

CRA-S-1665-SB-2006
Reserved on: 15.11.2022
Date of pronouncement: 05.12.2022

VS.

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

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab

N.S.Shekhawat J.

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. The case in the present trial was held as Sessions case No.12 of 1998/2005 titled as **“State Vs. Bhagwan Dass”**.

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 a 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 (appellant) 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 power 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. At the instance of the complainant, Inspector Jaswinder Singh along with other members of the raiding party and also by taking Dharmbir Singh alongwith them, raided the godown of Bhagwan Dass (appellant) at Bahi Lalo Jee Nagar, Amritsar. When the police party reached there, Bhagwan Dass succeeded in escaping from the arrest alongwith his companions by using a ladder. Search of godown, which was taken on lease by Bhagwan Dass (appellant), was conducted after following the due procedure of law and 100 bags of ACC cement, 270 bags of adulterated cement, 30 bags of Bhal powder, 300 empty bags, a platform balance were recovered from his godown. Nine samples of 35

kgs of each were drawn from the different bags of cement, adulterated cement and the Bhal powder. The parcels of samples were prepared and were sealed by Amarjit Singh, D.F.S.O. with his seal. After drawing such samples, the remaining cement bags were left in the godown itself and all other items were taken into possession vide separate memos prepared by the raiding team. The godown was also sealed by the seal of D.F.S.O and one more seal of description GS was put on the same. The samples of cement and a platform balance were loaded in a private truck and the initial formalities of investigation were done. The rough site plan was also prepared. During the course of investigation, Bhagwan Dass (appellant) was arrested on 11.05.1995.

The samples, which were loaded on private truck were deposited with the MHC of the Police Station after returning to the Police Station and the sample parcels were sent to office of Chief Engineer-cum-Director of Concrete Technology Division, Irrigation and Power Research Institute, Amritsar. The results of analysis of the samples were received on 25.10.1995 and as per the analysis of samples, the recovered cement was found to be adulterated. Thereafter, the statements of various witnesses were recorded and after completion of the investigation, the challan was presented before the learned trial Court by the police. Vide order dated 29.04.1998, learned trial Court ordered framing charges against the appellant for the offences punishable under Section 7 of the Essential Commodities Act, 1955 (hereinafter to be referred as the Act) and Section 420 of IPC, to which he pleaded not guilty and claimed trial.

In support of the charge, the prosecution examined PW-1 ASI Lakhbir Singh, who registered the FIR. Further, PW-2 SI Surender Kumar, was

examined, who partly investigated the case and arrested the accused/appellant, Bhagwan Dass. Still further, MHC Gurminder Singh was examined as PW-3 and Baldev HC was examined as PW-4 and their testimonies were formal in nature. Inspector Jaswinder Singh, who was Incharge of the Detective staff at the relevant time was examined as PW-5. He alongwith other police officials had conducted the raid on getting the information and also had made recoveries in the instant case. From the godown of the appellant, 100 bags of cement having mark ACC, 270 bags having mark ACC, but the bags were found containing fake cement after mixing the powder, 30 bags of container clay powder, 300 empty bags containing mark ACC were found. The samples were drawn from the recovered articles as per law and he explained the entire recovery process. Still further, the prosecution examined PW-6, Jyoti Inder Ogra, who was working as Sales Officer in ACC cement, who did not support the case of the prosecution. The prosecution further examined PW-7 Amarjit Singh, retired D.F.S.O., who was also part of the raiding team and supported the case of prosecution in toto. The prosecution further examined PW-7, Inspector Harbans (Harbir) Singh before whom the complainant produced the bill dated 08.03.1995 for the purchase of 10 bags of cement and the same was taken into possession vide memo Ex.PU. The prosecution further examined, PW-8 Swaran Singh, Clerk, whose testimony was formal in another. The prosecution further examined Dalip Singh as PW-9, who was posted as Research Officer in Irrigation Department. He prepared the report Ex.PU, which ran into three pages. He exhibited the second report as Ex.PW and another report as Ex.PX. As per the said reports, the supplied cement samples did not meet the requirement of I.S.-269/1976 in respect of the tests done. Still further, the

supplied cement samples were found to be adulterated and the powder sample with Lab Registration No.3441/CBM was not found to be a cement sample. Consequently, as per the lab reports, the samples did not confirm to the standards and were found to be adulterated. The prosecution further examined the complainant Dharmbir Singh, who supported the case of the prosecution.

After the prosecution evidence was closed, the entire incriminating evidence collected by the police during the course of the investigation was put to the accused in his statement under Section 313 Cr.P.C. and he pleaded that he had been falsely implicated in the instant case and no recovery was effected from him.

Learned counsel for the appellant vehemently contended that the entire case hinges on the testimony 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. It was further alleged that the godown was taken on rent by Bhagwan Dass (appellant) and the owner of the godown was not examined by the prosecution. Still further, learned counsel, while referring to various testimonies, referred to certain minor contradictions appearing in the case of the prosecution. Still further, learned counsel for the appellant submitted that the case property was not produced in the Court and a serious prejudice has been caused to the present appellant.

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-10 Dharmbir, complainant, who had produced 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 produced 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-9 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.PX, Ex.PV and Ex.PW. 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, 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 appellant vehemently argued that the accused was running his business 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 judgment and order dated 14.08.2006, is based on correct appreciation of evidence and the settled canons of law and the conviction of the appellant 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 was arrested in the instant case on 14.08.2006 and since then, he is facing the agony of trial/appeal. The appellant, Bhagwan Dass has undergone about 3 months and 15 days of actual sentence. The appellant is facing the prosecution for the last more than 25 years and has no criminal antecedents. Learned counsel for the appellant has submitted that the appellant is the sole bread earner of his 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 appellant is reduced to the period already undergone by him. However, the amount of fine is increased to Rs.50,000/-, which shall be deposited by the appellant with the concerned Chief Judicial Magistrate within a period of three months from today, failing which, the appellant 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