

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

Reserved on: 15.11.2022

Pronouncement on: 05.12.2022

(i) CRA-S-1618-SB-2006

Hari Mohan and another ...Appellants

VS.

State of Punjab ...Respondent

(ii) CRA-S-1682-SB-2006

Mohinder Singh ...Appellant

VS.

State of Punjab ...Respondent

(iii) CRA-S-1930-SB-2006

Tarsem Singh ...Appellant

VS.

State of Punjab ...Respondent

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. K.K.Dogra, Advocate
for appellant No.1- in CRA-S-1618-SB-2006.

Mr. D.S.Pheruman, Advocate
for the appellant(s) in CRA-S-1682-SB-2006

Mr. S.S.Majithia, Advocate
for the appellant(s) in CRA-S-1930-SB-2006.

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab

N.S.Shekhawat J.

By way of this judgment, I shall dispose of three appeals i.e. CRA-S-1618-SB-2006; CRA-S-1682-SB-2006 and CRA-S-1930-SB-2006, against

the common impugned judgment and order dated 14.08.2006, passed by the Court of Special Judge, Amritsar, whereby, the appellants in the three appeals were convicted under Section 7 of the Essential Commodities Act, 1955 (hereinafter to be referred as Act) and Section 420 of IPC and were sentenced to undergo rigorous imprisonment for four years under Section 7 of the Essential Commodities Act, 1955 and to pay a fine of Rs.5,000/-, in default of payment of fine, to further undergo rigorous imprisonment for six months by each, and to undergo rigorous imprisonment for three years under Section 420 IPC and to pay a fine of Rs.3,000/-, in default of payment of fine, to further undergo rigorous imprisonment for three months, by each, with default stipulation.

Initially, FIR No.43 dated 11.03.1995, under Section 7 of the Essential Commodities Act, 1955, Police Station 'A' Division, Amritsar, was registered against six persons. Out of the total six accused, Sri Ram S/o Hafu was declared to be a proclaimed offender, whereas, Sita Ram S/o Mela Ram had died and the proceedings qua him had abated. After presentation of challan, the trial was held by the Court of learned Special Judge, Amritsar vide Sessions Case No.9 of 1996. Even two separate challans i.e. one against Amarjit Singh and Joginder Singh and another against Bhagwan Dass were also presented and they had faced trials in separate Sessions cases i.e. Sessions Case No.8 of 1996 and Sessions Case No.12 of 1996 and were separately convicted and sentenced.

As per the story of the prosecution, on 11.03.1995, Inspector Jaswinder Singh, Incharge, Detective Staff, Amritsar alongwith Inspector Jasjit Singh, Incharge, Anti-Smuggling Staff, Amrtisar and other police officials were

present at Taranwala Bridge, Amritsar and in the meantime, the complainant Dharambir S/o late Baldev Raj, resident of House No.170, Satguru Ram Singh Avenue, Amritsar appeared before them and made a statement to them. As per the complainant Dharambir, he was running a grocery shop with his brother. On 08.03.1995, he went to G.S. Traders, owned by Sita Ram S/o Mela Ram, resident of House No.211, Muslim Ganj near Shivala Colony, Amritsar and his another shop is situated at Hussainpura Chowk, Amritsar and Sita Ram and his son Hari Mohan were present there. He purchased 10 bags of cement of ACC company and they issued him a bill at the rate of Rs.125/- per bag of cement. He had shown the bag of cement to mason for the construction of house and was informed that the colour of the cement did not match with of that ACC brand. He asked the mason to check the cement by using the same with the bricks. On this, the mason told him that the cement was adulterated and lacked grip between the bricks. The complainant investigated the matter at his own level and came to know that both these persons had taken on rent a godown from Tarlok Singh, which is situated at some distance beyond Daburji on the left side at Amrtisar-Jalandhar road. He came to know that they would bring Bhal powder from outside and mixed at the same in the bags of original ACC cement and sold this adulterated cement, representing it to be genuine ACC cement to the innocent people and general public. He had also been cheated by Sita Ram and Hari Mohan. Similarly, Bhagwan Dass and his family members and some other persons had taken on rent a godown from Bhan Singh, resident of Bahi Lalo Jee Nagar, Amritsar. They were also mixing Bhal powder in ACC cement and selling at their shop at Mahan Singh gate, Amrtisar to the innocent

people by representing it to be genuine ACC cement and in this manner, they had cheated him. If the raid is conducted at their shops and godowns, a large quantity of adulterated cement bags containing ACC mark, bags of Bhal powder and genuine bags of ACC cement and other items could be recovered.

On getting the information, the FIR in the instant case was registered on 11.03.1995 . On 12.03.1995, Inspector Jaswinder Singh, Inspector Jasjit Singh and other police officials joined the complainant with Amarjit Singh, D.F.S.O, Manmoharjit Singh, Inspector Food Supply, Onkar Nath Sharma, Inspector Food Supply, Jyoti Inder Ogra, Marketing Officer, ACC Company, Amritsar. They went to the house of Dharambir complainant and found 15 bags of cement bearing ACC mark. Out of 15 bags, it was recovered that 10 bags were purchased from Hari Mohan and Sita Ram, whereas five bags were purchased from Bhagwan Dass. Six samples were taken from these bags and their separate parcels were prepared. The parcels were sealed by the D.F.S.O. with his seal. The investigation was conducted by the police by following the due process of law. Search of godown of Bhagwan Dass was also conducted as per rules and 100 bags of ACC cement, 270 bags of adulterated cement, 30 bags of Bhal powder, 300 empty bags and a platform balance were recovered from his godown. Even nine samples were drawn from the same as well. The parcels of such samples were prepared and were sealed by D.F.S.O. Amarjit Singh with his seal. The parcels were taken into possession by the police and the preliminary investigation was conducted by the police. Inspector Jaswinder Singh along with other police officials went to the godown of Sita Ram, which was taken on rent by him at the farm-house of Tarlok Singh. From three rooms

of such godown, accused Hari Mohan, Raj Kumar, Mohinder Singh, Tarsem Singh and Sri Ram were arrested. They were also mixing Bhal powder in ACC cement and were also stitching the bags containing adulterated cement. Still further, 123 bags of cement bearing ACC mark, 410 bags containing adulterated cement, 10 bags containing Bhal powder, 530 empty bags bearing AC mark and a machine for stitching of the bags, 100 lables written on them 'Now more strong New Gagal Cement of ACC' a platform balance were also recovered from them. Again samples were drawn and separate sample seal was prepared. After this, Inspector Jaswinder Singh had gone to the shop of G.S. Traders alongwith accused and it was found that no rate list was displayed at such shop. Not only manufacturing and selling adulterated cement is an offence, but even the none displaying of rate list by the shop keeper also constituted the offence.

After completing the investigation, the challan was presented against the accused under Section 7 of the Essential Commodities Act, and Section 420 of the IPC. The accused pleaded not guilty to the charge and claimed trial.

In support of the charge, the prosecution examined 12 witnesses. The prosecution examined PW-1 ASI Lakhbir Singh, who had recorded the formal FIR Ex.PA/1 without any condition or omission. Similarly, the prosecution examined PW-2 S.I. Surinder Kumar, Incharge Security, SSP Office, Amritsar, who was posted in CIA staff of Amritsar at that time. He was part of the raiding team and supported the case of the prosecution. Still further, the prosecution examined PW-3, MHC Gurminder Singh and PW-4 H.C.

Baldev Singh, who were formal witnesses. Still further, the prosecution examined PW-5 Swaran Singh, Clerk office of R.T.A., Jalandhar, who proved the ownership of tractor in question. The testimony of PW-6 Constable Kulwant Singh is formal in nature. The prosecution examined PW-7, Inspector Jaswinder Singh, police line, Fatehgarh Sahib, who was part of the raiding team and made recoveries at the spot. Even he had drawn the samples along with the other police officials and also conducted the initial investigation at the spot. Thereafter, the prosecution examined Inspector Jaswinder Singh, who along with other officials had gone to conduct the investigation. The prosecution further examined Jyoti Inder Ogra as PW-8, who was working as a Sales Officer in ACC cement Limited and had joined the police party, while the raid was being conducted. Still further, the prosecution examined PW-9 Amarjit Singh, who was working as D.F.S.O. Amritsar, on the said day and was also associated by the police party. Similarly, the prosecution examined PW-10, Inspector Harbans Singh, who partly investigated the case and also took into the possession of 10 bags of cement from the accused. The prosecution further examined PW-11 Dalip Singh, Retired Research Officer, Irrigation Department, Amritsar, who had conducted the tests on the samples recovered by the police. He exhibited his report as Ex.PU, Ex.PU/1 and Ex. PU/2. The prosecution further examined the complainant Dharmbir as PW-12 and with stood the test of cross-examination.

The entire incriminating evidence collected by the police during the course of investigation was put to the accused in their statements under Section 313 Cr.P.C. and they pleaded that they had been falsely implicated in the instant

case and were confined in illegal detention. Later on, a false case was planted against them.

Learned counsel for the appellants vehemently contended that the entire case hinges on the testimonies of the official witnesses. Even no witness was joined from the public or any other independent witness from any other department was examined. Consequently, the case of the prosecution is liable to be discarded on this ground alone. Still further, it was alleged that Sita Ram took a godown on rent at the farm-house of one Tarlok Singh, however, no attempts were made to join the owner of the said godown. Still further, learned counsel has referred to the testimonies of the witnesses produced by the prosecution. It was submitted that the complainant Dharmbir alleged in his complaint that he purchased 10 bags cement from G.S.Traders at the rate of Rs.125 per bag, whereas, as per the bill book recovered from the shop of Sita Ram, the bill issued to Dharmbir Singh shows the amount to be Rs.132/- per bag. This contradiction creates a shadow of doubts in the case of prosecution and shows that the case had been planted on him. Still further learned counsel for the appellants submits that the case property was not produced in the Court and a serious prejudice has been caused to the present appellants.

Learned counsel for the State has vehemently opposed the submissions made by learned counsel for the appellants. He further submitted that the testimonies of various official witnesses could not be discarded on the ground that they were official witnesses and their testimonies may be taken into consideration.

I have heard learned counsel for the parties and have gone through the record of the case carefully.

Learned counsel for the appellants vehemently contended that the entire prosecution case is based on the testimonies of the official witnesses and despite availability, no independent witness was joined in the instant case. The FIR in the case was registered on 11.03.1995, whereas the raid was conducted by associating various other official witnesses, on 12.03.1995 and there was ample time with the official witnesses to join private and independent witnesses at the time of the raid. I find no substance in the said arguments as the official witnesses are also competent witnesses, if their testimonies inspire confidence. Only because of the fact that the prosecution did not examine any independent witness, would not necessarily lead to a conclusion that the accused was falsely implicated. The evidence of official witnesses cannot be distrusted and disbelieved, merely on account of their official status. It has been held by the Hon'ble Supreme Court of India in the matter of ***“State, Govt. of NCT of Delhi Vs. Sunil & Anr.”, (2001) 1 SCC 652*** as follows:-

“It is an archaic notion that actions of the Police Officer, should be approached with initial distrust. It is time now to start placing at least initial trust on the actions and the documents made by the police. At any rate, the Courts cannot start with the presumption that the police records are untrustworthy. As a presumption of law, the presumption would be the other way round. The official acts of the Police have been regularly performed is a wise principle of presumption and recognized even by the legislature”.

Consequently, there is no reason to discard the testimonies of official witnesses in the present case. All the official witnesses have been cross-examined at length, but nothing material could be extracted from there testimonies.

Still further, the testimonies of the official witnesses, have been duly corroborated by the statement of PW-12 Dharmbir, complainant, who had purchased 10 bags of cement from Sita Ram and Hari Mohan, whereas, 5 bags were purchased from Bhagwan Dass. The defence has not suggested any reason as to why Dharmbir Singh had falsely implicated the accused in this case. Dharmbir Singh was an independent witness, who had purchased 15 bags from the accused for the purpose of construction and the mason found the same to be adulterated and the said cement could not be used for the purpose of construction. The testimony of PW-12 Dharmbir Singh was corroborated by the statement of PW-11 Dalip Singh, retired Research Officer, Irrigation Department. In fact, in the year 1995, he was posted as Research Officer, Concrete Technology Division of Irrigation and Power Research Institute, Amrtisar. He had analyzed 12 samples, which were taken from the accused and he exhibited the reports as Ex.PU, Ex.PU/1 and Ex.PU/2. The report submitted by him clearly proved that the supplied cement samples did not meet the requirements of I.S.209-1976 and the samples were found to be adulterated. Thus, it is apparent that the accused had cheated the complainant and they have been rightly convicted under Section 420 of IPC. Apart from that, the accused had not displayed the rate list and other required information outside their shops, and had thus contravened the Cement (Quality) Control Order 1962

notified under Section 3 of the Act. Apart from that, there is prohibition of manufacturing, sale etc. of the cement, which is not up to the prescribed standard and this also constitutes an offence under Section 7 of the Act.

Learned counsel for the appellants vehemently argued that the accused were arrested from the godown and the owner of the godown was not joined at the time of the raid. In fact, there is no requirement of law that the owner of the godown should also be joined during the raid. There was enough evidence to prove the complicity of the present appellants in the commission of the crime as they were caught at the spot mixing the Bhal powder into the genuine ACC cement. Still further, learned counsel has referred to the minor inconsistency with regard to the minor variation of the price of the cement, which is of no significance. Still further, the huge quantity of cement was recovered from the appellants and it was not humanly possible to produce the entire case property before the Court at the time of the trial and no such request was even made by the defence at the time of the trial.

In view of the above, it has been held that the impugned judgement and order dated 14.08.2006, are based on correct appreciation of evidence and the settled canons of law and the conviction of the appellants in the above three appeals is liable to be maintained by this Court.

A perusal of the record would reveal that the FIR in the instant case was registered on 11.03.1995, and the accused were also arrested in the instant case on 14.03.1995 and since then, they are facing the agony of trial/appeal. The appellants, Hari Mohan and Raj Kumar have undergone about 4 months of actual sentence, whereas, the appellants Tarsem Singh and

Mohinder Singh have undergone more than five months of actual sentence. All the appellants are facing the prosecution for the last more than 27 years and have no criminal antecedents. Learned counsel for the appellants has submitted that the appellants are the sole bread earners of the family and a lenient view may be taken in the matter.

Consequently, ends of justice would be suitably met, if the sentence imposed on the present appellants is reduced to the period already undergone by them. However, the amount of fine is increased to Rs.50,000/- each, which shall be deposited by them with the concerned Chief Judicial Magistrate within a period of three months from today, failing which, the appellants shall undergo the sentence for a period of one year.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and destroyed after the expiry of period of limitation. The trial court record be sent back.

05.12.2022
hemlata

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No