

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

Criminal Appeal S-2115-SB of 2003

Date of Decision: October 18, 2016

Naiter SinghAppellant

Versus

State of PunjabRespondent

CORAM: HON'BLE MR. JUSTICE T.P.S.MANN

Present: Mr. Amit Arora, Advocate
as legal aid Counsel for the appellant.

Mr. Vikram Bishnoi, Asstt. A.G., Punjab.

T.P.S.MANN. J. (Oral

Convict Naiter Singh has filed the present appeal for challenging the judgment and order dated 20.10.2003 passed by learned Special Judge, Amritsar, whereby, he stood convicted under Section 7 of the Essential Commodities Act, 1955 (hereinafter to be referred as 'the Act') and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/- and in default of payment of fine, to further undergo rigorous imprisonment for one month.

The case of the prosecution, in nutshell, is that on 31.10.1996 at 2.30 p.m., Sh. Sawinder Singh Sohal, Fertilizer

Inspector (Enforcement) Amritsar along with Sh. Vir Singh, Agriculture Sub-Inspector, Amritsar, inspected the premises of M/s Ashok Kumar Tarlok Kumar, Ajnala under the powers vested with them vide Clause 28 of the Fertilizer (Control) Order, 1985 (hereinafter to be referred as 'the FCO'). M/s Ashok Kumar Tarlok Kumar was found selling, stocking and exhibiting for sale the single super phosphate 16%(G) brand Basant Super. Shri Ashok Kumar, sole proprietor of the firm was present at the premises. Sh. Sawinder Singh Sohal and Shri Vir Singh, disclosed their identities and intimated their desire to draw the sample of single super phosphate 16%(G) brand Basant Super. The record of the firm was checked and 609 bags of 50 kgs each of single super phosphate 16%(G) Basant Super brand were found lying in the premises of the said firm. In accordance with the table provided in schedule II Part-A 2 (c) of the FCO, Shri Sawinder Singh Sohal selected six bags out of total 609 bags and drew samples from those bags by inserting a sampling probe. The samples, so drawn were dry and clean. Each of the samples weighed 1500 gms. Composite sample of the fertilizer was mixed with the help of dry wooden rod in order to make it homogeneous and divided it into three equal portions. Those portions were filed in three thick gauged polythene bags. Mouth of these bags were tied with a thread. The test samples were put in three bags separately. Seven Forms 'J' were prepared by the Fertilizer

Inspector. One sealed sample along with Form 'J' was handed over to Shri Ashok Kumar, sole proprietor of the firm. Shri Sawinder Singh Sohal then prepared Form 'K' in triplicate, wrote code on these forms and also affixed brass seal on these forms bearing No. F-45 FCAO, Amritsar and then handed over the brass seal to CAO, Amritsar. These two sealed test samples along with other samples besides Forms 'J' and 'K' remained in the safe custody of Shri Sawinder Singh Sohal. On 5.11.1996, one sealed test sample was sent to the Fertilizer Quality Control Laboratory Faridkot along with Form 'K' through Mr. Prem Dutt, Agricultural Sub-Inspector, who handed over the sample at the laboratory on same day against receipt and on coming back to Amritsar, he handed over the receipt to Shri Sawinder Singh Sohal. The remaining one sealed test sample of Fertilizer and Forms 'J' and "K" remained in the custody of Shri Sawinder Singh Sohal and as long as these test samples remained in his custody and the custody of other officials, they were not tampered with. According to the analysis report issued by the Fertilizer Quality Control Laboratory, the sample of single super phosphate 16% (G) Brand Basant Super was not in accordance with the specifications in respect of percentage of P_2O_5 . The requisite percentage P_2O_5 was 16 (G) whereas percentage of P_2O_5 in the test sample was found as 15.25. There was, thus, variation of 0.75%. On the basis of the said report M/s Ashok Kumar Tarlok Kumar

was served a show cause notice along with photocopy of the analysis report in form as per compliance of Clause 30(3) of the FCO to explain their position. Reply of M/s Ashok Kumar Tarlok Kumar was received on 17.2.1997 that the firm had purchased fertilizer from M/s S.F.L. Industries Limited, village Rail Majra, District Nawan Shahar vide Bill dated 26.10.1996. Accordingly, it was noticed that M/s S.F.L. Industries Limited was the manufacturer of non-standard fertilizer and Shri Naiter Singh, Production Manager of the said firm was responsible person for production division, authorized by the manufacturer as per the provisions of Clause 24 of the FCO and responsible for the firm as per company's letter dated 29.6.1995 signed by Mr. B.R.Dhiman, Company Secretary. The manufacturer was also issued show cause notice vide registered letter dated 31.1.1997 observing that M/s Ashok Kumar Tarlok Kumar and Mr. Naiter Singh, Production Manager of firm S.F.L. Industries Limited, Nawan Shahar have harmed the farming community and country as a whole by manufacturing and selling fertilizer which was not of prescribed standard and, accordingly, a complaint was preferred by the Chief Agricultural Officer, Amritsar against them.

On filing of the complaint, notices thereof were issued to the accused and on their appearance, charge under Section 7 of the Act for violating clause 19(1)(a) and 19(1)(a)(c) VII of the Fertilizer Control Order issued under Section 3 of the Act was

framed against M/s Ashok Kumar Tarlok Kumar, Ajnala through its proprietor Ashok Kumar and under Section 7 of the Act for violating Clause 19(1)(a) and 19(1)(a)(c) VIII of the Fertilizer Control Order issued under Section 3 of the Act against M/s SFL Industries Limited through Shri Naiter Singh, Production Manager. The accused pleaded not guilty and claimed trial.

In support of its case, the prosecution examined PW1 Shri Prem Dutt, Sub-Inspector, Office of the Chief Agriculture Officer, Amritsar, PW2 Shri Mohinder Singh Chahal, Joint Director, Agriculture, Ludhiana, PW3 Shri Sawinder Singh Sohal, Agriculture Development Officer and PW4 Shri Vir Singh, Agriculture Sub-Inspector.

When examined under Section 313 Cr.P.C., the accused denied the allegations of the prosecution. Ashok Kumar took plea that he was a licenced dealer with valid licence. He had purchased the fertilizer single super phosphate 16%(G) from M/s S.F.L. Industries Limited with bills and in the machine stitched company packed bags. The bags were properly stored in the shop in the same conditions in which it was purchased from M/s S.F.L. Industries. Nothing was added or extracted out of the bags. The Fertilizer Inspector did not adopt proper procedure for sampling. Shri Naiter Singh took plea that he was an Ex-serviceman. He joined the service of M/s Shivalik Fertilizer Limited (S.F.L.) vide appointment letter dated 19.7.1982 as

Security Supervisor. During service, his General Manager got some papers signed from him and later on used those papers against him. He was never Manager Marketing/Sales Production Manager and Manager Quality Control. No production was made nor any fertilizer manufactured by him or under his control. He had been made a scapegoat by his employer.

In his defence, Sh. Naiter Singh examined Shri Baldev Singh, Clerk, office of the Director, Agriculture, Punjab as DW1, Shri B.K. Aggarwal, Manager, Bank of Baroda, Sector 17, Chandigarh as DW2, Shri Naiter Singh himself as his own witness as DW3 and Shri Mohinder Kumar, Legal Assistant to the Directorate of Agriculture, Punjab as DW4.

After hearing learned counsel for the parties and on going through the evidence brought on the record, the trial Court acquitted Ashok Kumar of the charge against him as he was not guilty of manufacturing the fertilizer with the specifications as laid down under the FCO. However, the appellant was convicted as being nominee of M/s S.F.L., who was responsible for not manufacturing fertilizer in accordance with the FCO and the specifications laid down in the order and, thus, violated the provisions of Clause 19 (1) (a) and 19 (1) (a) (c) of the FCO, thus, violating the provisions of Section 3 of the Act making him liable for punishment under Section 7 of the Act. He was, accordingly, convicted and sentenced, as mentioned above.

The sole argument of the learned counsel for the appellant is that the appellant had no role to play in the production and manufacturing of the fertilizer in question, rather he was posted as Security Supervisor with M/s F.S.L., which firm had been engaged in the business of manufacturing and producing the fertilizer. As the appellant had no role to play in the production and manufacturing of the fertilizer in question, he had not committed the offence alleged against him.

In order to prove that the appellant had been nominated as Production Manager in terms of Clause 24 of the FCO and required to look after the production and quality control functions of single super phosphate fertilizer, the prosecution relied upon the certificate issued by Shri B.R.Dhiman, Company Secretary on behalf of M/s SFL Industries Limited, which was brought on record as Ex.PN by PW3 Sawinder Singh Sohal, Agriculture Development Officer. Though the appellant claimed that he had never ever been appointed as Production Manager yet he did not challenge the said letter Ex.PN by cross-examining PW3 Sawinder Singh Sohal. Once the appellant failed to challenge the testimony of PW3 Sawinder Singh Sohal, especially in regard to the certificate Ex.PN, he could not later on turn around to show that he had been working as Security Supervisor throughout and had never ever been concerned with the production and quality control functions of the fertilizer. It was only

during his examination under Section 313 Cr.P.C. that he denied having been appointed as Security Supervisor vide letter dated 19.7.1982. Besides, he examined DW1 Baldev Singh, Clerk, Office of Director, Agriculture, Punjab, DW2 Shri B.K.Aggarwal, Manager, Bank of Baroda, DW3, the appellant himself and DW4 Shri Mohinder Kumar, Legal Assistant to the Directorate of Agriculture Punjab to convince the Court about not being concerned with the production and quality control functions of the fertilizer and rather he was only posted as a Security Supervisor. The various documents produced by him as well as by the witnesses examined by him in his defence were not even put to the witnesses examined by the prosecution. Under these circumstances, no reliance can be placed on the said evidence to hold that the appellant was only acting as a Security Supervisor and not concerned with the production and quality control functions of the fertilizer manufactured by M/s S.F.L. Industries Limited. Therefore, no fault can be found with the finding arrived at by the trial Court in holding that it was the appellant, who was incharge of and looking after the production and quality control functions of the factory regarding manufacturing of single super phosphate fertilizer.

As regards the question of sentence, it may be noticed that the law prescribes imposition of minimum sentence of three months, which may extend to seven years. However, for

any adequate and special reason, it can impose a sentence of imprisonment for a term less than three months. From the photocopy of the Ex-Serviceman Identity Card Ex.DW2/B, it is made out that the appellant was born on 3.1.1946. Therefore, by now, he is more than 70 years of age. He is an Ex-serviceman having served the country for some time. There is no material on record, from which, it can be indicated that apart from the present, he has committed any other offence. As per the custody certificate produced by the learned State counsel, the appellant had remained behind the bars for four days. He is facing the agony of criminal prosecution for the last about twenty years.

Taking into consideration the totality of circumstances, this Court is of the view that no useful purpose will be served by sending the appellant behind the bars, once again, for undergoing his remaining sentence of imprisonment. Ends of justice shall be suitably met, if his substantive sentence of imprisonment is reduced to the one already undergone by him. At the same time, fine of Rs.500/- imposed upon him by the trial Court can be enhanced.

Resultantly, the conviction of the appellant under Section 7 of the Essential Commodities Act, as recorded by the trial Court, is upheld. His substantive sentence of imprisonment is reduced to the period already undergone by him. However, the fine of Rs.500/- is enhanced to Rs.5,000/-. The enhanced amount

of fine be deposited by the appellant with the trial Court within three months from today, failing which, he shall be required to undergo rigorous imprisonment for three months.

The appeal is, accordingly, disposed of.

October 18, 2016
amit rana

(T.P.S. MANN)
JUDGE

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No