

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

**CRA-S-2383-SB-2003 (O&M)
Date of decision: 30.07.2018**

M/s Varinder Agro Chemicals Limited & another

.....Appellants

versus

State of Haryana

.....Respondent

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Dinesh Goyal, Advocate for appellant no.1
Mr.R.S.Cheema, Senior Advocate with
Mr.Gurkamal Singh Kandhola, Advocate for appellant No.2
Mr.Anil Mehta, DAG Haryana

- 1. Whether Reporters of Local newspapers may be allowed to see the judgment ?*
- 2. To be referred to the Reporters or not ?*
- 3. Whether the judgment should be reported in the Digest?*

Kuldip Singh, J.

Present appeal has been filed against judgment and order dated 13.12.2003, passed by the Presiding Officer, Special Court, Kurukshetra, vide which, the appellants M/s Virender Agro Chemical Ltd. and Raj Kumar Thakral, responsible person of M/s Virender Agro Chemical Ltd. were convicted under Clause 19(1)(a) of the Fertiliser (Control) Order 1985 (in short, 'Control Order') read with Section 7 of the Essential Commodities Act, 1955 (in short, 'the Act') and sentenced as under:-

<i>Sr. No.</i>	<i>Name of the convict-accused</i>	<i>Section</i>	<i>Sentence</i>
1	<i>M/s Virender Agro Chemical Ltd. 85-Industrial Area 'A' Ludhiana (Pb.) being the manufacturer</i>	<i>U/s 19(1)(a) of the Fertilizer (Control) Order 1985 read with Section 7 of the Essential Commodities Act, 1955</i>	<i>As this manufacturing unit cannot be given the substantive sentence of imprisonment, no order in that regard is being passed. However, the Unit would pay a fine of Rs.25,000/-</i>
2	<i>Raj Kumar Thakral, Vice President (Works) (as representative and responsible officer for Manufacturing Process for maintenance and control of quality in his individual capacity.</i>	<i>U/s 19(1)(a) of the Fertilizer (Control) Order 1985 read with Section 7 of the Essential Commodities Act, 1955</i>	<i>Rigorous Imprisonment for 3 (three) years and a fine of Rs.5,000/-. In default further rigorous imprisonment for 3 months.</i>

Facts of the case are that the appellant-accused M/s Varinder Agro Chemicals Limited, Ludhiana is the manufacturer of fertilizer and Raj Kumar Thakral is its responsible person. On 17.7.1997, Sh.S.K.Poonia, QCI (functioning as Fertilizer Inspector), visited the premises of M/s Laxmi Fertilizers, New Grain Market, Kurukshetra. At that time Ram Rattan, Salesman of said firm was found looking after the functioning of the said firm. Complainant took a sample of Single Super Phosphate 16% fertilizer (in short SSP) for the purpose of analysis. There were 103 bags of 50 kgs each in the stock. The fertilizer was manufactured by the appellant M/s Varinder Agro Chemicals Limited and was sold to the said firm M/s Laxmi Fertilizers, New Grain Market, Kurukshetra. Three bags out of 103 bags were selected as per procedure, by turning these bags 4-5 times up and down. Sample was drawn in compliance with provisions of Clause 28(1) (b) of Control Order and procedure laid down in schedule-II thereof. 1 ½ kgs of fertilizer was then separated as sample with the sampling probe which was clear and dry. The retrieved fertilizer from the bags through the probe then was thoroughly mixed on level clear hard surface by turning it

upside and down 2-3 times. The fertilizer was then divided in three equal parts. Each part of the sample was kept in neat, clean, dry, thick gauged polythene bags. These bags were put into cloth bags. Detailed descriptions thereof was mentioned in Form J, which was signed by the complainant and Rattan Singh, salesman. These bags then sealed as per procedure by the complainant. The entire process was undertaken in the presence of Rattan Singh, salesman. One part of the sample was given to Rattan Singh, salesman, whereas remaining two parts of the sample were handed over to the DDA, Kurukshetra, through Ram Sarup Clerk (PW2).

On 21.7.1997, DDA Kurukshetra sent one part of the sample to the State Quality Control Laboratory (Fertilizer) Karnal in terms of the provisions of Clause 30(1) of the Control Order through Surajmal, Fieldman (PW3) for analysis. On analysis in the laboratory, sample was found to be non standard. Copy of the report was sent to M/s Laxmi Fertilizers, New Grain Market, Kurukshetra on 29.7.1997, as per provisions of Clause 30(1) of Control Order. Copy of the report was also sent to manufacturer on 29.8.1997. The complaint was thereafter filed by Sh.S.K.Poonia, Quality Control Inspector, acting as Fertilizer Inspector.

On appearance, the accused was served with the notice under Clause 19(1)(a) of Control Order read with Section 7 of the Act.

In support of its case, the prosecution examined Dr.K.S.Kadyan, Assistant Soil Conservation Officer, Hisar (PW1), who stated that the sample was analysed by the analysis under his direct supervision and was found to be non-standard. Water soluble P₂O₅ was found deficient to the extent of 9.19% as it was found to be 9.81% instead of 16%. In cross-examination, he revealed that he has got the four analysts.

The sample was received by Steno Dharam Pal in his presence, who immediately handed over the sample to him. The sample was analysed on 18.9.1997 and on the same day, result was sent to DDA Kurukshetra. The sample was allotted to his analyst on the day of analysis. He further stated that the sample can decompose due to the effect of moisture but in this case, moisture was tested and it was found to be 4% within the permissible limits of 5%.

PW2 Ram Sarup, Clerk, office of DDA Kurukshetra appeared and stated that on 19.7.1997, Sushil Kumar Poonia, QCI deposited one sample of fertilizer with him with the seal intact. He sent the sample to Karnal Laboratory on 21.7.1997 through Suraj Mal Fieldman. On return, said Suraj Mal, Fieldman handed over the receipt him.

PW3 Suraj Mal, Fieldman proved the receipt of the sample and delivery of the same in the laboratory.

PW4 Sushil Kumar Poonia, Qualify Control Inspector stated that he is authorized by Government of Haryana vide notification Ex.PC to launch the prosecution. He is also notified as Fertilizer Inspector vide notification dated 24/25.3.1987. He was also declared Fertilizer Inspector vide notification dated 26.2.1986. He further reiterated the averments made in the complaint.

Thereafter, the prosecution closed the evidence.

When examined under Section 313 Cr.P.C., the accused Raj Kumar Thakral denied the entire evidence led against him. He stated that he is innocent. M/s Varinder Agro Chemicals Limited never used to manufacture non-standard fertilizer. The said company is no more in existence since 1998. He is no more an employee of the said company.

There had been many persons who have been appointed as responsible persons by the company from time to time. The fertilizer in question was not manufactured or sold by Virender Agro Chemicals Limited to the dealers. He was not appointed person at the time of alleged sale of the fertilizer in question nor the said fertilizer was ever sold by him to other accused dealer. In the market there are many imitation of the original popular brands. Hence, in this case, the bags of fertilizer in question being imitation of the original cannot be ruled out. Moreover, he was not the incharge nor responsible person of the company for the conduct of the business of the company. Every time when the sale was allegedly made the alleged sale was not to his knowledge. He further took the plea that the sample was not drawn by the Fertilizer Inspector as per rules prescribed under Control Order. He further stated that his company had very sophisticated plant and expert engineers to handle the process of production who used to exercise due diligence to adhere to the requirements of the Control Order.

Accused did not led evidence in defence.

After hearing the prosecution and the accused and going through the evidence, learned Presiding Officer, Special Court, Kurukshetra, while acquitting the dealer M/s Laxmi Fertilizers, New Grain Market, Kurukshetra and its salesman Ashok Gupta, convicted and sentenced the manufacturer and responsible of the manufacturer as stated above.

I have heard, learned counsel for the parties and also carefully gone through the file.

Learned counsel for the appellant no.2, namely, Raj Kumar

Thakral, has argued that Raj Kumar Thakral is not proved to be responsible officer for the purpose of Clause 24 of the Control Order. Clause 24 of the Control Order is reproduced as under:-

24. Manufacturers/Importers/Pool handling agencies to appoint officers responsible with compliance of the Order.-

Every manufacturing organization, importer and pool handling agency shall appoint in that organization and in consultation with the Central Government, 16 an officer, who shall be responsible for compliance with the provisions of this Order.

Learned counsel for the appellant no.2 has further argued that in this case to prove that appellant no.2 was the responsible person, only a photostate of the power of attorney Mark B was proved. The said authority was not even formally exhibited. Said power of attorney from M/s Varinder Agro Chemicals Limited authorized him to enforce quality control measures at the manufacturing stage and to attend all issues connected with the provisions of Clause 19 and 24 of the Control Order. The said power of attorney does not appoint him responsible person as per requirement of Clause 24 of Control Order.

Learned counsel for the appellant no.2 has also argued that the appointment is to be made in consultation with the Central Government. However, there is nothing in Mark B to show that any consultation with the Central Government was made and that the Central Government has accepted Raj Kumar Thakral to be responsible person under Clause 24 of Control Order.

Similarly, Mark C is a letter written by the Deputy Director, Agriculture, Kaithal, intimating that Raj Kumar Thakral, Vice President

(works) Varinder Agro Chemicals, Barnala is the responsible person. The said letter was also not proved in accordance with law and also does not meet the requirements of Clause 24 of Control Order.

I am of the view that since a criminal liability is sought to be fastened, therefore, all the requirements of Clause 24 of Control Order have to be met with and it has to be proved that Raj Kumar Thakral was appointed as responsible person for the purpose of the said Control Order, after consultation with the Central Government. Such requirements are not met in the present case. Therefore, Raj Kumar Thakral cannot be convicted being the responsible person of M/s Varinder Agro Chemicals Limited.

Learned counsel for the appellant no.1 has argued that lot of fake fertilizer is available in the market bearing various brands. Therefore, the bags of fertilizer, from which the sample was taken, cannot be connected with appellant no.1 firm. The complainant must prove the original bills to show that the said bags from which the sample was taken were in fact purchased from the manufacturer and kept in the same condition. To prove purchase, only one bill Mark A has been produced, which is a photocopy. The said bill was not proved in accordance with law. Therefore, bags are not connected with appellant no.1 firm.

Further contention has been raised that the lot number of the bags is not mentioned in the memo, vide which the samples were drawn. Therefore, even the bags from which samples were taken are not connected with the bill Mark A wherein bags having lot No.150597, 10097 are mentioned to have been supplied, allegedly by M/s Varinder Agro Chemicals Limited on 16.5.1997.

A perusal of file shows that indeed, in the memo as well as in

the complaint, the lot number of the bags, from which samples were drawn, is not mentioned. Therefore, the bags from which the samples were drawn are not connected with the manufacturer.

Learned counsel for the appellant no.1 has further argued that as per statement of Dr.K.S.Kadyan, there are four analyst and sample in the present case was handed over to one of the analyst. Dr.K.S.Kadyan states that it was analyzed under his direct supervision. However, the concerned analyst was not examined.

I am of the view that since the samples were analyzed under the direct supervision of Dr.K.S.Kadyan, therefore, examination of the concerned analyst was not material.

Learned counsel for the appellant no.1 further argued that the complainant in this case Sh.S.K.Poonia, Quality Control Inspector, was not competent to draw the sample. Learned counsel has further referred to the notification produced by him Ex.PC, vide which he was appointed by the Government, under which all the Quality Control Inspectors were authorized to file complaints with regard to violation of provisions of Control Order. The said notification dated 25.3.1987 does not authorize the Quality Control Inspector to draw the samples as well.

Learned counsel for the appellant no.1 has relied upon the decision of Special Judge under the Essential Commodities Act 1985, wherein the complaint was filed by Sh.S.K.Poonia and it was held that Sh.S.K.Poonia was not authorized to draw the sample. He was only authorized to file the complaint. Learned counsel has also produced a copy of the judgment passed by a Single Bench of this Court vide which the judgment of Special Judge, Kurukshetra was upheld in Criminal Appeal-S-

1676-SB-2010, decided on 5.11.2014, titled as State of Haryana vs. M/s Chaudhary Fertiliser Radaur Road, Ladwa and others, while observing that a similar appeal bearing Crl.Appeal No.728-MA of 2009, filed by the State was dismissed by a Coordinate Bench on 11.2.2010.

Learned counsel for the appellant no.1 has also referred to Clause 27 of Control Order, under which Fertilizer Inspector is appointed. The powers of Fertilizer Inspectors are given in Clause 28 of the Control Order, which includes power to draw sample of any fertilizer in accordance with the procedure of drawal of samples laid down in Schedule II.

Learned counsel for the appellant no.1 has also referred to the definition of Inspector under Clause 2(l) of the Control Order under which Inspector means Inspector of Fertilizers appointed under Clause 27.

In view of the matter, it has to be held that Sh.S.K.Poonia was not authorized to draw the sample. He was only competent to file a complaint.

Learned counsel for the appellant no.1 has further argued that in this case, there was variation of 6.19. 0.1% variation is permissible. Therefore, variation is 6.09. It is contended that in this case, sample was drawn on 17.7.1997. There was a delay of five days in sending the sample. If during this period, sample catches moisture, SSP contents which are water soluble P2 O5, are likely to vary. It has been further contended that the sample was not drawn as per Schedule II of Control Order.

I am of the view that since, it is not proved that the complainant was authorized to draw the sample and the bags from which samples were drawn are not connected with the accused company, therefore, this Court need not to go into further details. It is also not proved that Raj Kumar Thakral was duly appointed under Clause 24 of the Control Order to be a

responsible person in consultation with the Central Government.

As a result of the foregoing discussion, the present appeal is allowed. Impugned judgment and order dated 13.12.2003, passed by the Presiding Officer, Special Court, Kurukshetra, convicting and sentencing the accused-appellants are set aside. Appellants are acquitted of the charges framed against them. Their bail bonds and surety bonds are discharged. Fine deposited by the accused-appellants be refunded to them.

30.07.2018

gk

(Kuldip Singh)
Judge

Whether speaking/ reasoned:

Yes

Whether Reportable:

No