

STATE OF PUNJAB

v.

PRITAM CHAND AND ORS.

(Criminal Appeal No. 1069 of 2004)

FEBRUARY 11, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

Penal Code 1860:

s. 406 – Misappropriation of property entrusted under a contract – Allegation of – Award in favour of the party entrusting the property in arbitration proceedings – Prosecution u/s. 406 – acquittal by trial court on the ground that criminal case not made out against the accused and the case was of civil nature – High Court upholding acquittal on the ground that interference not called for as two views were possible as regards nature of the dispute – On appeal, held: Order of the High Court was abrupt and unreasoned – Hence, matter remitted to High Court.

s. 406 – Applicability of – Discussed.

The Rice Mill, in which the respondents were the partners, was entrusted with the work of milling the paddy by the Civil supplies Corporation of the appellant-State. Appellant alleged that the respondents failed to account for the paddy and thus misappropriated the same. In arbitration proceedings for the same, an award was rendered in favour of the Corporation.

In Criminal proceedings u/s. 406 IPC against the respondents, they were acquitted by trial court on the ground that since the matter arose out of breach of contract, was of civil nature and therefore criminal case was not made out against them. High Court upheld the

A order of trial court. Hence the present appeal.

Partly allowing the appeal and remitting the matter to High Court, the Court

B HELD: 1. 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 that 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. [Para 9] [177-H; 178-A]

D *Rajesh Bajaj v. State NCT of Delhi* 1999 (3) SCC 259 and *Trisuns Chemical Industry v. Rajesh Agarwal and Ors.* 1999 (8) SCC 686, relied on.

E 2. Section 406 IPC deals with punishment for criminal breach of trust. In a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or used or disposed of the property or willfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to carrying out of the trust. [Para 4] [176-B]

G Case Law Reference:

1999 (3) SCC 259 Relied on. Para 6

1999 (8) SCC 686 Relied on. Para 8

H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal

No. 1069 of 2004.

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From the Judgment and Order dated 16.10.2002 of the High Court of Punjab and Haryana at Chandigarh in Criminal Appeal No. 28-DBA of 1991.

Ajay Pal and Arun K. Sinha for the Appellant.

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Rajeev Singh, Rajesh Prasad Singh and Jaspreet Gogia(NP) for the Respondent.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Punjab and Haryana High Court dismissing the appeal filed by the State of Punjab against the judgment of acquittal recorded by learned Judicial Magistrate, 1st Class, Samana. The respondents were charged for alleged commission of offence punishable under Section 406 of the Indian Penal Code, 1860 (in short the 'IPC'). They were partners of one Jagdamba Rice Mills to whom the paddy was entrusted for milling by the Punjab State Civil Supplies Corporation Ltd. (in short the 'Corporation') during the year 1983-84. It was alleged that the accused failed to account for the paddy and thus misappropriated the same. Pursuant to arbitration clause between the parties an arbitrator was appointed and an award of Rs.1,81,315.43 was rendered in favour of the Corporation. The trial Court acquitted the accused on the ground that the matter arose out of breach of contract, the same was of civil nature and a criminal case against the accused was not made out.

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2. High Court endorsed the view and dismissed the appeal.

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3. In support of the appeal, learned counsel for the State submitted that the High Court's judgment is totally unreasoned as no reason has been indicated. Merely because there was allegedly a breach of contract, that cannot in all cases rule out

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A the criminal prosecution. It is pointed out that even the arbitration award on which reliance has been placed by the trial Court to direct acquittal, was a factor in favour of the Corporation and without examining the ingredients of Section 406 IPC the trial Court and the High Court directed acquittal.

B 4. Section 406 IPC deals with punishment for criminal breach of trust. In a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or
C used or disposed of the property or willfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to carrying out of the
D trust.

5. Criminal breach of trust is defined in Section 405 IPC. The ingredients of offence under Section 405 are (i) entrusting any person with property or with dominion over the property,
E (ii) the person entrusted (a) dishonestly misappropriated or converted to his own use the property or (b) dishonestly used or disposed of the property or willfully suffered any other person so to do in violation (i) of any direction of law prescribing mode in which such mode is to be discharged or (ii) of any legal
F contract made touching the discharge of trust.

6. In *Rajesh Bajaj v. State NCT of Delhi* (1999 (3) SCC 259) it was held as follows:

G "10. It may be that the facts narrated in the present complaint would as well reveal a commercial transaction or money transaction. But that is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings were committed in the course of commercial and also money transactions.

H One of the illustrations set out under Section 415 of the

Indian Penal Code [Illustration f] is worthy of notice now: A

"(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats." B

7. While dealing with a case under Section 482 of the Code of Criminal Procedure, 1973 (in short the 'Code') this Court referred to the aforesaid judgment and held that merely because an act has a civil profile is not sufficient to denude it of its criminal outfit. C

8. In *Trisuns Chemical Industry v. Rajesh Agarwal and Ors.* (1999 (8) SCC 686) it was noted as follows:

"9. We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. *Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement.* Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in *State of Haryana v. Bhajan Lal*. (1992 Supp (1) SCC 335)" D E F

(Underlined for emphasis) G

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 H

- A 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.
- B Therefore, we set aside the impugned judgment of the High Court and remit the matter to it for fresh consideration in accordance with law.

10. The appeal is allowed to the aforesaid extent.

C K.K.T.

Appeal partly allowed.