

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

CRR-1093-2001

Date of decision:- 4.4.2018

A.S. Parmar

...Petitioner

Versus

State of Punjab

...Respondent

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

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

Mr.Ramandeep Sandhu, Sr.D.A.G., Punjab.

H.S. MADAAN, J.

By way of filing the present revision petition, petitioner/accused - Amrik Singh Parmar has challenged notice of accusation under Section 7 read with Section 12-AA of the Essential Commodities Act served upon him by Special Judge, Sangrur as well as order dated 8.6.2001 passed in that regard. The revisionist prays that the revision petition be accepted, the notice of accusation served upon him as well as order dated 8.6.2001 be set aside and he be discharged.

Briefly stated facts of the case are that concern Indian Farmers Fertilizer Cooperative Limited, Kandla (for short IFFCO) has been engaged in manufacturing and selling of Dia-ammonium 18:46 and petitioner was in its employment but he has since retired from service; that on 15.10.1990, a sample of Dia-ammonium 18:46 fertilizer was drawn by Agriculture Department from the premises of M/s Iffco Kissan

Farmers Service Centre, Sangrur, a dealer of IFFCO, which was sent to Fertilizer Quality Control Laboratory, Ludhiana and as per report dated 20.11.1990 received therefrom, the sample was not found according to specifications; that respondent No.2 informed the company about the sample having been found to be sub-standard, however, without considering the reply filed by the manufacturing company he cancelled the dealer's registration certificate (licence); that such dealer had filed an appeal before Director Agriculture, Punjab, Chandigarh, who vide his order dated 8.4.1991 allowed the appeal and directed restoration of licence; that in that order, Director Agriculture, Punjab, Chandigarh while interpreting the provisions of Fertilizer Control Order, 1985 observed that the sample clearly came within permissible limits of the schedule; nevertheless respondent No.2 pursued the matter with the police and got registered an FIR No.112 dated 13.5.1991 with Police Station City, Sangrur against the dealer as well as against the present petitioner being employee of manufacturing company; that the police had filed challan dated 1.2.1992 in the Court of Special Judge, Sangrur; that on writ petition having been filed, the proceedings in the FIR were struck down; that statement of complainant Chief Agricultural Officer, Sangrur was recorded by the Court on 23.11.2000, in which he stated that at the time of taking sample, the same was well within permissible limits and that the order passed by the Director Agriculture, Punjab, Chandigarh was correct, however, learned Judge, dismissed the application for discharge and served notice of accusation upon the petitioner/accused.

According to the petitioner, the fertilizer was manufactured

and supplied by the company and not by the petitioner in his individual capacity and no punishment could be inflicted upon the petitioner for the said reason. According to the petitioner, he had been nominated as 'responsible person' in terms of Clause 24 of the Control Order; that if any person is nominated by the company then it is the duty of the concerned department to first verify that the concerned person has actual control on the quality of the product produced or not; that in case of petitioner, admittedly there is no evidence showing approval granted by the Central Government as required under the clause; that as per allegations in the FIR also, there is nothing to suggest that the petitioner was Incharge and responsible for conduct of overall business of the company. Therefore the entire proceedings are liable to be quashed. Several contentions have been raised to put forward a plea of innocence by the petitioner.

Notice of the petition was issued to respondent – State, which put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The operative part of the impugned order passed by learned Special Judge, Sangrur is as under:

The other ground taken by the accused, which is also adopted during the course of arguments by the other accused Amrik Singh, was that the deficiency found in the sample is within the permissible tolerance.. For this accused have relied upon item – i(d) which relates to NP fertilizers under the Control Order, and the contents of the nitrozen in DAP

should be minimum 18% whereas in the sample taken in this case, it was 17.78 and the variation was .22 whereas the permissible tolerance is 0.5. To this extent the contention of the accused has force but there is no force in the other contention raised by them. The minimum quantity of phosphoric pentoxide (P2O5) is 46% whereas it is found 45.06% and the variation was 0.94 whereas the permissible tolerance is 0.5 as reported in the report of the Analytical Chemist (Incharge) Fertilizer Quality Control Laboratory, Punjab, Ludhiana, in his report. The accused has referred to part-B of the Schedule (I) which prescribes the tolerance limit in plant nutrients from various fertilizers. According to item-3, the percentage of the variation for each of N&P contents is 0.5 units and in the remarks column, it is mentioned that this percentage is the tolerance limit for individual nutrients, subject to maximum of 2.5 per cent for all combined nutrients. The interpretation which the accused have put, in support of their contention, is that the total variation for tolerance limit is less than 2.5% in this case, but I do not agree to this contention, because when the tolerance limit for each of N&P contents is 0.5 units, the variation of more than 0.5 units for each nutrient would make the commodity sub-standard and this not to be calculated by making sum total of the variation for each of these constituents as the accused have tried to do their

written submission in the application of Dault Ram. However, it is contended by the accused that the Director, Agriculture, Punjab has allowed the appeal and the order of cancellation of the Licence of IFFCO has not been set aside. That cannot give any advantage to the accused, because any opinion of the Director Agriculture on the interpretation of the Statutory Rules cannot bind the Courts. The order of the Director, Agriculture has also not been placed on the record. Another ground was that the manufacturer has not been impleaded, but that is not a point on which the accused can take advantage because there is the provision like Sec.319 Cr.P.C. under which this power can be exercised by the Court after some evidence is recorded. However, there are the documents on record of the file collected during the investigation that IFFCO, the manufacturer, has nominated accused Amrik Singh to be a person responsible for the company for complying with the Fertilizer Control Order, 1985, which appointment is before the date on which the samples were taken. Prima facie case is made out against the accused for the offence punishable under Section 7 read with Section 12-AA of the Essential Commodities Act and accused Amrik Singh is liable under the abovesaid provision read with Section 10 of the Essential Commodities Act.

The reasons for the Court coming to the conclusion that

notice of accusation should be served upon the accused were mainly that any opinion of the Director Agriculture, Punjab, Chandigarh on the interpretation of the Statutory Rules cannot bind the Courts. But then Special Judge, Sangrur lost sight of the fact the interpretation so given by the Director Agriculture, Punjab, Chandigarh, who is higher in rank from Chief Agriculture Officer; complainant in this case deserves to be given due weightage and importance being opinion of an expert. The opinion given that the variation found in the sample was within permissible limits cannot be brushed aside lightly. As far as item – i(d) relating to NP fertilizers under the Control Order, the Nitrozen containing in DAP should be at least 18% whereas in the sample drawn in this case it was found to be 17.78% having variation of .22 against permissible tolerance of 0.5%. In the impugned order the Special Judge, Sangrur has admitted that this contention of accused has force. The other contention was that the minimum quantity of phosphoric pentoxide (P2O5) is 46% whereas it was found to be 45.06% with variation of 0.94% whereas permissible tolerance is 0.5% as reported in report of Analytical Chemist (Incharge), Fertilizer Quality Control Laboratory, Punjab, Ludhiana. As regards part-B of Schedule (I) prescribing tolerance limit in plant nutrients from various fertilizers, in terms of item-3, the percentage of the variation for each of N&P contents is 0.5 units and in the remarks column, it is mentioned that this percentage is the tolerance limit for individual nutrients, subject to maximum of 2.5 per cent for all combined nutrients. Learned trial Court has observed that when the tolerance limit for each of N&P contents is 0.5 units, the variation of more than 0.5 units for each

nutrient would make the commodity sub-standard and this not to be calculated by making sum total of the variation for each of these constituents as the accused have tried to do in their written submission. The order passed by the Director Agriculture, Punjab allowing the appeal and setting aside the order of cancellation of licence of IFFCO goes a long way in showing that the sample drawn was not sub-standard. The trial Court has also observed that order of Director Agriculture, Punjab, Chandigarh had not been placed on the record. Such order has been made available now, and its genuineness has been admitted by Agriculture Development Officer, Sangrur who had appeared in this case on 26.3.2018, which goes a long way in causing a jolt to the case of complainant. Learned Special Judge, Sangrur had found the petitioner to be liable since according to him, he had been nominated by IFFCO, the manufacturer to be a person responsible for the company for complying with the Fertilizer Control Order, 1985.

Learned counsel for the petitioner has referred to order passed by a Co-ordinate Bench of this Court in Criminal Revision No.2339 of 2004 challenging order vide which request of petitioner for discharge had been declined and charge had been framed against the petitioner for the offence under Section 7 of Essential Commodities Act. This authority had almost the similar facts. The operative part of the order is as under:

“As per prosecution version, Agricultural Officer, Sangrur had drawn a sample of DAP 18:46% fertilizer from the godown of Punjab State Warehousing Corporation. The

sample had been sent to the Fertilizer quality Control Laboratory, Ludhiana, which was opined to be non-standard and then after completion of necessary formalities, the complaint was lodged for contravention of clause 19(1)(a) of the Fertilizer (Control) Order, 1985, punishable under Section 7 of the Essential Commodities Act, 1955.

Counsel for the petitioners has argued that variation permissible was 2.5% whereas according to the report, variation of Nitrogen was found to be 0.36 and in Phosphate 0.91 and, as such, variation was within the prescribed limit. Copy Annexure P-5 is that of the standard in which tolerance limit in plant nutrient for various fertilizers had been given. For diammonium phosphate it is 0.5 for individual nutrients subject to the maximum of 2.5 per cent for all combined nutrients.

As per report, the variation in the nutrient contents was 0.36 whereas permissible limit 0.5. As far as phosphate was concerned, it was 0.91 against permissible tolerance limit of 0.5. If both the variations are combined, then it will be 1.27 and will be within prescribed variation of 2.5 in all combined nutrients. When this was the position, then present petitioners could not be prosecuted.

As per the order passed by the Director Agriculture, Punjab, Chandigarh the variations found were within permissible limits, therefore,

accused could not be accuse of manufacture/storage of sub-standard fertilizer. The order passed for serving notice of accusation upon the petitioner and notice of accusation actually served upon him are not sustainable and this revision petition is liable to be accepted.”

Similar is the position in the case in hand.

Therefore, the criminal revision petition is allowed and the impugned notice of accusation and order directing serving of such notice upon the petitioner are set aside, resultantly the petitioner stands discharged.

4.4.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No