

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

1. CRM-M-19950-2017

Rishi Pal Singh

...Petitioner

Versus

State of Haryana and another

...Respondents

2. CRM-M-27471-2017

Haresh Goel

...Petitioner

Versus

State of Haryana and another

...Respondents

3. CRM-M-32918-2017

Nand Kishore

...Petitioner

Versus

State of Haryana and another

...Respondents

Reserved on : 18.07.2019
Pronounced on : 25.07.2019

CORAM:- HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. S. K. Aggarwal, Advocate
for the petitioner in CRM-M-19950-2017.

Mr. Rajesh Sethi, Advocate &
Mr. Tushar Gupta, Advocate
for the petitioner(s) in CRM-M-27471 & 32918-2017.

Mr. Deepak Grewal, DAG, Haryana.

None for respondent No. 2.

ARVIND SINGH SANGWAN, J.

This common order shall dispose of above noted three criminal miscellaneous petitions as they are identical and arise out of the same FIR.

Prayer in these petition is for quashing of FIR No. 685 dated 04.11.2016, under Section 7 of the Essential Commodities Act, 1955 (*for short 'EC Act'*) and Section 420 IPC, registered at Police Station City, District Fatehabad; as well as the report submitted under Section 173 Cr.P.C.

Brief facts of the case are that the impugned FIR was registered on the statement of Inder Singh, Quality Control Inspector in the office of Deputy Director Agricultural, Fatehabad. As per the version given in the FIR, a tractor trolley was found parked in the grain market of Fatehabad containing 28 bags of Kargil DAP Fertilizer, which on inspection was found to be fake and, therefore, for violation of Sections 4, 5, 8(2) of Fertilizer (Control) Order, 1985, the present FIR was registered. The owner of the tractor Amarjeet Singh could not produce any bill but informed the police that he has purchased the same from one Sanjay Kumar, proprietor of M/s Guru Kirpa Pesticides.

Learned counsels for the petitioners have argued that the police initially recorded the statement of the owner of tractor Amarjeet Singh who named one Sanjay Kumar in his disclosure statement and thereafter, Sanjay Kumar, in his disclosure statement dated 19.12.2016, named one Ajit Beniwal and alleged that he had arranged the fertilizer for him. During further investigation, Ajit Beniwal made a disclosure statement that one Vikas and Rakesh Parikh, both residents of Ellenabad, told him that if he (Ajit) requires Kargil DAP Fertilizer, he can procure it from Rishi Pal Singh

and factory owner Nand Kishore and Ajit arranged 28 bags of the fertilizer for Rakesh. In the disclosure statement of accused Rishi Pal, it is stated that he along with Nand Kishore used to supply fake DAP Fertilizer, whereas Ashok Kumar and Neetu used to supply fake Kargil DAP Fertilizer. The police, thereafter, submitted the report under Section 173 Cr.P.C. against Sanjay, Rishi Pal, Nand Kishore, Haresh, Rakesh Kumar, Neetu Singh, Ajit Singh, Vikas and Ashok Kumar.

Accused/petitioners Rishi Pal Singh, Haresh Goel and Nand Kishore have filed the present petitions seeking quashing of the present FIR and report submitted under Section 173 Cr.P.C. on the ground that the petitioners were initially not named in the FIR nor any recovery of spurious fertilizer/fake fertilizer was effected from them in pursuance to the disclosure statement.

Learned counsels for the petitioners have further argued that there is no violation of Sections 4, 5, 8(2) of the Fertilizer (Control) Order, 1985, therefore, the provisions of Section 7 of the EC Act and Section 420 IPC are not made out against the petitioners.

Learned counsels for the petitioners have further argued that only evidence against the petitioners is the disclosure statements of the co-accused which is not admissible as evidence in the eyes of law as even no recovery in pursuance thereof was effected to corroborate the version given in statement. It is also argued that the petitioners were never informed in any manner when the recovery of 28 bags of Kargil DAP Fertilizer from the tractor trolley of Amarjeet Singh was effected and even the report of analysis was never served upon them.

Learned counsels for the petitioners further submitted that there

is no evidence of meeting of mind of the petitioners with the owner of the tractor trolley.

Learned counsel for the petitioners further argued that the FIR, which is registered under Section 7 of the EC Act, is not maintainable and have relied upon the judgment rendered in **2006 (1) RCR (Criminal) 9 M/s Bansal & Deol Fertilizer and another vs. State of Punjab** to buttress their arguments that as per the Fertilizer (Control) Order, 1985, DAP Fertilizers are no longer a controlled item, therefore, on the basis of the recovery of 28 bags of DAP Fertilizer, the police cannot invoke the provisions of Section 7 of the EC Act. The operative part of the judgment reads as under:

“11. The next contention, raised by counsel for the petitioners that DAP fertilizer has been removed from the list of controlled items, pursuant to the notification dated 10.02.1992 and, therefore, even if the facts, contained in the present FIR, are accepted to be true, no offence is made out against the petitioners, is borne out from the notification (Annexure P-8). A perusal thereof reveals that DAP fertilizer is no longer a controlled item. The notification is dated 10.02.1992, whereas the present FIR was registered on 04.11.1998, on which date, DAP fertilizer was no longer a controlled item. The respondents, whether in their reply, or in their submissions, have failed to controvert the above notification. There is no denial of the fact that on the date of the notification, DAP fertilizer was no longer a controlled item. In this view of the matter, the Fertilizer Inspector had no jurisdiction to conduct a raid and/or lodge the FIR with respect to any shortage of fertilizer. The Fertilizer Inspector draws his jurisdiction from the Essential Commodities Act

read with the Fertilizer (Control) Order, 1985. In case, an item is not a controlled item, no offence, in respect thereof, can be made out under the Fertilizer (Control) Order, 1985.

12. In view of what has been stated above, and taking into consideration the facts and circumstances of the present case, the present petition is accepted and FIR No. 198, dated 05.11.1998, registered under Section 7 of the Essential Commodities Act, 1955 read with Sections 5, 7, 8 and 35 of the Fertilizer (Control) Order, 1985 at Police Station Jagraon, as also subsequent proceedings emanating therefrom are quashed.”

Learned counsels for the petitioners have referred to Govt. of India Notification dated 25.08.1992 and subsequent letters issued by the Director Agricultural, Punjab to support their arguments.

It is further argued that even no offence under Section 420 IPC is made out against the petitioners as there are no allegations in FIR to invoke Section 420 IPC.

Learned counsels for the petitioners have, thus, argued that in the absence of any allegation under Section 7 of the EC Act and Section 420 IPC, the registration of the FIR is not maintainable as the complainant could have filed a complaint under the provisions of Fertilizer (Control) Order, 1985.

Learned counsel for the petitioners have further relied upon **1991 (1) R.C.R. (Criminal) 383, State of Haryana and others vs. Ch. Bhajan Lal and others**, to argue that from the bare perusal of the FIR, it is apparent that no offence is made out and, therefore, the FIR itself is not maintainable and the prosecution of the petitioners is nothing but misuse of

the process of law.

Learned counsels for the petitioners further argued that the petitioners are being prosecuted on the basis of a sequence of disclosure statements recorded by the accused persons, which is not admissible as per Section 10 of the Indian Evidence Act. Learned counsel for the petitioners have relied upon **1998 (2) RCR (Criminal) 574, State of Gujarat vs. Mohammad Atik**, wherein Hon'ble Supreme Court has held that disclosure statement of a co-accused against other accused is not admissible.

In reply, learned State counsel has submitted that as per the report of the Quality Control Laboratory, the sample taken from the recovered fertilizers was found to be not according to the specifications and was found to be spurious.

Learned State counsel further submitted that all the accused have made disclosure statement that they have been putting the spurious fertilizers in the bags and selling the same as NPK/DAP fertilizers.

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

The arguments raised by learned counsels for the petitioners is that as per the notification dated 25.08.1992, the Govt. of India has decontrolled all the Phosphatic and Potassic fertilizers namely DAP, NPK complex fertilizers and SSP w.e.f. 28.05.1992 and later on, even the Director Agricultural, Punjab has also issued a clarification in this regard. Therefore, in view of the judgment in **Bansal & Deol Fertilizer's case (supra)**, the respondents have failed to controvert the above said notification, hence, on the date of registration of the FIR, DAP fertilizer was no longer a controlled item. Therefore, no offence is made out under the

provisions of EC Act as well as Fertilizer (Control) Order, 1985.

It is also apparent that the recovery was effected from co-accused Amarjeet Singh, who is the registered owner of the tractor trolley, and in sequence of disclosure statements, the name of the petitioners figured. The disclosure statements were recorded by the police while the accused persons were in custody, therefore, the same is not admissible against the petitioners in view of Sections 10 and 27 of the Indian Evidence Act.

It is also not disputed by learned State counsel that subsequent to recording of the disclosure statements, no recovery was effected from any of the petitioners and the entire case is based upon recovery of 28 bags of Kargil DAP Fertilizer, which was effected from the tractor trolley owned by co-accused Amarjeet Singh. Therefore, the disclosure statements, made by the petitioners, which were not corroborated by any subsequent recovery, are not admissible.

Therefore, in view of the above discussion, finding merit in the present petitions, the same are allowed and the FIR No. 685 dated 04.11.2016, under Sections 7, 10, 55 of the Essential Commodities Act and Section 420 IPC, registered at Police Station City, District Fatehabad; as well as the report submitted under Section 173 Cr.P.C. are hereby quashed along with other subsequent proceedings qua the petitioners herein.

A photocopy of this order be placed on the file of other connected cases.

July 25, 2019

Waseem Ansari

**(ARVIND SINGH SANGWAN)
JUDGE**

*Whether speaking/reasoned
Whether reportable*

*Yes/No
Yes/No*