

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

CRA-S-1606-SBA-2006(O&M)

Date of decision:-23.8.2022

State of Punjab

...Appellant

Versus

M/s Janta Khad Store and others

...Respondents

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

Present: Mr.Anmol Singh Sandhu, AAG, Punjab
for the appellant.

Mr.D.S. Bhinder, Advocate
for respondents No.4 and 5.

H.S. MADAAN, J.

1. The State through Chief Agricultural Officer, Gurdaspur had filed a complaint under Section 19(1)(a) of Fertilizer (Control) Order 1985 read with terms and conditions of Dealer Registration Certificate and Section 7 and 12AA of Essential Commodities Act, 1955 (10 of 1955) against M/s Janta Khad Store, District Gurdaspur, Sh.Ajaib Singh, resident of village Fulke Tehsil Batala, District Gurdaspur, sole proprietor of the firm – respondent No.1, Sh.Amrik Singh, representative of firm – respondent No.1, M/s Agro Chemicals Punjab Limited, Manimajra, Chandigarh (Manufacturer) and Sh.Gurdeep Singh Chahal, Shift Incharge

c/o M/s Agro chemicals Punjab Ltd., Manimajra, Chandigarh, responsible person.

2. Briefly summed up, the case of the complainant is that Sh.Uttamjit Singh, Fertilizer Inspector, Batala along with Sh.G.S. Nijjar, Block Agricultural Officer, Batala had inspected the premises of M/s Janta Khad Store, Hathi Gate Batala on 30.11.1993; at that time Amrik Singh, representative of the firm was also present; Sh.Uttamjit Singh had disclosed his identity and given notice of intimation to draw sample of fertilizer obtaining signatures of Amrik Singh on the office copy of notice; out of 356 bags of Jat Super Single Superphosphate (G) available in the premises, 16% were found lying on the ground in the godown of the firm; Uttamjit Singh took out four bags i.e. 4th , 93rd , 183rd and 271st and after mixing the contents of those bags thoroughly, he drew the sample with a clean, neat and dry sampling probe by using the probe diagonally from one corner to other; the said bags were bearing the imprint M/s Agro Chemicals Punjab Ltd., which were machine stitched; the sample of the fertilizer so collected from the four bags weighing about 1200 gms. was mixed thoroughly on neat, clean and dry polythene sheet, then that sample was divided into three equal parts weighing 400 gms. each and then transferred into three separate neat, clean, dry and thick gauged polythene bags; after fastening the opening of each part of the sample with a thick thread to make each of them air tight, each polythene bag was put in a cloth bag, which were all sealed with the seal of Fertilizer Inspector with letters 'FERTILIZER INSPECTOR GURDASPUR 5'.

3. Uttamjit Singh gave intimation to Amrik Singh and got his

signatures on Form J signed by him and copy of Form J was put in each sample bag before sealing those bags; one part of the sealed sample along with copy of Form J was handed over to Amrik Singh on the spot, who had issued a receipt in that regard, whereas other two parts were handed over to Sh.Narinder Singh, Fertilizer Inspector (Enforcement), Gurdaspur; on analysis the sample was declared as not according to the specification by the Analytical Chemist, Fertilizer Quality Control Laboratory, Faridkot, which is an offence punishable with fine/imprisonment in terms of Clause 19(1)(a) of Fertilizer (Control) Order 1985, Section 7 and 12AA of Essential Commodities Act, 1955 (10 of 1955).

4. Accused No.2 Ajaib Singh is proprietor of the firm M/s Janta Khad Store, accused No.4 M/s Agro Chemicals Punjab Limited, Dhillon Complex, Manimajra, Chandigarh, U.T. is manufacturer and accused No.5 Sh.Gurdeep Singh Chahal, Shift Incharge c/o M/s Agro Chemicals Punjab Ltd., Dhillon Complex, Manimajra, Chandigarh is a nominee appointed by the manufacturer. In the complaint, the complainant prayed for summoning of the accused and dealing with them in accordance with law.

5. Notice of the complaint was issued to accused, who put in appearance and were admitted to bail.

6. After appearance of accused, they were charge-sheeted under Section 7 of the Essential Commodities Act, to which, they pleaded not guilty and claimed trial.

7. During the course of evidence of the Complainant/Prosecution, it examined the following witnesses:

PW1 Narinder Singh stated that on 1.12.1993 while he was posted as Fertilizer Inspector (Enforcement) in the office of Chief Agricultural Officer, Gurdaspur, Uttamjit Singh, Fertilizer Inspector, Batala deposited two sample parcels bearing seal impression No.5 along with Form J and K.; on 2.12.1993 one part of the sample was sent to Senior Analyst Fertilizer Quality Control Laboratory, Faridkot through Sukhwinder Singh, Agricultural Sub-Inspector; on 6.12.1993, Sukhwinder Singh gave receipt to him after deposit of sample in the laboratory aforesaid. The witness further stated that so long as the sample remained in his custody neither he tampered with the same nor he allowed anybody else to do so.

PW2 Mohinder Singh Chahal testified that on 29.3.1995, he was posted as Chief Agricultural Officer, Gurdaspur and he had filed the complaint Ex.PA after completing the necessary formalities.

PW3 Sukhwinder Singh stated that on 2.12.1993, he was posted as Agricultural Sub Inspector and on that day, Narinder Singh, ADO handed over to him a sample intact for depositing the same in the Testing Laboratory at Faridkot and that he had deposited the same with the laboratory obtaining receipt, which he handed over to Narinder Singh. He further stated that during the period sample remained with him no tampering therewith had taken place.

PW4 Uttamjit Singh, star witness for the prosecution, who had inspected the premises of M/s Janta Khad Store, Hathi Gate, Batala on 30.11.1993 and had drawn sample from the fertilizer bags of Jat Superphosphate deposited in that regard as well as getting the sample

analyzed from the laboratory. He otherwise supported the prosecution story on material aspects.

8. Learned Additional Public Prosecutor for the State tendered into evidence copy of notification Ex.PG, copy of Form C Ex.PH, affidavit of Ajaib Singh Ex.PJ, copy of show cause notice to Agro Chemicals Punjab Ex.PK and thereafter evidence of complainant/prosecution was closed.

9. After conclusion of evidence adduced by the complainant/Prosecution, statements of accused were recorded under Section 313 Cr.P.C. in which all the incriminating evidence appearing against them was put to such accused but they denied the allegations contending that they were innocent and had been falsely implicated in the case.

10. The accused did not lead any evidence in defence.

11. The trial Court of Special Judge, Gurdaspur had formulated the following points for determination:

- (i) Whether the sample in this case was taken as per the procedure laid down in Fertilizer (Control) Order, 1985?
- (ii) What is the effect of sample taken by approximation?
- (iii) Whether the provisions of Section 100(4) of the Code of Criminal Procedure have been complied with?
- (iv) Whether dealer is responsible if the sample is taken from stitched bags?
- (v) Whether the accused was responsible for the management and control of the manufacturing concern?

12. After hearing arguments, learned trial Court vide judgment dated 18.10.2005 acquitted all the accused of the charge.

13. Feeling dissatisfied with such judgment, the State of Punjab had approached this Court by way of moving an application under Section 378(3) Cr.P.C. for grant of leave to file an appeal, which was taken up on 8.8.2006 by a Division Bench of this Court. Leave to appeal as sought for by the State was granted. Appeal was admitted and notice was ordered to be sent to the accused.

14. However, only respondents No.4 and 5 have put in appearance through counsel to contest the appeal.

15. I have heard learned State counsel for the complainant and counsel for respondents No.4 and 5/accused besides going through the record.

16. A perusal of the impugned judgment goes to show that the trial Court considering the facts and circumstances of the case and on analysis of the evidence adduced by the complainant/State in light of the legal position had decided Point No.(i) holding that in this case the quantity of sample was taken approximately 1200 gms. and in view of the judgments discussed in para No.11 of the judgment, it was concluded the approximate quantity of sample which was taken is not permissible, therefore the case of the prosecution was not free from doubt. In the discussion in para No.12, the Court had observed that in Schedule II of the Control Order, a detailed procedure for taking of sample has been provided. However, some points of procedure had not been complied with since there is no mention in the complaint as well as in the statement of

Uttamjit Singh PW4 that the sample was not exposed to rain/sun, then material being sampled, the instruments used and bag of sample were free from any adventitious contamination. The statement of PW4 Uttamjit Singh is silent that each bag selected for sampling was thoroughly mixed as possible by suitable means. PW4 Uttamjit Singh has not mentioned the number of lots of the year for the purpose of selecting the bags for sampling.

17. With regard to Point No.(ii) i.e. the effect of sample taken by approximation in para No.13, it had been observed that rule does not permit approximation of quantity of sample to be taken, therefore the case of prosecution is not free from doubt.

18. With regard to Point No.(iii), whether the provisions of Section 100(4) of the Code of Criminal Procedure had been complied with, in para No.14 the answer has been given in negative holding that non-compliance of Section 100(4) of the Code of Criminal Procedure caused a serious dent to the case of prosecution.

19. With regard to Point No.(iv), whether dealer is responsible is the sample is taken from stitched bags, in paras No.15 and 16, this question has been answered in negative.

20. With regard to Point No.(v), whether the accused was responsible for the management and control of the manufacturing concern, the discussion is there in paras No.17 and 18. It has been concluded that an employee of the company could not be made liable to face the prosecution.

21. Learned State counsel has argued that the complainant had

proved its case against the accused conclusively and affirmatively, however, the trial Court by misappraisal of evidence and wrong interpretation of law erroneously came to the conclusion otherwise and returned finding of acquittal in favour of the accused. The said judgment has resulted in miscarriage of justice and cannot be sustained in the eyes of law, therefore the wrong be undone by accepting the present appeal and setting aside the impugned judgment.

22. Whereas, learned counsel for the respondents No.4 and 5 has refuted such assertions by learned State counsel submitting that the judgment does not suffer from any illegality or infirmity and there is no ground to interfere therewith since as per the settled law the Appellate Court can interfere with the judgment of acquittal, if the same is contrary to evidence and palpably erroneous.

23. After considering the rival contentions, I do not find any reason to set aside the impugned judgment. The trial Court has given detailed reasons for coming to conclusion that guilt of the accused was not established on record. The judgment can certainly be not termed as perverse or result of erroneous or arbitrary approach. The law is well settled that judgment of acquittal should not be interfered merely for the reason that another view in the matter is possible. It can certainly be not said that the impugned judgment has resulted in grave miscarriage of justice or the same is manifestly unjust and unreasonable. There is nothing to show that the trial Court had misread the evidence or wrongly interpreted the law in the process arriving at a wrong conclusion.

Therefore, no reason is found to be there calling for upsetting the

impugned judgment by way of acceptance of appeal.

24. The appeal is found to be without merit, hence it stands dismissed.

23.8.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes