

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRA-S-988-SB of 2004 (O&M)
Date of decision: 26.02.2016**

Ajit Singh

....Appellant

Versus

State of Punjab and others

.... Respondent

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Anupam Singla, Advocate for the appellant.

Mr. Yogesh Gupta, AAG, Punjab.

P.B. Bajanthri, J.

The appellant was subjected to criminal proceedings under the Essential Commodities Act, 1955 among others in the complaint case No. 2 of 05.07.1996/RBT No. 20 of 01.08.2002. The appellant has been convicted under Section 7 of the Essential Commodities Act, 1955 to undergo rigorous imprisonment for a period of 2 years and to pay fine of Rs. 5000/- in default of payment of fine to undergo further rigorous imprisonment for a period of 2 months on 23.04.2004. The appellant feeling aggrieved by the sentence and fine, presented this appeal.

2. Gist of the case are that on 2-9-1993, Kuldip Singh, Fertilizer Inspector, accompanied by Sarabjit Singh, Agricultural Development

Officer, (Plant Protection), Kapurthala, inspected the premises of M/s Punjab Agro Industries Corporation Ltd; V & P.O Miani Bakarpur, Tehsil and District Kapurthala. Ajit Singh, Incharge of the Corporation, was present there. The Fertilizer Inspector, gave a notice, showing his intention of taking the sample of fertilizer, for the purpose of analysis, under the Fertilizer (Control) Order 1985 (hereinafter to be called as the Order Only), which was received by him (Ajit Singh). The Fertilizer Inspector, then inspected the dealer's registration and stock register, in respect of "Jat Super" Single Super Phosphate 16%W.S, P2 P5 (Granulated), manufactured by M/s Agro Chem. Punjab Ltd; village Singhpura (Dera Bassi), Distt. Patiala. According to the stock register, there were 191 stitched bags of 50 kg. fertilizer each. Kuldip Singh, Fertilizer Inspector, signed the stock register, at page No. 40. This fertilizer was received by the firm, on 5- 6- 1993, through dispatch order Challan No. 411 dated 4-6-93. He checked the lot number and date of manufacture, on each bag. It was not mentioned on any bag. He also checked the Challan, aforesaid, to verify the lot number. It was also not mentioned therein. Thereafter, the Fertilizer Inspector, prepared the sampling detail, in duplicate, in Form 3 J, in the presence of Ajit Singh, Accused, aforesaid. Both of them put their signatures, on Form J. One copy of Form J, was handed over to Ajit Singh. Three bags, bearing Nos. 7, 71 and 135 were selected, at random. Thereafter the Fertilizer Inspector, inserted the sampling probe diagonally, from one corner to another, in those selected bags. The fertilizer so collected, was put on a clean and dry polythene sheet. It was mixed properly and divided into four equal parts. Two diagonally opposite parts, were removed. The remaining parts were again mixed together forming a composite sample of 1.500 kgs.

This composite sample was again spread on the dry, clean and thick polythene and divided into 3 approximate portions of equal weight. Each of the sample parts, was put into dry, clean and thick polythene sheet bags and the same were tied, to make the same air-tight. Then four detailed descriptions as specified in Form J and three Form K, under clause 30(1) of the Order, were filled in, in the presence of Ajit Singh, Incharge of M/s Punjab Agro Industries Corporation Ltd; V. & P.O Miani Bakarpur, Tehsil and District Kapurthala, and Sarabjit Singh, who put their signatures, on Form J. The detailed description in Form J alongwith each of the sample portion in polythene bags was put into three cloth bags separately, which were sealed with the seal bearing impression FI. Ajit Singh was given opportunity to put his seal impression on Forms J and K and on each portion of the sample. He availed of this opportunity as he put his seal bearing impression PAIC. Then the Fertilizer Inspector, put serial No.1, on the cloth bags, as identification mark of sample. One portion of the sample, was given to Ajit Singh and his signatures were obtained on Form J, in this respect. On 3-9-93, the remaining two portions of the sample alongwith Forms J and K (two in each) were deposited, with the Chief Agricultural Officer, Kapurthala, vide letter of the even date by Kuldip Singh. Balwinder Singh, Agricultural Development Officer (E), received the sample, on behalf of the Chief Agricultural Officer, Kapurthala. One portion of the sample alongwith Form K, was sent to the Analytical Chemist Fertilizer Quality Control Laboratory, Punjab, Faridkot, through Rajinder Singh, Beldar, on 8-9-93. Rajinder Singh, Beldar, deposited the same alongwith Form K, on the same day i.e 8-9-93 and got the receipt on the office copy from the Agricultural Development Officer of the Laboratory and handed over the same to

Balwinder Singh. The Analytical Chemist (Incharge) Fertilizer Quality Control Laboratory, Punjab, Faridkot, sent the analysis report, according to which, the contents of the sample were not according to the specifications and hence non standard. A show cause notice alongwith a copy of the analysis report, was sent to M/s Punjab Agro Industries Corporation Ltd; V & P.O Miani Bakarpur, Tehsil and District Kapurthala, authorised dealer by the Chief Agricultural Officer, Kapurthala, which was received by it and duly signed by Ajit Singh, accused No.2. Accused No. 3 M/s Punjab Agro Industries Corporation Ltd; is the distributor. The fertilizer was manufactured by M/s Agro Chem. Punjab Ltd; village Singhpura (Dera Bassi), Distt. Patiala, having Regd. office Dhillon Complex, Mani Majra, Chandigarh UT). A show cause notice alongwith a copy of the analysis Report, was sent to it. Ajit Singh, was the person Incharge of and responsible to M/s Punjab Agro Industries Corporation Ltd; V & P.O Miani Bakarpur, Tehsil and District Kapurthala, accused No. 1 for the conduct of its business, at the relevant time, whereas, Gurdip Singh Chahal Chief Chemist was the person Incharge of and responsible to M/s Agro Chem. Punjab Ltd; accused No.4, for the conduct of its business. Accused No. 1 to 3, for keeping and exhibiting for sale the non-standard fertilizer, accused No. 3 by distributing the non-standard fertilizer and accused No. 4 and 5, by manufacturing and exhibiting for sale the nonstandard fertilizer, accused No. 3 by provisions of Clause 19 of the Order, and committed the offence punishable under Section 7 of the Essential Commodities Act, 1955 (Amended upto date), (hereinafter to be called as the Act only)

3. The complaint was registered against appellant and 4 others. The appellant was employee of M/s Punjab Agro Industries Corporation

Limited which is an undertaking institution of the State of Punjab. He is stated to be Incharge of fertilizer store in the Punjab Agro Industries Corporation. On 02.09.1993, Kuldeep Singh, Fertilizer Inspector who had inspected the premises of M/s Punjab Agro Industries Corporation Limited, Miani Bakarpur, Tehsil and District Kapurthala noticed that sub-standard fertilizers were stored. He had taken samples and sent for analysis by the competent authority. The competent authority namely Analytical Chemist (Incharge) Fertilizer Quality Control Laboratory, Pb. Faridkot on 21.09.1993 in which a report has been made to the Chief Agricultural Officer, Kapurthala while making note of variation in composition as per analysis with reference to the specification as per FCO. Based on the said report a complaint was registered against appellant and others in the year 1996. The complaint was proceeded and appellant and others were sentenced.

4. The appellant contended that there was inordinate delay in initiation of complaint since the inspection of fertilizer was done on 02.09.1993 by the Inspector and analytical Chemist Report was received by the Chief Agricultural Officer, Kapurthala in the month of September, 1993. Whereas, the complaint was registered on 05.07.1996 Therefore, it was argued that on the question of delay in registering complaint, the entire proceedings are liable to be set aside.

5. Learned counsel for the appellant submitted that the appellant was an employee of Punjab Agro Industries Corporation Limited. Before initiation of proceedings under Essential Commodities Act, 1955 sanction is to be obtained from the competent authority. In the present case before registering complaint against the appellant prior sanction of the corporation

has not been obtained. Consequently, there is a violation of Section 15-A of Essential Commodities Act, 1955. An extract of the para is reproduced herein:-

“[15A. Prosecution of public servants.—Where any person who is a public servant is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his duty in pursuance of an order made under section 3, no court shall take cognizance of such offence except with the previous sanction—

(a) of the Central Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union;

(b) of the State Government, in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the State.”

6. It was further contended that the Inspector who had obtained samples of fertilizers on 02.09.1993 has not complied the procedure laid down in the Fertilizer Control Order, 1985 read with Rule 1 and Schedule 2. It was further contended that the appellant was only an Incharge of the stores where the fertilizers have been kept. It was not his duty to verify whether the fertilizers which were supplied to the Corporation are in terms of specification as per FCO or not therefore, the appellant has been implicated unnecessarily. It was also contended that the alleged incident relates back to the year 1993 and the appellant has attained age of superannuation and retired on 31.08.2000. Therefore, a lenient view be taken in deciding this appeal.

7. Learned counsel for the appellant relied on 3 decisions in

support of the contention that non-compliance of the control order. which are as follows:-

1. ***State of Punjab Versus M/s Karam Chand Rajinder***

Kumar and others reported in 1992(3)RCR (Criminal) 365

2. ***Ashwani Kumar Versus State of Punjab*** reported in 1993
(2) RCR (Criminal) 145.

3. ***Sham Lal Versus The State of Haryana*** reported in 2003
(4) RCR(Criminal) 872.

8. Learned State counsel vehemently contended that it was bounden duty of the appellant to verify the quality of fertilizer which were received by the Corporation with reference to the specification stipulated by FCO, therefore, the appellant cannot escape from the duties and responsibilities assigned to him. The appellant and others have been sentenced rightly having regard to the evidence adduced before the Court. Therefore, there is no infirmity in the order of sentence. It was further contended that question of delay as well as Section 197 of the IPC has been taken note of by the trial Court and the same has been dealt in accordance with the facts and circumstances. Thus, the appellant has not made out a case so as to interfere with the sentence.

9. Heard learned counsel for the parties.

10. No doubt there is a delay in registering complaint of about 3 years. The same has been taken note of by the Court below and rightly considered. So also Section 197 of Cr.P.C. namely sanction to prosecute the appellant has been dealt with in detail. The Hon'ble Supreme Court in case titled as Rajib Ranjan versus R.Vijay Kumar reported in (2015)1SCC513 which interpreting Section 197 of Cr.P.C. held as follows:-

“14. The ratio of the aforesaid cases, which is clearly discernible, is that even while discharging his official duties, if a public servant enters into a criminal conspiracy or indulges in criminal misconduct, such misdemeanor on his part is not to be treated as an act in discharge of his official duties and, therefore, provisions of Section 197 of the Code will not be attracted. In fact, the High Court has dismissed the petitions filed by the appellant precisely with these observations namely the allegations pertain to fabricating the false records which cannot be treated as part of the appellants normal official duties. The High Court has, thus, correctly spelt out the proposition of law. The only question is as to whether on the facts of the present case, the same has been correctly applied. If one looks into the allegations made in the complaint as stand alone allegations, probably what the High Court has said may seem to be justified. However, a little deeper scrutiny into the circumstances under which the complaint came to be filed would demonstrate that allegation of fabricating the false record is clearly an afterthought and it becomes more than apparent that the respondent has chosen to level such a make belief allegation with sole motive to give a shape of criminality to the entire dispute, which was otherwise civil in nature. As noted above, the respondent had in fact initiated civil action in the form of suit for injunction against the award of the contract in which he failed. Order of civil court was challenged by filing writ petition in the High Court. Plea of the respondent was that the action of the Department in rejecting his tender and awarding the contract to accused No. 1 was illegal and motivated. Writ petition was also dismissed with cost. These orders attained finality. It is only thereafter criminal complaint is filed with the allegation that accused No. 1 is favoured by creating a false certificate dated 28.12.2004. We would dilate this

discussion with some elaboration, hereinafter.

15. As already pointed above, tender was floated by the CSEB and the CEI herein was one of the parties who had submitted its bid through the respondent. However, tender conditions mentioned certain conditions and it was necessary to fulfill those conditions to become eligible to submit the bid and have it considered. As per the appellants, tender of the respondent was rejected on the ground that plant and equipment erected by the respondent at Patratu Thermal Power Station, Patratu, Jharkhand was not functioning well. This information was received by the Tender Committee from JSEB. When the report was sought by CSEB in December, 2004, the Tender Committee took the view that the respondent did not fulfill the pre-qualifying conditions and rejected his tender. Before doing so, the respondent was asked time and again to send the performance report which he had promised but he failed to comply even when he had assured to do the needful. In fact, that itself was sufficient to reject that bid of the respondent as it was non compliant with the tender conditions. Still, in order to verify the claim of the respondent and to consider his bid on merits, though not strictly required, the appellant R.C. Jain was deputed to get the desired information from JSEB. He met the officials of JSEB and submitted his report to the effect that the works carried out by the respondent at Patratu Thermal Power Station was not satisfactory. Even, Shri B.M. Ram, General Manager of the said Power Station furnished his report dated 28.12.2004 wherein it was summed up that due to the defects in the scanning system, supplied by the respondent, generation had been adversely effected and the said Electricity Board was not satisfied with the equipment supplied by the respondent. In spite of the aforesaid material, the tender Committee acted with

caution and even the technical expertise was sought. Even the report of the technical experts went against the respondent as it opined that the respondent was not technically suitable on the technical vetting and comparative data. On the basis of the aforesaid material, the respondent's tender document was not opened and returned and he was informed accordingly. All this has clearly happened in furtherance of and in discharge of the official duties by the appellant. In the facts of the present case, we are of the view that allegations of fabricating the records are mischievously made as an afterthought, just to give colour of criminality to a civil case.

16. As pointed out above, the respondent had even filed the civil suit challenging the decision of the Electricity Board in returning his tender documents on the ground that the same were not as per pre-qualifying conditions of the tender. He had thus resorted to the civil remedy. However, he failed therein as for the reasons best known to him, he sought to withdraw the same and accordingly the same was dismissed for non-prosecution. It is trite that once the suit is withdrawn, that acts as constructive res judicata having regard to the provision of Order 23, Rule 1 of the Code of Civil Procedure. Also, when suit is dismissed under Order 9, Rule 8 CPC, fresh suit under Order 9, Rule 9 is barred. The legal implication would be of that the attempt of the respondent in challenging the decision of the Tender Committee in not considering his tender remained unfaulted. Even when the respondent himself invited order of dismissal in the civil suit, curiously enough, he filed a writ petition against the order passed in the civil court dismissing his suit for non-prosecution, but the same was also dismissed by the High Court on 25.06.2007 and even a cost of Rs. 25,000/- was imposed on the respondent as the said writ petition was perceived by the High Court as `abuse of process of the

court'. SLP preferred by the respondent was also dismissed by this Court on 14.09.2007. It is only thereafter the respondent filed the criminal complaint out of which present proceedings emanate. No doubt, the respondent in his complaint has right to colour his complaint by levelling the allegations that the appellants herein fabricated the records. However, on the facts of this case, it becomes difficult to eschew this allegation of the respondent and we get an uncanny feeling that the contents of FIR with these allegations are a postscript of the respondent after losing the battle in civil proceedings which were taken out by him challenging the action of the Department in rejecting his tender. When he did not succeed in the said attempt, he came out with the allegations of forgery. It is thus becomes clear that the action of the respondent in filing the criminal complaint is not bonafide and amounts to misuse and abuse of the process of law.

17. In *State of Haryana v. Bhajan Lal*, 1991(1) R.C.R. (Criminal) 383 : 1992 Supp (1) SCC 335, this Court has laid down principles on which Court can quash the criminal proceedings under Section 482 of Cr.P.C. These are as follows:

"102.(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155

(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

Principle Nos. 6 and 7 are clearly applicable in the present case.

18. Having regard to the circumstances narrated and explained above, we are also of the view that attempt is made by the respondent to convert a case with civil nature into criminal prosecution. In a case like this, High Court would have been justified in quashing the proceedings in exercise of its inherent powers under Section 482 of the Code. It would be of benefit to refer to the judgment in the case of **Indian Oil Corpn. v. NEPC India Ltd. and others, 2006(3) R.C.R.(Criminal) 740 : (2006) 6 SCC 736**, wherein the Court adversely commented upon this very tendency of filing criminal complaints even in cases relating to commercial transaction for which civil remedy is available or has been availed. The Court held that the following observations of the Court in this behalf are taken note of:

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In **G. Sagar Suri v. State of U.P., 2000(1) R.C.R.(Criminal) 707 : (2000) 2 SCC 636**, this Court observed : (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a

civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

11. Thus non-compliance of Section 197 of Cr.P.C. is not attracted, since there is a dereliction of duty by the appellant. The Court below ignored Section 15-A of Essential Commodities Act, 1955 where in similar provision to Section 197 of Cr.P.C. In other words, wrongly considered Section 197 of Cr.P.C. instead of Section 15-A of the Essential Commodities Act, 1955.

12. Inspector Kuldeep Singh who had inspected the Corporation and obtained fertilizer sample, failed to follow the procedure laid down in the Fertilizer (Control) Order, 1985 in particularly Rule 1(e) and Schedule II which reads as follows:-

“(e) The sample should be kept in suitable, clean dry and air tight glass or screwed hard polythene bottle of about 400 gm capacity or in a thick gauged polythene bag. This should be put in a cloth bag which may be sealed with the Inspector's seal after putting inside the detailed description as specified in Form “J” Identifiable details may also be put on the cloth bag like sample No./Code No. or any other details which enables its identification;

13. The sample fertilizer was collected and kept in thick polythene sheet and the same were tied, is not in accordance with the aforesaid specific procedure. No doubt “other containers” collecting the fertilizer sample in a polythene sheet does not fall within the definition of other suitable container. This Court has held that provisions of Fertilizer (Control) Order 1985 are mandatory. Therefore non-compliance of the aforesaid procedure registration of complaint and sentencing the appellant are liable to be set aside. Learned counsel submitted that the Analytical Chemist (Incharge) Fertilizer Quality Control Laboratory, Punjab Faridkot who had submitted report relating to sub standard fertilizer, has not been examined. Even though the entire complaint and further proceedings were based on the analytical chemist report dated 21.09.1993. Even on this count entire proceedings are vitiated.

14. The appellant was subjected for proceedings under Essential

Commodities Act, 1955 and he has been punished under Section 7. It is noticed that Section 2 of the Essential Commodities Act, 1955 relates to definitions which reads as follows:-

Section 2. Definitions:-In this Act, unless the context otherwise requires:-

(i-a) Collector includes an Additional Collector and such other officer, not below the rank of Sub-Divisional Officer, as may be authorized by the Collector to perform the functions and exercise the powers of the Collector under this Act.”

‘(a) essential commodity means any of the following classes of commodities:—

(i) cattle fodder, including oilcakes and other concentrates;

(ii) coal including coke and other derivatives;

(iii) component parts and accessories of automobiles;

(iv) cotton and woolen textiles;’

(iva) drugs.

Explanation.— In this sub-clause, “drug” has the meaning assigned to it in clause (b) of section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940);

(v) foodstuffs, including edible oilseeds and oils;

(vi) iron and steel, including manufactured products of iron and steel;

(vii) paper, including newsprint, paperboard and straw board;

(viii) petroleum and petroleum products;

(ix) raw cotton, whether ginned or unginned, and cotton seed;

(x) raw jute;

(xi) any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the Constitution;

15. On the date of filing of complaint i.e. 05.07.1996 “fertilizer” was not one of the item included in the Essential Commodities Act,

therefore, registration of complaint itself is not clear. The Essential Commodities (Amendment) Act, 2006 wherein fertilizer, whether inorganic, organic or mixed” so incorporated in the Schedule (See Section 2-A). In view of these facts and circumstances, the concerned authorities have proceeded to initiate complaint without examining the provisions of law of the Essential Commodities Act, 1955 read with Schedule II (See Clause 28 (1)(b) and 29 -Part A procedure for drawal of samples of fertilizers etc. Therefore, in the present case, I find serious legal flaw in proceeding under Essential Commodities Act, 1955 against appellant and others.

16. For the foregoing reasons, the order of Special Judge, Kapurthala dated 23.04.2004 (Complaint case No. 2 dated 05.07.1996, RBT No. 20 dated 01.08.2002) is set aside. Appeal is allowed.

26th February, 2016
pooja saini

(P.B.BAJANTHRI)
JUDGE