

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

**1. CRA-S-765-SB-2004**

National Fertilizer Ltd. Naya Nangal and another

..... Appellants

Versus

State of Punjab

..... Respondent

**2. CRA-S-766-SB-2004**

Lalit Kumar Gupta and another

.....Appellants

Versus

State of Punjab

.....Respondent

**Date of decision :-9.2.2018**

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

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

Mr.Rakeshinder Singh Sidhu, AAG, Punjab.

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**H.S. MADAAN, J.**

Learned State counsel has filed affidavit of Sh.Manpreet Singh Dhillon, PPS, Deputy Superintendent of Police, Sub Division, Phagwara, District Kapurthala on behalf of respondent – State along with Annexures R-1/T and R-2/T, which is taken on record. As per the affidavit, appellant No.1 Lalit Kumar of CRA-S-766-SB-2004 had expired on 1.9.2005.

In view of the above, proceedings against **appellant No.1 Lalit Kumar of CRA-S-766-SB-2004 stand abated.**

Vide this judgment I propose to dispose of two appeals i.e. **CRA-S-765-SB-2004** filed by appellants National Fertilizer Ltd. Naya Nangal and another and **CRA-S-766-SB-2004** filed by appellants Lalit Kumar Gupta and another, all of them being accused in Criminal Complaint under Sections 7 and 12 AA of Essential Commodities Act, 1955(“the Act” – for short) read with Clause 19 of Fertilizer Control Order, 1985 and vide judgment/order passed by learned Special Judge, Kapurthala, they were convicted for the offence under Section 7 of the Act and sentenced as follows:-

| Name of accused                                                                                                                                                  | Under Section | Sentence                                                                                                                                                                                      |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Lalit Kumar Gupta, Avinash Gupta and B.S. Minhas                                                                                                                 | 7 of E.C. Act | To undergo rigorous imprisonment for 2 years and to pay a fine of Rs.5,000/- each and in default of payment of fine to further undergo rigorous imprisonment for a period of two months each. |
| M/s National Fertilizer Ltd. Nangal (Punjab), Nangal Unit, Naya Nangal, the manufacturing company through K.V. Srinivasan, an authorized representative thereof. | 7 of E.C. Act | To pay a fine of Rs.5,000/-.                                                                                                                                                                  |

The accused-convicts who were appellants before this Court prayed that the appeals be accepted and the impugned judgment of their conviction be set aside and they be acquitted of the charges framed against them.

Briefly stated facts of the case are that on 25.7.1996, Sh.Baldev Singh, Fertilizer Inspector accompanied by Sh.Ajit Singh, Agricultural Officer, Phagwara carried out inspection of premises of M/s Lalit Kumar Gupta and sons, Grain Market, Phagwara, District Kapurthala; that at that time Lalit

Kumar Gupta, proprietor of the said concern was present in the premises; that after disclosing his identity, Sh.Baldev Singh gave a notice to Lalit Kumar Gupta expressing his intention of taking sample of fertilizer for the purpose of analysis; that Lalit Kumar Gupta received the notice under his signatures and seal of the firm having impressions LKG; that thereafter stock register of the firm was checked in respect of CAN 25% N (Kissan Khad) manufactured by M/s National Fertilizer Ltd., Nangal (Punjab) Nangal Unit, Naya Nangal, which revealed that 60 bags of 50 kgs. each of fertilizer were stocked there; that Sh.Baldev Singh signed the stock register at page No.53; that the stock of the fertilizer had been received by the concern vide bill dated 30.5.1996; that Sh.Baldev Singh prepared the sampling detail, in duplicate, in Form-J in presence of Sh.Lalit Kumar Gupta, proprietor of the said concern; that it was signed by Lalit Kumar Gupta and Ajit Singh, Agricultural Officer, Phagwara; that one copy of Form-J was handed over to Lalit Kumar Gupta; that thereafter Sh.Baldev Singh, Fertilizer Inspector, selected two bags at random bearing Nos.1 and 30 and he inserted sampling probe into those bags from one corner to another diagonally, thereby collecting fertilizer on clean and dry polythene sheet; that the fertilizer so spread on clean and dry polythene sheet was mixed properly and divided into four equal parts out of which two diagonally opposite parts were discarded, whereas the remaining parts were mixed together forming a composite sample of 1.500 kgs., which was again spread on the dry, clean and thick polythene sheet and divided into three equal parts and then each of the sample parts, was put into dry, clean and thick polythene sheet bags and were tied, to make the same air tight; that thereafter, four detailed description as specified in Form-J and three Form K, under the relevant provisions of the order were filled in duly signed by Lalit Kumar Gupta and Ajit Singh, Agricultural Officer on Form-J; that the detailed description in Form-J along with polythene bags, were put into cloth bags and sealed with the seal having impressions

FI/II/3/KPT; that Lalit Kumar Gupta also put his seal bearing impressions LKG; that the Fertilizer Inspector, put serial No.1/ADO(E) on the cloth bags as identification of sample; that one sample portion was given to Lalit Kumar Gupta and his signatures on Form-J were obtained; that Sh.Baldev Singh brought the sample to the office of the Chief Agricultural Officer; that Sh.Baldev Singh received the sample on behalf of Chief Agricultural Officer making entry in the sample register; that he allotted code No.1/ADO(E) and sent one portion of the sample along with Form K to the Fertilizer Quality Control Laboratory, Punjab, Faridkot vide letter dated 26.7.1996 through Sohan Singh, Beldar, who deposited the same and Form K on the same day getting receipt on the office copy from the Laboratory, which he deposited with Sh.Baldev Singh.

The Analytical Chemist (Incharge), Fertilizer Quality Control Laboratory, Punjab, Faridkot had sent the analysis report to the effect that sample was not as per specifications, therefore, was non-standard, in that way Lalit Kumar Gupta, Proprietor of M/s Lalit Kumar Gupta & sons, Grain Market, Phagwara, District Kapurthala being sole proprietor of the said concern was responsible for the conduct of his business in the capacity of dealer and that fertilizer had been supplied by M/s Gupta Kissan Khad Agency, New Grain Market, Phagwara, District Kapurthala, a sole proprietorship concern of Avinash Gupta, was responsible to it for the conduct of its business; that the fertilizer was manufactured by M/s National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal and B.S. Minhas, Manager Production of the said company was incharge of and responsible to it, was responsible for the conduct of its business at the relevant time.

Notices were issued to all the accused above mentioned to which they submitted replies. However, finding that those accused by selling, distributing and manufacturing the non-standard fertilizer had contravened the provisions of Clause 19 of the Fertilizer Control Order, 1985 (hereinafter

referred to as the Order only) committing offence under Section 7 of the Act, a criminal complaint was filed in the Court of Special Judge, Kapurthala.

On presentation of the complaint, Special Judge, Kapurthala observing that there were sufficient grounds to summon the accused punishable under Section 7 of the Act accordingly summoned them. The accused put in appearance and were supplied with copies of complaint and other documents relied upon therein. Notice of accusation for the offence under Section 7 of the Act was served upon the accused, to which, they pleaded not guilty and claimed trial.

During the course of its evidence, the prosecution examined Sh.Baldev Singh, Agricultural Officer, notified as Fertilizer Inspector as PW1, Sohan Singh, Beldar in the office of Chief Agricultural Officer, Kapurthala as PW2, who had deposited the sample in the laboratory of Analytical Chemist at Faridkot, Jaswant Singh, who was posted as Chief Agricultural Officer at the relevant time as PW3, who had filed the complaint and Ajit Singh, Seed Testing Officer, at the relevant time, Agricultural Officer, Phagwara as PW4, who accompanied Baldev Singh, Fertilizer Inspector at the time of sampling.

With that the evidence of the prosecution/complainant stood closed.

Statements of accused were recorded under Section 313 Cr.P.C., in which all the incriminating circumstances appearing against such accused were put to them but they denied the allegations contending that they were innocent and had been falsely involved in this case.

In addition to above, accused Lalit Kumar Gupta, Proprietor of M/s Lalit Kumar & Sons, Grain Market, Phagwara, District Kapurthala took up a plea that the bags from the sample were taken, were properly stored as per the Fertilizer Control Order and the place in which the fertilizer bags were kept, was fit to store the fertilizer bags; that there was no moisture in the room and no tampering had been done with the fertilizer bags; that bags were factory stitched

and were kept in the same condition as those were supplied to him by M/s Gupta Kissan Khad Agency; that the sample was not properly drawn as per the Fertilizer Control Order and the procedure for taking the same was explained to him; that nothing in writing was given to him at the time of taking of the sample and when sample was taken, it was a rainy day.

Accused Avinash Gupta, sole proprietor of M/s Gupta Kissan Khad Agency, Phagwara, Distributor took up a plea that the fertilizer bags from which the sample was taken were directly supplied by M/s N.F.L. Nangal and he had just done billing in the transaction; that consignment of the fertilizer was not received by him but was directly supplied by the manufacturer to the dealer through him.

Accused M/s National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal, manufacturing company through K.V. Srinivasan, nominated and responsible officer took up a plea that the entire fertilizer manufactured at Naya Nangal, was got tested from the Quality Control Laboratory maintained in the factory at every step; that the only material which was reported to be according to the specifications, laid down in the Fertilizer Control Order was supplied to the dealers; that fertilizer in question is highly hygro-scopic in nature and it absorbs lot of moisture from the atmosphere, therefore it was required to be analyzed on dry basis after evaporating excess moisture and that in the instant case, neither the sampling was done in accordance with the mandatory provisions of the Order, nor the analysis was made in accordance with that order, therefore, no offence has been committed by M/s NFL, Nangal, the manufacturer.

Accused B.S. Minhas, from M/s NFL, Nangal while pleading innocence further took up a plea that at the time of manufacture of the lot of CAN fertilizer from which the sample was allegedly drawn from the premises

of M/s Lalit Kumar Gupta & Sons, Grain Market, Phagwara, District Kapurthala on 25.7.1996, he was not working as a Production Manager, as such in no way responsible for the conduct of the business of M/s NFL regarding the manufacture of CAN fertilizer; that he has been wrongly named as a nominee under Clause 24 of the Fertilizer Control Order; that actually for proper nomination under Clause 24 of the Order, it is mandatory to have the prior concurrence of the Central Government as well as that of the Officer, who has to be nominated under that Clause; that no such nomination has ever been made in his name, prior to the manufacture and supply of the lot from which the sample was allegedly drawn; that he was not the person responsible for the conduct of the day to day business of M/s NFL Naya Nangal and that show cause notice has been wrongly addressed to him to which he had submitted reply refuting the factum of his nomination.

In their defence evidence, accused examined Sita Ram Sharma as DW1, S.K. Bhat as DW2 and Har Kamal Pritpal Singh as DW3 besides tendering documents Ex.DG, Ex.DH, Ex.DJ, Ex.DK.

With that the defence evidence of the accused stood concluded.

The trial Court formulated following questions for determination:-

- i. *Whether on 25.7.1996 Baldev Singh, Fertilizer Inspector, alongwith Ajit Singh, Agricultural Officer, inspected the premises of M/s Lalit Kumar Gupta, Grain Market, & Sons Grain Market, Phagwara, Distt. Kapurthala, a proprietorship concern, in the presence of Lalit Kumar Gupta, proprietor thereof, and took the sample of Calcium ammonium Nitrate 25% N Kissan Khad, lying there, and on analysis, the same was found to be non-standard/not according to the specifications and Lalit Kumar Gupta,*

*being the dealer of the non-standard fertilizer, aforesaid, contravened the provisions of Clause 19 of the Order ibid and thereby committed the offence, punishable under Section 7 of the Act ?*

- ii. *Whether Avinash Gupta, proprietor of M/s Gupta Kissan Khad Agency, distributor of the said fertilizer, by distributing the non-standard fertilizer, to the dealer, violated the provisions of Clause 19 of the Order and thereby committed the offence, punishable under Section 7 of the Act ibid?*
- iii. *Whether the fertilizer, aforesaid, which was non-standard, was manufactured by M/s National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal, and supplied by it, to M/s Gupta Kissan Khad Agency, New Grain Market, Phagwara, Distt. Kapurthala, a proprietorship concern, of which Avinash Gupta, was the sole proprietor, and thereby contravened the provisions of Clause 19 of the Order and committed the offence, punishable under Section 7 of the Act?*
- iv. *Whether B.S. Minhas, Manager Production of M/s National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal, was the person incharge of and responsible to the said company, for the conduct of its business, regarding the production of the aforesaid non-standard fertilizer, and thereby contravened the provisions of Clause 19 of the Order and committed the offence, punishable under Section 7 of the Act?*

v. *Whether the prosecution has proved its case against the accused, beyond a reasonable doubt?*

After hearing arguments, the trial Court came to the conclusion that the prosecution had proved its case against Lalit Kumar Gupta (accused No.2), Sole Proprietor of M/s Lalit Kumar Gupta and sons, Grain Market, Phagwara, District Kapurthala (accused No.1), Avinash Gupta (accused No.4), sole Proprietor of M/s Gupta Kissan Khad Agency, Phagwara, District Kapurthala (accused No.3), M/s Natiional Fertilizer Ltd.. Naya Nangal (accused No.5) through nominated and responsible officer of the company K.V. Srinivasan and B.S. Minhas (accused No.6) for the offence under Section 7 of the Act and they were convicted and sentenced as mentioned above, which left them aggrieved and they have filed the present appeals.

However, it was observed that no criminal liability could be fastened upon M/s Lalit Kumar Gupta & Sons, Grain Market, Phagwara, District Kapurthala (accused No.1) and M/s Gupta Kissan Khad Agency, New Grain Market, Phagwara, District Kapurthala (accused No.3) on account of the reasoning that those were not separate legal entities. Both the concerns were acquitted of the notice served upon them.

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

Learned counsel for the appellants has argued that PW1 Baldev Singh, Agriculture Officer, Kapurthala had taken sample of CAN on 25.7.1996 but he did not state that the probe used was neat and clean and no copy of the letter/direction had been proved on record; that as far as directions issued by PW3 Jaswant Singh, Chief Agriculture Officer to him to send the sample to the lab through PW2; that since fertilizer in question is highly hygro-scopic in nature and it absorbs a lot of moisture from the atmosphere, therefore it was

required to be analyzed on dry basis after evaporating excess moisture, which he did not do, therefore analysis was not proper. He has further argued that PW3 Jaswant Singh had admitted in his cross-examination that if CAN fertilizer absorbs moisture from the atmosphere, plant nutrient ratio shall decrease. He had further admitted that the dealer had requested for retesting. PW4 admitted that the bags were factory stitched and properly stored and furthermore no independent witness was joined making the recovery doubtful.

However, learned State counsel has pointed out that all these facts have been dealt with by the learned trial Court in detail in a convincing manner and no other view in the matter is possible.

After hearing the rival contentions, I find that the trial Court in para No.14 of the judgment has discussed the oral as well as documentary evidence adduced by the prosecution/complainant in support of its case. In para No.15, the contention of learned counsel for the accused that the Fertilizer Inspector at the time of taking the sample did not comply with the mandatory provisions of the relevant Rules of the Schedule, annexed to the Order and that the manner, in which, the sample was taken, was not mentioned in Forms J and K, the fertilizer of all the bags, selected at random was not taken out and properly mixed and as such no representative sample was taken, has been discussed along with the authorities referred by learned counsel, coming to the conclusion that such submissions were without merit. The ratio of authorities have been cited observing that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of and that the negligence of those to whom public duties are entrusted cannot by statutory interpretation, be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute.

As regards taking of composite/representative sample, it has been observed in para No.16 that the mere fact, that the bags which were selected at random, were not taken out of the stock and the entire fertilizer, contained therein was not spread on the polythene sheet, does not mean that the composite sample was not taken and since the probe was inserted into the bags, selected at random, diagonally, from one corner to the other as is proved from the evidence on record, it can be said that the fertilizer taken out, from the said bags, in this manner represented the entire lot in these bags.

As regards, non-mentioning of the details of sampling in Forms J and K, it has been observed that again the provisions of the rules were not violated since there is no column provided in form J for recording the detailed procedure. It has been observed that in the complaint, the detailed procedure according to which the sample was drawn, from the fertilizer, from the premises of M/s Lalit Kumar Gupta & Sons, Grain Market, Phagwara, District Kapurthala has been mentioned. The case law on the point has been discussed in detail. Learned trial Court has come to the conclusion that the facts mentioned in forms J and K along with report, Ex.PH and allegations contained in the complaint in its opinion were sufficient to constitute the offence punishable under Section 7 of the Act and non-mention of the procedure, according to which, the sample was drawn from the fertilizer cannot prove fatal to the case of the prosecution.

In para No.18, the plea taken by learned defence counsel that sample was not taken in air tight glass container as per rules has been discussed but then referring to the case law, it has been observed that suitable container as defined in Rule 14 of the Prevention of Food Adulteration Rules, 1955 cannot be confined in a straitjacket and that suitable containers have been prescribed to prevent leakage/evaporation and in case of dry substance to prevent moisture. It

has been further observed that no violation of mandatory provisions had taken place.

Coming to the report submitted by Analytical Chemist, it has been submitted that in the fertilizer in question, the moisture was 3.40% and there was variation of 2.40%; that though the analysis was required to be made on dry basis, as per objection raised by learned defence counsel, who had further contended that it was the duty of the Analyst to ensure that the moisture from the sample was evaporated etc., the trial Court has observed that the Analyst is not required to mention all details of the manner, in which, the analysis was made and in case there was any doubt to the report of Analytical Chemist, then he could be summoned and cross-examined on the point. It was further observed that once the report was given by Analytical Chemist showing that sample was non-standard, it is to be presumed that he analyzed the samples in accordance with the provisions of law and that the objection so raised by learned defence counsel was on the basis of mere hypothesis.

As regards the objection that the sample was taken from the bags, which were factory stitched, that has been discussed in para No.20 of the judgment passed by the trial Court, which for ready reference is reproduced as under:

*It was next submitted by the counsel for the accused No.1 to 4 that the sample was taken from the bags, which were factory stitched. He further submitted that since, the sample was taken from the factory stitched bags, which were properly stored in the same condition, in which, the same were received, from the manufacturing company, the dealer and the distributor, did not violate the provisions of Clause 19 of the Order, nor did they commit any offence, punishable under Section 7 of the Act. He also relied upon the cross-examination of Baldev Singh, PW1, when he stated that all the bags, lying in the*

*stock of the dealer, were factory stitched. In case, the bags were properly stored in the same condition, in which, the same were, supplied by the manufacturing company, then how the moisture contents in the sample, analyzed by the Laboratory, were higher than the prescribed tolerance limit. The report, Ex.PH, of the Laboratory, therefore, belies the statement of Baldev Singh, PW1, in this regard. Baldev Singh, PW1, in his examination-in-chief, in clear-cut terms, stated that the sample was taken, strictly, in accordance with the provisions of the Rules and Regulations. It may be stated here, that Clause 19 of the Order, does not distinguish between the dealer, distributor and the manufacturer. The dealer, who exhibits the non-standard fertilizer for sale, the distributor, who distributes the said non-standard fertilizer and the manufacturer, who manufactures the said non-standard fertilizer, contravenes the provisions of Clause 19 of the Order *ibid*, and thereby commit the offence, punishable under Section 7 of the Act. Had it been the intention of the Legislature that if the sample was taken from the factory stitched bags and the same was found to be non-standard, the dealer and the distributor, would not be held liable, it would have been provided in Clause 19 of the Order *ibid*, in so many words. By making no such exception in Clause 19 of the Order *ibid*, the intention of the Legislature, was to make all the aforesaid three categories of accused, liable for the offence, punishable under Section 7 of the Act. In this view of the matter, the submission of the counsel for the accused, being without merit, must fail, and the same stands rejected.*

Another contention of learned defence counsel has been discussed in para No.21 of the judgment, which is reproduced as under:

*The Counsel for the accused, also placed reliance on Arun Kumar and other Vs. State of Punjab 1995(3) RCR 231, to contend that there was no*

*culpable mental state of accused, and, as such, no offence was committed by them. No doubt, the sample was taken from the factory stitched bags. However, since, the moisture contents were found higher than the prescribed tolerance limit, in the sample, as per the report, Ex.PH, of the Laboratory, it could be said that the same were not properly stored or kept at a proper place. The report, Ex.PH, of the Laboratory, over-rides the ocular evidence of Baldev Singh, PW1, the Fertilizer Inspector, when he stated that the bags were properly stored. Under these circumstances, it could not be said that there was no culpable mental state of the accused, and, as such, they did not commit an offence, punishable under Section 7 of the Act. The facts of the aforesaid authority, clearly go to show that the moisture contents, were not higher than the prescribed tolerance limits, in the sample. The facts of the aforesaid authority, being distinguishable, from the facts of the present case, no help can be drawn therefrom, by the counsel for the accused.*

The matter regarding Lalit Kumar Gupta requesting Chief Agricultural Officer that sample which was lying in the Agricultural Department be sent for re-analysis has been discussed, however, the request was declined causing prejudice to Lalit Kumar Gupta and that aspect has been dealt in detail in para No.22 of the judgment. The law on the subject laid down by this Court that a Court in the interest of justice can order for re-analysis though it was not a right of the accused to get re-analysis conducted in every case in the absence of statutory provision to the effect has been taken into view observing that rejection of the application of Lalit Kumar Gupta for getting the second portion of the sample re-analyzed from a greater expert was in accordance with the provisions of the rules and regulations in the absence of specific provisions to the contrary.

As regards submission that B.S.Minhas (accused No.6) was neither incharge nor responsible to M/s National Fertilizer Ltd. Nangal (Punjab), Nangal Unit, Naya Nangal, manufacturing company (accused No.5), that aspect has been dealt with in para No.24, which for ready reference is reproduced as under:

*It was next submitted by the counsel for the accused for B.S. Minhas, accused No.6, that he was neither incharge of nor responsible to M/s National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal, manufacturing company, accused No.5, to conduct its business, at the relevant time. He further submitted that he was also not appointed as a person responsible for the compliance with the provisions of the Order, in consultation with the Central Govt. as per Clause 24 of the said Order. He further submitted that under these circumstances, no criminal liability, could be fastened upon him. Reliance was also placed on M.V. Javall Vs. Mahajan Borewall & Co. & Ors., 1997(8) Judgments Today, Supreme Court 386 . The submission of the counsel for accused No.6, in this regard, does not appear to be correct. It was M/s National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal, which brought about the situation upon which the Chief Agricultural Officer, acted. It is evident from the show cause notice dated 16.1.997, copy whereof is Ex.PN, that the same was issued to the General Manager, M/s NFL. Nangal, Distt. Ropar. Reply to this notice, was filed by the Deputy General Manager, O.N. Chhabra, which is Ex.PO, dated 14.2.1997. It was received in the office of the Chief Agricultural Officer and the endorsement, in that regard, is Ex.PO/1. Another show cause notice No.1845 dated 26.3.1997, was issued to Pritpal Singh, Manager (Production), M/s NFL Naya Nangal, Distt. Ropar, by the Chief Agricultural Officer-cum- Registering Authority, under the Fertilizer Control Order, 1985, reply to that notice, was sent by O.N. Chhabra, Dy. General Manager, of the said company, which is Ex.PP dated 7.4.1997. In this*

*letter, it was clarified by the National Fertilizer Ltd. that B.S. Minhas, Manager (Production), had been nominated to represent National Fertilizer Limited, Naya Nangal, under Clause 24 of the F.C.O. vide Corporate Office letter No.NFL/Tech/200/119 dated 14.12.1995, addressed to the Director (Fertilizer), Ministry of Agriculture and Co-operation, Krishi Bhawan, New Delhi. It was in pursuance of this information, that show cause notice, copy whereof, is Ex.PQ dated 3.9.1997, was issued to B.S. Minhas, Manager (Production), National Fertilizer Ltd., Naya Nangal (Punjab). Reply to this notice, was sent by B.S. Minhas, Manager (Production), dated 9.9.1997. There is another reply dated 9.9.1997, sent by B.S. Minhas, Manager (Production). In none of these replies, it was stated by B.S. Minhas, Manager (Production), that he was not the Production Manager of the manufacturing company. It was also not stated by him that he was not appointed as responsible officer for the compliance of the provisions of Clause 24 of the Order ibid. Not only this, Ex.DE, is the copy of the memorandum dated 29.6.96, issued by the National Fertilizers Ltd., Nangal Unit (Personnel Department). According to this letter, B.S. Minhas, Addl. Manager (Production) was promoted as Manager (Production) by upgrading his own post with effect from 1.7.1996. Ex.DF, is a copy of an Office Order, dated 2.7.97, issued by the Addl. General Manager (Incharge) of National Fertilizers Ltd. According to this letter, B.S. Minhas, Manager, Unit, Group of Plants, was promoted to look-after the entire Production Department as Manager (Production) and also to report to Addl. General Manager (Works). These letters clearly go to prove that it was B.S. Minhas, who was the Manager (Production) and the person incharge of and responsible to the company, for the conduct of its business. The company was manufacturing the fertilizer, aforesaid, at the relevant time. The Manager (Production), could certainly be said to be over-all incharge of the quality etc. of the said fertilizer. Ex.DW3/A, is the letter, without date, signed by B.S. Minhas, Manager (Production), N.F.L.*

*He stated in this letter that Pritpal Singh, Manager (Production), at the relevant time was the over-all responsible officer, in this case. However, this letter has hardly got any significance, in view of the documentary evidence, referred to above. Ex.DG, Ex.DH, Ex.DJ and Ex.DK are the photocopies of four documents, which were admitted by the Addl. Public Prosecutor, for the State, and thus tendered into evidence vide Ex.DG, dated 27.10.1995, the Company was directed to appoint an Officer, not below the rank of the Managing Director/Chief Production Officer, in consultation with the Central Govt. Ex.DH, is the copy of the Note of the Company, vide which the name of Naiter Singh, Chief Production Manager, was forwarded to the State Govt. for approval of the Central Govt. However, the name of the Company, in this Note/letter, is not written. It is not written therein, as to of which Company, Naiter Singh was the Chief Production Manager. Under these circumstances, no help from this document, can be drawn. Ex.DJ, is a copy of the letter, written by the Chief Inspector Fertilizer, Directorate of Agriculture, Punjab to M/s S.F.L. Hoshiarpur. This document also does not relate to NFL (National Fertilizers Limited), accused No.5. As such, no help can be drawn by the counsel for the accused, from this document. Ex.DK, is the copy of another letter, which was addressed to SFL Industries Ltd. This document does not relate to National Fertilizer Ltd., Nangal (Punjab), Nangal Unit, Naya Nangal, accused No.5, and, as such, no help, therefrom can also be drawn by the counsel for the accused. Even if, it is assumed that B.S.Minhas was not appointed as the Officer responsible for the compliance of the provisions of Clause 24 of the Order in consultation with Central Govt. it does not make his appointment as illegal and invalid. Consultation between the Company and the Central Govt. was an internal matter, but so far as the criminal liability of the person appointed as responsible Officer, was concerned, the same could not be diluted, in any manner, on account of non-consultation. Had the manufacturing*

*Company, not conveyed to the Chief Agricultural Officer, that B.S. Minhas, Manager (Production) was appointed as an Officer for the compliance of the provisions of Clause 24 of the Order, the matter would have been different. The Chief Agricultural Officer, believed the representations, made by the manufacturing company, regarding the appointment of a responsible Officer, and now B.S. Minhas, Manager (Production), cannot turn round and say that he was not responsible for the conduct of the business of the said company. It is held that B.S. Minhas, was the person incharge of and responsible to the Company, at the relevant time, for the conduct of its business, and, as such, was rightly arrayed as an accused.*

The defence evidence has been discussed in para No.25, which is as under:

*Sita Ram Sharma, DW1, Assistant Manager, Production, brought the record of the Company and stated that there is Laboratory in the Company, which analyses the samples, drawn every hour during the course of manufacture. He also proved, Ex.DA, Ex.DB, and Ex.DC, copies of those analysis reports, made on 29.5.1996, 30.5.1996 and 31.5.1996. He further stated that if in the Laboratory, plant nutrients, are found to be deficient, in any lot, the material is re-cycled in the factory and only then it is sent to the dealer. He, however, during the course of his examination-in-chief, admitted that vide Ex.DD, photocopy of the invoice, the material was sent to the dealer, on 30.5.1996. During the course of his cross-examination, he admitted that no Govt. Supervisor had any control over the Analyst and the Laboratory, in the factory. The statement of Sita Ram Sharma, DW1, does not help the case of the accused, in any manner. The moisture contents, as per report, Ex.PH, of the Analytical Chemist was found to be higher than the prescribed tolerance limits.*

*Had the fertilizer been manufactured, in accordance with the Rules and Regulations, the question of moisture contents, being found to be higher in the sample, would not have arisen. In this view of this matter, the statement of Sita Ram Sharma, DW1, cannot be acted upon. While discussing the matter, as to whether, B.S. Minhas, was the person incharge of and responsible to the company for the conduct of its business, the documents, proved by S.K. Bhatt, DW2, have also been discussed. It has been held above that B.S. Minhas, was the person responsible for the conduct of the business of the company. The oral evidence of S.K. Bhatt, DW2, against the documentary evidence, referred to above, regarding the appointment of B.S. Minhas, as person responsible for the compliance of the provisions of Clause 24 of the Order, has hardly got any significance, and cannot be acted upon. The defence evidence is rejected, for the reasons, recorded above.*

As regards, non-joining of independent witness, it is a matter of common knowledge that now-a-days people generally hesitate to come forward to appear as a witness for the prosecution against the criminals apprehending that such criminals may not turn towards them and cause harm to them or their near relatives. Then there are hassles of going to the police station in connection with investigation and to attend the hearings in the Court, therefore, people mostly avoid joining the investigation and offering themselves as witnesses.

In absence of any motive, the statements of official witnesses are to be taken at par with those of the independent witnesses.

Though learned counsel for the appellant has tried to make out a case that accused B.S. Minhas was promoted as Manager (Production) on 29.6.1996 vide Ex.DE but he was not given any charge and the entire production was under Pritpal Singh and further B.S. Minhas, vide order dated 2.6.1997 (Ex.DF) and from the defence evidence adduced, it is proved that

Pritpal Singh, Manager (Production) was the overall Production Manager of the unit. All these contentions do not sound convincing when it is considered that in Ex.PP sent by NFL, which is dated 7.4.1997, Sh.O.N. Chhabra, Dy. General Manager had informed the Chief Agricultural Officer-cum-Registering Authority Under FSO 1985, Kapurthala that B.S. Minhas, Manager (Production), National Fertilizers Ltd., NayaNangal (Punjab) had been nominated to represent National Fertilizers Limited, Naya Nanga, under Clause No.24 of F.C.O. vide their corporate office letter No.NFL/Tech/200/119 dated 14.12.1995 addressed to Director (Fertilizer), Ministry of Agriculture and Co-operation, Krishi Bhawan, New Delhi, photocopy of which had been attached.

It being so, now it is not open to such accused to say that he was not the person responsible for quality of the production and rather it was Sh.Pritpal Singh.

After hearing learned counsel for the parties, I am of the considered view that the judgment of conviction passed by the Court below is well reasoned one, based upon proper appraisal and appreciation of evidence and correct interpretation of law. There is no illegality or infirmity therein.

However, as regards sentence part is concerned, it is contended by learned counsel for the appellants that appellant B.S. Minhas is aged about 80 years and Avinash Gupta is more than 65 years of age and they do not keep good health; that the incident relates to the year 1996 and more than 21 years have elapsed since then and that taking a lenient view benefit of probation be granted to them. In support of his contention, he has referred to citation **Satinder Singh Versus Punjab State, 2003(4) RCR(Criminal) 616** by a Co-ordinate Bench of this Court wherein benefit of probation was given to an accused convicted under Section 7 of the Act, when sample of fertilizer was found to be substandard.

Keeping in view the facts and circumstances of the case especially that by Sub standard fertilizer, the farmers were put to loss, a disadvantage affecting the economy of the country, no ground for grant of probation to such appellants/convicts is made out. However, considering the fact that the recovery is of the year 1996 and more than 21 years have elapsed since then, I am of the view that ends of justice would be squarely met if the sentence of appellants accused B.S. Minhas (appellant No.2 in CRA-S-765-SB-2004) and Avinash Gupta (appellant No.2 in CRA-S-766-SB-2004) is reduced to one year, whereas the part of conviction relating to payment of fine is kept as intact.

Ordered accordingly.

With such modification in sentence part, the present appeals stand disposed of.

Appellants B.S. Minhas (appellant No.2 in CRA-S-765-SB-2004) and Avinash Gupta (appellant No.2 in CRA-S-766-SB-2004) are stated to be on bail granted to them by this Court while suspending their sentence. Their bails are cancelled. Chief Judicial Magistrate, Kapurthala is directed to issue arrest warrant to get them arrested so as to make them undergo the remaining sentence.

Necessary intimation be sent to the quarter concerned.

**( H.S. MADAAN )**  
**JUDGE**

**9.2.2018**

**Brij**

1. Whether reportable? **No / Yes**
2. Whether speaking / reasoned? **No / Yes**