, considering that respondent nos.2 and 3

are claiming lien over the said goods, in respect of amounts that are stated to be owed by Gangotri/the petitioner. As noticed above, cheques issued to

respondent nos.2 and 3 have also been dishonoured. Clearly, in these circumstances, it was not apposite to release the goods in question in favour of

the petitioner. As noticed above, the order dated 14.11.2018 is also, ex facie, untenable as having being passed in gross violation of principles of

natural justice.

34. Considering the above, this Court considers it apposite to modify the order impugned herein by directing the petitioner to deposit a sum of Rs.

1,50,96,000/- along with interest at the rate of 9% per annum from the date when the said goods were released to the petitioner on superdari, till the

date of the deposit, within a period of two weeks from today. The disbursal of the said amount would be subject to any further order that may be

passed by the learned trial court.

35. The petition is disposed of in the aforesaid terms. The pending applications are also disposed of.