

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Reserved on: 15.11.2022

Date of Pronouncement: 05.12.2022

(i) CRA-S-1710-SB-2006

Amarjit Singh ...Appellant

VS.

State of Punjab ...Respondent

(ii) CRA-S-2498-SB-2006

Joginder Singh ...Appellant

VS.

State of Punjab ...Respondent

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

Present : Mr. D.S.Pheruman, Advocate
for the appellant(s).

Mr. Vipin Pal Yadav, Additional Advocate General, Punjab

N.S.Shekhawat J.

By way of this judgment, I shall dispose of two appeals i.e. CRA-S-1710-SB-2006 and CRA-S-2498-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 two 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. In the present case, the trial was held by the learned trial Court in Sessions Case No.8 of 1998/2005.

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 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.

Bhupinder Singh S/o Jagjit Singh resident of Mohalla Gobind Nagar, Police

Station 'B' Division, Amritsar was joined with them after conducting raids at the godowns of Sita Ram, Hari Mohan and Bhagwan Dass, who told that 3 / 4 days earlier, he had purchased 7 bags of ACC cement from Joginder Singh, who is a partner of Amarjit Singh, resident of Ram Bagh Area, he told that he had sold such bags, which were cheaper by Rs.14 per bag than the market price and he had sold such bags without bill. Such bags were handed over to him from a godown existing in four field area. There was a talk of the town that spurious cement was being sold by them. He had suspicion that the cement sold to him was also spurious and on getting such information, Inspector Jaswinder Singh alongwith other persons of his party along with Bhupinder Singh conducted raid at the godown of Balwant Singh, situated on G.T. Road running in between Amritsar and Jalandhar. On seeing the police party, Amarjit Singh (appellant in CRA-S-1710-SB-2006) succeeded in escaping by scaling over the wall and Joginder Singh (appellant in CRA-S-2498-SB-2006) was apprehended at the spot. They were missing Bhal powder in ACC cement and were also filling up adulterated cement in the bags bearing marks of ACC Company and were stitching the bags with stitching machine. From the said godown, 35 bags of cement bearing ACC marks said to contain genuine cement, 570 bags containing the adulterated cement bearing ACC mark, 40 bags of Bhal powder, 340 empty bags bearing ACC mark, a machine for stitching bags, 110 labels of ACC mark and one platform balance were recovered from the said godown. From 35 bags of genuine cement, 570 bags of adulterated cement and 40 bags of Bhal powder, 3 samples each weighing 35 kgs were separated. The said parcels were sealed with the seal of Amarjit Singh, D.F.S.O, bearing No.13 and

a separate sample seal were prepared. The recovery memo was prepared to take the samples into possession, by the police. Separate parcels of samples, stitching machine, labels mark ACC, platform balance were also loaded in a private truck, which was already available with the Inspector and the remaining articles were left at the godown, which was also sealed by Amarjit Singh, D.F.S.O. with a seal 'GS'. A tractor No.PUO-1814 HMT was also taken into possession under Section 102 Cr.P.C. from the spot. During the course of investigation, the appellant Amarjit Singh was also arrested on 12.03.1995. The parcels were sent to the office of Chief Engineer-cum-Director of Concrete Technology Division, Irrigation and Power Research Institute, Amritsar and the results of analysis of the said samples were received on 25.10.1995. As per the analysis of the samples, the cement recovered by the raiding team was found to be adulterated. After completion of the necessary investigation, challan was ordered to be presented against Amarjit Singh (appellant in CRA-S-1710-SB-2006) and Joginder Singh (appellant in CRA-S-2498-SB-2006). Vide order dated 29.04.1998, the charge for the offences Punishable under Section 7 of the Essential Commodities Act (hereinafter referred is to the Act) and Section 420 IPC were ordered to be framed against both the accused, to which they pleaded not guilty and claimed trial. In support of the charge, the prosecution has examined PW-1 Lakhbir Singh, ASI, who had recorded the formal FIR in the instant case. The prosecution examined PW-2, SI Surender Kumar, who remained associated during the course of raid and was a witness to the recovery of tractor trolley No.PUO-1814 from the godown of Balwant Singh and Joginder Singh. Still further, the prosecution examined PW-3 ASI Prabhjit

Singh, who was a part of the raiding team. The prosecution further examined PW-4 Balwant Singh, who was the owner of the workshop. He stated that Amarjit Singh (appellant) had taken the godown on rent from him and godown was taken on rent for storing the cement. Still further, PW-5 MHC, Gurminder Singh and PW-6, HC Baldev Singh were examined, whose testimony was formal in nature. The Investigating Officer, Inspector Jaswinder Singh was examined as PW-7, who made a detailed statement with regard to the steps during the course of investigation. Even, he made the statement with regard to recovery of the genuine ACC cement and the adulterated ACC cement. The said witness deposed that Bhupinder Singh S/o Jagjit Singh came to him and his statement under Section 161 Cr.P.C. was recorded and the same is Ex. PQ. Bhupinder Singh produced seven bags allegedly containing cement of mark ACC and three samples weighing 35 kgs each were drawn from the same and the samples were sealed with the seal No.13 of D.F.S.O. and were taken into possession vide memo Ex. PQ/1, which was attested by Bhupinder Singh, Jyoti Inder Ogra and Amarjit Singh. The police party raided the godown which the accused Amarjit Singh had taken on lease from Balwant Singh and the said godown was situated on G.T. Road in the four field area. On seeing the police party, Amarjit Singh, fled away from there and Joginder Singh was apprehended at the spot, when he was preparing spurious cement by mixing clay powder in the cement and was stitching the same in the bags. Out of the search of the godown, 35 bags of cement mark ACC, 570 bags of fake cement, 40 bags of clay powder, 340 bags empty bags, one stitching machine, 110 labels of ACC and one floor weighing machine were found . Out of 35 bags of cement, 4 bags

in random were selected and out of these four bags so selected, the cement was drawn and mixed and out of that mixed cement, 3 samples of 35 Kgs each were drawn and were sealed with seal No.13 of D.F.S.O. The prosecution further examined PW-8, Jyoti Inder Orga, who was working as Sales Officer in ACC cement however, the said witness was declared hostile. The prosecution examined PW-9 Amarjit Singh, retired D.F.S.O., who was part of the raid team. Still further, the prosecution examined PW-10, Inspector Harbans Singh, who partly investigated the case. Dalip Singh was examined as PW-12, who was posted as Research Officer in Irrigation Department. He exhibited the reports Ex.PU, Ex.PW, and Ex.PX. As per the said reports, the samples of cement were found to be adulterated. The complainant Bhupinder Singh in the present case was examined as PW-13, who supported the case of 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 their statement under Section 313 Cr.P.C. and they pleaded that they had been falsely implicated in the instant case and no recovery was effected from them.

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, even though PW-13 Bhupinder Singh did not support the case of the prosecution, still he admitted that the bags were taken into police possession vide memo Ex.PQ/1 and he identified his signatures on the memo. He partly supported the case of the prosecution. Still further, the official witnesses had supported the case of the prosecution in complete particulars. The defence has not suggested any reason as to why Bhupinder Singh had falsely implicated the accused in this case. In fact, he was an independent witness, who had produced cement 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 these witnesses was duly supported by the statement of PW-12 Dalip Singh, who was posted as Research Officer, Concrete Technology Division of

Irrigation and Power Research Institute, Amrtisar. He exhibited the reports as Ex.PU, Ex.PV and Ex.PX. 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.

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, are based on correct appreciation of evidence and the settled canons of law and the conviction of the appellants in the above two 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. The accused Amarjit Singh was arrested in this case on 23.03.1995 and Joginder was arrested in the instance case on

14.03.1995 and since then, they are facing the agony of trial/appeal. The appellant, Amarjit Singh has undergone about 03 months and 15 days of actual sentence, whereas, the appellant Joginder Singh has undergone about 04 months and 18 days 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