



Crl.O.P.Nos.15537 & 15540 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved on : 03.07.2024

Pronounced on: 09.07.2024

Coram:

**THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN**

Crl.O.P.Nos.15537 & 15540 of 2024

& Crl.M.P.Nos.9493 & 9494 of 2024 & Crl.M.P.Nos.9490 & 9492 of 2024

**Crl.O.P.No.15537 of 2024**

T.Stanes and Company Ltd.,  
No.30/31, Railway Station Road,  
Thudiyalur,  
Coimbatore – 641 034.  
Represented by Mr.P.Suresh Kumar.

... Petitioner/Accused No.3

**/versus/**

Tmt.M.Mythili, M.Sc.(Ag.),  
Agricultural Officer,  
O/o.Assistant Director of Agriculture,  
Periyanaickenpalayam,  
Sarkarsamakulam Block,  
Coimbatore District – 641 020.

.... Respondent/Complainant

**Prayer:** Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and to quash the impugned complaint in C.C.No.813 of 2023, now pending trial on the file of the Learned Judicial Magistrate No.V, Coimbatore, in so far as the petitioner is concerned.

For Petitioner : Mr.Adithya Varadarajan,  
for Mr.N.Damodaran



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**Crl.O.P.No.15540 of 2024**

Sakthi Fertilizers Corporation Ltd.,  
10/10C, Venkatasamy Street,  
Railway Men's Colony,  
Kavundampalayam,  
Coimbatore – 641 030  
Represented by Mr.A.Pandian.

... Petitioner/Accused No.2

**/versus/**

Tmt.M.Mythili, M.Sc.(Ag.),  
Agricultural Officer,  
O/o.Assistant Director of Agriculture,  
Periyanaickenpalayam,  
Sarkarsamakulam Block,  
Coimbatore District – 641 020.

.... Respondent/Complainant

**Prayer:** Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and to quash the impugned complaint in C.C.No.813 of 2023, now pending trial on the file of the Learned Judicial Magistrate No.V, Coimbatore, in so far as the petitioner is concerned.

For Petitioner : Mr.Adithya Varadarajan,  
for Mr.N.Damodaran

**COMMON ORDER**

These two Criminal Original Petitions are filed by the second and third accused Company in C.C.No.813 of 2023 on the file of Judicial Magistrate No.V, Coimbatore to quash the said complaint initiated against them under Section 3(2) (a) of Essentials Commodity Act, 1955.



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2. The substance of the complaint which is impugned in this petition :-

The complainant is the Agricultural Officer, Periyanaickenpalayam, Coimbatore District. As per the notification No.II(1)/AG/8/2011, dated 22/10/2010 she has been appointed as Fertilizer Inspector and she is empowered to conduct inspection, draw samples and proceed under the Fertilizer Control Order, 1985.

3. Three samples of Diammonium Phosphate (DAP) kept by the third accused was drawn in the presence of its representative. Out of three samples, one was sent for test at Fertilizer Quality Control Laboratory, Villupuram, another was handed over to the Assistant Director Office, Sankarasmakulam and the third sample given with the third accused. The analysis report received from the laboratory revealed that the sample of fertilizer in question is “non-standard”. Hence, the first accused M/s.Indian Potash Limited, who is the manufacturer of the non-standard fertilizer, the second accused M/s.Sakthi Fertilizers Corporation, Coimbatore, the wholesale dealer of the fertilizer and the third accused M/s.T.Stanes and Company Ltd, Coimbatore, dealer were issued show cause notice along with analysis report. The accused 1



to 3 relied to the show cause notice. On the request of the first accused, the sample given to the 3<sup>rd</sup> accused was sent to re-analysis at Central Laboratory, Nasik, Maharashtra. The report from Central Lab also confirmed that the fertilizer is non-standard. Hence, for committing offence under Section 19(a)(b) of Fertilizer Control Order, 1985 which is punishable under section 7(1) (a) (ii) of Essential Commodities Act, 1955, after obtaining sanction to prosecute from the Director of Agriculture, Chennai, complaint was filed.

4. The said complaint is challenged on the ground that the petitioners/accused 2 and 3 are only the wholesale dealer and dealer respectively. The manufacturer of the Fertilizer is the first accused. Only the manufacturer is responsible for the standard of the product. As wholesale and retail dealers, the petitioners have no knowledge about the quality of the fertilizer. If the fertilizer is of non-standard quality, the manufacturer is the violator of the Act and control order. Only the manufacturer should be prosecuted and not the petitioners. The samples were drawn from stitched bags and if the product is of non-standard, only the manufacturer have the exclusive knowledge about the standard and *mens rea* to sell non-standard fertilizer. In the absence of allegation that the bag was tampered by the dealers, they cannot



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be held criminally liable for the non-standard fertilizer kept by them for sale.

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5. The Learned Counsel for the petitioners rely on the unreported judgment of the Punjab and Haryana High Court rendered in ***Bhupinder Garg and others -vs- State of Punjab*** decision dated 07/05/2024, wherein the Learned Judge has held that the dealers and stockist cannot be held liable for non-standard fertilizer if the sample drawn from sealed bags and no proof available against the stockist/dealer for tampering the seal.

6. In the judgment cited supra, the Learned Judge has come to such conclusion in view of the fact Regulation 19(1)(a) of the Fertilizer Control Order been struck down by the Punjab and Haryana High Court in ***Tarsem Singh -vs- Union of India*** reported in ***1997 (115) PLR 34***.

7. From the typed set of papers containing documents indicates that, on 17/08/2020 inspection of the third accused premises by the Fertilizer Inspector had resulted in drawing three samples from the bag containing Diammonium Phosphate (DAP). One of the sample was handed over to the 3<sup>rd</sup> accused under Form J, another sample sent to the lab at Villupuram under Form



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K. Yet another sample forwarded to the Assistant Director of Agricultural, having Office at Sarakarsamakulam. The analysis report received from the Lab in Form L, opined that the sample is NOT according to the specification of FCO, 1985. The sample fails in available Phosphorus and Water Soluble Phosphorus. Hence, the sample is declared “NON-STANDARD”. This report is dated 29/08/2020. M/s.Sakthi Fertilizer Corporation, the second accused-Petitioner in Crl.O.P.No.15540/2024 was served with show cause notice dated 04/09/2020 to give explanation within 7 days for distributing non-standard fertilizer. Similar show cause notice dated 04/09/2020 served to the 3<sup>rd</sup> accused/petitioner in Crl.O.P.No.15537/2020 to explain for stocking and selling of non standard fertilizer within 7 days.

8. Both the petitioners replied to the show cause notice. The second accused-M/s. Sakthi Fertilizer Corporation in its reply has stated that they are not the manufacturer of the said fertilizer. The deficiency reported in the nutrient content may be due to the manufacturing defect. The third accused-M/s.T.Stanes and Company Limited had stated that the product under question is manufactured by M/s.Indian Potash Limited (first accused) and sold to them by M/s.Sakthi Fertilizers Corporation (second Accused), who are the authorised



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distributors of M/s.Indian Potash Limited. The fertilizers are received from the second accused and stored as per the instruction provided under the fertilizer control order. The samples were drawn from the stitched bag.

Regulation 19(a)(b) of Fertilizer Control Order, 1985

***RESTRICTIONS ON MANUFACTURE/  
IMPORT, SALE, ETC. OF FERTILISER***

***19. Restriction on manufacture/import, sale and  
distribution of fertilisers.***

*No person shall himself or by any other person on  
his behalf:-*

*(a) manufacture/import for sale, sell, offer for  
sale, stock or exhibit for sale or distribute any fertiliser  
which is not of prescribed standard;*

*(b) manufacture/Import for sale, sell, offer for  
sale, stock or exhibit for sale, or distribute any mixture  
of fertilisers, which is not of prescribed standard\*\*  
(subject to such limits of permissible variation as may be  
specified from time to time by the Central Government)  
or special mixture of fertilisers which does not conform  
to the particulars specified in the certificate of  
manufacture granted to him under this Order in respect  
of such special mixture.*

Section 7 (1) (a) (ii) of Essential Commodities Act,



1955.

*7. Penalties.-*

*[(1) If any person contravenes any order made under Section 3,-*

*(a) he shall be punishable,-*

*(i) .....*

*(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:*

*Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;*

**9.** The Fertilizer Control Order restricts on manufacturing/import for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertilizer which is not of prescribed standard. While the regulation clearly restricts stock and distribution of non-standard fertilizers, these petitioners being the stockist and dealer are liable to be prosecuted as per law. The petitioners cannot claim the advantage of the Punjab and Haryana High Court judgment which has struck down Regulation 19 as violative of Article 19 and 21 of the Constitution of India. With due respect, in view of this Court, Regulation 19 of the Fertiliser



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(Control) Order, 1985 is not in contrary to constitution. A reasonable restriction imposed to prevent spurious/sub-standard/non-standard fertilizers violating the standard prescribed cannot be held as unconstitutional. The object of the restriction is to prevent farmers getting cheated by the substandard fertilizers, which will not only affect the yield but may cause health hazard to the persons, who consume the products and to protect the end user as well as general public, who will be consuming the agricultural produce using the sub standard/non-standard fertilizers. Whoever in the line of custody starting from manufacturer to the retail seller, whether stockist/distributor or wholesaler, they all are liable for the violation.

**10.** The Law prescribes strict liability wherein mere possession or dealing the restricted product is sufficient to prosecute.

**11.** As a result, these Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous Petitions are closed.

09.07.2024

Index :Yes/No.  
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**DR.G.JAYACHANDRAN,J.**

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To:-

1. The Judicial Magistrate No.V, Coimbatore.

Pre-delivery common order made in  
Crl.O.P.Nos.15537 & 15540 of 2024

09.07.2024