

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

**CRA-S-1976-SB-2004 (O&M)
Date of decision: 26.04.2019**

Diwan Chand

....Appellant

Versus

State of Punjab

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Ms. Swati Batra, Advocate (Legal Aid counsel) and
Mr. Ajay Aggarwal, Advocate for
Mr. Denesh Goyal, Advocate
for the appellant.

Mr. M.S. Nagra, AAG, Punjab.

ARVIND SINGH SANGWAN, J. (Oral)

Present appeal has been filed challenging the judgment of conviction dated 23.09.2004, vide which the appellant was held guilty of offence punishable under Section 7(1)(a)(ii) read with Section 10 of the Essential Commodities Act, 1955 (for short 'Act of 1955') and the order of sentence of even date, vide which the appellant was sentenced to undergo R.I. for a period of one year with a fine of Rs.2,000/- and in default of payment of fine, to further undergo R.I. for three months.

Brief facts of the case are that PW5 Kundal Lal, the then Joint Director, Agriculture, Punjab, being Chief Agricultural Officer, Hoshiarpur,

was authorized to institute the complaint under the Act of 1955 as per notification dated 10.07.1991 issued by the Department of Food and Supplies, Govt. of Punjab (Ex.PJ). The fertilizer was declared essential commodity by the Govt. of India vide notification dated 29.03.1957. M/s The Hoshiarpur Cooperative Marketing Society Limited (hereinafter referred to as 'Society') is the licensed dealer vide certificate of dealership Ex.PH issued under Fertilizer Control Order, 1985 (for short 'Control Order, 1985'), which was renewed upto 21.07.1999 vide document Ex.PJ, containing the list of the authorized manufacturing concern, from whom the Society could purchase the fertilizer. Gurmukh Singh, Manager of the Society, who is accused No.1 in this case, had furnished an affidavit Ex.PK to abide by the rules and regulations of the Control Order, 1985 and the Act of 1955 and the same was duly attested by the Notary Public on 05.08.1996. One of the authorized manufacturer is IFFCO, from which the dealer purchased Urea, DAP and NPK fertilizer as per Sr. No.5 of the list Ex.PJ. Vide notification Ex.PF dated 30.07.1986 published in the Punjab Govt. Gazette, various officers of the Agriculture Department were notified as the Fertilizer Inspectors, competent to draw the sample from various dealers/manufacturers/pool handling agencies. Agriculture Inspectors were included within the list of the competent officers, notified as Fertilizer Inspectors. Subsequently, the designation of Agriculture Inspectors was changed to Agricultural Development Officers (ADOs) as competent Fertilizer Inspectors vide notification dated 05.08.1991 Ex.PG, in the State Govt. Gazette.

On 26.08.1996, Sh. B.K. Mehta, Fertilizer Inspector along with Sh. Ashok Kumar, Agricultural Development Officer (Enforcement), Hoshiarpur visited the premises of the Society for the purpose of taking sample of Dia-Ammonium Phosphate 18:46 (DAP) manufactured by IFFCO Kandla Gujarat. Accused No.1 was present in the shop of the Society and was served with a notice Ex.PA by Sh. B.K. Mehta, Fertilizer Inspector, of his intention to draw the sample. This notice was signed by accused No.1. There were 354 bags of DAP, each containing 50 kgs of DAP, IFFCO brand, lying in the stock of the Society, which was considered a lot and four bags were selected at random as per table at page No.41 of the Control Order, 1985. All the bags were of the same brand, which were stored, arranged and kept systematically in rows. The sample was taken by use of clean and dry sampling probe, made of brass, by inserting probe in all these four selected bags, diagonally, from one corner to another. Four of five kilograms of fertilizer was drawn from the four bags and the same was spread on clean and dry polythene sheet on a hard surface. The contents were thoroughly mixed with the hard paper and made homogeneous. It was divided into four equal parts. Two diagonally opposite parts were removed and the process was repeated till the composite remained about 1.5 kgs. This was divided into three equal parts, each weighing 400 grams. Each part was immediately transferred in the clean, dry and thick gauged polythene bags. Each test sample prepared was further put in the dry empty cloth bags, along with Form 'J', five copies of which were signed by him and accused No.1. One copy each, of Form 'J' was put in three bags, along with polythene bags

containing fertilizer and each sample bag was made air-tight with thread. Each part was then sealed with the seal of the Fertilize Inspector. He also prepared two Forms 'K' duly filled, which were completed in the presence of accused No.1 and other members of the raiding party. On each test sample, the identification marks i.e. name of the fertilizer, brand and date of sampling was mentioned. One part of the sealed test sample was handed over to accused No.1, who acknowledged it on Form 'J' and the second test sample along with Form 'K' was deposited in the office of Quality Control Laboratory, Ludhiana vide letter of Chief Agricultural Officer dated 29.08.1996 and the third sample was deposited along with Form 'K' in the office of Chief Agricultural Officer, Hoshiarpur. The analysis report found the contents of the sample fertilizer to be non-standard vide report dated 17.09.1996. A show cause notice dated 25.10.1996 was served upon the Society by the Chief Agricultural Officer along with copy of the report dated 17.09.1996. Accused No.2 has been impleaded because he had been appointed as person responsible for the quality and production of the fertilizer being Chief Manager (Production) by the manufacturing concern and thus, he violated the provisions of Clause 19(1)(a) and Clause 2(h)(q) of the Control Order, 1985 issued under Section 3 of the Act of 1955, which is punishable under Section 7 thereof and there is similar violation by the dealer for possessing non-standard fertilizer. Initially, the Field Officer, IFFCO, Hoshiarpur was also impleaded as accused but on account of his death, proceedings against him were abated.

Notice of accusation under Section 7 of the Act of 1955 for

violating the above clauses of the Control Order, 1985, issued under Section 3 of the Act of 1955, was served upon accused No.1 and against accused No.2, for the offence punishable under Section 7 of the Act of 1955 being person responsible for the quality and production of the fertilizer, having been appointed as such, by the manufacturing concern, to which both the accused pleaded not guilty and claimed trial.

The prosecution, in support of its evidence, examined PW1 Ashok Kumar, ADO, PW2 B.K. Mehta, ADO (Enforcement), PW3 Mehnga Ram, Retired Agricultural Sub Inspector, PW4 Bharpur Singh, ADO and PW5 Kundal Lal, retired Joint Director, Agriculture, Punjab and closed the evidence. Thereafter, the trial Court vide impugned judgment acquitted accused No.1 Gurmukh Singh, however, convicted appellant Diwan Chand, being Chief Manager (Production) of IFFCO, Kandla. Present appeal has been filed challenging the judgment of conviction and order of sentence.

It is argued on behalf of the appellant that as per allegations in the complaint, when the samples were drawn and as per the analytical report, the same were found of non-standard, the complainant served a notice Ex.PL only to the Society i.e. accused No.1. This notice was addressed only to the dealer/Society, as it bears single endorsement No.15388 dated 25.10.1996 and there is no endorsement that copy of the same was forwarded to the manufacturer i.e. IFFCO, the principal employer of the appellant and therefore, mandatory provisions were violated. It is further argued that the trial Court has not taken into consideration the letter dated 01.01.1996 Ex.PM, wherein while appointing the person responsible

for compliance of the Control Order, 1985 under the Act of 1955, the employer of the appellant i.e. IFFCO, had appointed the appellant as CM (Production) and the prosecution had failed to connect that the fertilizer, which was lifted for taking the sample, was in fact supplied by same Plant, where the appellant was posted as CM (Production). It is also argued that that even in Form 'J' Ex.PB, at Sr. No.IV, it is recorded that date on the bags is not mentioned, therefore, prosecution has failed to prove that the fertilizer was supplied by IFFCO.

Learned counsel has further argued that it has come in the cross-examination of complainant PW5 Kundal Lal that the company/manufacturer/IFFCO was not arrayed as an accused in the complaint and only the appellant, being its Chief Manager (Production) was made a party. It is admitted by this witness that he had no resolution from the Board of Directors, appointing the appellant as a nominee and the complainant has not received any consent from the Central Govt. It is further admitted by this witness that no show cause notice was issued to the manufacturing company and this fact is also not mentioned in the complaint. PW1 Ashok Kumar, ADO, who had brought the register regarding deposit of the sample parcel, in the cross-examination, has stated as under: -

“....I have seen the bill Ex.PD on which lot number of the fertilizer is not mentioned and the date of manufacture of the fertilizer is also not mentioned. It was not mentioned in Form J that condition of the bags were lying in the godown in good condition. We were not having specimen of the label of the

manufacturing concern in our office nor the sample of stitching pattern was with us. The bags were selected at random as per the FCO schedule.....”

It is thus argued on behalf of the appellant that the identity of the fertilizer, from where the sample was drawn, is not proved to be supplied by manufacturer/company/IFFCO and therefore, it raises a serious doubt about the prosecution version.

Learned counsel for the appellant has further submitted that in cross-examination, PW2 B.K. Mehta, ADO (Enforcement), who was competent person under the Control Order, 1985 and the Act of 1955 and was part of the raiding team, had admitted that he was not having any logo/pattern of IFFCO with him nor had the stitching pattern. This witness further admitted that he did not ask for any logo or machine pattern from the manufacturer and similar bags are easily available in the market. It is argued that in the absence of date in Form ‘J’, once it is admitted by PW2 that he had no logo or pattern of IFFCO, it could not be proved that bags, from where the sample of fertilizer, were in fact supplied by IFFCO and on the same set of allegations, co-accused Gurmukh Singh, Manager of the Society, from whose premises, the samples were drawn, stands acquitted as the prosecution failed to prove its case against him. It is lastly argued that in the statement of the appellant under Section 313 Cr.P.C. dated 10.08.2004, in reply to a specific question that the fertilizer was purchased by the Society from IFFCO, he had denied this fact and the prosecution failed to lead any cogent evidence to prove this fact.

It is further argued that the manufacturer company i.e. IFFCO was not arrayed as an accused and therefore, prosecution of the appellant being an employee of the company, is not sustainable. Learned counsel has relied upon Order 30 of the Control Order, 1985 to submit that as per Order 30 (3), it is mandatory for the authority to send the analysis report under Order 13(2) to the dealer/manufacturer/bill handling agency, from whom the sample was drawn, within a period of 15 days from the date of receipt of such report. Learned counsel has further argued that the purpose of sending is to allow an accused to apply for re-analysis under Order 29(b) of the Control Order, 1985 and the report was not sent to the manufacturer and therefore, there was no occasion for them to avail this legal right. As per Order 24, it is mandatory for the manufacturer to appoint a person responsible for compliance of the order and the prosecution has failed to prove this fact.

Learned counsel for the appellant has next argued that the prosecution has failed to prove that before filing the complaint, it is verified that the appellant is nominated by the manufacturer to have actual control on the quality of the product and further, the nomination of the appellant is approved by the Central Govt. There is no such letter on record by the Central Govt that the appellant was appointed as responsible person and therefore, prosecution of the appellant is not sustainable. It is further argued that in the complaint, there is no allegation that the appellant was nominated as a person responsible and incharge of the company to conduct the business of the manufacturing unit. There are no allegations that the fertilizer, in any

way, was tempered by the appellant or the same was found sub-standard with his connivance or knowledge.

Learned counsel has again referred to statement of the appellant under Section 313 Cr.P.C., wherein he has specifically stated in his defence that he has no concern with the process of manufacturing of the alleged brand of fertilizer or its quality. The appellant was not working as CM (Production), as alleged in the complaint and was not responsible for the production and quality of the alleged fertilizer and further stated that the alleged fertilizer was not manufactured by IFFCO.

In reply, learned State counsel has submitted that the trial Court has rightly convicted the appellant, as he was the person incharge and responsible for the manufacturing of fertilizer and show cause notice was duly served to the dealer, from whose premises, the sample was drawn and the same was found to be of non-standard and therefore, offence against the appellant is proved.

After hearing learned counsel for the parties, I find merit in the present appeal.

(a) As per provisions of Order 30 (3) of Control Order, 1985, a notice has been issued only to the dealer, through its authorized representative Gurmukh Singh-accused No.1 who already stands acquitted by the trial Court. It is clearly admitted by PW5 in his cross-examination that no notice was issued to the manufacturer/IFFCO and therefore, legal right for re-analysis by way of reference under Order 29(b) was denied to the appellant.

(b) It is also not disputed that the manufacturer/IFFCO was not arrayed as an accused in this case and only the appellant being its Chief Manager (Production) was prosecuted on behalf of the company. A perusal of the statements of PW1 and PW5 shows that provisions of Clause 24 of Control Order, 1985 is not properly complied with. It is not proved beyond doubt that the appellant was appointed as a person responsible for IFFCO in consultation with the Central Govt.

(c) A perusal of Form 'J', which was filled up at the time of taking the sample, clearly shows that there is no mention of date of manufacturing on the bags, from where the sample was drawn. PW5 in his cross-examination admitted that he had not taken any logo or pattern of IFFCO and therefore, it is not proved that the bags were supplied by IFFCO.

(d) A perusal of bill Ex.PD vide which the dealer allegedly purchased fertilizer from IFFCO do not find the lot number or date of manufacturer. It is admitted by PW2 that bags similar to bag from which sample was drawn are easily available in market. Therefore, the admission of PW1 in cross-examination that bags were not in good conditions raise a doubt that the sample was drawn from original sealed bags supplied by IFFCO.

(e) In cross-examination of PW5, it has come that he has not taken any resolution from the Board of Directors appointing the appellant as nominee of IFFCO and had also not obtained any such letter showing the consent of the Central Govt., therefore, proper compliance of Order 24 is not made by the prosecution. In the absence of manufacturer being arrayed

as an accused in the complaint, prosecution of the appellant is not sustainable.

(f) A perusal of statement of the appellant under Section 313 Cr.P.C. shows that in reply to the question that fertilizer was purchased by the Society from IFFCO, he relied in negative and further stated that he was never working as CM (Production) and was not responsible for the production and quality of the fertilizer and even denied that the fertilizer was supplied by IFFCO and therefore, from the statement of PW1, PW2 and PW5, it is not proved that the samples were drawn from the same bags of fertilizer, which were supplied by IFFCO, especially when it does not bear the proper description like date of manufacturing, as per Form 'J'.

For the reasons recorded above, present appeal is allowed and the judgment of conviction dated 23.09.2004 and order of sentence of even date, passed by the trial Court, are set aside.

[ARVIND SINGH SANGWAN]
JUDGE

26.04.2019
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No