
(2007) 01 P&H CK 0061
In the Punjab And Haryana At Chandigarh

Punjab State Civil Supplies Corporation (PUNSUP)	APPELLANT
Vs	
Deepak Kumar and Another	RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 406, 420

Citation : (2007) 147 PLR 175 : (2007) 2 RCR(Criminal) 550

Hon'ble Judges : Uma Nath Singh, J;A.N. Jindal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Uma Nath Singh, J.—This application for leave to appeal arises out of a judgment dated 14.7.2006 passed by learned Additional Sessions Judge, Rupnagar, in Crl. Appeal No. 9/11.8.2004, recording acquittal of the accused-respondent, while setting aside his conviction u/s 406 IPC and sentence of two years R.I. with a fine of Rs. 1,000/-, in default of payment, to undergo further R.I. of one month, recorded by learned Judicial Magistrate, 1st Class, Ropar in Crl. Case No. RT 24/18.1.01/2.6.04 (F.I.R. No. 14 dated 1.3.1997).

2. As per prosecution case, it appears, that a complaint was lodged by Teja Singh Sidhu, District Manager, PUNSUP Ropar, to the S.S.P., Ropar against M/s Deepak & Company, Kurali, alleging that they supplied paddy to the Rice Sheller allotted by D.F.S.C. and after shelling, the rice was supplied to the F.C.I, and deposited in the accounts of PUNSUP. In the year 1995-96, the respondent company was allotted to PUN-SUP and during that year, it was supplied 3111 bags of common variety and 37099 bags of fine variety, totaling 40210 bags weighing 26136.50 qtls. Apart from it, 16680 bags of fine variety were transferred from M/s Guru Rice Mills, Kurali, and in that way, a total quantity of 56890 bags, weighing, 36978.50 qtls., were supplied to the respondent company. Out of the said quantity of paddy, the firm supplied rice of 43925 bags of fine variety, weighing 28551.25 qtls. As per clause 5 of the agreement between the parties, the sheller

was responsible for quality and quantity of rice and according to clause 5(1) of agreement, the parties were liable to deposit economic cost. As per clause 11, Rs. 40,000/- were deposited as security. Further, as per stock in the firm of Deepak & Company, 12965 bags should have been there in the premises, but allegedly on physical verification of the premises of the respondent company, conducted on 14.1.1997, the paddy in question was not found to be there and thus, in this way, the firm committed misappropriation of 12965 bags of paddy, weighing 8427.25 qtls. The value of the said quantity of item was assessed to be Rs. 4,71,990/-, and over and above that, the applicant was entitled to charge an interest @ 21%. Accordingly, a case was registered under Sections 406/420 I.P.C. and a challan was laid against the respondent.

3. Heard learned Counsel for the applicant and perused the judgment.

4. Learned Counsel submitted that learned lower Appellate Court has committed a serious error in setting aside a well reasoned judgment of the trial Court only on the ground that initial onus to prove the entrustment was on the prosecution. The receipt (Ex.PW2/D), allegedly signed by Manjit Singh, was, admittedly, not signed by him. The prosecution could not prove the identity of Manjit Singh, who was said to have received those bags, from the side of M/s Guru Rice Mills, no witness was examined to prove the transfer of 16680 bags as per instructions issued by the PUNSUP and received by M/s Deepak & Company. Thus, the prosecution is not able to substantiate the allegations and bring home the charges against the accused-respondent. As regards the entrustment of 40210 bags, it was found that the accused-respondent had supplied rice equal to 43925 bags. Thus, the lower Appellate Court appears to be correct in coming to a finding that whatever paddy was supplied to the accused-respondent," he had returned the same back after shelling, as per the terms of the agreement.

5. We have also examined the judgment of the learned Single Judge of this Court in the case of Pawan Kumar v. State of Haryana 2006 (2) R.C.R.162, wherein the judgment of Hon"ble Apex Court in the case of Kailash Verma v. Punjab State Civil Supplies Corporation and Anr. 2005 (1) R.C.R. 727 has been discussed. There is no dispute that presence of an arbitration clause in an agreement itself would not entail automatic quashing of an FIR u/s 406 IPC. However, in identical facts, as detailed in the judgment of Hon"ble the Apex Court, the position would be different. Thus, in a case where there is an arbitration clause and a Government Department entrusts paddy to a party for dehusking and that party fails to return rice after shelling as per the agreement, no offence u/s 406 I.P.C. would be made out. Besides, exercise of powers u/s 482 Cr.P.C. against an order of discharge in such a case would be unwarranted. Admittedly, the applicant Government undertaking handed over paddy to the respondent-company for dehusking, and as per the findings in the impugned judgment, the alleged deficient quantity of rice was returned after shelling. Moreover, as per the facts of the judgment of Hon"ble the Apex Court, the Additional Chief Judicial Magistrate and the Revisional Court concerned had passed the discharge order holding that

the allegations as contained in the complaint were of civil nature, and further, prima facie, no criminal case was made out. In addition to that, the said orders were passed at a stage where final report had already been submitted by the Police. Hon''ble the Apex Court, thus, found that the orders were correct and as such, set aside, the order of the High Court, which while exercising inherent powers u/s 482 Cr.P.C. quashed the orders of the Courts below. On the other hand, in the judgment of learned Single Judge in the case of Pawan Kumar (supra), the accused approached this Court only at the stage of F.I.R. and, hence, the Court held that the presence of an arbitration clause on the agreement itself is not enough to entail automatic quashing of the F.I.R. In the instant case, the petitioner has approached this Court for grant of leave to appeal after a regular trial in an F.I.R., which has resulted in the order of acquittal. Thus, the ratio of the aforesaid judgments would not apply either way in the facts and circumstances of this case.

6. Hence, in the premises discussed hereinabove, the application for leave to appeal, being devoid of merits, is hereby dismissed. Resultantly, the appeal also fails.