

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

**CRA-S-2245-SB-2003  
Date of decision:-10.11.2017**

**Rajinder Singh**

**....Appellant**

**Versus**

**State of Haryana**

**....Respondent**

**CORAM : HON' BLE MR. JUSTICE H.S. MADAAN**

Present : Mr.Dinesh Goyal, Advocate  
for the appellant.

Mr.Neeraj Poswal, AAG, Haryana.

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**H.S. MADAAN, J.**

This appeal has been preferred against the judgment of conviction and order of sentence dated 17.11.2003/18.11.2003 passed by the Presiding Officer, Special Court, Kurukshetra, vide which accused M/s S.F.L. Industries Ltd. through Rajinder Singh and Rajinder Singh, Production Manager being the responsible person of the manufacturer were convicted and sentenced as follows:

| Sr.No<br>. | Name of the<br>convict/accused                                                         | Under<br>Section                                                            | Sentence                                                                                                                                                            |
|------------|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.         | M/s S.F.L. Industries Ltd., SCO 45-48, Sector 35-C, Chandigarh being the manufacturer. | U/S 19(1)(a) of the Fertilizer (Control) Order, 1985 read with Section 7 of | As this Manufacturing Unit cannot be given the substantive sentence of imprisonment, no order in that regard is being passed. However, the unit would pay a fine of |

|    |                                                                                                                                                                                                         |                                                                                                                  |                                                                                                                            |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------|
|    |                                                                                                                                                                                                         | the Essential Commodities Act, 1955.                                                                             | Rs.25,000/-.                                                                                                               |
| 2. | Rajinder Singh, Production Manager (as representative and responsible Officer for Manufacturing process for, maintenance and control of quality and being over all incharge in his individual capacity. | U/S 19(1)(a) of the Fertilizer (Control) Order, 1985 read with Section 7 of the Essential Commodities Act, 1955. | Rigorous imprisonment for three years and a fine of Rs.5,000/-. In default further rigorous imprisonment for three months. |

Whereas other co-accused, namely, M/s Ramesh Trading Company, Ladwa being the Dealer through Ramesh Kumar, resident of village Chhalondi, Tehsil Thanesar, District Kurukhetra being the responsible person of the dealer, M/s Kurukshetra Traders, Kurukshetra being the Distributor through Subhash Sehgal son of Thakar Dass, person being partner of M/s Kurukshetra Trading, Kurukshetra had been acquitted.

The accused-convict - Rajinder Singh, Production Manager being the responsible person of the manufacturer, who is appellant before this Court pray that the appeal be accepted, the impugned judgment of conviction and order of sentence be set aside and he be acquitted of the charge framed against them.

Briefly stated, the facts of the case are that the State of Haryana through Quality Control Inspector (hereinafter referred to as QCI) of the office of Deputy Director Agriculture (hereinafter referred to as DDA), Kurukshetra had brought a complaint against M/s Ramesh Trading Company, Ladwa being the Dealer through Ramesh Kumar, resident of village Chhalondi, Tehsil Thanesar, District Kurukhetra being

the responsible person of the dealer, M/s Kurukshetra Traders, Kurukshetra being the Distributor through Subhash Sehgal son of Thakar Dass, person being partner of M/s Kurukshetra Trading, Kurukshetra and M/s S.F.L. Industries Ltd. through Rajinder Singh and Rajinder Singh, Production Manager being the responsible person of the manufacturer under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act) read in conjunction with Clause 19(1)(a) of the Fertilizer (Control) Order, 1985.

Shortly put, the case of complainant had been that M/s S.F.L. Industries Ltd. through Rajinder Singh and Rajinder Singh, Production Manager being the responsible person for manufacturing fertilizer unit and for compliance of the provisions of the Control Order had been granted a licence for manufacturing of fertilizer; that M/s Kurukshetra Traders, Kurukshetra with Subhash Sehgal as its working partner and responsible for compliance of the provisions of the Control Order was distributor of the products of M/s S.F.L. Industries Ltd.; that M/s Ramesh Trading Company, Ladwa with Ramesh Kumar, a partner of the said firm and responsible person for compliance of the provisions of the Control Order was dealer for the purchase and sale of chemicals and fertilizers *inter alia* of M/s S.F.L. Industries Ltd. through M/s Kurukshetra Traders, Kurukshetra; that on 9.10.1996, Sh.S.K. Poonia, QCI had visited the premises of M/s Ramesh Trading Company, Ladwa in discharge of his official duties and drew a sample of Single Super Phosphate 16% fertilizer (for short – SSP) for the purposes of analysis; that 100 bags of 50 kgs. each were there in the stock; that the fertilizer was manufactured by M/s S.F.L. Industries Ltd., Chandigarh whereas it

had been sold through M/s Kurukshetra Traders, Kurukshetra to M/s Ramesh Trading Company, Ladwa; that as per record produced by M/s Ramesh Trading Company, Ladwa to the FI, the sample was drawn by selecting 2 bags out of 100 bags according to procedure in compliance with the provisions of Clause 28(1)(b) of the Control Order and procedure laid down in Schedule-II thereof; that 1 ½ kgs. of fertilizer was then separated as sample with sampling probe made of brass, which was clear and dry; that the retrieved fertilizer from the bags through the probe was thoroughly mixed on level clean hard surface by turning it upside and down 2-3 times and thereafter it was divided into three equal parts; that each part of the sample was kept in neat, clean, dry and thick gauged polythene bags; that those bags detailed described as specified in Form J completed and signed by the complainant and Ramesh Kumar accused was placed with each sample in the cloth bags; that those bags were then sealed as per procedure by QCI acting as Fertilizer Inspector; that it was so done in the presence of accused Ramesh Kumar; that one part of the sample was given to him, whereas remaining two parts of the sample were handed over to Sh.Kashmiri Lal, Clerk on behalf of DDA, Kurukshetra; that DDA, Kurukshetra on 10.10.1996 had sent one part of the sample to the State Quality Control Laboratory (Fertilizer), Karnal for analysis in terms of provisions of Clause 30(1) of the Control Order through Ram Dayal, Fieldman; that on analysis the sample was found to be non-standard and report in that regard was sent to the office of DDA, Kurukshetra on 15.11.1996 in terms of Clause 30(2) of the Control Order, a copy of the report was sent to accused M/s Ramesh Trading Company, Ladwa on 22.11.1996 in compliance with the provisions of

Clause 30(1) of the Control Order and he was asked to send bill of the manufacturer/distributor, a copy of the analysis report was also sent to the manufacturer i.e. accused M/s S.F.L. Industries Ltd., Chandigarh on the same day i.e. 22.11.1996; that M/s Ramesh Trading Company, Ladwa through accused Ramesh Kumar having stocked for the sale of the non-standard fertilizer, M/s Kurukshetra Traders, Kurukshetra through Subhash Sehgal having manufactured and distributed the said non-standard fertilizer and M/s S.F.L. Industries Ltd. Chandigarh through accused Rajinder Singh having manufactured and distributed the said non-standard fertilizer were then prosecuted for violating provisions of Clause 19(1)(a) of the Control Order read with Section 7 of the Act.

After presentation of complaint in the Court by QCI acting as FI on 30.4.1998, the accused were summoned to face trial. The accused put in appearance, notice of accusation was served on the accused on 20.8.2003 for having violated the provisions of Clause 19(1)(a) of the Control Order read with the provisions of Section 7 of the Act. The accused pleaded not guilty and claimed trial. Then the case was fixed for evidence of complainant/prosecution.

During the course of its evidence, the complainant examined as many as four witnesses i.e. PW1 – Dr.K.S. Kadyan, the then Analytical Chemist, PW2 – Sh.Kashmiri Lal, Clerk, PW3 – Ram Dayal, Fieldman and PW4 – Sh.S.K. Poonia, QCI.

With that the prosecution evidence got concluded.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against

them were put to them but they denied the allegations contending that they are innocent and had been falsely involved in this case.

Further, accused Subhash Sehgal for himself and on behalf of accused No.3 – M/s Kurukshetra Traders, Kurukshetra took up the plea that he was innocent and has been falsely implicated in this case; that he was not responsible for the purpose of Act and has committed no offence.

Further, accused Rajinder Singh for himself and on behalf of accused No.5 – M/s S.F.L. Industries Ltd. Chandigarh took up the plea that he is not responsible person for purpose under Section 24 of the Fertilizer Control Order, 1985; that he was not overall Incharge of the Manufacturing Company nor he was concerned with day to day functioning of the company; that he had not given any undertaking as Ex.PE/9; that this document is not related to him and Ex.PE/7 and Ex.PE/8 are false documents; that he has joined in this company as a Clerk on 21.10.1980; that he had never remained Production Manager in SFL company; that he has no control in the company over Quality of product produced; that Managing Director of SFL Company is overall Incharge of the company; that Sh.S.K. Sood was the Managing Director of SFL Company, now he is the owner of Sadhna Phosphate Chemical Ltd., 304 South Delhi, H.No.12, Zamroudpur Community Centre, Kailash Colony, New Delhi and that Mrs. Rupinder Kaur @ Ruby Singh is the last Promoter-cum-Executive Director is the responsible person of the company.

In defence evidence, the accused examined Ram Kumar – Muneem as DW1 and Sh.N.K. Sasena as DW2.

With that defence evidence of accused was closed.

After hearing arguments, learned trial Court convicted and sentenced accused M/s S.F.L. Industries Ltd. through Rajinder Singh and Rajinder Singh, Production Manager being the responsible person of the manufacturer as mentioned above, which left him aggrieved and he has filed the present appeal.

Whereas accused M/s Ramesh Trading Company, Ladwa being the Dealer through Ramesh Kumar, resident of village Chhalondi, Tehsil Thanesar, District Kurukhetra being the responsible person of the dealer, M/s Kurukshetra Traders, Kurukshetra being the Distributor through Subhash Sehgal son of Thakar Dass, person being partner of M/s Kurukshetra Trading, Kurukshetra were acquitted of the charge framed against them.

I have heard learned counsel for the appellant – accused - convict, learned Assistant Advocate General for the State of Haryana besides going through the record and I am of the considered view that there is no illegality or infirmity in the impugned judgment as regards the conviction part. The Presiding Officer of the Special Court, Kurukshetra has dealt with various aspects of the case under different heads, first being drawing of sample and related evidence, second link evidence, third analysis of sample, fourth scientific evidence, fifth evidence regarding responsibility of the accused with regard to compliance of provisions of control order and then rival claims of the prosecution and defence have been discussed.

As regards taking of the sample, accused Nos.1 and 2 had denied that sample had been lifted from their premises, rather they had

come up with a plea that those had been planted upon such accused when they refused to oblige the complainant by greasing his palm. But then such denial does not come out to have much merit. Mr.S.K. Poonia QCI appearing as PW4 had deposed on oath as regards the averments given in the complaint including visiting premises of accused No.1 on 9.10.1996, taking sample of SSP as per procedure. The details of drawing sample at the spot are mentioned in Ex.PC. He further deposed regarding accused No.2 remaining present at the spot on behalf of accused No.1 and his participation in the proceedings, process and spot investigations. He had deposed regarding taking sample of SSP in three parts, giving of one part of sample to accused No.1 through accused No.2 while handing over of the remaining two parts of the sample to DDA, Kurukshetra through Kashmiri Lal, Clerk (PW2). He further proved registration of certificates of accused No.1 as Ex.PD, report sent to the office of DDA, Kurukshetra as Ex.PA/1 and Ex.PA/2 through forwarding letter Ex.PA/1, sending copy of report to accused No.1 through accused No.2 vide letter Ex.PE and registered letter to manufacturer M/s S.F.L. Industries Ltd. Rai Majra (Punjab) vide endorsement Ex.PE/1. He further stated that accused No.1 had sent his reply original being Ex.PF. He had proved bill as Ex.PF/1. Thus the version of accused Nos.1 and 2 that sample had not been lifted from their premises gets nullified when signatures of accused No.2 are there on the relevant documents. The plea taken that accused No.2 was called to the office of complainant and made to sign certain papers on the pretext of renewal of licence of dealership do not come out to be convincing. Accused No.2 does not appear to be such a novice and naive

person so as to sign the documents taken in by representation of complainant that the same were required for renewal of licence of dealership without bothering to see their contents. Though in their defence evidence, accused had examined Ram Kumar their Muneem as DW1 but he stood exposed in his cross-examination. The stock of fertilizer from which the sample had been drawn was admittedly purchased by accused Nos.1 and 2 vide bill No.12556 dated 4.10.1996 from M/s. S.F.L. Industries, Chandigarh and they had not carried out any change therewith. Accused Nos.1 and 2 have come out with a plea that the liability if any is of manufacturer. Accused No.1 happens to be the dealer of manufacturer and fertilizer was stored there for sale to the farmers. Though the procedure for drawing of sample had been challenged, however, various pleas taken in that regard have been discussed by the Court below and those were not found to have any element of merit. The sample was found to have been drawn as per procedure provided. I am in agreement with the trial Court on that point, therefore, pleas again raised here are not being discussed. The sample drawn is to be taken as representative sample having been taken out from two bags out of the whole lot stocked at a place. The link evidence in this case is found to be complete with no chain missing. As per report received, the sample was found to be sub-standard. The trial Court has held accused Nos.5 and 6, the manufacturer to be responsible for the lapse by giving proper reasoning. In para No.68 of the judgment, this aspect has been dealt with in detail finding that as far as accused No.5 is concerned on request made by it permission for manufacturing, distribution and selling of SSP 16% was granted to it on 19.4.1995

subject to compliance with certain conditions, details of which given in Ex.PF/7 itself and that accused No.5 had been in communication with DDA, Kurukshetra and had duly notified accused No.6 to be as responsible officer for compliance with the provisions of the control order.. Supplying of that information was pre requisite before permission could be granted to the manufacture. It was on the basis of undertaking furnished by accused Nos.5 and 6 that permission letter Ex.PF/7 had been issued. The undertaking was to the following effect:

*I Rajinder Singh (Production Manager) nominated under Clause-24 (M/s SFL Industries Limited, SCO No.457-458, Sector 35-C, Chandigarh) (Full name and address of the manufacturing firm) do hereby declare that I/We will not manufacture or supply/ditribute any non-standard fertilizer in the State. If my firm is found doing so I /We may be debarred to sell/stock/exhibit our fertiliser in your district in future.*

It being so, it stands established that Rajinder Singh was Production Manager of accused No.5 manufacturer and he was responsible for manufacturing of the fertilizer and if some shortcoming was detected or fertilizer was found to be sub-standard, the responsibility obviously rests with the manufacturer and its Production Manager i.e. Rajinder Singh. Now it is not open for him to come up with a plea that he is simply a matriculate and was not qualified to be a Production Manager and was not responsible to the company regarding manufacturing and its day to day conduct and furthermore there is nothing on record to show that some minimum educational qualification has been prescribed for being responsible person of a manufacturing

concern for compliance with the control order.

Learned counsel for the appellant has referred to *R.G. Srivastava Versus State of Punjab and another, 2003(2) R.C.R.(Criminal) 54, State of Punjab Versus R.K. Prashar and another, 2010(4) R.C.R.(Criminal) 647,* and *Hanuman Versus State of Haryana, 2007(3) R.C.R.(Criminal) 488* in support of his contentions. But I find that these are not applicable due to different facts and circumstances and contest in which such observations had been made. The complainant had successfully proved its charge against accused Nos.5 and 6. The judgment of conviction passed by the trial Court are well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law and no fault can be found with the same. As such, the trial Court was justified in convicting the accused.

As regards sentence part, appellant – accused – convict had been sentenced to undergo rigorous imprisonment for a period of 3 years and to pay a fine of Rs.5,000/- and in default thereof, to further undergo rigorous imprisonment for a period of three months. He is stated to be facing the agony of trial since the year 1998 i.e. more than 19 years. He is not shown to have any past criminal record. It is stated that his family is dependent upon him for financial support, therefore, leniency be shown to him.

Keeping in view the facts and circumstances, I am of the view that ends of justice would be squarely met if the sentence of appellant – accused – convict Rajinder Singh is reduced to one year, whereas the part of conviction relating to payment of fine is kept as

intact.

With such modification in sentence part, the impugned judgment is upheld as against Rajinder Singh and the present appeal is disposed of accordingly.

Rajinder Singh appellant – accused is stated to be on bail granted to him by this Court while suspending his sentence. His bail is cancelled. Chief Judicial Magistrate, Kurukshetra is directed to issue arrest warrant to get him arrested so as to make him undergo the remaining sentence.

**10.11.2017**  
**Brij**

**(H.S.MADAAN)**  
**JUDGE**

|                           |   |        |
|---------------------------|---|--------|
| Whether speaking/reasoned | : | Yes/No |
| Whether Reportable        | : | Yes/No |