IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.)

CRA-S-1050-SB-2004 (O&M)
Date of Decision:-18.09.2018.

Nirbhai Singh

.....Appellant

Versus

State of Punjab

......Respondent

(2.)

CRA-S-1051-SB-2004 (O&M)

Nirbhai Singh

.....Appellant

Versus

State of Punjab

......Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

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

Mr. Nikhil K. Chopra, Additional A.G. Punjab.

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P.B. BAJANTHRI, J. (Oral)

Cost by way of demand draft bearing No.40078 has been paid to the petitioner today in Court.

2.) By this common order CRA-S-1050-SB-2004 and CRA-S-1051-SB-2004 shall be disposed of as point of issue involved in both the appeals are similar. For brevity, facts are being extracted from CRA-S-1050-SB-2004.

3.) In the instant appeal, appellant has questioned the judgment

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dated 03.05.2004 passed in Complaint – 7.EC Complaint No.4 of 06.04.1998 dated 3.05.2004 by Special Judge, Hoshiarpur.

4.) Learned counsel for the appellant submitted that appellant was appointed as a Chief Production Officer with M/s Munak Chemicals Limited. It was submitted that appellant's appointment as a Chief Production Officer was not approved by the competent authority. Thus, he could not be designated as Chief Production Officer. Learned counsel for the appellant further submitted that respondent-Department have collected samples relating to Single Super Phosphate from M/s Vijay Trading Company. The aforesaid item was manufactured by M/s Munak Chemicals Limited, Bhatinda. The respondents-Department found that Single Super Phosphate production was not in accordance with the prescribed standard and it was a sub-standard. Consequently, a complaint was registered under Section 2 (h) (g) and Clause 1 (b) of Schedule – I Part-A read with Clause 19 (1) (a) of the Fertiliser (Control) Order, 1985 issued under Section 3 of the Essential Commodities Act, Punishable under Section 7 (1) (a) (ii) of the Essential Commodities Act, 1955. Appellant has been sentenced to undergo imprisonment for a period of 1 year and to pay fine of Rs.1,000/-on 03.05.2004. Learned counsel for the appellant submitted that matter is fully covered by decision of this Court passed in ***Ajit Singh Vs. State of Punjab*** reported in ***2016 (2) Law Herald 1184***. Learned counsel for the appellant submitted that appellant's appointment is not in accordance with law which is evident from judicial pronouncement in ***CRA-S-2383-SB-2003*** decided on 30.07.2018 titled as ***M/s Varinder Agro Chemicals Limited and another Vs. State of Haryana.*** It was further submitted that there is non-compliance to Rule 1 (a) and Schedule – II of the Fertiliser (Control) Order,

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1985, author of the analytical chemist report has not been examined and for the first time word 'fertiliser' was incorporated under the Essential Commodities Act in the year 2006 by means of the Essential Commodities (Amendment) Act, 2006 and it was also submitted that manufacturer of the Single Super Phosphate, namely, M/s Munak Chemicals Limited has not been impleaded for taking action relating to production of sub-standard Single Super Phosphate.

5.) *Per contra*, learned counsel for the State-respondents while resisting the appellant's contention submitted that there is a compliance to Rule 1 (e) and Schedule-II of the Fertiliser (Control) Order, 1985 to the extent of taking the sample of Single Super Phosphate and kept it in thick gauged polythene bag which is in accordance with the aforesaid provision. It was further submitted that author of analytical chemist report has not been examined in the matter but officials of the department were examined. It was also submitted that definition of word 'fertiliser' was incorporated by Notification dated 29.03.1957 while exercising power under sub-clause XI of clause (a) of Section 2 of the Essential Commodities Act, 1955 (10 of 1955). It was further contended that under Section 3 of the Essential Commodities Act, 1955, the Fertiliser (Control) Order, 1985 was introduced. Schedule to the Order, 1985 item No.7 relates to Single Super Phosphate which was introduced on 11.3.1988 i.e. much prior to the date of obtaining sample relating to Single Super Phosphate on 9.10.1997 and 10.10.1997 in respective cases. Therefore, the appellant's contention that 'fertiliser' was incorporated for the first time in the year 2006 may not hold good and present matter is distinguishable with reference to cited decision.

6.) Heard the learned counsel for the parties.

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7.) Perusal of the records, it is evident that there is a compliance to Rule 1 (e) and Schedule-II of the Fertiliser (Control) Order, 1985 insofar as storage of sample in a thick gauged polythene bag. “Fertiliser item” was included way back on 29.03.1957 by means of a Notification while exercising power under sub-clause XI of Clause (a) of Section 2 of the Essential Commodities Act, 1955 read with the Fertiliser (Control) Order, 1985 read with the Notification dated 11.3.1988 (item No.7) which is suffice to say that 'fertiliser' was included by means of a Notification and order in terms of the Essential Commodities Act provisions. For the first time 'fertiliser' is incorporated by means of Essential Commodities (Amendment) Act, 2006. Whereas inclusion of 'fertiliser' was in vogue from 29.03.1957 till 2006 was in force by means of a Notification and order which are in accordance with the Essential Commodities Act, 1955. Therefore, appellant's contention that 'fertiliser' has been included for the first time in the year 2006 by means of amendment of Act do not hold good. The other contention of the appellant which is not disputed by the learned counsel for the State, namely, non-examination of author of analytical chemist report. Unless report of analytical chemist is examined and cross-examined, any reliance on the analytical chemist report would vitiate further proceedings. In this regard, Supreme Court in the case of ***S.C. Girotra Vs. United Commercial Bank (UCO Bank) and others*** reported in ***1995 Supp (3) SCC 212*** in para 5 held that author of the document is required to be examined and cross-examined failing which value of the document cannot be taken into consideration. Only on the score that non-examination of author of analytical chemist report sentencing the appellant would be liable to be set aside. The other contentions of the appellant relating to status of

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the appellant like appointing him as Chief Production Officer which has not been proved by the competent authority and question of taking any action against the appellant insofar as sub-standard production of Single Super Phosphate with M/s Munak Chemicals Limited may not be necessary for deciding the present appeal having regard to the fact that sentence is set aside on the score that non-examination of analytical chemist. Appellant is acquitted of the charges. Bail bonds and surety bonds furnished by the appellant stand discharged.

8.) Appeals stand allowed.

(P.B. BAJANTHRI)
JUDGE

September 18, 2018.
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Whether speaking/reasoned:- Yes / No

Whether Reportable:- Yes / No.

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