

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

CRA-S-434-SBA-2005(O&M)

Date of decision:-14.7.2022

State of Punjab

...Appellant

Versus

Prem Singh and others

...Respondents

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

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

Mr.Satinder Khanna, Advocate
for respondent No.2.

H.S. MADAAN, J.

1. This appeal is directed against the judgment dated 22.7.2004 passed by Judicial Magistrate Ist Class, Ludhiana vide which accused Prem Singh, Salesman, Bhupinderjit Singh, Secretary of The Khasi Kalan, Cooperative Agricultural Service Society Ltd., Prem Kumar Gupta, Branch Markfed Incharge, Ludhiana, Mohan Lal, District Manager, Markfed, Ludhiana and Sukhdev Singh, Manager Markfed Fertilizer Plant, Dhuri were acquitted of the notice of accusation served upon them in a complaint under Section 19(1)(a) of the Fertilizer (Control) Order, 1985, punishable under Section 7 of the Essential Commodities Act, 1995

(hereinafter referred to as the Act) filed by State of Punjab through Chief Agricultural Officer, Ludhiana.

2. The complainant – State of Punjab by way of filing the present appeal seeks setting aside of the impugned judgment.

3. Briefly stated, facts of the case, as pleaded in the complaint referred to supra are that fertilizer has been declared as an essential commodity vide Government of India notification No.SR1048 dated 29.3.1957. The Fertilizer(Control) Order-1985 has been issued in exercise of powers conferred by Section 3 of the Essential Commodities Act-1955(10 of 1955) by the Central Government. The Khasi Kalan, Cooperative Agricultural Service Society Ltd., Khasi Kalan (hereinafter referred to as the Society) is responsible for the sale of sub-standard NPK-12:25:6; the accused No.1 Prem Singh had been working as Salesman with the society and accused No.2 Bhupinderjit Singh had been serving the society as Secretary, as such Incharge of its affairs and responsible for the sale of fertilizer; accused No.3 Prem Kumar Gupta, Incharge, Branch Markfed was responsible for the supply of fertilizer to the society, whereas accused No.4 Mohan Lal, District Manager, Markfed was responsible for the supply of fertilizer; accused No.5 Sukhdev Singh, Manager, Markfed Fertilizer Plant, Dhuri was responsible for manufacturing of fertilizer, in that way, all the accused were responsible for the sale and conduct of business under the Fertilizer(Control) Order-1985.

4. Sh.Ranjit Singh, Agricultural Development Officer posted at Khasi Kalan, who had been declared as Fertilizer Inspector by the Punjab

Government vide notification under Clause 27 of the Fertilizer (Control) Order – 1985, as such empowered to draw samples of fertilizer accompanied by Sh.Jit Singh, Agricultural Development Officer, Kum Kalan and Sh.Avtar Singh, Agricultural Development Officer, Matewara had visited the premises of the society on 29.6.1998 and drew sample of NPK-12:25:6 manufactured by Markfed Fertilizer Plant, Dhuri in presence of Sh.Prem Singh, Salesman. The sample was drawn as per rules. The necessary formalities were completed at the spot. The sample had been drawn in three portions, one of which was given to Sh.Prem Singh, Salesman along with a copy of 'J' form at the spot. Of the two remaining portions, one was sent to Analytical Chemist, Fertilizer Quality Control Laboratory, Ludhiana and as per report received therefrom, the composition of fertilizer was not found to be as per requisite standards and it was found to be sub-standard. After receipt of the Analyst report, show cause notices were served upon Secretary of the society as well as Manager, Markfed Fertilizer Plant, Dhuri and Manager, Markfed, Ludhiana. After perusing the replies received, all the accused were found to be responsible for storage and for sale of sub-standard fertilizer, therefore, a complaint was prepared and filed in the Court.

5. After appearance of accused, notice of accusation for an offence under Section 7 of the Act was served upon the accused, to which, they pleaded not guilty and claimed trial.

6. During the course of evidence of the Complainant/Prosecution, it examined Ranjit Singh, ADO as PW1, Sh.Jeet Ram, ADO Koom Kalan as PW2, Sh.Jagjit Singh, Agriculture

Development Officer (Retd.) as PW3, Sh.Nazar Singh, Peon as PW4, Dr.Balbir Singh, Managing Director, Punseed, Chandigarh as PW5. The Complainant/Prosecution relied upon various documents also.

7. 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 them but they denied the allegations contending that they are innocent and have been falsely implicated in the case

8. After hearing arguments, learned Judicial Magistrate Ist Class, Ludhiana vide judgment dated 22.7.2004 acquitted all the accused of the charge/notice of accusation.

9. 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 permission file an appeal. That application was allowed and necessary permission was granted.

10. Notice of the appeal was given to the respondents. However, only respondent No.2 has put in appearance to contest the appeal.

11. I have heard learned State counsel for the complainant and counsel for respondent No.2/accused besides going through the record.

12. A perusal of the impugned judgment goes to show that the accused had been acquitted for the following reasons:

- (i) The Co-operative Society in question had not been arrayed as an accused and in view of the law laid down in the citations Criminal Misc.No.40193-M of 1999 decided on 23.9.2002, 2002(4) RCR(Criminal) Page 301, 1988(1) RCR Page 372, 1993(2) RCR

Page 145, CrI.Misc.No.5045-M of 1988 decided on 22.8.1988, 1985(2) RCR Page 510 and 2003(1) RCR(Criminal) Page 187 to the effect that when Director of the company is prosecuted and company is not made co-accused, then the proceedings are liable to be quashed. That law was found applicable to the present case and it was held that accused Sukhdev Singh, Manager of the Markfed, who had been prosecuted was not liable.

- (ii) There was nothing on record to show that accused were Incharge and responsible for the conduct of business;
- (iii) Proper procedure for drawing the sample was not followed and sample drawn was less than requisite 500 grams, which was in contravention of mandatory provisions.
- (iv) Accused Mohan Lal was posted as District Manager from 18.7.1997 to 26.6.1998, whereas sample was taken on 29.6.1998, in that way on the date of taking sample Mohan Lal was not posted there.
- (v) In case of society, decisions are taken by the elected body and society remains under the management and control of the elected body.
- (vi) There is nothing on record to show whether the date of fertilizer had expired or not.
- (vii) Mandatory notice was not served upon Mohan Lal, Prem Kumar Gupta and Sukhdev Singh, in that way proceedings got vitiated as mandatory provisions of law were violated.

13. 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.

14. Whereas, learned counsel for the respondent No.2 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.

15. 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.

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

14.7.2022
Brij

(H.S.MADAAN)
JUDGE

Whether reasoned/speaking : No / Yes

Whether reportable : No / Yes