IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-S-2418-SBA-2006
DATE OF DECISION : 14th DECEMBER, 2017

State of Punjab

…. Appellant

Versus

M/s. Pannu Khad Store, Batala, District Gurdaspur.

…. Respondent

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

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

None for the respondent.

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A. B. CHAUDHARI, J. (Oral)

Being aggrieved by the judgment and order dated 01.05.2006 passed in Sessions Case No.18 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 read with Section 7 and 128A of Essential Commodities Act, 1950 (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.

In support of the appeal learned State counsel vehemently argued that the trial Court has wrongly acquitted the accused as there are voluminous evidence on record. The entire procedure of sample taking has been followed scrupulously by the Fertilizer Inspector. He then invited my attention to the findings of the trial Court that each bag was stitched carefully and contended that there was no scope left for even suspicion for the fertilizers being subjected to any natural changes and that the sample was taken in clean dry and polythene bag. He therefore, submitted that the order of acquittal deserves to be converted in to the one of conviction.

I have heard learned State counsel and gone through the entire judgment and reasons recorded therein.

The sample was taken on 26.05.1997 by the concerned Fertilizer Inspector. The trial Court found that the procedure mentioned in Schedule II of the Control order was not scrupulously followed. He also found that the initial burden of proof was on the Fertilizer Inspector but which he failed to discharge the same. The trial Court further found that the complaint as well as the evidence of Fertilizer Inspector did not contain the material averments relating to the manner of taking the sample contemplated under Schedule II of the control order. In stead of repeating the reasons recorded by the learned trial Judge I quote relevant portions from paras 11 and 13 which reads thus:

> 11. xxx…. xxx…. xxx…. In schedule II of control order a vast procedure for taking of a sample has been provided. xxx…. xxx…. xxx…. xxx…. xxx…. xxx…. There is no mention in the complaint as well as in the statement of PW3 Bikramjit Singh that the sample was not exposed to rain/sun. Nothing is also mentioned that the material being sampled the following instruments and the bag of sample were free from any adventitious contamination. PW-3 Bikramjit

Singh 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 Bikramjit Singh PW.3 is silent that each bag selected for sampling was thoroughly mixed as possible by suitable means. 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. There is only statement of Bikramjit Singh that he had drawn the sample with the help of sample probe. But he has failed to mention the number of lots of the year for the purpose of selecting the bags for sampling out of 35 bags of Zinc sulphate 21. In this way the sample has not been drawn in accordance with the procedure laid down in the control order.

13. xxx…. xxx…. xxx…. xxx…. xxx…. xxx…. There is also no reference of any stitching machine in the complaint as well as in the prosecution evidence. So it can safely be presumed that the bags were stitched by the manufacturing company and not by the dealer. xxx…. xxx…. xxx….”

The submission made by learned counsel for the appellant-State that want of independent witness would not vitiate prosecution case, will have to be accepted as correct. The law is trite that testimony of official witnesses can also be relied upon and there is no need for examination of independent witness as a precondition. However, I find that the reasons given above by the trial Court are legal, correct and proper and the view taken by the trial Court is based on various Single Bench judgments of this Court from time to time as mentioned in the impugned judgment and order.

In that view of the matter, it would not be possible to interfere with the order of acquittal since the order of acquittal is based on evidence and no perversity is seen therein. There is no merit in the present appeal. In the result, I make the following order:

ORDER

(i) CRA-S-2418-SBA-2006 is dismissed.

14TH DECEMBER, 2017 **(A. B. CHAUDHARI)**
'*raj*' **JUDGE**

Whether speaking/reasoned: Yes No

Whether Reportable: Yes No