
Before T. P. S. Mann, J.

BALDEV KISHAN AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB,—*Respondent*

CRIMINAL MISC. NO. 37773/M OF 2005

21st August, 2006

Essential Commodities Act, 1955—Indian Penal Code, 1860—S. 406—Misappropriation of bags of paddy of Markfed by a firm—Firm issuing cheques as security for the rice misappropriated by it—Firm failing to deliver balance due quantity of rice in the coming season—Insufficient funds in account—Registration of case u/s 7—Case committed to Special Court—Promulgation of 1997 Ordinance—Special Courts ceased to have powers to try offence u/s 7 of E.C. Act after 27th August, 1998 when the ordinance lapsed—Merely because the offence committed in 1995–96 is no ground to clothe Special Court with power to try offence—Order of Special Court taking cognizance of case and charging petitioners after 27th August, 1998 held illegal and without jurisdiction—Charge u/s 406 IPC—Arbitration clause in the agreement—Arbitrator also giving his award—Dispute between parties civil in nature—No offence u/s 406 IPC made out against petitioners—Petitioners discharged u/s 406 IPC and relegated to face trial before the Magistrate.

Held, that once the Special Court ceased to have the powers to try offence under section 7 of the Act, after 27th August, 1998 when the Ordinance lapsed, the petitioners could not be tried by the Special Court and had to be tried by an ordinary Court. Mere fact that the offence was allegedly committed in the year 1995–96 was no ground to clothe the Special Court with the power to try the offence. The relevant date is the one when the cognizance of the offence was taken. Admittedly, the FIR was registered after the Essential Commodities (Special Provisions) Act, 1982 stood repealed and the Essential Commodities (Special Provisions) Ordinance, 1997 stood lapsed. At that point of time, the Special Court ceased to exist for the present case and the same was required to be tried by an ordinary Court. Hence, the taking of cognizance of the case by Special Court, Fatehgarh

Sahib and charging the petitioners for offence under section 7 of the Act is held to be illegal and without jurisdiction. Accordingly, the petitioners are relegated for facing the trial of the said offence in the Court of Addl. Chief Judicial Magistrate, Fatehgarh Sahib.

(Paras 9 & 10)

Further held, that Clause 20 of the agreement which was executed by the Markfed and the firm refers to the arbitration. A perusal of the same would show that disputes and differences arising out of or in any manner touching or concerning the agreement whatsoever shall be referred to the sole arbitration of the M.D. Markfed or any person appointed by him in this behalf. It has not been denied by the respondent that in compliance to the said clause of the agreement, Arbitrator was appointed, who gave his award dated 23rd November, 2001. The only reply of the respondent to the specific averment of the petitioners in para 12 of the petition is that the said para was a matter of record. It is held that the petitioners have not committed any offence under section 406 IPC and they are, accordingly, discharged of the same.

(Paras 13 & 14)

P.K. Gupta, Advocate, *for the petitioners*.

S. S. Chahal, AAG, Punjab, *for the respondent*.

JUDGEMENT

T.P.S. MANN, J.

(1) By way of the present petition, the petitioners are seeking quashing of FIR No. 139 dated 9th September, 1998 registered at Police Station, Sirhind under Section 7 of the Essential Commodities Act (for short '**the Act**') and Section 406 IPC, final report under Section 173 Cr. P.C., charge-sheet dated 20th August, 2004 and also charge-sheet dated 17th May, 2005.

(2) The petitioners, along with one Palwinder Singh, were partners of M/s Baba Fateh Singh Rice Mill, G.T. Road, Tarkhanmajra, Sirhind. It was alleged in the FIR that the petitioners entered into an agreement with the Punjab State Co-operative Supply and Marketing Federation Limited, hereinafter referred to as "Markfed" through its District Manager and Senior Accounts Officer for custom milling of paddy for the year 1995-96. The agreement was executed on 28th February, 1996. In pursuance thereto a total of 50635 bags of paddy was stored in the premises of M/s Baba Fateh Singh Rice

Mills, which remained under the possession and control of the Markfed and the firm. Out of the stock kept with the firm, 47815 bags were shelled against the delivery of advance rice. However, 2820 bags of paddy were misappropriated by the firm without consent and permission from the Markfed. It was further mentioned that when the complainant/Markfed brought the matter to the notice of the accused, they issued five cheques for a total amount of Rs. 21 lacs as security for the rice which had been misappropriated by them. An affidavit was also given that they were ready to give security amount of balance rice in shape of bank guarantee under which they promised to deliver the balance due quantity of rice in the coming season. However, the accused did not have sufficient funds in their account. On these allegations FIR was registered against the accused.

(3) After completing the investigation, report under Section 173 Cr.P.C. dated 15th January, 1999 was submitted by the Police. After the presentation of the challan, Additional Chief Judicial Magistrate, Fatehgarh Sahib framed charges against the petitioners under Section 406 I.P.C. on the allegations that they misappropriated 2820 bags of rice, which was entrusted to them by the Markfed. Thereafter, an application was filed by the State that the case stood registered under Section 7 of the Act and, therefore, the case be committed to the Court of Special Judge, Fatehgarh Sahib. Accordingly, the case was committed and on 17th May, 2005, Special Judge, Fatehgarh Sahib found sufficient material to frame charges under Section 7 of the Act against the petitioners for having contravened provision 10 of Punjab Rice Procurement (Levy) Order, 1983. The aforementioned F.I.R. and the charge-sheet were challenged by the petitioner in the present petition.

(4) When the petition came up for preliminary hearing on 19th July, 2005, an argument was raised on behalf of the petitioners that the Essential Commodities (Special Provisions) Act, 1981 and the Ordinance of 1997, which provided for the constitution of Special Courts to try offence under Section 7 of the Act, elapsed on 27th August, 1998. Along with it, the Special Court ceased to have powers to try offences under Section 7 of the Act, cognizance of which was taken after 27th August, 1998. Hence, the Special Judge, who passed the order on 17th May, 2005, while framing charges against the petitioners under Section 7 of the Act, acted illegally and without jurisdiction as the case was triable by the ordinary Court. Therefore, time was sought by the petitioners to make a necessary application before the Special Court for assigning the case to the concerned Court.

(5) Accordingly, an application was filed before Special Judge, Fatehgarh Sahib for recalling the order,—*vide* which charges were framed against the accused. However, the application was rejected on the ground that the offence related to the year 1995 and as such it could be tried by the Special Court. Copy of the order dated 18th June, 2005 passed by Special Judge, Fatehgarh Sahib declining the aforementioned application of the petitioners was, thereafter, brought on record by the petitioners by filing Criminal Misc. No. 48243 of 2005.

(6) The petition again came up for hearing before this Court on 6th September, 2005 when notice of motion was issued. The State of Punjab has also filed reply to the petition.

(7) The Essential Commodities (Special Provisions) Act, 1981 was enforced with effect from 1st September, 1982. The same was originally implemented for five years and later on extended for another ten years. The intention of the legislature for enforcing said enactment was to deal more effectively with persons indulging in hoarding, black-marketing and profiteering in essential commodities. The Special Courts were constituted under Section 12-A of the said Act. The procedure to try the offences was laid down under Section 12-AA. This Act remained in force till 31st August, 1997. Thereafter, the Essential Commodities (Special Provisions) Ordinance, 1997 was promulgated, but the said Ordinance elapsed with effect from 27th August, 1998. Thus, the offence under Section 7 of the Act for which the cognizance was taken after 27th August, 1998, could not be tried by a Special Court and could be tried only by an ordinary Court.

(8) The effect of repealing of Essential Commodities (Special Provisions) Act, 1981 and the lapse of the Essential Commodities (Special Provisions) Ordinance, 1997 was considered by a Full Bench of this Court in **Anil Kumar versus State of Punjab (1)** while dealing with the question as to what was the effect on the cases which were registered before the repealed Act and the cases in which the Court had taken cognizance. After considering the statutory provisions, it was held as under :—

“14. We are of the considered view that the cases which were registered and in which the Court has taken cognizance shall continue as if the Special Act has not been repealed by the Central Act.”

(9) In the case in hand, the F.I.R. was registered on 9th September, 1998 and the final report was prepared by the police on 15th January, 1999. Once the Special Court ceased to have the powers to try offence under Section 7 of the Act, after 27th August, 1998 when the Ordinance lapsed, the petitioners could not be tried by the Special Court and had to be tried by an ordinary Court. Mere fact that the offence was allegedly committed in the year 1995-96 was no ground to loathe the Special Court with the power to try the offence. The relevant date is the one when the cognizance of the offence was taken. Admittedly, the F.I.R. was registered after the Essential Commodities (Special Provisions) Act, 1982 stood repealed and the Essential Commodities (Special Provisions) Ordinance, 1997 stood lapsed. At that point of time, the Special Court ceased to exist for the present case and the same was required to be tried by an ordinary Court.

(10) In view of the above, the taking of cognizance of the case by Special Court, Fatehgarh Sahib and charging the petitioners for offence under Section 7 of *the Act* is held to be illegal and without jurisdiction. Accordingly, the petitioners are relegated for facing the trial of the said offence in the Court of Additional Chief Judicial Magistrate, Fatehgarh Sahib.

(11) The petitioners were charged under Section 406 IPC by Additional Chief Judicial Magistrate, Fatehgarh Sahib on 20th August, 2004. An argument has been raised by the petitioners that no offence under Section 406 IPC was made out as it was a dispute merely of civil nature. It was also pointed out that for adjudicating the dispute which had arisen between the Markfed and the firm, an Arbitrator was appointed who gave his award. Copy of the award has been placed on record as Annexure P.8. As per which the claim of Markfed for Rs. 20,34,345 with interest at the rate of 2% per annum till its recovery, was allowed by the Arbitrator on 23rd November, 2001. Further that where government department entrusted paddy to the accused for shelling and the accused did not return the rice as per the agreement, it would disclose a dispute of civil nature alone and no offence, accordingly, was made out under Section 406 IPC.

(12) In a similar case, **Kailash Verma versus Punjab State Civil Supplies Corporation and another (2)** the Supreme Court held that where the Corporation had initiated steps for arbitration proceedings on the basis of the arbitration clause in the agreement,

no offence under Section 406 was made out as it was a matter of civil nature. It was observed as under :—

“In the present case, the appellant was discharged by the Chief Judicial Magistrate and the revisional court confirmed that order after elaborately considering the facts and circumstances of the case. It may also be noted in **Bal Kishan Das versus P.C. Nayar, 1991 Supp. (2) SCC 412**, under similar facts and circumstances, this Court held that no offences were made out under Section 406 IPC as it was a matter of civil nature. The respondent-corporation had also initiated steps for arbitration proceedings on the basis of the arbitration clause in the agreement. In our view, the High Court was not justified in exercising its inherent power under Section 482 of the Criminal Procedure Code in this case. It cannot be either said that there was miscarriage of justice warranting interference by the High Court. Hence, we allow these appeals and set aside the judgment of the High Court. The order of discharge passed by the learned Magistrate in favour of the applicant is affirmed.”

(13) The agreement, which was executed between the Markfed and the firm has been placed on record by the petitioners as Annexure P.1. Clause 20 of the same refers to the arbitration. A perusal of the same would show that disputes and differences arising out of or in any manner touching or concerning the agreement whatsoever shall be referred to the sole arbitration of the M.D. Markfed or any person appointed by him in this behalf. It has not been denied by the respondent that in compliance to the said clause of the agreement, Arbitrator was appointed, who gave his award dated 23rd November, 2001. The only reply of the respondent to the specific averment of the petitioners in para 12 of the petition is that the said para as a matter of record.

(14) Resultantly, the present petition is disposed of by holding the cognizance of offence under Section 7 of the Essential Commodities Act by Special Judge, Fatehgarh Sahib is illegal and without jurisdiction. the cognizance of the said offence will now be taken up by the Magistrate, who will proceed with the trial in accordance with law. It is also held that the petitioners have not committed any offence under Section 406 IPC and they are, accordingly, discharged of the same.

R.N.R.