

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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

(1) CRM-M-33168-2011(O&M)

The Lodhiwala CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(2) CRM-M-8948-2012(O&M)

The Talwandi Khurd CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(3) CRM-M-11862-2012(O&M)

The Bija CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(4) CRM-M-13511-2012(O&M)

The Kalal CASS Ltd.

...Petitioner

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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Versus

State of Punjab and others

...Respondents

(5) CRM-M-1403-2013((O&M)

The Binjal CASS Ltd.

...Petitioner

Versus

State of Punjab

...Respondent

(6) CRM-M-3643-2013(O&M)

The Chakohi CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(7) CRM-M-3707-2013(O&M)

The Pabbian CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(8) CRR-330-2013(O&M)

The Talwandi Khurd CASS Ltd.

...Petitioner

Versus

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

-3-

State of Punjab and others

...Respondents

(9)

CRR-347-2013(O&M)

The Bija CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(10)

CRR-367-2013(O&M)

The Kalal Majra CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

(11)

CRR-382-2013(O&M)

The Lodhiwala CASS Ltd.

...Petitioner

Versus

State of Punjab and others

...Respondents

Date of Decision:-5.10.2018

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

Present: Mr.Arun Chandra, Advocate
for the petitioner in CRM-M-1403-2013.

Mr.Pardeep Singh Mirpur, Advocate

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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for the petitioner(s) in remaining cases.

Ms.Samina Dhir, DAG, Punjab.

Mr.Tarun Seth, Advocate for
Mr.Sumit Jain, Advocate
for the respondent (MARKFED).

H.S. MADAAN, J.

By this order, I shall dispose of CRM-M-33168-2011(O&M),
CRM-M-8948-2012(O&M), CRM-M-11862-2012(O&M), CRM-M-
13511-2012(O&M), CRM-M-1403-2013((O&M), CRM-M-3643-
2013(O&M), CRM-M-3707-2013(O&M), CRR-330-2013(O&M), CRR-
347-2013(O&M), CRR-367-2013(O&M) and CRR-382-2013(O&M) filed
by petitioners.

CRM-M-33168-2011(O&M), CRM-M-8948-2012(O&M),
CRM-M-11862-2012(O&M), CRM-M-13511-2012(O&M), CRM-M-
1403-2013((O&M), CRM-M-3643-2013(O&M), CRM-M-3707-
2013(O&M) for quashing of complaints, summoning order and
subsequent proceedings arising therefrom pending in the trial Court have
been filed by petitioner(s) – accused No.1 - society.

Whereas CRR-330-2013(O&M), CRR-347-2013(O&M),
CRR-367-2013(O&M) and CRR-382-2013(O&M) have been filed by the
petitioner(s) against the impugned order dated 30.11.2012 passed by

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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learned trial Court dismissing their applications for discharge.

Briefly stated, the common facts of the cases, which are necessary for the decision of the petitions in hand are that the State through Chief Agricultural Officer, Ludhiana had brought the complaints under Section 19(1) of the Fertilizer (Control) Order 1985 (hereinafter referred to as the “*Control Order*”) punishable under Section 7 of the Essential Commodities Act, 1955 (hereinafter referred to as “*the Act*”) on the allegations that accused No.1 are Coop. Agriculture Service Societies dealing with the distribution of fertilizer; that M/s Oswal – accused No.2 is/was manufacturing unit for manufacturing Oswal DAP N18% P46% and responsible for the manufacturing/selling/stocking and distributing and offering for sale in Punjab State; that Vishnu Parsad Muddana – accused No.3 was the person responsible under Clause 24 of Control Order for the conduct of business and quality of produce of manufacturer on behalf of Oswal Chemical & Fertilizers; that the Oswal DAP was supplied through Ludhiana MARKFED Branch, Jagraon (Ludhiana) directly from the Rake Point of the company to this society; that the primary agricultural coop. Societies had been exempted from obtaining the licenses of fertilizers, as such accused No.1 societies had been responsible for the distribution of low quality of DAP fertilizer; that

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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accused Nos.2 and 3 are responsible for manufacturing/selling/stocking and distributing sub standard fertilizer of Oswal DAP under the Control Order, in that way, accused had violated the provisions of Clause 19(1)(a) of the Control Order since the samples of Oswal DAP N18% P46% (Oswal Bumper), which had been drawn by the competent officer as per rules and were then sent to Chief Agriculture Officer, Ludhiana, had been found not according to specifications of the Control Order as per analysis reports.

After receipt of result of the samples, show causes notices were served to accused No.1 – societies, copies of analysis reports of the samples had been sent to that societies. Show cause notices were served upon MARKFED Branch, Jagraon and District Manager MARKFED, Ludhiana. Similarly, show cause notice along with copies of the analysis reports were sent to accused Nos. 2and 3. Replies were received, which were not found to be satisfactory, therefore, complaints were filed in the Court.

On presentation of the complaints by the complainant in the Court, finding good and sufficient grounds to proceed further against the accused for committing offence under Section 7 of the Act, accused were ordered to be summoned. The personal appearance of the complainant

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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was exempted till further orders and he was permitted to appear through Additional Public Prosecutor.

Only accused No.1 had put in appearance in the Court, whereas the case kept being adjourned for procuring service of remaining accused time to time. In the meanwhile, the present petitions were filed, notice of the same were issued to the respondent, who put in appearance through counsel.

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

During pendency of the present petitions, while hearing arguments on 2.9.2015, a Co-ordinate Bench of this Court had observed as under:

During the course of hearing, it has transpired that sample of fertilizer in the present case was taken from the machine stitched bags in the presence of petitioner salesman of the society on 29.10.2001 by selecting 5 bags out of this lot material at random, as pointed out in para 7 of the reply filed by Dr. Rajinder Singh Pandher, Chief Agricultural Officer, Ludhiana. In para 6 of the impugned complaint dated 28.2.2004 (Annexure P-1) filed by the Chief Agricultural

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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Officer, Ludhiana, it is alleged that a lot of 430 bags of the fertilizer in question was supplied to the society of the petitioner through M/s Markfed, Jagraon. However, Markfed is admittedly not the accused in the present complaint. Vide order dated 24.8.2007 passed by the learned Chief Judicial Magistrate, Ludhiana, warrant of arrest were issued against accused nos.2 and 3-manufacturer through the concerned Superintendent of Police. When accused nos.2 and 3 were not arrested, concerned warrant of arrest of accused nos.2 and 3 (manufacturer) alongwith a letter was sent to the concerned Superintendent of Police vide order dated 15.1.2008 passed by the learned Chief Judicial Magistrate, Ludhiana. Learned counsel for the parties are ad-idem that manufacturer, in any case, would be the main accused.

In view of the above, Senior Superintendent of Police, Ludhiana (now Commissioner of Police, Ludhiana) is directed to file his own affidavit on or before the next date of hearing alongwith action taken report and specifying as to what kind of steps were taken to arrest accused nos.2 and 3, in compliance of the above said order passed by the learned

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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Chief Judicial Magistrate, Ludhiana. He shall also explain that if the accused could not be arrested, what were the reasons for not arresting the accused during all this long period of more than 7 years.

Learned counsel for the State, on instructions from Sh.Gurdeep Singh, Agricultural Development Officer, O/o Chief Agricultural Officer, Ludhiana, has pointed out that as per the official communication dated 20.12.2001 issued by the Branch Manager, Markfed, Jagraon, to the Chief Agricultural Officer, Ludhiana fertilizer used to be purchased by the state level purchase committee comprising of Director, Agricultural, Punjab, Secretary, Cooperation, Punjab, Registrar, Cooperative Societies, Punjab and Managing Director, Markfed, Chandigarh.

In view of the above, Managing Director, Markfed, Chandigarh, is directed to file his own affidavit on or before the next date of hearing, explaining as to how much profit was earned by the Markfed in purchasing the fertilizer from the manufacturer and selling it forward to different cooperative societies like the present petitioner-society in the

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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State of Punjab. He shall also explain as to what kind of measures used to be adopted by Markfed to ensure quality control of the fertilizer used to be purchased by Markfed from the manufacturer, for the purpose of onward supply, through sale, to different cooperative societies in the State of Punjab.

Chief Agricultural Officer, Ludhiana-complainant is directed to file his own affidavit explaining that once as per the averments taken in para 6 of the complaint itself, the fertilizer in question was supplied to the petitioner-society through Markfed and the sample thereof was taken from the machine stitched bags by selecting 5 bags out of this lot material at random, why the Markfed was not made one of the accused through its Managing Director or the concerned officer.

An affidavit of Managing Director, MARKFED was filed in the Court in response thereto. The relevant part of his affidavit reads as under:

2. Markfed is an Apex Cooperative Society. Markfed has

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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been assigned to arrange/procurement of fertilizers as per the policy of the State Government through the Department of Cooperation for the smooth distribution and availability of the fertilizer well in time for the farmers of the State. Markfed also ensured purchase of stocks for distribution of the fertilizer and the fertilizers are being arranged by making the advance payment to the suppliers and interest on the same is borne by Markfed. The establishment cost of the especially dedicated work force is also borne by Markfed.

3. That for Rabi season in the year 2001-02 Global Tenders on behalf of State level Fertilizer Purchase Committee were invited by Markfed for the purchase of DAP Fertilizer. Copy of the Proceedings of the Purchase Committee is annexed “A-1” and copy of the Balance sheet is annexed as “A-2”.

4. That on the recommendation of the State level committee Purchase Order was placed for the purchase of DAP from lowest tender i.e. M/s Oswal Chemicals and Fertilizer Limited at the agreed price with the certain terms & conditions.

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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5. That as regards, the profit earned from the Fertilizer activity concerned, no separate balance sheet was prepared with regard to the fertilizer supplied by M/s Oswal Chemicals and Fertilizer Limited. However as per the balance sheet for the year 2001-02 an amount of ₹.18.12 crores was earned as profit from the entire activity of supply of fertilizer by Markfed in the State of Punjab which comprises of DAP, Urea, Zinc, MOP and NPK fertilizer for both Rabi and Kharif Seasons. That the profit shown in the balance sheet is exclusive of the interest incurred on the handling of the fertilizer activity and establishment charges.

6. That as per the clause No.8 of the tender's terms & conditions the specifications of the fertilizers were prescribed in Annexure “A-1” of the terms & conditions. It is further incorporated in clause No.8(D) that the manufacturer/seller shall be responsible for the quality of DAP stocks in terms of specifications laid in fertilizer control order for the intact bags till their disposal by the agency/buyer Annexure “A-3”.

7. That the State level fertilizer Purchase Committee recommended the purchase of the fertilizer with the

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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stipulations that the supplier will supply fresh stock of good quality in sound and standard packing having uniform granules of one colour besides as per the “Fertilizer Control Order” specifications.

Interestingly, the MARKFED has not been impleaded as an accused by the complainant. Accused No.1 – societies had just been distributing the fertilizer, supplied to it by the MARKFED, manufactured by respondents No.2 and 3 in stitched bags, then how could they be penalized for alleged poor quality of the fertilizer. No valid reasoning in that regard has been given in the complaints and similarly learned Magistrate seems to have passed the orders with regard to respondent No.1 in a mechanical manner without due application of mind. The fact has to be taken into consideration that petitioners – societies are not engaged in sale of the fertilizer but its distribution among the members of the society and furthermore the samples had been drawn from sealed bags as supplied by the manufacturer through MARKFED. Therefore, no criminal liability could be fastened upon accused No.1 in absence of any act or omission on their parts, which might have resulted in deterioration of quality of fertilizer. The liability of MARKFED was much more than that of petitioner No.1 since it was MARKFED, which had procured the

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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fertilizer, supplying it to petitioner societies, meant for distribution among their members and no lapse or fault on the part of the petitioners – societies comes out to be there, which might have attracted prima facie commission of any such offence on their part.

Learned counsel for the petitioners has referred to order passed by a Co-ordinate Bench of this Court in CRM-M-4582 of 2008 titled **Manoj Grover Versus State of Punjab**, wherein referring to authority **State of Punjab Versus Jagdish Chand and another, 2004(2) RCR(Criminal)478**, in which it has been observed as under:

The sample of cattle feed was found to be sub-standard. The same was taken from a stitched bag. This Court was pleased to observe that the accused, who was a dealer, cannot be held guilty. Further, in the case of **Arun Kumar and others Vs. State of Punjab 1995(3) RCR(Criminal) 231**, the accused purchased bags fertilizer from National Fertilizer Limited and kept the same in original form without any tampering. Sample from bags found to be sub-standard. This Court held that it could not be said that accused had any culpable mental state for committing offence and for manufacturing defect,

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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accused cannot be held responsible.

Learned counsel for the petitioners has further referred to order passed by a Co-ordinate Bench of this Court in CRM-M-16232 of 2010 titled *Kulwinder Singh Versus State of Punjab* decided on 9.11.2010 wherein observing that there are no allegations that stitched bags were tampered with; that the non-compliance of the sub-standard, if at all, can only be attributed to the manufacturer and not to the petitioner, who had admittedly purchased/got supplied the bags from distributor firm.

In the present case also, there are no allegations of tampering of the bags.

Learned counsel for the petitioners has further referred to authority Guno Majra Co-op. Agri. Service Society Ltd. Versus State of Punjab, 1994(1) R.R.R. 721, wherein it has been observed that the purpose of agricultural societies is to collectively purchase fertilizer from the market and to distribute the same among its members and there is no sale or transfer of property involved between the society and its members; further primary societies are also functioning as agents of their members and the principal society to distribute the fertilizer; that there is no element of sale and transfer involved and the societies are not required to

CRM-M-33168-2011(O&M);
CRM-M-8948-2012(O&M);
CRM-M-11862-2012(O&M);
CRM-M-13511-2012(O&M);
CRM-M-1403-2013((O&M);
CRM-M-3643-2013(O&M);
CRM-M-3707-2013(O&M);
CRR-330-2013(O&M);
CRR-347-2013(O&M);
CRR-367-2013(O&M); and
CRR-382-2013(O&M);

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be registered under the Fertilizers (Control) Order, 1985.

Therefore, I find that it shall be in the fitness of things, proper, appropriate and to prevent abuse of process of law, if CRM-M-33168-2011(O&M), CRM-M-8948-2012(O&M), CRM-M-11862-2012(O&M), CRM-M-13511-2012(O&M), CRM-M-1403-2013((O&M), CRM-M-3643-2013(O&M), CRM-M-3707-2013(O&M) are allowed.

Ordered accordingly. The complaints along with summoning orders and ancillary proceedings qua the petitioners are quashed in all these petitions.

Since CRM-M-33168-2011(O&M), CRM-M-8948-2012(O&M), CRM-M-11862-2012(O&M), CRM-M-13511-2012(O&M), CRM-M-1403-2013((O&M), CRM-M-3643-2013(O&M), CRM-M-3707-2013(O&M) stand allowed, CRR-330-2013(O&M), CRR-347-2013(O&M), CRR-367-2013(O&M) and CRR-382-2013(O&M) have become infructuous and are disposed of accordingly.

5.10.2018
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No