(2013) 09 P&H CK 0474

In the Punjab And Haryana At Chandigarh

Case No : Criminal Rev. No. 2919 of 2013 (O and M)

M/s. Bharat Rice Trading Company and Another — APPELLANT

Vs

State of Haryana and Another — RESPONDENT

Date of Decision : 17-09-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2013) 09 P&H CK 0474

Hon'ble Judges : Sabina, J

Bench : Single Bench

Advocate : Jagdish Manchanda, for the Appellant;

Final Decision : Dismissed

Judgement

Sabina, J.—Petitioners had faced the trial for commission of offence punishable u/s 138 of the Negotiable Instruments Act, 1881 (''Act'' for short) on a complaint filed by respondent No. 2. Trial court vide impugned judgment/order dated 26.9.2012 convicted and sentenced the petitioners qua commission of offence punishable u/s 138 of the Act. Appeal filed by petitioners against the said judgment/order was dismissed by the Appellate court vide judgment dated 16.8.2013. Hence, the present petition by the petitioners.

2. Case of the complainant Haryana Warehousing Corporation, in brief, is that paddy had been handed over to the accused for milling and was to be delivered after milling to Food Corporation of India. When the premises of the petitioners were inspected, it was found that there was shortage of paddy. Petitioners admitted the shortage of paddy and two cheques i.e. cheque dated 12.4.2007 in the sum of Rs. 20,00,000/- and cheque dated 15.4.2007 in the sum of Rs. 12,00,000/- were issued to indemnify the loss of paddy. When the said cheques were presented for encashment, they were dishonoured by the bank with the remarks ''Funds insufficient''.

3. In order to prove its case, complainant led its evidence. Petitioners, when examined u/s 313 Cr.P.C., denied the allegations levelled against them.

4. Learned counsel for the petitioners has submitted that, in fact, the cheques in question had been issued by way of security. Rs. 15,00,000/- had already been paid by the petitioners to the Corporation. Since the cheques in question had been issued by way of security, as per the agreement executed between the parties, they were not liable to be presented for encashment. Agreement was executed at the time of handing over of the paddy to the petitioners for milling and as per the agreement, in case of a dispute, parties could approach the arbitrator. Recovery suit had also been filed against the petitioners by the Corporation.

5. In the present case, the cheques in question were duly signed by petitioner No. 2. The cheques were issued as shortage of paddy was discovered at the time of checking of the premises of the petitioners. In order to indemnify the corporation for the loss, the cheques in question were issued by the petitioners. The fact that a civil suit has been filed qua recovery of the amount in question does not lead to the inference that the petitioners cannot be punished qua commission of offence punishable u/s 138 of the Act. Since the cheques in question presented by the petitioners were dishonoured, the courts below rightly ordered the conviction and sentence of the petitioners. No ground for interference by this Court is made out. Accordingly, this petition is dismissed.

