

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2016

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

CrI.R.C.No.770 of 2010

Coromandel Fertilisers Limited
Coromandel House
1-2-10 Sardar Patel Road,
Secunderabad.
represented by S.Purushotama Babu S/o.Sanjeev
Manager,
Coromandel Fertilisers Limited,
SSP Plant,
Ranipet, Vellur. ... Petitioner/1st Accused

vs

The Agricultural Officer,
K.Thirunavukarasu
Office of the Assistant Director of Agriculture
7A Sampath Niwas
Gandhi Nagar, Co-op Colony,
Namakkal. ... Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment of learned Principal Sessions Judge, Namakkal, passed in C.A.No.43 of 2009 on 13.07.2010, confirming the judgment of learned Judicial Magistrate II, Namakkal, passed in C.C.No.40 of 2007 on 29.06.2009.

For Petitioner : Mr.Karthik
for M/s.T.S.Gopalan and Co.

O R D E R

This revision arises against the judgment of learned Principal Sessions Judge, Namakkal, passed in C.A.No.43 of 2009 on 13.07.2010, confirming the judgment of learned Judicial Magistrate II, Namakkal, passed in C.C.No.40 of 2007 on 29.06.2009.

2. The case of the prosecution is that first accused was a manufacturer of fertilizers and second accused was the seller/dealer. The respondent Agricultural Officer, K.Thirunavukarasu, Office of the Assistant Director of Agriculture, 7A Sampath Niwas Gandhi Nagar, Co-op Colony,

Namakkal, took samples of fertilizer viz., Super Phosphate from the second accused and sent the same for chemical analysis. The report of chemical analyst revealed that the fertilizers were not of prescribed standard. The respondent preferred a private complaint against petitioner/A1 and another alleging commission of offences under Fertilizer Control Order 19(1)(a) r/w 7(1)(a) (2) of Essential Commodities Act, 1955 and the same was taken on file in C.C.No.40 of 2007 on the file of learned Judicial Magistrate II, Namakkal.

3. Before the trial Court, the prosecution examined two witnesses and marked sixteen exhibits and one material object. One witness was examined on behalf of the defence and eight exhibits were marked.

4. On appreciation of materials before it, the trial Court, under judgment dated 29.06.2009, convicted the accused and sentenced them to 6 months S.I. and fine of Rs.2,000/- i/d. 6 weeks S.I. There against, petitioner/A1 preferred an appeal in C.A.No.43 of 2009 on the file of learned Principal Sessions Judge, Namakkal, which came to be dismissed under judgment dated 13.07.2010. Hence, this revision.

5. Heard learned counsel for petitioner.

6. Learned counsel for petitioner submitted that petitioner/A1 is a company, manufacturing fertilizers and samples had been seized at the hands of the second accused on 14.06.2005. Ex.P7 is the Analyst Report dated 30.06.2005. Under Ex.P8 dated 25.07.2005 an explanation was called for from the petitioner. Petitioner company has offered its explanation under communication dated 27.08.2005 and therein it also informed that its products were in keeping with FCO specification i.e., Fertiliser (Control) Order specification and that if its explanation was not accepted, the referee sample available may be sent for re-analysis to any other laboratory in keeping with Clause 29-B of the Fertiliser (Control) Order, 1985.

7. For the purpose of our discussion, Clauses 29, 29-B, 32 and 32-A of the Fertiliser (Control) Order, 1985, may be reproduced:

"29. Laboratory for analysis. - A fertiliser sample, drawn by an inspector, shall be analysed in accordance with the instructions contained in Schedule II in the Central Fertilisers Quality Control and Training Institute Faridabad or Regional Fertiliser Control Laboratories at Bombay, Madras or Kalyani (Calcutta) or in any other laboratory notified for this purpose by the State Government with the prior approval of the Central Government.

(1-A) Bio-fertiliser samples drawn by an inspector shall be analysed in accordance with the instructions laid down in Schedule III in the National Centre for Organic Farming, Ghaziabad or Regional Centres of Organic Farming at Bangalore, Bhubneshwar, Hissar, Imphal, Jabalpur and Nagpur or any other laboratory notified by Central or State Government;

(1-B) Organic fertiliser samples drawn by an inspector shall be analysed in accordance with the instructions laid down in Schedule IV in the National Centre for Organic Farming, Ghaziabad or Regional Centres of Organic Farming at Bangalore, Bhubneshwar, Hissar, Imphal, Jabalpur and Nagpur or any other laboratory notified by Central or State Government,

(2) Every laboratory referred to in sub-clause (1) shall, in order to ensure accurate analysis of fertiliser samples, possess minimum equipment and other laboratory facilities, as may be specified from time to time by the Controller in this behalf.

29-B. Laboratories for referee analysis. - (1) Every laboratory referred to in sub-clause (1) of clause 29 shall be designated as referee laboratory for the purpose of analysis of any sample of fertiliser:

Provided that no such laboratory which carried out the first analysis of the fertiliser sample shall be so designated in respect of that sample:

Provided further that in respect of any sample the analysis of which has been challenged, may be sent for referee analysis to any one of the other laboratories except those which are located in the State or where the first analysis has been done:

Provided also that the Central Fertiliser Quality Control and Training Institute and Regional Laboratories shall be considered as one group of laboratories and a sample first analysed by any one of them, shall not be sent for referee analysis to any other in that group, but only to any other laboratory notified by a State Government.

(2) Notwithstanding anything contained in this Order, the Appellate Authority as specified in sub-clause (1) of clause 32-A, in case of sample analysed by the State Government Laboratory, or the Controller, in case of samples analysed by Central Fertiliser

Quality Control and Training Institute, Faridabad or its Regional Fertiliser Control Laboratories, as the case may be, shall decide and send, one of the two remaining samples, for reference analysis as provided under sub-clause (1).

32. Appeals at Central Government level.- (1) In any State, where the fertiliser allocation is made by the Central Government under this Order and if the suspension or cancellation of authorisation letter of the manufacturer and/or pool handling agency or debarment of business, in anyway, has an effect of dislocating the said allocation and if the Central Government is of the opinion that it is necessary or expedient so to do for maintaining the supplies, may direct the concerned State Government to furnish detailed report about the nature of contravention and a brief statement of the reasons for such suspension or cancellation and pass such Order as it may think fit, confirming, modifying or annulling the order of state Government:

Provided that if the report called by the Central Government is not received from the State Government within a period of fifteen days from the date of issue of the communication, the Central Government may decide the case without the report, on merit.

(2) Any person aggrieved by the analysis report of Central Fertiliser Quality Control and Training Institute or its Regional Laboratories may appeal to the Controller for referee analysis of such sample within a period of 30 days from the receipt of analysis report:

Provided that the Controller may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing it within that period.

32-A. Appeal at the State Government level. - (1) The State Government shall, by notification in the Official Gazette, specify such authority as the Appellate Authority before whom the appeals may be filed within 30 days from the date of the Order appealed against by any person, except by an industrial dealer, aggrieved by any of the following orders or action of registering authority or a Notified Authority, namely:

(I) refusing to grant a certificate of manufacture for preparation of mixture of fertilizers or special mixture of fertilizers; or

(ii) suspending or cancelling a certificate of manufacture; or

(iii) suspending or cancelling authorization letter or debarring from carrying on the business of selling of fertilizer; or

(iv) non-issuance of authorisation letter or certificate of manufacture within the stipulated period; or

(v) non-issuance of amendment in authorisation letter within the stipulated period.

(2) Any person aggrieved by analysis report of fertilizer testing laboratories notified by the State Government may appeal to the Appellate Authority appointed under Sub-clause (1) for reference analysis of such sample within thirty days from the date of receipt of analysis report."

8. The primary contention of learned counsel for petitioner is that once the petitioner had sought action under clause 29-B of the Fertiliser (Control) Order, 1985, the Courts below ought to have construed the same as an exercise of right of appeal provided under clause 32-A of the Fertiliser (Control) Order, 1985. This Court is unable to agree and hold the findings of Courts below that the petitioner company has failed to exercise its right under clause 32-A of the Fertiliser (Control) Order, 1985, incorrect. Clause 32-A of the Fertiliser (Control) Order, 1985, informs a right of a person aggrieved to seek a reference analysis of a sample within 30 days from the date of receipt of the analysis report. Clause 32-A (2) of the Fertiliser (Control) Order, 1985, informs that the authority appointed under sub clause 1 thereof shall be the appellate authority. It is only when an appeal under Clause 32-A of the Fertiliser (Control) Order, 1985, has been moved that the second proviso to Clause 29-B of the Fertiliser (Control) Order, 1985, comes into play. For the aforesaid reason and on consideration of the facts of the case, this Court would confirm the findings of conviction. However, this Court would accept the second submission of learned counsel for petitioner that the petitioner being a company, a juristic person, cannot be required to undergo custody.

9. Accordingly, while confirming the findings of conviction of the petitioner, this Court alters the sentence to one of fine in a sum of Rs.2,000/- i/d. 2 months S.I. The default sentence shall be undergone by the representative of the company. Learned counsel for petitioner brings to notice that the fine imposed by the trial Court has been paid. This would give the entire case a quietus.

This Criminal Revision is disposed of with the above modification.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Namakkal.

2.The Judicial Magistrate II,
Namakkal.

+1cc to Mr.T.S.Gopalan and Co., Advocate Sr.4546

Cr1.R.C.No.770 of 2010

sr(CO)
srg(25/04/2016)

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