

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).876-877/2004

(From the judgement and order dated 14/10/2003 in CRLRP No. 416/1999 & CRLRP No. 417/1999 of  
The HIGH COURT OF DELHI AT N. DELHI)

STATE FARM CORPN. OF INDIA LTD.

Petitioner(s)

VERSUS

M/S. NIJJER AGRO FOODS LTD.& ORS.

Respondent(s)

(With appln(s) for stay and permission to place addl. documents on record)

(For final disposal)

Date: 21/07/2005 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE S.H. KAPADIA

For Petitioner(s)

Mr. C.N. Sree Kumar, Adv.

For Respondent(s)

Mr. Ejaz Maqbool, Adv.

Mr. S.R.Khan, Adv.

Mr. Nakul Dewan, Adv.

Mr. Abhimeet Sinha, Adv.

Mr. Ravinder Agarwal, Adv.

Mrs. Anil Katiyar, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeals are allowed, in terms of the signed order.

(N. Annapurna)

(V.P. Tyagi)

Court Master

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2005

(Arising out of S.L.P.(Crl.) Nos.876-877/2004)

State Farm Corpn. of India Ltd.  
Plaint(s)

...Appellant

Versus

M/s. Nijjer Agro Foods Ltd. & Ors.  
Respondent(s)

...Respondent

O R D E R

Leave granted.

Two complaints under Section 138 of the Negotiable Instruments Act were filed by the appellant against the respondents. In those complaints, the Metropolitan Magistrate, New Delhi issued summons to the respondents. An application filed by them for dropping the proceedings was dismissed in terms of the order of learned Magistrate, dated 26th April, 1999, holding that "whether the cheques were issued for discharge of debt/liability can be decided only after recording evidence. At the stage of summoning the respondents court has just to see whether prima facie case is made out against the accused or not under Section 133 of the N.I.Act." Further, it was held, whether the respondents have made payment by way of bank drafts in lieu of the cheques which are subject matter of complaints can also be decided at the trial and not at the stage of summoning and by way of an application seeking to drop the criminal complaint proceedings. Quite strangely the High Court, by impugned judgment dated 14th October, 2003, while exercising revisional jurisdiction, examined the defence on merits and allowed the criminal revision petition filed by the respondents and reversed the decision of the Magistrate declining to drop the proceedings by holding that by making payment of Rs.40 lacs, the respondents had discharged their liability. It was no stage to examine the defence of the respondents.

Though, at this stage, we are not going into the merits, but we may only note that

the subject matter of the two complaints are four cheques in all amount

ting to

Rs.76,55,917.47 ps. According to the respondents, they made payment of Rs.40 lacs by six bank drafts after the issue of some of the cheques. Whether the said payment has been made or it is towards some of the amounts covered by the cheques are all the questions which can be decided only at the trial of the complaint cases under Section 138 of the Negotiable

Instruments Act and could not have been made the basis of allowing the revision petition .

The approach of the High Court is clearly erroneous.

For the aforesaid reasons, we set aside the impugned judgment of the High

Court and restore the Complaint Cases No.111 and 211, dated 2nd January, 1997, to be

tried on merits in accordance with law. The parties are directed to appear before the Chief Metropolitan Magistrate on 29th August, 2005 for

appropriate directions.

The appeals are allowed accordingly.

.....J.

(Y.K. SABHARWAL)

.....J.

(B.N. SRIKRISHNA)

.....J.

(S.H. KAPADIA)

New Delhi,

July 21, 2005.