
Sushil Kumar Vs State of Punjab

Criminal Miscellaneous No. M-13372 of 2012 (O and M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 28, 2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) &” Section 438#Penal Code, 1860 (IPC) &” Section 406, 420

Citation: (2012) 05 P&H CK 0085

Hon'ble Judges: Paramjeet Singh, J

Bench: Single Bench

Advocate: K.K. Goel, for the Appellant; J.S. Bhullar, AAG, Punjab, Mr. Rakesh Gupta, Advocate for the Pungrain along with and Mr. Harkesh Singh Sidhu, IAS, Managing Director-Pungrain, for the Respondent

Judgement

Paramjeet Singh, J.

This is a petition filed u/s 438 Cr.P.C. for grant of concession of anticipatory bail to the petitioner in case FIR No. 15

dated 05.03.2012 under Sections 420/406 IPC registered at Police Station Sehna, District Barnala. Heard learned counsel for the parties.

2. Learned counsel for the petitioner contends that 130 trucks of paddy were allotted to the petitioner-mill for milling for the year 2010-11. Out of

which, after shelling petitioner has delivered 96 trucks of rice in the account of Food Corporation of India. Instead of adjusting the said amount,

they have adjusted the said amount of rice in the account of one Manoj Kumar, who was earlier proprietor of the mill to whom paddy was allotted.

Petitioner joined the said partnership firm as partner in August, 2010. As such petitioner is not responsible for the earlier liability of the mill. The

rice of trucks should have been accounted for in the account of the petitioner for the year 2010-11. Learned counsel for the petitioner further

stated that for the remaining paddy, petitioner is ready and willing to pay its entire cost. Learned counsel further contends that 10 trucks of rice are

lying in the premises of the petitioner's mill and for 7 trucks of rice he is ready to pay equivalent value i.e. Rs. 25 lacs by way of bank draft.

Learned counsel for the petitioner further contended that there is an arbitration clause and the proceedings are civil in nature.

3. This fact has not been denied by the authorities but this cannot be taken as ground to avoid the criminal proceedings. The civil proceedings as

well as criminal proceedings can go on simultaneously. This issue has already been elaborately dealt with by a learned Single Judge of this Court in

CrI. Misc. No.M-44541 of 2007 decided on 16.02.212, hence this contention cannot be accepted and is rejected.

4. Sh. Harkesh Singh Sidhu, IAS, Managing Director, Pungrain along with concerned official and record is present in Court today. On instructions

from Managing Director, learned counsel for Pungrain states that an amount of Rs.2.30 crores is still due against the petitioner being value of

consignment of 41 trucks of rice. Learned counsel further states that petitioner has acknowledged the pendency of 41 trucks of rice.

5. Keeping in view the peculiar facts of the case and the fact that huge amount of Pungrain has been allegedly misappropriated by the petitioner in

connivance with the field staff and officials of the corporation for which District Manager and Inspector appears to be responsible. As per the

norms/instructions stock is to be kept under joint custody of the petitioner as well as officials of the Pungrain. They are required to depute

chowkidar/security guards to supervise the same. It has been told to this Court during the course of arguments that firstly the physical verification of

the stocks was carried out in September, 2011 and thereafter for sufficiently long time no physical verification has been carried out at the mill

premises of the petitioner. As per the instructions of the department physical verification of the stock is to be carried out every month. It appears

that field staff including the District Manager has not carried out his duties in proper manner. Paddy/rice worth crores of rupees has been

misappropriated by the petitioner in connivance with the officials and officers of the Pungrain. District Manager is the principal officer of the

corporation in the district. He is also required to make periodic inspections/physical verification of the stocks. It has come to the notice of this

Court that number of cases of the paddy/rice misappropriation are reported daily and cases are registered.

6. In order to find out the persons involved in the misappropriation and keeping in view the gravity of offence, custodial interrogation of the

petitioner is required.

7. No ground is made out to grant concession of pre-arrest bail.

8. Dismissed.

9. Before parting with the judgment, it would be appropriate to notice that crooked and wicked rule the roost. The food-grains worth thousand of

crores is being siphoned off. Instead of taking any action against the main culprits of such scams, only petty officials are made liable. In such cases

investigation is required to be conducted thoroughly by the Senior Police Officers as well as the Senior Officers of the Corporation. Such scandals

are the result of mess and splendour by well net mafia comprising of unscrupulous elements in the corporation. There may be high profile nexus

with regard to the movement of the food-grains worth crores of rupees. It needs to be verified to unearth maximum misappropriation of the food-

grains in the Pungrain-corporation and other corporations of the State. The officers/officials are required to be identified during the tenure of which

officers/officials the maximum misappropriation of the foodgrains including the paddy/rice and other food-grains has taken place. It is a common

knowledge that in some of the scandals most powerful man/men, bureaucrats are behind the racket and they help in diluting the investigation/inquiry

of the crime. Keeping in view the gravity of involvement of the officers/officials/traders etc, a proper policy is required to be framed specifically

with regard to the storage/shelling and movement of the food-grains in order to minimize such frauds. It has come to notice of this Court that

generally four major elements are responsible for the commission of frauds in the food-grains. They are field staff and the supervisory staff,

businessman and traders, transporters and external elements (mafias). Failure on the part of the food-grain agencies to frame meticulously the

instructions/guidelines and lack in following the same is the major reason for frauds. External elements help in perpetuating the frauds with the help

of the mafias. There has been a growing collusion between the businessman/traders, politicians, civil servants and the field staff and the

management and the staff of the concerned corporation. The rules are bent, regulations are flouted and norms are generally thrown to the winds.

All the food-grains scams/fraud have a common basic feature. They involve negligency or dishonesty at one stage or the other. Collusion is

apparently in many cases. The staff/officials/officers as custodian of the food-grains of the corporation do not watch the interest of the corporation

properly. Sometime rules/instructions issued from time to time are ignored deliberately. In such cases, the modus operandi of the frauds is required

to be examined in depth and thorough enquiry is required to be conducted in various aspects relating to the fraud/malpractice in the foodgrains

agencies.

10. Without further elaboration, I deem it proper at this stage that copy of this order be sent to the Chief Secretary, Punjab to find out and supply

the complete details of number of criminal cases instituted with regard to the frauds in the food-grains institutions of the State i.e. the

corporations/boards and the State Departments in the last five years and also to identify the maximum frauds committed during the tenure of a

particular officer, the steps taken by the concerned corporation / agency/respective State departments to minimize the frauds. The said report shall

be submitted to this Court by 25.07.2012.

11. Since the new paddy season is approaching and the procurement and the allotment of paddy/rice etc. are to be made in the next season, the

State is directed to prepare a foolproof policy with regard to the allotment of paddy and storage of stocks with the rice shellers and other godowns

with safe measures. The said policy should be finalized well in advance before the commencement of next season.

12. Keeping in view the unholy nexus between the transporters, businessman, rice sheller owners and the officials/officers of the department of

Foods and Supplies and concerned foodgrain agencies which are involved in the procurement/allotment of the food-grains including paddy rice

etc., the State shall make an endeavour to use modern technology that would have less human intervention. The transparency should be brought in

the system in allotment of food stocks at various places and CCTV cameras arrangement should be made in order to check the movements of

coming and outgoing of food-grains stocks. The allotment procedure should be computerized and the data should be available with a centralized

agency in addition to the concerned corporations/departments etc. The State Government may constitute a high level committee of senior officials

who are well versed with the storage of the food-grain stocks and take other appropriate measures which may be necessary for avoiding the

frequent frauds/misappropriation of the food-grains. A system be developed to minimize the frauds. The elements/officers/officials who are

involved in the frauds and the officers during whose tenure such scams have occurred, they should not be entrusted such duty in future. In addition

to the concerned agencies, State Government may also look into the viability of entrusting the powers of surprise checking to the concerned

Deputy Commissioner/District Magistrate or any other officer. A centralized Vigilance Agency other than the food-grain agencies be created to

carry out surprise checks/physical verification from time to time.

13. Physical security measures concept should be made effective and should be done at short intervals. Failure on the part of the officials/officers

should be taken care of and responsibility should be fixed of such officers. With a purpose to maintain effective physical security, special installation

of the equipment and deployment of the manpower should be taken care.

14. Keeping in view the seriousness of state of affairs in Pungrain, the Managing Director, Pungrain is also directed to take appropriate steps at the

departmental level including institution of criminal proceedings against the officials who are responsible for it, within a period of two months from

today. List on 30.07.2012 for consideration of status report.