

CRM-M-43605-2018 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-43605-2018 (O&M)
Date of Decision: 07.05.2024

BHUPINDER GARG & OTHERS

... Petitioners

Versus

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Rakesh Verma, Advocate with
Mr. Manish Verma, Advocate
for the petitioners.

Mr. Baljinder Singh, Asstt. A.G., Punjab.

JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 482 Cr.P.C. is for quashing of the Complaint Case No.14 dated 22.03.2018 (Annexure P-1) titled as '*State Vs. M/s Punjab Seeds Company & others*' registered under Section 19(a)(c)(v) of the Fertilizer (Control) Order, 1985 punishable under Section 7 of the Essential Commodities Act, 1955 read with Section 12AA of the Essential Commodities Act, 1955, the summoning order dated 07.04.2018 (Annexure P-2) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that Surinder Kumar, Fertilizer Inspector, Gidderbaha along with Bikkar Singh, Asstt. Cotton Extension Officer, Gidderbaha on 28.07.2016 checked the fertilizer stock register of the M/s Punjab Seeds Company, Near Punjab and Sind Bank Gidderbaha, District Sri Muktsar Sahib and found that 1 kg x 20 bags (20 Kgs) of

Potassium Nitrate 13:0:45 fertilizer was lying in balance in the said premises on 28.07.2016. The samples of the same were taken for the purposes of a quality check. The same were sent for analysis and as per the report of the Fertilizer Testing Laboratory, Faridkot, the sample test result showed Nitrogen contents to be 10.08% as against 13.00% and thus, the analysis report showed that the sample was not according to the specifications and had failed in Nitrogen contents. A show cause notice dated 22.09.2016 was served by the Fertilizer Inspector, Gidderbaha to M/s Punjab Seeds Company, Near Punjab and Sind Bank, Gidderbaha, Sri Muktsar Sahib (petitioner No.2) and to its proprietor Mr. Bhupinder Garg (petitioner No.1) for violation of Clause 19(a) of the Fertilizer (Control) Order, 1985 and a copy of the analysis report was also supplied. Show cause notice was also sent to the distributor/stockist i.e. M/s Jindal Agencies, Gidderbaha, Sri Muktsar Sahib dated 28.10.2016 and reply was submitted by M/s Punjab Seeds Company, Near Punjab and Sind Bank, Gidderbaha, Sri Muktsar Sahib on 19.10.2016. The Fertilizer Inspector, Gidderbaha, Sri Muktsar Sahib also called upon the dealer firm to appear personally and to explain the matter regarding failure of the sample. The dealer availed the opportunity for re-analysis of the sample provided to him under Clause 32-A of Fertilizer (Control) Order, 1985. The same was sent to the Fertilizer Quality Control Laboratory Assam, Ulubari, Guwahati. The sample result showed nitrogen percentage of 11.99% as against 13.00%. Thus, the same was not according to specification. Thereafter, the licence of the dealer firm was cancelled vide letter No.3506 dated 16.08.2017. The dealer firm filed an appeal to the Joint Director

(Input)-cum-Appellate Authority under Section 32(a) of the Fertilizer (Control) Order, 1985 against the cancellation order regarding the dealer's registration certificate. The same was accepted partially and the licence of the dealer firm was restored. The distributor/stockist M/s Jindal Agencies, Gidderbaha, Sri Muktsar Sahib was served with a second show cause notice along with the second test report dated 26.07.2017 and importer M/s Tata Chemicals Limited, Bombay House 24 Homi Modi Street, Mumbai and its responsible person Vijay Vallabh were also sent show cause notices and analysis report dated 03.08.2017 for violation of Clause 19(a)(c)(v) of the Fertilizer (Control) Order, 1985 which is punishable under Section 7 of the Essential Commodities Act, 1955 read with Clause 19(a) of the Fertilizer (Control) Order, 1985.

3. Shri Bhupinder Garg (petitioner No.1) being the Proprietor of M/s Punjab Seeds Company, Near Punjab and Sind Bank, Gidderbaha, Sri Muktsar Sahib (petitioner No.2) being the stockist/dealer of the pesticides and Harish Kumar (person to sign J form-petitioner No.3) had violated the provisions of Clause 19(a)(c)(v) of the Fertilizer (Control) Order, 1985 which is punishable under Section 7 of the Essential Commodities Act, 1955 read with Clause 19(a) of the Fertilizer (Control) Order, 1985.

M/s Tata Chemicals Limited, Regd. Office Bombay House-24, Homi Modi Street, Mumbai and its responsible person were liable being the importer company.

M/s Jindal Agencies, Gidderbaha, Sri Muktsar Sahib and its responsible person were liable being the stockist firm.

Since the Fertilizer (Control) Order, 1985 had been issued under Clause 19(a)(c)(v) of the Fertilizer (Control) Order, 1985, under Section 3 of the Essential Commodities Act, 1955 which is punishable under Section 7 of the Essential Commodities Act, 1955 read with Clause 19AA of the Fertilizer (Control) Order, 1985 all the accused had violated the provisions of the Essential Commodities Act.

4. Based upon the aforementioned allegations, the complaint (Annexure P-1) was instituted under Section 19(a)(c)(v) of the Fertilizer (Control) Order, 1985 punishable under Section 7 of the Essential Commodities Act, 1955 read with Section 12AA of the Essential Commodities Act, 1955 which led to the consequential summoning order dated 07.04.2018 (Annexure P-2) punishable under Section 7 of the Essential Commodities Act, 1955 read with Clause 19(a) of the Fertilizer (Control) Order, 1985.

5. The learned counsel for the petitioners contends that petitioner No.1 was the proprietor of the dealer firm petitioner No.2 whereas petitioner No.3 had nothing to do with the working of petitioner No.2. Neither the dealer nor the marketing firm could in any manner be responsible for the sub-standard fertilizer contained in the bag from which a sample had been taken. There was no allegation that the bags had been tampered with when the samples were taken from the premises of M/s Punjab Seeds Company, Gidderbaha, Sri Muktsar Sahib. Therefore, the liability, if any, only lay with the manufacturer M/s Tata Chemicals Limited, Mumbai. Reliance is placed on the judgments of this Court in the cases of **Manoj Grover Versus State of**

Punjab, CRM-M-4582-2008, decided on 15.12.2009, Kehar Singh Versus State of Punjab and another, CRM-M-8021-2010, decided on 15.09.2011, Ghanvir Singh Versus State of Punjab & another, CRM-M-28723-2010, decided on 30.07.2012 and M/s Tata Chemicals Ltd. & another Versus State of Punjab, CRM-M-14123-2016, decided on 19.04.2024.

6. On the other hand, the learned State counsel contends that the petitioners who were the dealers firm and its proprietor/worker were equally responsible for the quality of pesticides which they had stocked for sale and from which a sample had been taken from their premises. Therefore, as the offence was *prima facie* established, no case for quashing of the complaint (Annexur P-1) and Summoning order dated 07.04.2018 (Annexure P-2) was made out.

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

8. In **Manoj Grover** (supra), it was held as under:-

“Thus, even from the perusal of the F.I.R., no offence under Section 7(1) (a) of Essential Commodities Act, 1955 is made out qua the petitioner, who is only a dealer and is not responsible for the sub-standard fertilizer in the bag lying in his custody duly stitched and then sealed and which was ordered from Indian Potash Company Limited, Ludhiana, who had further actually received the DAP from M/s Oswal Chemicals and Fertilizers, Misadia, Village Orissa. As such, nowhere either the Government Agency Indian Potash Limited or the petitioner’s firm M/s Deepak Fertilizers and Chemicals, Amloh or M/s Guru Nanak Khad Store, Fatehgarh Sahib are actual manufacturers of the said DAP (Oswal) which was recovered by the complainant. There is no allegation that the stitched bags were tampered with.

Thus, the non-compliance of the sub-standard, if at all, can only be attributed to the manufacturer M/s Oswal Chemicals and Fertilizers, Misadia, Village Orissa and not to either the M/s Deepak Fertilizers and Chemicals or the Chief Manager, Indian Potash Company Limited.

Accordingly, the present petition is allowed and the F.I.R. No.114 dated 10.09.2005 registered under Sections 7(1)(a) of Essential Commodities Act, 1955, 19(1)(a) of Fertilizer Control Order, 1985 at Police Station Khamano, District Fatehgarh Sahib qua the present petitioner in Crl. Misc. No.M-4582 of 2008 and the petitioner in Crl. Misc. No.M-12668 of 2008 is, accordingly, quashed.

(emphasis supplied)

In **Kehar Singh** (supra), it was held as under:-

“The pleadings which are not in dispute and has been referred to above, clearly indicates that the samples which were drawn from the bags were taken from the stitched bags. Form J, which is required to be issued at the time when the sample is taken wherein signatures of not only Authorized Authority under the Fertilizer Control Order 1985 is put but also that of the dealer/manufacturer as also the fertilizer inspector, there is no mention in the said form that there was either any tampering with the bags or that the packaging of the bags was not as per rules and regulations. What has been stated merely is that the bags were stitched. If any irregularity or discrepancy had been found by the

raiding party, the same would have found mention in Form J but there is none. The additional presumptions which the counsel for the State intend to draw during arguments cannot be accepted. In case the samples were drawn from the stitched bags wherein no irregularity or discrepancy was found therein, the dealers cannot be held liable and it is only the manufacturer who has to respond to the sample having failed or did not fulfill the specifications required. In the absence of any evidence on record, or the statement to the effect that the petitioners were in any manner associated in the manufacture of the fertilizer contained in the bags, they cannot be held liable for the contents of the fertilizer.

Counsel for the respondents could not point out any provision of the Act or the Fertilizer Control Order, 1985 and or any Regulations, Rules or instructions framed/issued under these, which have been violated or would bring the petitioners within the ambit of the offences alleged to have been committed by them for which the FIR and or the complaint was filed against them by the respondents.

It would not be out of way to mention that purchase receipts and vouchers have been placed on record, authenticity of which is not challenged by the respondents, showing that they have purchased the fertilizer in the form of bags. Further as per the instructions issued by the Government of India on 14.5.2004, Annexure P10, clause L thereof clearly holds that in case of any contravention or

declaration of fertilizer to be sub standard, the responsibility is of the manufacturer alone. This would obviously mean that apart from the manufacturer and the Department of Fertilizer, others cannot be held liable, however, this sweeping statement cannot be made applicable to all cases as it would depend upon facts of each case.

In the present case, there is no such assertion with regard to tampering with the packing or manhandling, non proper storage etc. of the fertilizer or the bags by the petitioners and therefore, in the above facts and circumstances, it cannot be said that an offence is prima facie made out against the petitioners or they had violated any provision of the Act Read with the Fertilizer Control Order, 1985. My this opinion is further strengthened by an earlier judgment of this Court in Manoj Grover's case (supra) wherein the same opinion has been expressed by this Court on virtually same facts.

In view of the above, the present petitions are allowed. The impugned FIRs /complaints are hereby quashed alongwith all consequential proceedings arising therefrom qua the petitioners alone, who are neither manufacturers or the officers or employees of the manufacturer and are in no manner associated with the manufacturing process.”

(emphasis supplied)

In **Ghanvir Singh** (supra), it was held as under:-

“A perusal of the criminal complaints reveals that the petitioners are either the marketers or importers of the fertilizers stated to be found “non-standard”. It is also recorded in the J Forms, issued at the time of drawl of the samples, that the

bags/ packets of the fertilizers were found to be stitched and sealed when samples were drawn from them. In the J Forms there is no mention of tampering with the stitching or seals or any other irregularity or discrepancy. It is also not the case of the respondents that the petitioners were manufacturers or employees of the manufacturers of the fertilizers or were associated with the manufacture of the fertilizers in any manner. There is no such plea in the complaints also. In the situation, in my humble opinion, not the petitioners, but the manufacturers may be liable to respond to the deficiency, if any, found in the samples of the fertilizers.

Section 7 of the Act runs as under:

“7. PENALTIES. (1) If any person contravenes any order made under Sec. 3, - (a) he shall be punishable, - (i) in the case of an order made with reference to Cl.(h) or Cl.(i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(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;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any packing, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the Court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under Cl. (b) of sub-section (4) of Sec. 3 fails to comply with the direction, he shall be punishable 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.

(2-A) If any person convicted of an offence under sub- clause(ii) of Cl. (a) of sub-section (1) or under subsection (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six 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 six months.

(2B) For the purposes of sub-sections (1), (2) and (2A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under subsection (2) has caused no substantial harm to the

general public or to any individual, shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months, or six months, as the case may be.

(3) Where a person having been convicted of an offence under sub-section (1) is again convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the Court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the order.”

The petitioners are alleged to have contravened Regulation 19(1)(a) of the Fertilizer Order. Regulation 19 reads as under:

“19. Restriction on manufacture/ import, sale and distribution of fertilizers

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

•manufacture/import for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertlliser which Is not of prescribed standard;

*•manufacture/Import for sale, sell, offer for sale, stock or exhibit for sale, or distribute any mixture of fertl11sers, 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.

- sell, offer for sale, stock or exhibit for sale or distribute:-*
- any fertiliser the container whereof is not packed and marked in the manner laid down In this Order*
- any fertiliser which is an [imitation of or] a substitute for another fertiliser under the name of which It Is sold;*
- any fertiliser which Is adulterated;*

Explanation:- A fertiliser shall be deemed to be adulterated, If It contains any substance the addition of which is likely to eliminate or decrease Its nutrient contents or make the fertiliser not conforming to the prescribed standard.

- any fertiliser the label or container whereof bears the name of any individual firm or company purporting to be manufacturer/ Importer of the fertiliser, which individual, firm or company Is fictitious or does not exist.*
- any fertiliser, the label or container whereof or anything accompanying therewith bears any statement which makes a false claim for the fertiliser of which s false or misleading in any material particular.*
- any substance as a fertiliser which substance is not, in fact, a fertiliser; or*
- any fertilizer without exhibiting the minimum guaranteed percentage by weight ofplant nutrient.”*

Regulation 19 of the Fertilizer Order was considered and struck down by this court in Tarsem Singh versus Union of India, (1997) 115PLR34, while observing as under:

“12. Summing up Regulation 19 of the impugned Fertilizer Control Order, 1985 is a piece of unfair legislation. It has given an

arbitrary power, to the Government to prosecute a person, who cannot show in a Court of Law that the report of the Public Analyst who has declared the sample of the fertiliser as 'substandard', could possibly fall in an error leading to his conclusions while testing the sample. It has also snatched a valuable right of a person who deals in the trade of fertilizer and sells the sealed and stitched bags as supplied to him by the manufacturer. Even this piece of legislation has made such dealer punishable who has properly stored the essential commodities as such 'fertilizer'. I am of the opinion that Regulation 19 of the impugned Fertilizer Control Order, 1985 is violative of Article 19 read with Article 21 of the Constitution of India and in its present shape cannot be allowed to operate/stand and as such Regulation 19 of the Control Order is hereby struck down. Thus the first proposition is answered in the affirmative.

13. The second proposition propounded above can also be answered with ease. When the foundation of the prosecution is based upon a piece of legislation, which has not been able to stand the test of scrutiny, all prosecutions launched by the authorities under Regulation 19 read with section 7 of the Essential Commodities Act are bound to be quashed and it is ordered accordingly."

In State of Punjab versus Jagdish Chand and another, 2004(2) RCR (Criminal) the accused was

acquitted by the learned trial court, inter alia, on the ground that there was no evidence to show that he was manufacturer of the cattle feed which was found to be not as per specifications and this court refused to interfere with the findings of acquittal.

In Arun Kumar and others versus State of Punjab, 1995 (3) RCR (Criminal) 231, the appellants were partners of firm M/s Mangat Ram & Sons, Faridkot. On 27.6.1984 the Chief Agricultural Officer visited the shop of the appellants and found that they were in possession of 273 bags of NFL fertilizer. The Chief Agricultural Office took a sample of the fertilizer from a bag and sent it to the laboratory for analysis. The Analyst found that the sample was deficient in respect of Nitrogen and Amonical Nitrogen and therefore, a case was registered as FIR No. 135 dated 8.11.1984, Police Station, Kotwali Faridkot under Section 7 of the Act and after trial, Special Court convicted and sentenced the accused for the offence under Section 7 of the Act. In appeal, this court observed as under:

“2. There is no dispute that the Chief Agricultural Officer who has been examined as PW.1 visited the shop of the appellants on 27.6.1984 and took the sample of the fertilizer. The case of the prosecution is that the fertilizer is substandard and it does not contain the total Nitrogen and Amonical Nitrogen as prescribed standard. The report of the Analytical Chemist in the Fertilizer Control Laboratory in Punjab Agricultural

University, Ludhiana was marked Ext. PC. According to PW. 6, the Analytical Chemist who examined the sample, the total Nitrogen was 24.5% against 25% and Amonical Nitrogen contents were 11.5% against 12.5%. Thus, there is a variation of 0.5% in total Nitrogen and 1% in Amonical Nitrogen. The said variation appears to be negligible. According to PW.6 the tolerable variation is 0.3 unit whereas the variation was only 0.5 unit and PW.6 has not given the permissible limit of the variation in respect of Amonical Nitrogen. Thus the variation appears to be negligible. Apart from that, the fertilizer was purchased admittedly by the appellants from Nangal Fertilizer Ltd., Nangal. It is not disputed that to prove this fact DW. 1 has been examined, who was working as Accounts Officer at the relevant time with the National Fertilizers Ltd., Nangal. His evidence also shows that the fertilizer had been purchased by the appellants from National Fertilizers Ltd., Nangal. The evidence of DW.1 also further shows that if there is any manufacturing defect, the responsibility lies on the National Fertilizers Ltd, Nangal as the bags are stitched with automatic machines. Farther, the evidence of PW.2 who was the Enforcement Inspector, who was also present at the time of taking sample from the shop of the appellants, also deposed that the bags of fertilizers found in possession of the appellants, were machine stitched. Therefore, it is clear that the bags of fertilizer, found by

the Chief Agricultural Officer and his party had been received by the appellants in their original form without any inter meddling or tampering. If this is the case, it cannot be said that the accused had any culpable mental state for committing any offence either under Section 7 of the Essential Commodities Act or under the provisions of Fertilizers Control Order. If there is any defect, in the manufacturing process and the bags were intact as supplied by the National Fertilizers Ltd. to the appellants shop, it cannot be said that the accused were responsible for any substandard in the fertilizer. In this view of the matter, I am of the opinion that the appellants are entitled to have an order of acquittal in their favour. Accordingly, I allow the appeal and set aside the conviction and sentence imposed by the Presiding Officer, Special Court, Faridkot. The accused is accordingly acquitted. The amount of fine, if paid, is directed to be refunded to the appellants." (Emphasis supplied)

To the similar effect are the orders cited on behalf of the petitioners and nothing to the contrary could be shown on behalf of the respondents/States during the course of hearing.

In view of the above, no case is made out against the petitioners and continuation of the proceedings against them, in my considered view, shall be an abuse of the process of the court. It is

well established that in the proceedings instituted on complaint, exercise of the inherent powers under Section 482, CrPC, to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482, CrPC.

To hold that a Criminal Complaint can be quashed only if it does not disclose any offence or is frivolous, vexatious or oppressive, the Hon'ble Apex Court in State of Madhya Pradesh v. Awadh Kishore Gupta, (2004) 1 SCC 691, ruled as under:

“...The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective

without sufficient material. Of course, no hard and fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code... “

Enumerating the principles governing invocation of the provisions of Section 482 of the Code, Hon’ble the Supreme Court in Indian Oil Corpn. V. NEPC India Ltd. ,(2006) 6 SCC 736, (at page 747) ruled as under:

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and

criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, State of Haryana v. Bhajan Lal, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, Central Bureau of Investigation v. Duncans Agro Industries Ltd., State of Bihar v. Rajendra Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque.. The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for

wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the

complaint disclose a criminal offence or not.”

Similarly in R. Kalyani v. Janak C. Mehta and Others, (2009) 1 SCC 516, it has been held as under:

“15. Propositions of law which emerge from the said decisions are:

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a First Information Report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose, the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue.

16. It is furthermore well known that no hard and fast rule can be laid down. Each case has to be considered on its own merits. The Court, while exercising its inherent jurisdiction, although would not interfere with a genuine complaint keeping in

view the purport and object for which the provisions of Sections 482 and 483 of the Code of Criminal Procedure had been introduced by Parliament but would not hesitate to exercise its jurisdiction in appropriate cases. One of the paramount duties of the superior courts is to see that a person who is apparently innocent is not subjected to persecution and humiliation on the basis of a false and wholly untenable complaint.”

In Shakson Belthissor V. State of Kerala & Anr. Criminal Appeal No. 249 of 2004, decided on July 06, 2009 the Hon’ble Supreme Court reiterated as under:

“The scope and power of quashing a first information report and charge sheet under Section 482 of the CrPC is well settled. The said power is exercised by the court to prevent abuse of the process of law and court but such a power could be exercised only when the complaint filed by the complainant or the charge sheet filed by the police did not disclose any offence or when the said complaint is found to be frivolous, vexatious or oppressive. A number of decisions have been rendered by this Court on the aforesaid issue wherein the law relating to quashing of a complaint has been succinctly laid down.”

In C.P. Subhash v. Inspector of Police Chennai & Ors., Criminal Appeal No. 176 of 2013 (Arising out of S.L.P. (Crl.) No. 1962 of 2011), decided on January 23, 2013, Hon’ble Supreme Court was of the view:

“7. The legal position regarding the exercise of powers under Section 482 Cr.P.C. or under Article 226 of the Constitution of India by the High Court in relation to pending criminal proceedings including FIRs under investigation is fairly well settled by a long line of decisions of this Court. Suffice it to say that in cases where the complaint lodged by the complainant whether before a Court or before the jurisdictional police station makes out the commission of an offence, the High Court would not in the ordinary course invoke its powers to quash such proceedings except in rare and compelling circumstances enumerated in the decision of this Court in State of Haryana v. Ch. Bhajan Lal 1992 Supp (1) SCC 335.”

As regards quashing of the process issued by a Magistrate, in Nagawwa v. Veeranna Shivalingappa Konjalgi, (1976) 3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations made in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of Magistrate for issuing process against the accused could be quashed under the following circumstances:

“(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings.”

In the consequence, I accept the petitions, quash Criminal Complaint No. 17 of 02.02.2012, “State of Haryana versus M/s. Pardhan Khad Bhandar, Bapoli, Panipat etc.” And order dated 02.02.2012, passed by learned Chief Judicial Magistrate, Panipat therein; Criminal Complaint No. 172 of 06.04.2012, “State of Haryana versus Shri Sushil Kumar etc.” And order dated 06.02.2012 passed by learned Chief Judicial Magistrate, Jind therein, Criminal Complaint No. 234-2 of 06.10.2010, “State of Haryana versus M/s. Namberdar Pesticides and Fertilizers etc.” And order dated 06.10.2010, passed by learned Chief Judicial Magistrate, Ferozepur therein; Criminal Complaint No. 417 of 12.11.2008, “State of Haryana versus M/s. Mor Khad Bhandar etc.” And order dated 12.11. 2008, passed by learned Chief Judicial Magistrate, Sonapat therein;

and Criminal Complaint No. 459 of 02.11.2011, “State of Haryana versus Shri Lachhman Dass Garg etc.” And order dated 02.11.2011, passed by learned Sub Divisional Judicial Magistrate, Tohana therein, qua the petitioners only and discharge the petitioners from the proceedings.

(emphasis supplied)

In **Tata Chemicals Pvt. Ltd.** (supra), it was held as under:-

*“9. A perusal of the impugned criminal complaint would reveal that the petitioners are the marketing company and the Regional Manager of the same. Admittedly, the samples were drawn from a sealed packing. There is no evidence to suggest that the bags/packets of the fertilizer were torn or improperly stored. In this situation, the liability of a marketing company does not arise as is apparent from the judgments of this Court in **Manoj Grover** (supra), **Kehar Singh** (supra), **Ghanvir Singh** (supra). The liability if any would lie with the manufacturing company.”*

(emphasis supplied)

9. A perusal of the impugned criminal complaint would reveal that the petitioners are the dealer firm and its proprietor/officer. Admittedly, the samples were drawn from a sealed packing. There is no evidence to suggest that the bags/packets of the fertilizer were torn or improperly stored. In this situation, the liability of the dealer firm does not arise as is apparent from the judgments of this Court in **Manoj Grover** (supra), **Kehar Singh** (supra), **Ghanvir Singh** (supra) and **M/s Tata Chemicals Ltd.** (supra). The liability if any would lie with the manufacturing company.

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10. In view of the above, I find considerable merit in the present petition. Therefore, the Complaint Case No.14 dated 22.03.2018 (Annexure P-1) registered under Section 19(a)(c)(v) of the Fertilizer (Control) Order, 1985 punishable under Section 7 of the Essential Commodities Act, 1955 read with Section 12AA of the Essential Commodities Act, 1955, the summoning order dated 07.04.2018 (Annexure P-2) punishable under Section 7 of the Essential Commodities Act, 1955 read with Clause 19(a) of the Fertilizer (Control) Order, 1985 and all consequential proceedings arising therefrom stand quashed.

(JASJIT SINGH BEDI)
JUDGE

07.05.2024

JITESH

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