

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

CRA-S-No.1964-SBA OF 2006
DATE OF DECISION : 15th NOVEMBER, 2017

State of Punjab

.... Appellant

Versus

M/s Khalsa Khad Store, Gurdaspur & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. Dhruv Dayal, Sr. D.A.G. Punjab.

None for the respondents.

* * * *

A. B. CHAUDHARI, J. (Oral)

Being aggrieved by the judgment and order dated 16.08.2005 passed in Sessions Case No.31 of 2000 arising out complaint under Section 19(1)(a) of Fertilizer (control) Order 1985 read with terms and conditions of dealer registration certificate and Section 7 and 12AA of Essential Commodities Act, 1955 (10 of 1955), the present appeal was filed by the State of Punjab in this Court against the acquittal of the respondent-accused.

Heard learned counsel for the State.

It is not in dispute that in a private complaint filed by the Chief Agricultural Officer, Gurdaspur the allegations were that the accused persons had stocked and sold the fertilizer which was ultimately found to be misbranded by the concerned laboratory.

Learned counsel for the appellant vehemently argued that the trial Court committed error in acquitting the respondent in the

absence of any reason for acquittal. He further contended that there are voluminous record of forensic report etc. which was scientific evidence and should have been relied upon by the trial Court. He, therefore, prayed for reversing the order of acquittal in the one of conviction.

None has appeared for the respondent-accused.

I have perused the impugned judgment and order and reasons contained therein. Upon perusal of the reasons contained in the order, at the outset I find that the evidence is said to have been committed on 10.11.1997 and thereafter on that date sample was taken. The entire procedure was followed. However, the trial Court has recorded categorical finding about the fault in the procedure that was followed by the concerned Inspector. I have gone through the reasons recorded by the trial Court. I quote the relevant reasons from para 11:

“Xxx... Xxx... Xxx... I must point out some points of procedure which have not been complied with. There is no mention in the complaint as well as in the statement of PW-2 Kulwant Singh that the sample was not exposed to rain/sun. It is also not mentioned that when the material being sampled the following instruments and the bag of sample were free from any adventitious contaminations. Kulawant Singh PW-2 has simply stated that he had selected two bags for taking sample and he took the sample with the help of sampling probe. The sample was divided into three parts and each part was put in a polythene bag. The

statement of PW-2 Narinder Singh is silent that each bag selected for sampling was thoroughly mixed as possible by suitable means or that the sample was kept in a suitable clean dry and air tight glass or screwed hard polythene bottle of about 400 grams capacity or in a thick gauged polythene bag. In this way the sample has not been drawn in accordance with the procedure laid down in the control order. Hon'ble Mr. Justice V. M. Jain, Judge of our own High Court has observed in 2004(1) Criminal Court cases 475 (supra) that if the requirement of law was not complied with while taking sample as such, FIR against the accused in violation of the mandatory provisions of law, deserves to be quashed, Hon'ble Mr. Justice Nirmal Singh, Judge of our own High Court has observed in 2003(4) RCR (CrI.) 639 (supra) that if the sample has not been drawn as per the procedure laid down in part A of schedule-II, sub-clause(s) of the control order, then the accused cannot be convicted for the same. His lordship has further observed that mere putting sample in three polythene bag was not sufficient when it did not conform to the mandatory procedure laid down for drawing the sample of fertilizer.”

The reasons given by the trial Court in para 11 as above are legal correct and proper and are in consonance with the judgment cited by the trial Court.

I also quote relevant portion of para 13 of the judgment of the trial Court, which again relates to the question of law that was decided by this Court.

“The statement of PW-2 Kulwant Singh is silent on this point. Hon’ble Mr. Justice Viney Mittal, Judge or our own High Court has observed in 2003(1) Criminal Court Cases 679 (supra) that it was essential for the complainant to specifically aver and state in the complaint that a person who was being accused of violation of the control order was in any manner responsible for the management and control of the manufacturing concern. His Lordship has further observed that in the absence of any such averment the aforesaid person cannot be arrayed as an accused in the complaint. Hon’ble Mr. Justice Ashutosh Mohunta, Judge of our own High Court has also taken a similar view in 2003(3) RCR 48 (supra). His Lordship has also observed that in order to hold a person responsible for the quality control of product it must be stated in the complaint that such a person was in over all control of the day to day business of the company or firm. His Lordships has also observed that me (sic) assertion that such a

person appointed was a person responsible for the quality control of the products does not carry any weight. Hon'ble Mr. Justice R. L. Anand Judge of our own High Court has also taken the similar view and observed in 1997 (2) RCR 565 (supra) that the present petitioner alone cannot be prosecuted until and unless the company was added as a co-accused, relying upon the ration laid down in the aforesaid rulings, being an employee of a company would not make such a person liable to face the prosecution."

Upon perusing the above reasons, I find that the impugned judgment and order and reasons contained therein cannot be faltered. In the result, there is no merit in the present appeal and the same is therefore, dismissed.

15th NOVEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>