

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**BENCH AT AURANGABAD**

**CRIMINAL WRIT PETITION NO. 1508 OF 2017**

1. M/s. Adinath Agro Industries  
Dharangaon Road, Parola (Rural)  
Tq. Parola, District Jalgaon.
  2. Ishan s/o. Sunil Jain  
Age 28 years, Occ. Service,  
Serving as Manager  
(Responsible person)  
with M/s. Adinath Agro Industries  
Dharangaon Road, Parola (Rural)  
Tq. Parola, District Jalgaon.
- ... **Petitioners**

**Vs.**

1. The State of Maharashtra  
The Department of Agriculture  
Through Sidhanath Sadhu Kalel  
Age 32 years, Occ. Service,  
Serving as Inspector and Agriculture  
Officer, Panchayat Samiti, Raver,  
Tq. Raver, District Jalgaon.
  2. M/s. Kranti Traders  
Raver, Tq. Raver, Dist. Jalgaon.
  3. Pramod Amrutrao Patil  
Age 54 years, Occ. Business,  
Prop. Patil Biotech Pvt. Ltd.  
53, Visanji Nagar, Jalgaon,  
District Jalgaon.
  4. Pankaj Yuvraj Bora  
Age 40 years, Occ. Service,  
Manager, M/s. Kranti Traders,  
Raver, Tq. Raver, Dist. Jalgaon.
- ... **Respondents**

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Mr. V.D. Hon, Sr.Advocate h/f. Mr. A.V. Hon, Advocate for the Petitioners.  
Mr. B.V. Virdhe, A.P.P. for the Respondent-State.

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**CORAM : MANGESH S. PATIL, J.**

**DATE OF RESERVING THE JUDGMENT : 12.07.2018**  
**DATE OF PRONOUNCING THE JUDGMENT : 07.08.2018**

**JUDGMENT :**

Heard. Rule. The Rule is made returnable forthwith. The learned A.P.P. waives service for the respondent-state. With the consent of both the sides the matter is heard finally.

2. The petitioners who are the accused nos.4 and 5 in Regular Criminal Case No. 34 of 2017 pending in the Court of learned Judicial Magistrate First Class, Raver, District Jalgaon have filed this writ petition under Article 227 read with Article 226 of the Constitution of India as also under Section 482 of the Cr.P.C. for quashing the criminal case.

3. Stated in brief the facts leading to the filing of this writ petition are to the effect that the complainant was designated as an Agriculture Extension Officer in the office of Panchayat Samiti, Raver and was appointed as such under Clause-27 of the Fertilizer (Control) Order, 1985 promulgated under the provisions of Essential Commodities Act, 1955 and his such appointment was duly notified by the State Government on 13.10.2010. The accused no.1 is a firm dealing in fertilizers which is the respondent no.2 herein. The accused no.2 who is the respondent no.3 herein is the owner of the accused no.1 and accused no.3 who is the respondent no.4 herein was working as a Manager

there. Pursuant to the power delegated to him under Clause-28 (i) (b) of Fertilizer (Control) Order, 1985, he inspected the godown of the accused no.1 on 19.07.2016. He found that a mixed fertilizer of Calcium : Magnesium : Sulphur in grade of 10:5:10 in granular form manufactured by the accused nos.4 and 5 who are the petitioners herein was stocked therein for sale. It was bearing Lot no.022 and the date of manufacture was 05/2016 and it was expected to conform to schedule to part-A of Fertilizer (Control) Order, 1985. Three test samples were collected and were duly sealed, one of them was handed over to the accused no.1-dealer, second sample was sent for chemical analysis to the Analytical Chemist, Fertilizer Testing Laboratory along with a memorandum in the requisite Form-K dated 19.07.2016 and the third sample was retained in the office of the complainant. After analysis a report in Form-L was received. It was found that the sample was non standard and was not according to the specification. The variation in the contents was above the permissible tolerance limit. It was a contravention of Clause-b of Fertilizer (Control) Order. A notice was issued to the accused nos. 1 and 4 i.e. the Dealer and Manufacturer. Pursuant to such notices they submitted a reply and further requested for re-analysis as per the provisions of Clause - 32(A) (2) of the Fertilizer (Control) Order. It was got done from another laboratory and still it was again declared to be non standard and was not conforming to the specifications laid down under Fertilizer (Control) Order. Thus all the

accused had contravened Clause-19(a) (b) of Fertilizer (Control) Order which was an offence punishable under Section 3 read with Section 7 of the Essential Commodities Act, 1955 and sought to punish them. The process was issued. Hence this petition.

4. The learned senior advocate for the petitioners vehemently submitted that the specification laid down for manufacture of Secondary Nutrient Mixture of fertilizer of Calcium : Magnesium : Sulphur in proportion of 10:5:10 laid down by the State Government in pursuance of Sub-clause 2 of Clause-13 of the Fertilizer (Control) Order as per the advise of State Fertilizer Committee constituted under Sub-clause 5 of Clause-38 of that order dated 31.10.2013 itself was having inherent defects and limitations. It was only after it was realised, the State Fertilizer Committee in its meeting dated 28.10.2016 specifically noted in its minutes that there was a technical difficulty and many samples of the fertilizer mixture in the proportion of 10:5:10 were turning out to be non standard. Considering the percentage of such non standard fertilizer that were being detected, it was advised by the committee that new grade had to be formulated by appointing a technical committee and accordingly even such a committee was constituted. According to the learned senior advocate, these minutes clearly demonstrate that there could be some inherent limitations and defects in maintaining the standard specification while manufacturing the mixed fertilizer of Calcium : Magnesium : Sulphur in proportion of 10:5:10 and if that be

so, the petitioners cannot be made to face the prosecution. When the committee of experts admitted that there are some inherent limitation in maintaining such standard, no fault can be found with the petitioners, even if it is assumed that the samples did not conform to the specifications in respect of such a mixture manufactured by the petitioners. He would therefore submit that in view of such grey area in respect of the specification laid down for manufacture of such mixed fertilizer the petitioners must be given benefit and the complaint is liable to be quashed and set aside.

5. The learned A.P.P. submitted that the complainant had visited the godown and had taken samples of the fertilizer on 19.07.2016. Samples were taken, those were duly analysed and had turned out to be sub-standard and the offence was completed even before the State Fertilizer committee held its meeting on 28.10.2016. Even the samples were analysed prior thereto twice over and it is only after such a report of the committee that by a subsequent notification dated 15.07.2017 the earlier notification dated 31.10.2013 laying down the standards was denotified. Therefore, when the offence was already complete, such supervening circumstances would not come to the rescue of the accused persons and the petitioners. The fact remains that the petitioners had allegedly manufactured the mixed fertilizer and after following necessary procedure prescribed under the Fertilizer (Control) Order, the Fertilizer Inspector has lodged the complaint and as on the

date of the complaint, there was enough material for proceeding against the petitioners and the rest of the accused persons. The decision of the State Fertilizer Committee would only operate prospectively and the petitioners are not entitled to derive any benefit therefrom at least at the threshold, even before framing of the charge.

6. It is quite clear that the whole emphasis of the learned senior advocate for the petitioners is on the fact that the State Fertilizer Committee also understood the defects and limitation in manufacturing the mixed fertilizers in that form and realising the difficulty it referred the matter to a committee of expert and the expert committee in its meeting dated 12.01.2017 also apparently resolved that it was difficult to manufacture mixed fertilizer in proportion of 10:5:10 in a granular form and it was necessary to fix new specifications and grades. However, it needs to be emphasised that the State Fertilizer Committee had held its meeting and had referred the matter to the expert committee which is still apparently working to fix new standard, it has nowhere been said or resolved by the State Fertilizer Committee that it was not at all possible to manufacture a mixed fertilizer conforming to the prescribed specification and grades as was notified by the notification dated 31.10.2013. On the contrary, the minutes of that meeting and particularly Clause-3 would clearly show that All India Association of Mixed Fertilizers had submitted a written request to the committee to withdraw the complaints against the manufacturers which

were already lodged. The proposal did not find favour with the committee and it specifically had insisted that necessary steps against such manufactures were needed and continued to be taken.

7. When admittedly, the alleged offence was committed when the notification dated 31.10.2013 was already in force and the offence was complete, as a logical and legal corollary the petitioners are legally bound to face the charge.

8. In this regard, it is necessary to observe that whether any mixed fertilizer was manufactured by the petitioners and whether due to the inherent defects in maintaining the prescribed standard they would be able to derive any benefit from it is a matter of evidence. The scope of the present inquiry does not permit this Court to examine that aspect of the matter. Therefore, as has been rightly submitted by the learned A.P.P., there is enough material to reveal complicity of the petitioner in commission of the crime and there is no sufficient ground to quash the criminal proceeding at the threshold by applying the principles laid down in the case of **State of Haryana V/s Bhajanlal; AIR 1992 S.C. 604.**

9. The writ petition is dismissed.

10. The rule is discharged.

11. After pronouncement of the judgment, the learned advocate

for the petitioners submits that there was interim relief during the pendency of the writ petition and the arrangement be continued for four weeks so as to enable the petitioners to approach the Supreme Court.

12. Learned A.P.P. opposes the request.

13. Considering the fact that the interim relief was in operation during pendency of the writ petition, it shall continue till 28.08.2018.

**(MANGESH S. PATIL, J.)**

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