IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: November 15, 2022

1. CRA-S-2237-SB-2003:

M/s Janta Fertilizer Centre and others

...Appellants

Versus

State of Punjab

...Respondent

2. CRA-S-2260-SB-2003:

Kulwant Singh

...Appellant

Versus

State of Punjab

...Respondent

3. CRA-S-2293-SB-2003:

M/s Munak Chemicals Ltd. and another

...Appellants

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Gaurav Chopra, Senior Advocate, with
Mr. Saurabh Jain, Advocate,
(in CRA-S-2237-SB-2003)

Mr. Sunil Chadha, Senior Advocate, with
Ms. Kashish Aggarwal, Advocate,
(in CRA-S-2260-SB-2003)

Mr. Jugansh Goyal, Advocate, for
Mr. Denesh Goyal, Advocate,
(in CRA-S-2293-SB-2003)
for the appellant(s).

Mr. J.S. Arora, Deputy Advocate General, Punjab,
for respondent - State.

SANJAY VASHISTH, J.

1. This judgment shall dispose of three appeals, bearing Nos. CRA-S-2237-SB-2003, CRA-S-2260-SB-2003 and CRA-S-2293-SB-2003, filed against the judgment of conviction and order of sentence, dated 22.11.2003, passed by learned Special Judge, Kapurthala, in Complaint Case No. 9 of 20.10.1997/RBT No. 23 of 01.08.2002, vide which the accused/appellants were held guilty for contravention of the provisions of Clause 19 of **the Fertiliser (Control) Order, 1985** (hereinafter referred to as **'the 1985 Order'**) and convicted for the offence punishable under Section 7 of **the Essential Commodities Act, 1955** (hereinafter referred to as **'the 1955 Act'**).

Convicts – Kulwant Singh, Kewal Singh, Harbans Singh, Sadhu Singh and Nirbhai Singh were sentenced to undergo rigorous imprisonment for a period of two years each and to pay fine of Rs. 3,000/- each and in default of payment of fine to undergo further rigorous imprisonment for a period of one month each, whereas M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi, and M/s Munak Chemicals Limited Bathinda were sentenced to pay fine of Rs. 5,000/- each for the offence punishable under Section 7 of the 1955 Act.

2. Criminal Appeal No. CRA-S-2237-SB-2003, has been filed by the distributors, i.e. (1) M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi, through Kewal Singh, (2) Kewal Singh, (3) Harbans Singh, and (4) Sadhu Singh.

Criminal Appeal No. CRA-S-2260-SB-2003 has been filed by the dealer Kulwant Singh (sole proprietor of M/s Rana Khad Store, Dalla, District Kapurthala).

And, Criminal Appeal No. CRA-S-2293-SB-2003 has been preferred by the manufacturers, i.e. (1) M/s Munak Chemicals Limited, Dabwali Road, Bathinda, and (2) Nirbhai Singh. No separate appeal was filed by M/s Rana Khad Store, Dalla, District Kapurthala.

3. During pendency of aforementioned appeals, Kewal Singh (appellant No. 2 in CRA-S-2237-SB-2003) expired on 17.04.2015, and vide order dated 14.10.2015, appeal qua him stands abated.

4. Facts of the case are that on 28.09.1995, Pirthipal Singh, Fertilizer Inspector alongwith Nirmal Singh, Agricultural Development Officer, inspected the premises of M/s Rana Khad Store, Dalla, District Kapurthala, in the presence of its sole proprietor Kulwant Singh. A notice was served upon him by Prithipal Singh, showing his intention for taking sample of fertilizer, for the purpose of analysis under the 1985 Order, which was received by Kulwant Singh. Stock register of Dealer was inspected, in respect of 'Pooja Brand Single Super Phosphate 16% W.S. 05 (Powder)', manufactured by M/S Munak Chemicals Ltd, Dabwali Road, Bathinda. According to the stock register, there were 93 stitched bags of 50 Kgs each. Pirthipal Singh signed the stock register at page No.36. Said stock of fertilizer was received on 21.09.1995 by the dealer, i.e. M/s Rana Khad Store, vide Bill No. 921 dated 22.09.1995, through

M/s Janta Fertilizer Centre, Sultanpur Lodhi, and Batch No. 3H 951 was mentioned thereon.

5. Prosecution further alleges that by following the procedure of drawing the sample, as laid down in Schedule II of the 1985 Order, Pirthipal Singh prepared sample detail in duplicate in Form-3, Sr. No. 5561, in the presence of Nirmal Singh, Agricultural Development Officer, and Kulwant Singh. Form-J was signed by both of them and Kulwant Singh availed the opportunity of affixing the seal on Form-J, bearing 'RKS'. One copy of Form-J was handed over to Kulwant Singh.

6. Thereafter, three bags of aforesaid fertilizer were selected at random, bearing Nos. 2, 25, 48. Prithipal Singh, then inserted the sampling probe into the selected bags from one corner to another diagonally, collected fertilizer on clean dry polythene sheet, mixed it properly and divided it into four equal portions. Removing diagonally, the opposite portions, the remaining portions were mixed together forming a composite sample of 1.500 Kgs. Composite sample was again spread on dry, clean and thick polythene sheet and divided into three approximately equal portions of equal weight. Each of the sample portions was put into dry, clean and thick polythene bags and the same (polythene bags) were tied to make them air- tight.

7. Thereafter, four detailed descriptions, as specified in Form-J and three Form KS No. 5561, were filled in the presence of Kulwant Singh, proprietor, and Nirmal Singh, Agricultural Development Officer.

Both of them affixed their signatures on Form-J. Detailed descriptions in Form-J alongwith each portion of sample in polythene bag, were put into cloth bag separately, which was sealed with the seal impression F1/11/22/SPR. Kulwant Singh also put his seal impression 'RKS' on the sample. The Fertilizer Inspector put serial No. 5 on the cloth bags as identification of sample. One portion of the sample was given to Kulwant Singh and his signatures were obtained on Form-J.

8. On 29.09.1995, remaining two portions of sample alongwith Form-J and K (two in each), were sent to the Chief Agricultural Officer, Kapurthala, through Sarabjit Singh, Beldar, which were received by the Agricultural Development Officer (Enforcement) on behalf of the Chief Agricultural Officer, Kapurthala. He allotted Code No. AUO (E) on 29.09.1995.

9. One portion of sample alongwith Form-K, was sent to the Fertilizer Quality Control Laboratory, Ludhiana, vide letter No. 7846, dated 04.10.1995, of Chief Agricultural Officer, Kapurthala. On the same day, the said sample and Form-K, were deposited by Rajinder Singh, Beldar, with Baldev Singh, Agricultural Development Officer of the Fertilizer Quality Control Laboratory, Ludhiana.

10. Vide letter No. AR 2001, dated 12.10.1995, analysis report was sent by the Analytical Chemist (Incharge), Fertilizer Quality Control Laboratory, Punjab, Ludhiana, declaring that the sample was found not according to the specification and, thus, it was declared to be non-

standard. Copy of the analysis report was also sent to M/s Rana Khad Store, Dalla, District Kapurthala, vide letter No. 9813, dated 20.10.1995, forwarded by the Chief Agricultural Officer, Kapurthala.

11. Thus, Kulwant Singh, proprietor of M/s Rana Khad Store, Dalla, District Kapurthala (dealer), M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi, a partnership firm (distributors), Kewal Singh, Harbans Singh and Sadhu Singh, partners of the said firm and as such incharge of and responsible for the conduct of its business by selling, stocking and distributing the non-standard fertilizer, M/s Munak Chemicals Ltd., Bathinda, manufacturing company of the said fertilizer and Nirbhai Singh, Chief Production Officer of the said company at the relevant time and as such incharge and responsible of the said company for the conduct of its business, were found to have contravened the provisions of Clause 19 of the 1985 Order and committed the offence punishable under Section 7 of the 1955 Act.

12. After filing of the complaint, learned Trial Court (Special Judge) summoned the accused for the offence punishable under Section 7 of the 1955 Act. Charges were framed by the learned Trial Court, under Sections 7 and 12-A of the 1955 Act, vide its order dated 10.06.2002.

13. Prosecution examined Baldev Singh, Agricultural Development Officer, Kapurthala, as PW-1, who received the sample on behalf of the Chief Agricultural Officer, Kapurthala. Rajinder Singh, Beldar, appeared as PW-2, who took the sample to the Analytical

Chemist. Fertilizer Quality Control Laboratory, Punjab Agricultural University, Ludhiana, for its deposit there and then to analyise standard of the fertilizer. Sarabjit Singh, Beldar, appeared as PW-3, and deposed about deposit of the sample with Baldev Singh, Agricultural Development Officer, Kapurthala. Pirthipal Singh appeared as PW-5, and proved the sampling done by him. Said aspect was also proved by Nirmal Singh (PW-4), Agricultural Development Officer, Sultanpur Lodhi, who accompanied Pirthipal Singh at the time of sampling of fertilizer. Jaswant Singh, retired Chief Agricultural Officer, appeared as PW-6, to prove filing of complaint (Ex. PW) before Court by him. Thereupon, prosecution evidence was closed.

14. In the plea got recorded by the accused, under Section 313 Cr.P.C., Kulwant Singh, sole proprietor of M/s Rana Khad Store, Dalla, District Kapurthala (dealer), stated that he purchased the fertilizer from M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi, vide Bill No. 921, dated 21.09.1995 and kept the same as intact in the shop. He further stated that he never sold the fertilizer in loose condition and that bags of fertilizer purchased from M/s Janta Fertilizer Centre were duly stitched and sealed by the company and only sealed bags of fertilizer were sold by him. He further stated that he maintained record regarding sale and purchase of fertilizer.

15. Kewal Singh, a partner of M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi (distributor) in his statement, under Section 313

Cr.P.C., admitted that he was a partner of M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi, at the relevant time; the fertilizer was received by M/s Rana Khad Store, Dalla, District Kapurthala, on 21.09.1995, vide Bill No. 921; bags were duly stitched and sealed by the company, with 50 Kg. weight of each bag; and that at the time of unloading the bags of fertilizer from the truck, M/s Rana Khad Store, Dalla, lifted the same immediately in a tractor trolley. Other co-accused Harbans Singh and Sadhu Singh, partners of the said distributor firm, also took up the same pleas.

16. Nirbhai Singh, a responsible officer on behalf of M/s Munak Chemicals Ltd., Bathinda, in his statement under Section 313 Cr.P.C. stated that he had not committed any offence; he was not responsible officer of M/s Munak Chemical Ltd., Bathinda, at the relevant time; and that the fertilizer was not supplied under his signatures nor he had any knowledge regarding the supply of the same.

17. In defence evidence, Sadhu Singh, one of the partners of M/s Janta Fertilizer Centre, Mandi Road, Sultanpur Lodhi, appeared as DW-1, but his statement was left incomplete as the bill which he could prove, had already been exhibited. No other evidence was led by the accused.

18. After completion of the procedural stages of the trial, learned Trial Court heard the arguments and held the accused guilty for the offence punishable under Section 7 of the 1955 Act, in regard to the

violation of Clause 19 of the 1985 Order, and sentenced them, as already noticed above, vide judgment of conviction and order of sentence, dated 22.11.2003.

19. Hence, the appeals before this Court since 2003.

20. Mr. Gaurav Chopra, Senior Advocate, appearing for the appellants (distributors) in CRA-S-2237-SB-2003, on the very outset stated that arguments to be addressed by him would also cover interests of all appellants/convicts in these appeals.

21. Learned Senior counsel submits that to control production, supply and distribution etc. of essential commodities, the 1985 Order was notified by the Central Government, in exercise of powers conferred upon it by Section 3 of the 1955. Part-VI of the 1985 Order, deals with '*restrictions on manufacture/import and sale etc. of fertilisers*', while Clause 19 of the 1985 Order deals with '*restriction on manufacture/import, sale and distribution of fertilisers*'. He further submits that Clause 28 of the 1985 Order entails '*powers of inspectors*' and Clause 28(1)(b) of the 1985 Order prescribes that an inspector may, with a view to secure compliance with this order, *draw samples of any fertiliser in accordance with the procedure of drawal of samples laid down in Schedule II.* Furthermore, Part-VIII of the 1985 Order pertains to '*Analysis of Samples*' and Clause 29 (1) provides that a fertiliser sample, drawn by an inspector, shall be analysed in accordance with the instructions contained in Schedule II, either in the Central Fertilisers

Quality Control and Training Institute Faridabad or Regional Fertiliser Control Laboratories at Bombay, Madras or Kalyani (Calcutta) or in any other laboratory notified for this purpose by the State Government with the prior approval of the Central Government.

22. Learned Senior counsel then submits that in the present case mandatory provisions of sampling of fertilisers, as provided under Schedule II appended to the 1985 Order, have been flouted and, thus, conviction of appellants is not sustainable. While submitting so, learned Senior counsel referred to Clause 28(1)(b) of the 1985 Order, which confers power upon an inspector to draw samples of fertilisers in accordance with the *procedure of drawal of samples laid down in Schedule II*. He also referred to Part-A, Para 1(e)(i) of Schedule II of the 1985 Order to argue that the sample shall have to be kept in suitable, clean dry and air tight glass or screwed hard polythene bottle of about 400 gm capacity or in a thick gauged polythene bag and this shall be put in a cloth bag which shall be sealed with the Inspector's seal.

23. Learned Senior counsel further submits that Part-A, Para 4-A (iii) of Schedule II of the 1985 Order, prescribes the approximate weight of one sample of fertiliser, which in the present case, would be 400 grams. Learned Senior counsel also referred to Para Nos. 5 and 6 of Part-A of Schedule II of the 1985 Order, which talks about '*preparation of composite sample*' and '*preparation of test sample and reference sample*', respectively, and stated that as per Para 6, composite sample

prepared in terms of Para 5, shall be spread out on a clean, hard surface and divided into three approximately equal portions each of the weight as specified in Para 4-A of Schedule II of the 1985 Order, and each of such samples shall constitute the test sample.

24. Learned Senior counsel also argues that it was mandatory for the Fertiliser Inspector to not only weigh drawn sample of fertiliser in the manner indicated in Para 4-A of Schedule II of the 1985 Order, but also to prepare the composite sample as a homogeneous mixture with the composite sample subsequently being divided into three approximately equal portions in terms of the weight specified in Para 4-A. And, in terms of Para 1(e)(i) of Schedule II of the 1985 Order, each sample was mandatorily required to be kept in a suitable, clean and air tight glass or screwed hard polythene bottle of about 400 grams capacity or in a thick gauged polythene bag.

25. While making attack on the inception of collection of samples of fertiliser, learned Senior counsel has referred to the statement of material witness – Pirthipal Singh, who was Agriculture Development Officer, Sultanpur Lodhi, and notified Fertiliser Inspector, at the relevant time, and appeared as PW-5. In the examination-in-chief, said witness deposed that:

> "……*Out of the aforesaid fertilizer bags, 3 bag of fertilizer were selected, bearing numbers 2, 25 and 48. A sampling probe was diagonally inserted into these bags from one corner. Approximate 7 Kgs of fertilizer was taken out from each bag separately on a dry polythene bag. The same was mixed and was divided into four parts.* ……"

26. In the cross-examination, said witness deposed that:

> "*……We stayed at the premises of Rana Khad Store for 2/2½ hours. There are houses around the shop Rana Khad Store. We did not call any other person to witness the sampling. The bags were taken from the stack and then by inserting probe the sample was withdrawn.* ***7 Kgs of the fertilizer was taken as sample approximately and we did not weight it.*** *The stack was little bit away from the wall and the bags were lying on the brick floor. There were two doors to the shop, one in the front and one in the back. There was a fan in that room where the fertilizer was lying. No memo regarding the procedure adopted at the time of drawing the sample was prepared. Only J and K form and notice served on the accused before drawing sample were sent to the Chief Agriculture Officer and except that no other document was sent. ……… The polythene bag in which the sample was put was available with us. I cannot tell the thickness of the polythene bag. ……….. It is correct that when we taken the sample the bags of the fertilizer were intact. It is incorrect to suggest that I have deposed falsely." (emphasis added)*

27. Regarding lethargic and non-calculative procedure being adopted, learned Senior counsel also referred to parts of the statement of prosecution witness – Nirmal Singh, Agriculture Development Officer, Sultanpur Lodhi, who appeared as PW-4, and had joined company of Pirthipal Singh (PW-5), at the time of collection of samples of fertiliser and its recovery. Relevant portions of the statement of Nirmal Singh (PW-4) says:-

> "*……Three bags were selected at random i.e. bag no. 5, 25 and 46.* ***Approx. 6 Kg. sample was drawn with the sampler.*** *6 Kg. fertilizer was divided into four equal parts on the plain paper. Each portion was mixed. Two portions were destroyed and remaining two parts were again divided into four equal parts. Again two portions were discarded. Again remaining two portions were mixed and was divided into 3*

equal parts each weighing 500 grams. These samples were put in three dry, clean polythene bags and were tied to make them air-tight and were put in the cloth bags. ……
x x x x x

…...There is no attestation of any person of Rana Khad Store on the cutting on form J and K. The sample was weighed in the weighing scale which was available on the shop of Rana Khad Store. When the sample was withdrawn from the bag it was taken by approximation and it was not weighed. After the sample was drawn from the bag the same was placed on polythene sheet. No memo in writing was prepared regarding the sampling procedure adopted by us. It was month of September and rainy season. It is correct that the fertilizer is hygroscopic nature and gains moisture from the air. ……...Single super phosphate is available in powder form as well as in granules. We had taken the polythene bags from our office before leaving for sampling. The same were of 1 kg capacity but I cannot tell the thickness of the polythene bag. ……" (emphasis added)

28. From the aforementioned statements of two prosecution witnesses, i.e. PW-5 and PW-4, respectively, learned Senior counsel argues that there is material contradictions in the statements of said witnesses with regard to procedure of sampling of fertiliser and its weighment, i.e. which type of weighing scale, weight and measures were used and what was total weight of fertiliser taken out from three bags – 6Kgs or 7 Kgs.

From the statements, it is also not clear whether the sample as required under the aforementioned provision of law for sending for analysis, was weighed with weighing scale or just on estimation basis, the same was put in the plastic bags. It is also clear that no glass container was used for keeping the sample air-tight and there is nothing on record that what was the thickness of polythene sheet of the polythene bag used.

29. Learned Senior counsel has also referred to Form-L, bearing A.R. No. 2801, dated 12.10.1995 (Ex. PH), i.e. analysis report of fertilizer sample, sent by the Analytical Chemist (Incharge), Fertilizer Quality Control Laboratory, Punjab, Ludhiana, to the Chief Agricultural Officer, Kapurthala, which is the basis of framing case against the appellants. Relevant excerpt of the said report says:

"Sr. No.	*Particulars*	*Specification as Per FCO*	*Composition as per analysis*	*Variation*	*Permissible tolerance limit*
1	*2*	*3*	*4*	*5*	*6*
1.	*Moisture % Maximum*	*12.0*	*2.22*	-	-
2 to 8	*XXX*	*XXX*	*XXX*	*XXX*	*XXX*
9.	*Water soluble P_2O_5% Minimum*	*16.0*	*11.22*	*4.78*	*0.1*
10.	*XXX*	*XXX*	*XXX*	*XXX*	*XXX*
11.	*Others.*				
(a)	*XXX*	*XXX*	*XXX*	*XXX*	*XXX*
(b)	*Free phosphoric acid % by weight maximum*	*4.0*	*1.42*	-	-
(c) & (d)	*XXX*	*XXX*	*XXX*	*XXX*	*XXX*

Remarks:- The sample ~~is~~/is not according to the specifications."

30. Learned Senior counsel also refers to Form-J, bearing Sr. No. 5561, filled on 28.09.1995 (Ex. PD), and argues that the said form is a printed document, columns of which have been filled with pen, with cuttings therein. Even different pen and black/blue ink has been used to fill the said form. It is surprising that there is nothing to develop an idea even from the said Form-J that what mode of sampling was adopted by the officers, at the time of collection of sample of fertiliser. Therefore,

there is nothing to substantiate in writing that while filling Form-J, procedure prescribed under the 1985 Order has been followed in letter and spirit by the Fertiliser Inspector and his team members.

31. Learned Senior counsel also refers to Form-K, bearing Sr. No. 5561, dated 28.09.1995 (Ex. PE). In the said document also there are cuttings, over-writing and use of different pen & ink, and is clearly visible with naked eyes. Thus, learned Senior counsel argues that procedure adopted cannot be said to be fair and transparent. Rather, it was full of non-compliance of mandatory/statutory provisions of law, at the time of collection of sample of fertiliser.

32. While countering the observations and findings of learned Trial Court in the impugned judgment of conviction, dated 22.11.2003, with regard to the argument addressed by accused and how the same have been partially held to be correct, learned Senior counsel referred to the findings made in para 15 of the impugned judgment, which says as under:-

> *"15. The counsel for the accused at the very outset submitted that in the complaint Ex. PW filed by Jaswant Singh, Chief Agricultural Officer, the detailed procedure with regard to the drawing of the sample of the fertilizer, aforesaid from the stock of M/s Rana Khad Store Dalla, District Kapurthala was not mentioned. He further submitted that even in Form-J, Ex. PD such detailed procedure of taking the sample was not mentioned. He further submitted that it was incumbent upon the Fertilizer Inspector, who took the sample from the fertilizer of M/s Rana Khad Store Dhalla, District Kapurthala to give the detailed procedure of sampling in the complaint and also in Form-J. He further submitted that in the absence of giving the details of taking the sample in the complaint. Ex. PW*

> *and Form-J, Ex. PD any evidence led by the prosecution in this regard, in the shape of the statements of Pirthipal Singh and Nirmal Singh, PWs could not be taken into consideration. The submission of the counsel for the accused does not appear to be correct. In para 6 of the complaint, the detailed procedure of sampling was mentioned by the complainant in Form-J, Ex. PD. It was also mentioned in clear-cut terms that the sample of fertilizer had been drawn in accordance with the procedure laid down in the Fertilizer (Control) Order 1985.* ***No doubt, the details of drawing sample were not mentioned in Ex. PD. Once it was mentioned in Ex. PD, Form-J that the sample was drawn in accordance with the procedure laid down in the Fertilizer (Control) Order 1985 in my opinion there was substantial compliance with the relevant provisions****. When Form-J, Ex. PD is taken into consideration alongwith the allegations contained in the complaint Ex. PW detailing the procedure regarding the sampling and the evidence of Pirthipal Singh and Nirmal Singh only one and one inescapable conclusion that can be arrived at is that the sample was taken strictly in accordance with the relevant provisions of law. The submission of the counsel for the accused in this regard does not appear to be correct and is rejected." (emphasis added)*

33. With all the aforementioned submissions, learned Senior counsel for the appellants submits that observations made by learned Trial Court are self-contradictory and not sustainable, thus, all the appellants deserve acquittal.

34. In support of his submissions, learned Senior counsel has placed reliance on the judgments rendered in the cases of **State of Punjab v. M/s Karam Chand Rajinder Kumar and others, 1992 (3) R.C.R. (Criminal) 365 (D.B.), State of Punjab v. Balak Ram and another, 1991 (3) R.C.R. (Criminal) 425 (D.B.), Hari Krishan v. State of Punjab, (2007 (3) R.C.R. (Criminal) 461, A.K. Shahu v. State of Punjab, 2011 (3)**

R.C.R. (Criminal) 70, Om Parkash v. State of Punjab, 2011 (22) R.C.R. (Criminal) 620, and Ajit Singh v. State of Punjab and others, (2016 (2) Law Herald 1184.

35. On the other hand, Mr. J.S. Arora, Deputy Advocate General, Punjab, argued that there is nothing wrong in the findings recorded by learned Trial Court; all the legal parameters have been followed; judgments cited by the appellants are not applicable to the facts and circumstances of the present case; appellants cannot draw any benefit in case some immaterial discrepancies are pointed out; and that action being against the society, the appellants did not deserve any concession. Therefore, findings of conviction and sentence deserve to be upheld.

36. I have heard learned counsel for the parties and with their able assistance gone through the material available on record minutely.

37. It would be apt to first notice the relevant provisions of the 1985 Order and the 1955 Act, which are as under:-

> ***Clause 19 of the Fertiliser (Control) Order, 1985***:
>
> *" **19. Restriction on manufacture / import, sale and distribution of fertilizers**. – No person shall himself or by any other person on his behalf:-*
>
> *(a) manufacture/import for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertiliser which is not of prescribed standard;*
>
> *(b) manufacture/import for sale, sell, offer for sale, stock or exhibit for sale, or distribute any mixture of fertiliers which is not of prescribed standard (subject to such limits of permissible variation as may be specified from time to time by the Central Government) or special mixture of fertilisers which does not conform to the particulars specified In the certificate of manufacture*

granted to him under this Order in respect of such special mixture.

(c) sell, offer for sale, stock or exhibit for sale or distribute –

(i) any fertiliser the container whereof is not packed and marked in the manner laid down in this Order;

(ii) any fertiliser which is an imitation of or a substitute for another fertiliser under the name of which it is sold;

(iii) any fertilizer which is adulterated.

Explanation. – A fertiliser shall be deemed to be adulterated, if It contains any substance the addition of which is likely to eliminate or decrease its nutrient contents or make the fertiliser not conforming to the prescribed standard;

(iv) any fertiliser the label or container whereof bears the name of any individual firm or company purporting to be manufacturer/importer of the fertiliser, which individual, firm or company is fictitious or does not exist;

(v) any fertiliser, the label or container whereof or anything accompanying therewith bears any statement which makes a false claim for the fertiliser or which is false or misleading in any material particular.

(vi) any substance as a fertiliser which substance is not, in fact, a fertiliser; or

(vii) any fertilizer without exhibiting the minimum guaranteed percentage by weight of plant nutrient:

Provided that specifications of city compost in Schedule IV shall, in case of municipalities, be applicable only when it is traded in packaged form for use in agriculture:

Provided further that the specifications of vermi-compost in Schedule IV shall be applicable only in such cases where it is sold in packaged form and for agricultural purposes:

Provided also that the specifications of non-edible de-oiled cake fertilizer in Schedule V shall be applicable only in such case where it is sold in packaged form for agricultural purposes."

Clause 28(1)(b) of the Fertiliser (Control) Order, 1985:

*"**28. Powers of inspectors**. - (1) An inspector may, with a view to securing compliance with this Order, -*

(a) XXX XXX XXX

(b) draw samples of any fertiliser in accordance with the procedure of drawal of samples laid down in Schedule II;"

Clause 29 (1) of the Fertiliser (Control) Order, 1985:

*" **29. Laboratory for analysis**.- (1) A fertiliser sample, drawn by an inspector, shall be analysed in accordance with the instructions contained in Schedule II in the Central Fertilisers Quality Control and Training Institute Faridabad or Regional Fertiliser Control Laboratories at Bombay, Madras or Kalyani (Calcutta) or in any other laboratory notified for this purpose by the State Government with the prior approval of the Central Government."*

SCHEDULE II – PART-A, Para 1(e)(i) of the Fertiliser (Control) Order, 1985:

*" **SCHEDULE II***

[See clauses 28(1)(b) and 29]

PROCEDURE FOR DRAWAL OF SAMPLES OF FERTILISERS

*1. **General requirements of sampling**:*

In drawing samples, the following measures and precautions should be observed:-

(a) to (d) XXX XXX XXX

(e)(i) The sample shall be kept in suitable, clean dry and air tight glass or screwed hard polythene bottle of about 400 gm capacity or in a thick gauged polythene bag and this shall be put in a cloth bag which shall be sealed with the Inspector's seal.

(ii) XXX XXX XXX

(f) XXX XXX XXX"

SCHEDULE II – PART-A, Para 4-A of the Fertiliser (Control) Order, 1985:

*" **4-A. Weight of one sample.**- One sample of fertiliser shall have the approximate weight, as specified below:-*

(i)	*For straight micronutrient fertilisers.*	*100 gms.*
(ii)	*For chelated micronutrient, fertilisers and mixtures of*	*50 gms. or the maximum packing size of similar quantity.*
(iii)	*For other fertilisers and mixtures of fertilisers.*	*400 gms."*

Section 7 of the Essential Commodities Act, 1955:

" 7. Penalties. – (1) If any person contravenes any order made under Section 3,—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section(4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine: Provided that the court may, for any adequate and special

reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2-A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2-B) For the purposes of sub-sections (1), (2) and (2-A), the fact that an offence under sub-clause (ii) of clause (a) of sub-section (1) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reason for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be.

(3) Where a person having been convicted of an offence under sub-section (1) is again convicted convicted of an offence under that sub-section for contravention of an order in respect of an essential commodity, the court by which such person is convicted shall, in addition to any penalty which may be imposed on him under that sub-section, by order, direct that that person shall not carry on any business in that essential commodity for such period, not being less than six months, as may be specified by the Court in the Order."

38. A cojoint reading of above statutory provisions would show that the 1985 Order has been notified in terms of the provisions of Section 3 of the 1955. Clause 19 of the 1985 Order deals with '*restriction on manufacture/import, sale and distribution of fertilisers*', whereas Clause 28 of the 1985 says about '*powers of inspectors*' and sub-clause (1)(b) of Clause 28 of the 1985 Order provides that an inspector may, with a view to secure compliance of the 1985 Order, *draw samples*

of any fertiliser in accordance with the procedure of drawal of samples laid down in Schedule II. Clause 29 (1) of the 1985 Order further provides that a fertiliser sample, drawn by an inspector, shall be analysed in accordance with the instructions contained in Schedule II, in any of the Laboratory(s) mentioned in the said clause.

39. As per Para 1(e)(i) of Schedule II of the 1985 Order sample shall have to be kept in suitable, clean dry and air tight glass or screwed hard polythene bottle of about 400 gm capacity or in a thick gauged polythene bag and this shall be put in a cloth bag which shall be sealed with the Inspector's seal.

40. Part-A, Para 4-A (iii) of Schedule II of the 1985 Order, further prescribes the approximate weight of one sample of fertiliser, which in the present case, would be 400 grams. Para Nos. 5 and 6 of Part-A of Schedule II of the 1985 Order, talks about '*preparation of composite sample*' and '*preparation of test sample and reference sample*', respectively, and as per Para 6, composite sample prepared in terms of Para 5, shall be spread out on a clean, hard surface and divided into three approximately equal portions each of the weight as specified in Para 4-A of Schedule II of the 1985 Order, and each of such samples shall constitute the test sample.

41. While considering the arguments and observations recorded vis-a-vis findings given by the learned Trial Court, this Court is of the view that on some of the issues arguments addressed before it were

accepted by the learned Trial Judge, but halfheartedly. Thus, re-analysis of the evidence becomes abundant duty of the Appellate Court. First of all, bullet points noticed from the statements of Pirthipal Singh, Fertiliser Inspector (PW-5) and Nirmal Singh, Agriculture Development Officer (PW-4) are that:

Pirthipal Singh, Fertiliser Inspector (PW-5)

- Approximately 7 Kgs. of fertilizers was taken out from each bag separately on a dry polythene bag;
- In his cross examination, however, this witness admits that 7 Kgs. of fertiliser was taken as sample approximately but was not weighed;
- There were houses around the shop of M/s Rana Khad Store;
- No independent witness was called to witness the sampling;
- No memo regarding the procedure adopted at the time of drawing the sample was prepared; and
- When confronted, this witness was unable to tell the thickness of the polythene bags used.

Nirmal Singh, Agriculture Development Officer (PW-4)

- 3 bags, i.e. Bag Nos. 5, 25 and 46 were randomly selected;
- Approximately 6 Kgs. of sample was drawn, which was divided into four equal parts on plain paper; each portion was mixed; two portions were destroyed and remaining two parts were again divided into four equal parts; again two

portions were discarded; again the remaining two portions were mixed and divided into three equal parts each weighing 500 grams.

- Samples were put in 3 dry, clean polythene bags and were tied to make them air tight and thereafter put in cloth bags;
- When the sample was withdrawn from the bag, it was taken by approximation and was not weighed;
- After the sample was drawn from the bag, the same was placed on a polythene sheet;
- No memo in writing was prepared regarding the sampling procedure;
- Sampling was done in the month of September, which was rainy season;
- It was correct that the drawn fertiliser was hygroscopic in nature and gains moisture from the air; and
- When confronted, this witness was unable to tell the thickness of the polythene bags used.

42. From the aforementioned aspects it becomes evident that drawn samples of fertiliser were never weighed and were rather drawn by approximation. Further, drawn samples of fertiliser were neither collected nor sampled in the manner prescribed in Para 1(e), Part-A, Schedule-II of the 1985 Order.

43. In the case of **M/s Karam Chand Rajinder Kumar and others**

(supra), it was found that sample was not taken in air tight glass container as required under Para 1 Schedule II, rather it was put in polythene bags. Thus, it has been held that it contravened mandatory provisions of Para 1 Schedule II. Accordingly, accused were acquitted. Para Nos. 7 and 8 of the said judgment reads as under:-

> *"7. It will appear from the perusal of rule 1 ibid that it is mandatory provision of law which requires to be complied with strictly and that the sampling instructions and the containers for samples shall be protected from adventitious contaminations. While drawing a representative sample, the contents of each container selected for sampling are required to be mixed as thoroughly as possible by suitable means; the samples shall be placed in suitable, clean, dry and air tight glass or other suitable containers and each sample container shall be sealed air tight after filling and marked with full details of sampling, the date of sampling and other important particulars of the consignment. The learned trial court while coming to the conclusion that there provisions had not been complied with, had placed reliance on the judgment of the Punjab and Haryana High Court in* ***Pitamber Lal and others v. The State of Punjab, 1986(1) Recent Criminal Reports 298 : 1985(2) Chandigarh Law Reporter 122****, wherein it was observed that in that case there was no evidence to show that the sample of fertilizer was immediately transferred to a suitable air tight container provided with a tight fitting stopper or lid. It has been held in Pitamber Lal's case (supra) that where sample of fertilizer was not properly handled by Agriculture Inspector in accordance with law nor the same was placed in suitable airtight container or provided with a tight fitting stopper or lid, the possibility of the sample being decomposed cannot be ruled out.*
>
> *8. In the instant case although the Agriculture Inspector had put each part of the sample into separate polythene bags and he had tied the same with stirring and made them air tight etc., there was no evidence that these were provided with tight fitting stoppers. Besides the polythene bags used by the Agriculture Inspector for sealing the sample cannot be equated with suitable air tight glass or other container as envisaged in Rule I of Schedule II of the Fertilizer Control order reproduced above. According to the report of the*

Analytical Chemist, Punjab, the sample of fertilizer drawn by the Agriculture Inspector was found not conforming to the prescribed standard inasmuch as the potash contents were found 4.33% as against the permissible contents of 4.0%. In other words patash content was found to be in excess by 0.33% of the prescribed standard. The possibility of the sample getting decomposed causing change in the result, on account of the failure of the Agriculture Inspector in taking in samples in accordance with Rule 1 of Schedule II of the Fertilizer Control Order, cannot be ruled out as the Agriculture Inspector had committed contravention of Rule 1 in Schedule II of the order ibid. In this view of the matter, the prosecution cannot be said to have proved the case against the respondents beyond a shadow of reasonable doubt."

44. In the case of **Balak Ram and another (supra)**, in similar circumstances proceedings were held to be vitiated for non-compliance of the provisions of law as contained in Schedule II of the Fertilizer (Control) Order, 1957. Para 4 of the said judgment says:

*" 4. It has repeatedly been held by this Court in **Charan Dass and others v. State of Punjab, 1987 (1) Recent Criminal Reports 285; Sohan Singh and another v. State of Panjab, 1988 (1) Recent Criminal Reports 372 : 1988 (1) All India Criminal Law Reporter 860 (Punjab and Haryana); Gian Chand Luthra v. State of Punjab, 1988 (2) Recent Criminal Reports 481 : 1988 (2) All India Criminal Law Reporter 985 and Hardev Singh and another v. State of Punjab, 1989 (2) Recent Criminal Reports 420** that infirmities in collecting the sample in violation of the statutory requirements envisaged in Schedule II of the order vitiate the proceedings."*

45. In **Hari Krishan's case (supra)**, it has been held that when sample was not taken as per procedure prescribed in Schedule II of the 1985 Order, inasmuch as, sample of two Kgs. was taken against requirement of 1½ Kgs, and other procedure was also not followed,

conviction was set aside. Para No. 12 of the said judgment says as under:-

> *"12. Thus, it is felt that the trial Court wrongly observed in the operative part of the judgment that the sample was drawn by the Fertilizer Inspector in accordance with the procedure as laid down in Schedule II of the Fertilizer (Control) Order, 1985. The trial Court could not swallow the illegality committed by the Fertilizer Inspector and hold that the sample was taken in accordance with the procedure. Even otherwise, (from) the scrutiny of the evidence also clearly transpires that the sample was not divided into four parts and it was not mixed homogeneously, so as to mix two remaining parts together to form a cone and also flatten out the cone and repeat the operation of quartering till a composite sample of about 1.5 kg. weight is obtained. Herein, the sample of more weight than required was taken out and as against placing of the sample on the levelled clean hard surface, it was put on a piece of paper. More so, rather than putting the samples in air tight glass container, it was put in polythene bags. No plausible explanation for deviating from the standard procedure as prescribed in 1985 Order has been made by the prosecution. Therefore, the trial Court fell in error in ignoring the aforesaid illegalities committed by the Fertilizer Inspector. A similar view was taken in the following judgments :-*
>
> 1. *Gian Chand Luthra v. State of Punjab, 1988(2) RCR (Criminal) 481;*
> 2. *State of Punjab v. M/s. Karam Chand Rajinder Kumar and others, 1992(3) RCR (Criminal) 365;*
> 3. *State of Punjab v. Ashok Kumar and others, 2003(4) RCR (Criminal) 639;*
> 4. *State of Punjab v. Sohan Lal, 2003(2) RCR (Criminal) 609;*
> 5. *Amrit Lal v. State of Punjab, 1989(2) RCR (Criminal) 711.*
>
> *The present case is also on the similar footings. It may further be observed that here, in this case the accused was not present as admitted by DW-1 Joginder Paul, consequently, he could not be said to be person responsible and incharge of the business. If Karam Chand was present*

on the spot, then he could be said to be responsible for the conduct of the business, but he was not challaned in the case. Therefore, I am of the view that the trial Court over-looked the aforesaid facts and evidence by holding the appellant guilty of the crime.

As a consequence of above discussion, I accept the appeal, set aside the impugned judgment and acquit the appellant of the charge framed against him. His bail bonds and surety bonds are hereby discharged. The fine, if deposited by him, be refunded.

Appeal allowed."

46. In the case of **A.K. Shahu (supra)**, the sample was not mixed homogeneously so as to mix remaining parts together to form a cone and also flatter out the cone and repeat the operation of quartering till a composite sample of about 1.5 kg weight was obtained. The sample was not put in air tight glass container, rather it was put in a polythene bag. The Fertiliser Inspector failed to draw the sample in accordance with the procedure as contained in para 5 of Schedule II of the 1985 Order. No plausible explanation for deviating from the standard procedure was given. Thus, the conviction of accused was set aside. Para No. 8 of the said judgment, reads thus:-

"8. Even otherwise, from the scrutiny of the evidence, it is proved on the record that the sample was not mixed homogeneously so as to mix remaining parts together to form a cone and also flatten out-the cone and repeat the operation of quartering till a composite sample of about 1.5 kgs weight is obtained. The sample was not put in air tight glass container, rather it was put in a polythene bag. No plausible explanation for deviating from the standard procedure as prescribed in 1985 Order has been made by the prosecution. Therefore the learned trial court fell in error in ignoring the aforesaid illegalities committed by the Fertilizer Inspector. A similar view was taken in ***Gian Chand Luthra v.***

> ***State of Punjab, 1988 (2) RCR (Criminal) 481; State of Punjab v. M/s Karam Chand Rajinder Kumar and others, 1992 (3) RCR (Criminal) 365; State of Punjab v. Ashok Kumar and others, 2003 (4) RCR (Criminal) 639; State of Punjab v. Sohan Lal, 2003 (2)RCR (Criminal) 609; and Amrit Lal v. State of Punjab, 1989 (2) RCR (Criminal) 711****.*** *The present case is also on the similar footings. It is well settled law that if a statute enacts something in Act, then it shall be done in such a manner and not in any other manner and if those requirements are neglected, it will invalidate the whole proceedings."*

47. In **Om Parkash's case (supra)**, while relying upon the judgment in the case of **Hari Krishan (supra)**, impugned order was quashed because samples were drawn in a polythene bag and subsequently the same was put in a cloth bag. It was held that there was contravention of the 1985 Order, because prosecution was under obligation to put the sample in a tin container.

48. In **Ajit Singh's case (supra)**, again proceedings were quashed because of non-compliance of mandatory provision. Observations made in para Nos. 12 and 13 of the said judgment says:-

> *"12. Inspector Kuldeep Singh who had inspected the Corporation and obtained fertilizer sample, failed to follow the procedure laid down in the Fertilizer (Control) Order, 1985 in particularly Rule 1(e) and Schedule II which reads as follows:-*
>
> > *"(e) The sample should be kept in suitable, clean dry and air tight glass or screwed hard polythene bottle of about 400 gm capacity or in a thick gauged polythene bag. This should be put in a cloth bag which may be sealed with the Inspector's seal after putting inside the detailed description as specified in Form "J" Identifiable details may also be put on the cloth bag like sample No./Code No. or any other details which enables its identification;*

> *13. The sample fertilizer was collected and kept in thick polythene sheet and the same were tied, is not in accordance with the aforesaid specific procedure. No doubt "other containers" collecting the fertilizer sample in a polythene sheet does not fall within the definition of other suitable container. This Court has held that provisions of Fertilizer (Control) Order 1985 are mandatory. Therefore non-compliance of the aforesaid procedure registration of complaint and sentencing the appellant are liable to be set aside. Learned counsel submitted that the Analytical Chemist (Incharge) Fertilizer Quality Control Laboratory, Punjab Faridkot who had submitted report relating to sub standard fertilizer, has not been examined. Even though the entire complaint and further proceedings were based on the analytical chemist report dated 21.09.1993. Even on this count entire proceedings are vitiated."*

49. If the provision of law, consistently laid down, is made applicable to the facts and circumstances of the present case, this Court is of the considered view that the proceedings of collection of sample of fertiliser are liable to be vitiated, which are enough to demolish complete case of the prosecution. Thus, the findings recorded in the impugned judgment of conviction by learned Trial Court, are not sustainable.

50. Learned State counsel has not been able to show any material or advance any argument to convince this Court to take a different view than the one formulated in **Hari Krishan's case (supra)**. In totality, accepting the arguments advanced by learned Senior counsel for the appellants and considering other factors available on record, as discussed here-above, impugned judgment of conviction and order of sentence, dated 22.11.2003, passed by learned Special Judge, Kapurthala,

in Complaint Case No. 9 of 20.10.1997/RBT No. 23 of 01.08.2002, are liable to be set aside.

51. Ordered accordingly.

52. Consequently, all the appellants are acquitted qua charges framed against them by learned Trial Court.

54. All the three appeals are disposed of accordingly.

(SANJAY VASHISTH)
JUDGE

November 15, 2022
Pkapoor Whether Speaking/Reasoned: **YES/~~NO~~**
Whether Reportable: **YES/~~NO~~**