IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(145) CRM-M-4144-2026 (O & M)
Reserved on: 15.07.2026
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Mukesh Kumar ….. Petitioner(s)

V/s

State of Punjab ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Imaan Singh Khara, Advocate,
with Mr. Prince Pal, Advocate,
for the petitioner(s).

Mr. Adeshwar S. Pannu, AAG, Punjab.

Mr. H.S. Randhawa, Advocate as Amicus Curiae.

Mr. Gourav Verma, Advocate and
Mr. Ajay Gupta, Advocate,
for the complainant-Markfed.

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JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 528 BNSS, 2023 is for quashing of case FIR No.60 dated 07.06.2018 under Sections 420, 406 and 120-B IPC registered at Police Station City Jalalabad, District Fazilka (Annexure P-1) alongwith all consequential proceedings arising therefrom including the Final Report (Annexure P-2).

2. The present FIR came to be registered at the instance of District Manager, Markfed, Punjab and reads as under:-

Markfed The Punjab State Cooperative Supply and Marketing Federation Ltd. Fazilka (01638-260162 email: m.fazilka@dmarkfedpunjab.com Office Order As per report of

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Branch Incharge, committee is hereby formed for doing physical verification of stocks of Paddy 2017-18 stored at M/s P.M. Industries, Jalalabad as under: 1. Sh. Ramesh Kumar, Technical Officer, Markfed Fazilka. 2. Sh. Vinod Kumar, Clerk, Markfed Fazilka. 3. Sh. Sahil Verma, Accountant, Markfed Fazilka. Afore-mentioned officials/employees are hereby directed to complete physical verification of paddy stocks stored at M/s P.M. Industries, Jalalabad and to produce report before the undersigned. Ensure strict compliance of this order. Sd/- District Manager Markfed Fazilka Date 31.05.2018 No. DMF/Paddy/2018/4906 Dated 31.05.2018. Copy to: 1. Chief Manager (Paddy & Rice) Markfed Chandigarh for information. 2. Concerned officials/employees for compliance. 3. Senior Accounts Officer, Markfed Fazilka for Information. 4. Accounts Officer, Markfed Branch, Jalalabad for information. No. DM/Fazilka/2018/4922 Dated 01/06/2018. To, The S.S.P, Fazilka. Subject: Application for lodging FIR against Mukesh Kumar S/o Sh. Prithve Raj Doomra Prop. M/s PM. Industries (Rice Miller) Jalalabad for embezzlement of 6187.625 Qtls. paddy supplied for custom milling for Year 2017-18. R/Sir, It is respectfully submitted that M/s Industries (Rice Miller), Jalalabad was supplied paddy 67187.625 Qtls. for custom milling for year 2017-18. The said firm issued a receipt regarding quality and quantity as per specifications laid by G.O.I. The said firm has to supply rice to FCI on or before 30.05.2018 but in physical verification by committee formed by District Manager, Markfed Fazilka which was conducted on 31-05-2018 and a shortage of 15155 bags paddy crop 2017-18 found formed and only 2000 bags of substandard rice in unstandard weight were found not in specifications of norms of FCI. That proprietor of above said firm has embezzled paddy supplied for custom milling for Year 2017-18 and is liable to

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pay Rs. 1,01,84,223/- to the Markfed and has not paid a single penny to the department. So it is requested that a FIR as per law against Sh. Mukesh Kumar S/o. Sh. Prithve Raj Doomra Prop. of M/s P.M. Industries (Rice Miller) Jalalabad may kindly be registered as the offence has already been committed by firm. Yours sincerely, Sd/- District Manager Markfed Punjab.

3. Pursuant to the FIR (Annexure P-1), the Challan (Annexure P-2) was submitted against the petitioner.

4. The learned counsel for the petitioner contends that a civil dispute has been given the colour of a criminal case. An Arbitration Award dated 29.09.2019 (Annexure P-3) already stands passed in favour of Markfed. Sections 406 and 420 IPC are ante-thesis of each other. Therefore, in view of the judgment in ***Kailash Verma versus Punjab State Civil Supplies Corporation and Anr. 2005(2) Criminal Court Cases 39(SC),*** the FIR (Annexure P-1) in question, and all consequential proceedings arising therefrom including Final report (Annexure P-2) are liable to be quashed.

5. The learned counsel for the State and the learned counsel for the complainant alongwith the learned Amicus Curiae, on the other hand, contend that merely because a set of allegations lead to initiation of civil proceedings would not preclude criminal prosecution if the facts so warrant. As per the Arbitration Award passed by the Sole Arbitrator dated 29.09.2019 (Annexure P-3), the petitioner is liable to pay a sum of Rs.1,15,60,718/-, though, he was proceeded against *ex parte.* The judgment in ***Kailash Verma (supra)*** has been considered and distinguished by the Division Bench of this Court in '***State of Punjab versus Pritam Chand and others 2014(5)***

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RCR(Criminal) 792'. Therefore, the present petition is liable to be dismissed.

6. I have heard the learned counsel for the parties.

7. In '***State of Punjab versus Pritam Chand and others 2014(5) RCR(Criminal) 792',*** the Division Bench of this Court held as under:-

> *The following reference made by a learned Single Judge on August 09, 2012 has led to placement of this Criminal Appeal alongwith two Criminal Revisions (Criminal Revision Nos.1245 and 1412 of 2012) and two Criminal Misc. Petitions (Crl.Misc.M Nos.5582 of 2009 and 24351 of 2012) before us:-*
>
> > "Keeping in view the judgments on both the sides to the effect that the civil proceedings as well as criminal proceedings can be initiated in a case, it would be proper to refer to this case to the Division Bench.."
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> *2. To appreciate the controversy in its correct perspective, brief reference to the facts may be made from Criminal Appeal No.28-DBA of 1991 which has been preferred by the State of Punjab against the order dated 18.1.1990, passed by the Judicial Magistrate, First Class, Samana, acquitting the respondents in a case under Section 406 I.P.C. which had arisen out of FIR No.159 dated 26.9.1984 registered at Police Station Ghagga, District Patiala.*
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> *3. The afore-stated FIR was registered on the basis of a written complaint made by the District Manager, Punjab State Civil Supplies Corporation Limited, Patiala (in short, the PUNSUP), inter-alia, alleging that PUNSUP had purchased paddy as one of the procuring agencies of the State Government for custom milling and for delivering the resultant rice to Food Corporation of India (in short, 'FCI') in the central pool, out of which 4293-80-000 quintals of paddy was entrusted to M/s Jagdamba Rice Mill, Ghagga, for shelling during the paddy season 1983-84. The respondents accused were the partners of the Firm M/s Jagdamba Rice Mill and as per the Government Instructions they were obligated to deliver 67% yield of rice of*

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PR-106 variety. The respondents, however, did not deliver the custom milled rice to the tune of 447-05-900 quintals as well as 3634 'B Class' gunny bags which were entrusted to their firm. In this manner, the respondents were alleged to have caused loss to the tune of L 1,33,028.99 to PUNSUP and defalcated paddy worth the above mentioned amount.

4. The matter was investigated and on presentation of challan, charges under Section 406 I.P.C. were framed against the respondents. The prosecution examined eight witnesses besides producing documentary evidence. The respondents in their statement under Section 313 Cr.P.C. denied the allegations, pleaded innocence and took a specific plea that an arbitration case was already pending against them initiated by PUNSUP. They tendered a copy of the Award (Exhibit D-1) and closed the defence evidence.

5. The learned Judicial Magistrate held that since the paddy was supplied to the accused by the complainant under a contract (Exhibit PW-3/A) dated 12.10.1983 and since they allegedly failed to return the paddy or the extracted rice, it was only a case of 'breach of contract' and not that of 'breach of trust'. It was observed that the complainant (PUNSUP) could get the contract enforced, hence the registration of a criminal case was sheer abuse of the process of law. The learned Judicial Magistrate also took notice of the fact that after registration of the criminal case, the accused had moved an application before the Civil Court under the Arbitration Act for referring the dispute for arbitration and vide order dated May 23, 1986 the Chairman of PUNSUP was appointed as Arbitrator who had passed the Award dated 8.7.1987 (Exhibit D- 1) holding the accused-respondents liable to pay L 1,81,315.43 to the PUNSUP. The Judicial Magistrate thus concluded as follows:-

> "13. In such like cases where matter was referred to the Arbitrator and the Arbitrator rendered award, it has been held in Mohan Lal v. State of Punjab, 1989 Chandigarh Civil Cases 537 (HC) that in view of the Arbitrator's award, the matter assumed the character of civil nature, FIR and also proceedings based thereof were quashed. So, in this view of the judgment, it must be held that in view of the award Ex.D-1, criminal proceedings against

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> the accused regarding the same subject matter must be held to be an abuse of the process of Court.."

6. The Judicial Magistrate accordingly acquitted the respondents.

7. The State of Punjab preferred this appeal against the aforesaid order which was dismissed by a learned Single Judge of this Court on 16.10.2002 observing that:-

> "Learned counsel for the State submitted that a criminal case may arise even where breach of contract is also there and there is no bar for prosecution under the criminal law. Though this proposition is correct, two views are possible whether on the allegations made, it was purely a case of civil dispute or a criminal case was also made out.
>
> Having regard to the facts of this case, I am not inclined to hold that the view taken by the trial Court is unreasonable.
>
> Accordingly, the appeal is dismissed."

8. Still aggrieved, the State of Punjab preferred Criminal Appeal No.1069 of 2004 and the Hon'ble Supreme Court, after briefly noticing the ingredients of 'criminal breach of trust' as defined under Section 405 of IPC and on consideration of the decisions in (i) Rajesh Bajaj v. State NCT of Delhi, 1999 (3) SCC 259 and (ii) Trisuns Chemical Industry v. Rajesh Agarwal and others, 1999 (8) SCC 686, held vide its order dated 11.2.2009 as follows:-

> "9. These aspects were not considered by the trial Court and, therefore, the High Court should not have in a summary manner dismissed the appeal after having recorded that a criminal case may arise even when breach of contract is also there and there is no bar for prosecution under the criminal law. Having said so, the High Court came to an abrupt conclusion because two views are possible as to whether the allegation made was of a civil dispute or of a criminal nature no interference was called for. The approach is clearly erroneous. Therefore, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration in accordance with law"

9. When this appeal came up for hearing on August 09, 2012 after its remand by the Hon'ble Supreme Court, the learned Single Judge referred it to Division Bench for the reason

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mentioned in the reference order which we have reproduced at the outset.

10. The principal issue that arises for consideration is whether criminal proceedings under Section 405 of IPC (breach of trust) or under Section 415 of IPC (cheating) can be initiated and/or maintainable when antecedents of the occurrence originate out of a binding contract between the parties and the arbitration clause contained therein gives rise to civil liability in the event of breach of such contract?

11. To be more specific, the question that we are called upon to determine in these cases is whether a breach of contract giving rise to 'civil liability' would, as a matter of principal, rule out to the 'criminal prosecution'?

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42. The principles that emerge out of the cited decisions may thus be usefully summarised to lay down that:-

(i) if a prima-facie case for commission of an offence under Sections 405 and 406 I.P.C. or under Section 415 I.P.C. or other related provisions of the Penal Laws is made out from the allegations contained in a complaint under Section 200 Cr.P.C., or a chargesheet submitted under Section 173 Cr.P.C., the High Court would refrain from invoking its inherent powers under Section 482 of Cr.P.C. or the constitutional jurisdiction under Article 226 of the Constitution and shall not set at naught such criminal prosecution only because the allegations against the accused persons have emanated from an agreement of 'civil nature' between the parties or such an agreement contains an 'arbitration' clause. In our humble view, the conclusions drawn in Baldev Krishan and others' and Kailash Verma's cases (supra), were founded upon the peculiar facts and circumstances of those cases and the same cannot be said to have laid down the principle that a contract between the parties with an arbitration clause shall be a lawful embargo against initiation or continuation of criminal proceedings arising out of the dispute touching such agreement between the parties;

(ii) A complaint on the basis of which FIR has been registered or a criminal complaint under Section 200 Cr.P.C., cannot be quashed at the threshold by the High Court in exercise of its inherent or constitutional

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jurisdiction nor are the complainant or the investigating agency, as the case may be, expected to produce the relevant material at the initial stage for consideration of a court of competent jurisdiction for the formation of its opinion whether or not a prima-facie case as per the ingredients descripted in different provisions of the Indian Penal Code or any other Penal Law, is made out;

(iii) However, in a case where the entire material produced by the complainant or the investigating agency at the stage of preliminary evidence or the charge-sheet under Section 173 Cr.P.C., respectively, even if accepted in its entirety, does not make out a prima-facie case such proceedings being an abuse of process of law as well as an exercise in futility, are liable to be quashed by the High Court to prevent the abuse of process of any court and to secure the ends of justice;

(iv) Wherever the material produced by a complainant or the investigating agency, even if accepted in entirety, also does not establish a prima-facie offence, an accused is entitled to press for his discharge at the stage of framing of charges and it is the duty of the trial Magistrate to objectively consider his plea, of course without permitting such accused to produce any proof of his innocence at the stage of framing of charges;

(v) The High Court shall exercise its inherent power under Section 482 Cr.P.C. or discretionary jurisdiction under Article 226 of the Constitution, keeping in view the three well known parameters, namely, (i) to give effect to an order under the Code; (ii) to prevent abuse of process of the Court, and (iii) to otherwise secure the ends of justice, though no inflexible rule in this regard can be laid down except to observe that the aforesaid jurisdiction is exercisable sparingly and with great care and circumspection;

(vi) The High Court, while invoking its powers under Section 482 Cr.P.C. or Article 226 of the Constitution, shall be guided by the seven celebrated principles commencing from R.P. Kapoor v. State of Punjab, AIR 1960 Supreme Court 866 and summed up in Bhajan Lal's case (supra);

(vii) Additionally, the High Court would be well within its power under Section 482 Cr.P.C. read with Article 226 of the Constitution to strike down criminal proceedings/prosecution on the basis of a compromise or amicable settlement between the parties subject to the

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> limitations indicated or illustrated by a Five Judges Bench of this Court in Kulwinder Singh v. State of Punjab and others, 2007 (3) RCR (Criminal) 1052, which has got the seal of approval by the Hon'ble Supreme Court in Gian Singh v. State of Punjab and another, 2012 (10) SCC 303.
>
> (viii) To sum up and reiterate, we hold that the appellant or the petitioner-rice millers cannot seek quashing of criminal proceedings initiated against them under Sections 405, 406 or 415 IPC or other related provisions of IPC only on the ground that they have entered into an agreement with one or the other procuring agencies or that non-delivery, shortage of delivery or delivery of poor quality of rice by them, gives rise to civil liability for which the complainant-procuring agencies have got an efficacious remedy by invoking the arbitration clause and seeking consequential recovery. However, if the investigation report, even on its acceptance in entirety, does not disclose prima-facie ingredients of any offence under the penal law(s), the aggrieved party is at liberty to raise such a plea before an appropriate forum as per the conclusions summarised above.

8. Apparently, if the allegations levelled in the FIR constitute an offence, then the criminal prosecution shall not be set to naught because the allegations emanate from an agreement of a civil nature between the parties or such an agreement contains an Arbitration Clause.

9. Coming back to the facts of the present case, a bare perusal of the FIR (Annexure P-1) and the consequential challan (Annexure P-2) would reveal that *prima facie,* the petitioner is criminally liable for having embezzled paddy worth more than Rupees One Crore. In Arbitration proceedings, where the petitioner was proceeded against *ex parte,* the Sole Arbitrator vide his order dated 29.09.2019 (Annexure P-3) has passed an Award of Rs.1,15,60,718/- but the petitioner has chosen not to pay the said amount.

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10. Keeping in view the aforementioned facts and circumstances, as the offences are *prima facie* established, the question of quashing of the FIR (Annexure P-1), Final Report (Annexure P-2) and all consequential proceedings arising therefrom does not arise and therefore, the present petition stands dismissed.

11. The pending application(s), if any, shall stand disposed of accordingly.

July 17, 2026 **(JASJIT SINGH BEDI)**
sukhpreet **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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