

**Bail Slip**

The Petitioner/Accused was directed to be released on Bail made in CRL MP(MD).No.1/2011 in CRL RC(MD).No.303/2011 dated 19.11.2011 on the file of the Madurai Bench of Madras High Court.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**DATED : 10.07.2019****CORAM:****THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN****CRL RC (MD)No.303 of 2011**

1.M/s.Ranadey Micro Nutrients (P) Ltd,
683/P/A, Industrial Estates,
Angol Belgam, Karnataka State,
Rep.by its Authorised Agent,
Pramod Dynaswar Sawant.

2.Pramod Dynaswar Sawant,
Executive Officer/Authorised Agent,
Ranadey Micro Nutrients (P) Ltd.,
1-A, Kondhwa Krura, Pune,
Maharashtra State.

... Petitioners / Appellants/
Accused 1 & 2

Vs.

Inspector of Fertilizer /
Agricultural Officer,
(Quality Control), Periyakulam.

...Respondent / Respondent/
Complainant

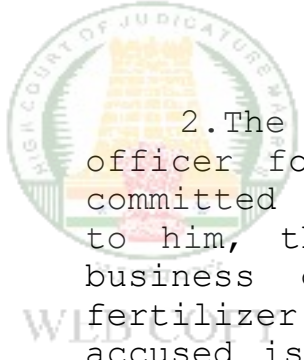
Prayer : This Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, to set aside the judgment dated 08.12.2010 in C.A No.39 of 2008 passed by the learned Additional District and Sessions Judge (Fast Track Court), Periyakulam which confirmed the conviction and sentence judgment passed by the Judicial Magistrate, Theni in C.C No.796 of 2006 dated 04.06.2008 and set aside the same.

For Petitioners : Mr.B.Rajesh Saravanan

For Respondent : Mr.A.Robinson,
Government Advocate (crl.side)

ORDER

The revision petitioners herein were arrayed as accused nos.1 and 2 in C.C No.795 of 2006 on the file of the Judicial Magistrate, Theni. It is a private complaint filed by the respondent herein.

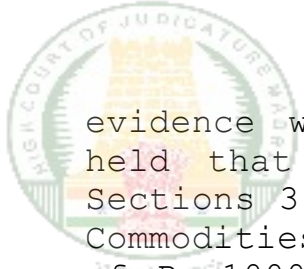


2.The case of the respondent is that he is an authorised officer for making complaint in the Special Court for offences committed under the Fertilizer (Control) Order, 1985. According to him, the first accused is a registered company carrying on business of manufacturing and distributing various types of fertilizer and micro nutrient mixture fertilizer. The second accused is the authorised officer represented the first accused company. The third accused is a authorised wholesale seller of the first accused. The complainant on 06.09.2003 entered the wholesale shop in question that was situated at 140 A, Edamal Street, Theni. At that time, the fourth accused who was working as the office staff/P.Balakrishnaraj was present. The complainant took the samples of micro nutrient fertilizer mixture that was kept for sale which was purchased from the third accused Ranadey Agro Limited, Pollachi which was manufactured by the first accused company.

3.The complainant selected two bags at random and opened the same and poured them on a clean, thick polythene sheet which was spread on the floor. It was thereafter thoroughly mixed by hand and divided into four equal portions. The opposite equal portions were collected and the same was transferred into original container. The balance two equal opposite parts were thoroughly mixed by hand and quartered into 4 equal portions. This procedure was followed until the required quantity of 300 gms was attained. The composite sample thus obtained was spread on clean, hard surface without exposing to direct sunlight mixed thoroughly and divided into three approximately equal portions each having 100gm weight. Each of these sample constituted the test sample and assigned a code number PKM/QCF/71/2003-04. Each test sample was transferred into a thick polythene bag and tied tightly with thread. One sample was given to the dealer/4th accused and signature was obtained in "J" form. Another portion of the sample was handed over to the Assistant Director of Agriculture. The third one was sent to the authorised lab.

4.The result of the sample was received on 27.10.2003 indicating that the sample was non standard. In view of the same, a show cause notice was sent to the fourth accused. Reply was duly received from the accused Accused 1, 3 and 4. According to the complainant, since non standard Micro Nutrient Mixture Fertilizer was manufactured, the accused had contravened the provisions of Clause 19(a)(1)(a)(b) of the Fertilizer Control Order, 1985. Since the offences under Sections 3 r/w.7(1)(a)(ii) and 10 of the Essential Commodities Act were committed, the private complaint in question came to be laid.

5.The complainant entered appearance and contested the charge. On the side of the complainant, as many as 4 witnesses were examined. Exs.P1 to P11 were marked. On the side of the accused, no



evidence was adduced. The learned Judicial Magistrate, Theni held that the accused herein had committed the offence under Sections 3 r/w. Section 7(1)(a)(11) and Section 10 of the Essential Commodities Act. While the first accused was levied with a fine of Rs.1000/-, the second accused was sentenced to undergo three months rigorous imprisonment and levied with fine of Rs.1000/-. Challenging the judgment passed by the trial court, the accused filed CrI.A.No.39 of 2008 before the learned Additional District and Sessions Judge (Fast Track Court), Periyakulam. By judgment dated 08.12.2010, the appeal was dismissed. Challenging the same, this criminal revision case has been filed.

6. Heard the learned counsel on either side.

7. When the matter was taken up for hearing, the learned counsel appearing for the revision petitioner contended that in as much as the procedure laid down for the drawing up the sample was not followed in this case, the revision petitioners are entitled for acquittal. In this regard, he placed reliance on the decision reported in **(2015 (2) MWN CrI.393 (Madras Fertilizers vs. The State of Tamilnadu)**. Per contra, the learned Government Advocate (crl.side) drew my attention to the decision rendered in **(2003) 1 L.W (crl) 426**.

8. I carefully considered the rival contentions. It is true that the learned Judge of this Court in the decision reported in **(2003) 1 L.W (crl) 426** held that the procedure prescribed for drawl of sample is directory and not mandatory and that mere non compliance of the procedure laid down under the Fertilizers (Control) Order, 1985 will not vitiate the prosecution case. But then, as rightly contended by the learned counsel for the petitioners, in **(2003) 1 L.W (crl) 426** there is no reference to an earlier judgment reported in **(2000) (1) MWN (Cr) 199 (Kadarkarai & ors vs. State by Agriculture Officer, Fertilizer Inspector)**.

9. In a later decision made rendered by the Madras High Court in **Criminal Appeal No.239 of 2004 ((2015 (2) MWN CrI.393 (Madras Fertilizers vs. The State of Tamilnadu))**, the aforesaid decision was followed and it was held that the Fertilizers (Control) Order, 1985 is having statutory force and that therefore, the procedure for drawing up of the samples of fertilizers will have to be strictly complied with. It was held that when the statute prescribes a certain procedure, it should be done in that manner and not in any other manner. Therefore, respectfully following the decision rendered in **(2000) (1) MWN (Cr) 199 (Kadarkarai & ors vs. State by Agriculture Officer, Fertilizer Inspector)** as well as the one reported in **2015 (2) MWN CrI.393**, I have to necessarily hold that since the procedure laid down in Fertilizers (Control) Order, 1985 has not been followed, the petitioners deserve to be acquitted.



10. In this view of the matter, the judgments passed by the courts below are set aside. This criminal revision case stands allowed. The bail bond if any executed by the revision petitioner shall stand cancelled. The fine amount if any remitted by the revision petitioner shall be refunded to the accused.

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Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Principal Sessions Judge, Theni.
2. The Chief Judicial Magistrate, Theni.
3. The Additional District and Sessions Judge
(Fast Track Court), Periyakulam.
4. The Judicial Magistrate, Theni.
5. The Inspector of Fertilizer/Agricultural Officer,
(Quality Control), Periyakulam.
6. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to Mr. B. RAJESH SARAVANAN, Advocate (SR-74644[F] dated 11/07/2019)

CRL RC (MD) No. 303 of 2011

10.07.2019

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AE/ (13.08.2019) 4P 8C