

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-11825-2022 (O&M)
Reserved on : 11.10.2022
Date of Decision: 4.11.2022

Ravi Anand

....Petitioner

VERSUS

State of Punjab

....Respondent

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Prem Prakash, Advocate and
Mr. Sukhwinder Singh Sudan, Advocate,
for the petitioner.

Mr. Mohinder Singh Joshi, Addl. AG, Punjab.

KARAMJIT SINGH, J.

Present petition has been filed by the petitioner under Section 483 of Cr.P.C. read with Article 227 of the Constitution of India against the judgment and order dated 23.7.2018 (Annexure P-1) whereby the petitioner and other accused persons were convicted and sentenced by the Court of Judicial Magistrate, 1st Class, Sri Muktsar Sahib in case No.399 of 4.6.2014 under Clause 19 (a)(c)(v) of the Fertilizer (Control) Order, 1985 and Sections 7 and 12 AA of the Essential Commodities Act, 1985 as follows : -

Sections	Sentence
Section 7 of Essential Commodities Act read with Clause 19 (a)(b)(c) of the Fertilizer Control Order, 1985	To undergo rigorous imprisonment for a period of one year and to pay fine of Rs.200/-. In default of payment of fine, further RI for seven days.

The petitioner has also made prayer that Criminal Appeal No.199 of 2018 titled Ravi Anand v. State of Punjab filed by the petitioner against the impugned judgment and order dated 23.7.2018 stands abated

from record and file of the Court of learned Additional Sessions Judge-I, Sri Muktsar Sahib, Punjab.

The brief facts of the case are that on 8.6.2012, Gurmeet Singh, Agriculture Development Officer (Fertilizer Inspector) inspected the premises of M/s Ashok Kumar and Sons, New Grain Market, Sri Muktsar Sahib and as per stock register of the firm, 109 bags each weighing 50 kg. of Single Super Phosphate 16% were lying in the stock. The said fertilizer was manufactured by M/s Ganpati Fertilizers, Chitorgarh, marketed and supplied by M/s Shri Ram Fertilizers and Chemicals Limited, New Delhi vide Invoice No.2999200152 dated 28.3.2012 and was received by the dealer firm on 4.6.2012 as per the stock register. The aforesaid inspection was conducted by the Fertilizer Inspector in the presence of Ashok Kumar, Proprietor of the Firm and at that time, batch number was not found to be mentioned in the stock register. The aforesaid 109 bags of the fertilizer were in polythene packing and were found sealed. The Fertilizer Inspector prepared form 'J' in duplicate which was signed by Ashok Kumar, proprietor and Pakhar Singh, Agriculture Development Officer at the spot. The Fertilizer Inspector prepared 3 forms 'P' and also prepared 3 forms 'K' in the presence of Ashok Kumar Proprietor and Pakhar Singh, Agriculture Development Officer. 3 bags of fertilizers numbered as 36, 72 and 108 were selected from the stock of 109 bags of fertilizer. The sample was drawn by the Fertilizer Inspector from the said 3 bags as per the procedure prescribed in Fertilizer (Control) Order, 1985. The sample so made homogenous was filled in 3 thick gauged polythene bags and the mouth of the bags were properly sealed to make them air tight. One sealed sample and one form 'J'

sample and other forms were kept by the Fertilizer Inspector in his safe custody. The second sample was deposited in the Fertilizer Testing Laboratory, Ludhiana along with form 'K'. The said sample on its analysis was found to be sub-standard as Neutral Ammonium Citrate Soluble Phosphoric Acid was found to be 12.47% instead of 16.00% having a variation of 3.35% and Water Soluble Phosphoric Acid was found to be 11.35% instead of 14.50% having a variation of 3.15% whereas permissible tolerance limit for these is 0.10%.

The Fertilizer Inspector submitted the analysis report in the form 'L' to the Chief Agricultural Officer; that during the aforesaid inspection, other shortcomings were also found ; (i) fertilizer in question was not added in the dealer's licence in violation of Fertilizer (Control) Order, 1985, (ii) Stock register was not maintained by the dealer in violation of Section 35 (i)(a); (iii) Licence was not displayed in open space by the dealer; (iv) More than one bag of DAP fertilizer was found open in violation of Section 22(a) of the Fertilizer (Control) Order; (v) the bills issued by the dealer were not bearing the signatures of the customer in violation of Section 5 of Fertilizer (Control) Order, 1985; (vi) the dealer could not produce the bill of M/s Shri Ram Fertilizer and Chemicals Limited in violation of Section 5 of Fertilizer (Control) Order, 1985. The aforesaid analysis report was served upon the dealer along with show cause notice dated 5.7.2012 through registered post and the dealer submitted his reply to the said show cause notice and the same was not found to be satisfactory. Consequently, the complaint was filed in the Court of Illaqa Magistrate by the Chief Agriculture Officer against the dealer, manufacturer and the supplier of the said fertilizer.

During the trial, State examined CW1 Pakhar Singh, Agriculture Development Officer, CW2 Gurpreet Singh who took the sample for analysis to Fertilizer Testing Laboratory, Ludhiana, CW3 Gurlal Singh, Junior Assistant in the office of Chief Agriculture Officer, Jalandhar, CW4 Gurmeet Singh, Agriculture Development Officer (complainant), CW5 Beant Singh Chief Agricultural Officer, CW6 Sanju Rani, Establishment Clerk and CW7 Garish Kumar, Agricultural Development Officer. The accused persons were examined under Section 313 Cr.P.C.

After hearing the counsel for the parties, the trial Court convicted and sentenced the accused persons including the petitioner as has been detailed above.

The petitioner being aggrieved by the judgment and order dated 23.7.2018 passed by the learned trial Court, filed an appeal and the same is now pending before the first appellate Court, for its disposal in accordance with law.

Counsel for the petitioner has contended that the impugned judgment and order are patently illegal. He has further contended that the petitioner who is a law graduate was working as a in-house lawyer for M/s Shri Ram Fertilizer and Chemicals Limited and he was appearing in the trial Court in a representative capacity for accused No.4. It is further contended that the petitioner joined the aforesaid company on 23.1.2012 and was confirmed on 23.7.2012 and was not permanent employee of the Shri Ram Fertilizer and Chemicals Limited, when the premises of M/s Ashok Kumar and Sons were inspected on 8.6.2012 by the Agricultural Development Officer (Fertilizer Inspector) as has been alleged in the complaint.

Ram Fertilizer and Chemicals Limited was not impleaded as party in the complaint and in its absence, the employee of the said company cannot be held liable.

Counsel for the petitioner has further submitted that the present petition filed under Section 482 Cr.P.C. is maintainable even when the regular appeal against the order of conviction and sentence is pending before the first Appellate Court. In this context, counsel for the petitioner refers to **Gian Singh v. State of Punjab and others** (2012) 10 SCC 303, **Ramawtar v. State of Madhya Pradesh** 2021 SCC Online SC 966, **Kulwinder Singh and others v. State of Punjab** 2007 (3) RCR (Criminal) 1052 and **Sube Singh and others v. State of Haryana** 2013 (4) RCR (Criminal) 102.

Counsel for the petitioner has further contended that the representative of the Company under Section 305 Cr.P.C. cannot be convicted and sentenced to imprisonment. In support of his contention, counsel for the petitioner has referred to order of this Court passed in **CRM-M-25244-2012** on 19.8.2013 titled **Dow Agro Science India Private Limited v. Central Bureau of Investigation** and **CRM-M-12661-2014** decided on 13.5.2014 titled **Jaya Switches (India) Private Limited v. State of Haryana**.

Counsel for the petitioner has further contended that the High Court apart from exercising its supervisory jurisdiction under Articles 227 and 235 of the Constitution of India, has a duty to exercise continuous superintendence over the Judicial Magistrates in terms of Section 483 Cr.P.C. as has been held by the Hon'ble Supreme Court of India in

others; (2009) 6 SCC 576.

Counsel for the petitioner has further contended that the person who is not even remotely alleged to have committed offence/offences cannot be convicted at all either at the trial or while exercising, wide jurisdiction under Article 226 of the Constitution of India as has been observed by Hon'ble Supreme Court in **Bharat Amratlal Kothari v. Dosukhan Samadkh Khan Sindhi** (2010) 1 SCC 234.

The petition is contested by the State counsel who has submitted that the present petitioner faced the trial and was convicted and sentenced to imprisonment vide judgment and order dated 23.7.2018 and thereafter, he filed regular appeal which is pending in the Court of learned Additional Sessions Judge, Sri Muktsar Sahib since 2018 and the present petition has been filed by the petitioner under Section 483 Cr.P.C. after about 7 years of the filing of the criminal complaint and as such, the present petition is not maintainable.

I have considered the submissions made by the counsel for the parties.

From the perusal of Annexure P-5, it is evident that the petitioner was impleaded as authorised representative of M/s Shri Ram Fertilizers and Chemicals Limited in Criminal Complaint No.399 of 4.6.2014 titled State of Punjab (through Chief Agriculture Officer) v. Ashok Kumar and others and he faced the regular trial and was convicted and sentenced to imprisonment by the learned trial Court vide judgment and order dated 23.7.2018 (Annexure P-1). Admittedly, the petitioner being aggrieved by the judgment (Annexure P-1) has filed regular appeal

Additional Sessions Judge, Sri Muktsar Sahib. In the said appeal, sentence of the petitioner has been suspended. Present petition has been filed on 3.1.2022 and prior to the filing of the present petition, the petitioner had never challenged the aforesaid criminal complaint, the trial proceedings and the proceedings in the appeal.

Counsel for the petitioner has referred to judgments passed by Hon'ble Supreme Court in **Gian Singh's** case (supra) and **Ramawtar's** case (supra) and the judgments passed by this Court in **Kulwinder Singh's** case (supra) and **Sube Singh's** case (supra) in order to establish that the present petition is maintainable even if the regular appeal against the impugned judgment and order of conviction and sentence is pending before the first appellate Court.

I have gone through the aforesaid judgments cited by the counsel for the petitioner. All the said judicial pronouncements are based on the compromise which was effected between the parties. However, in the instant case, no such compromise has been effected between the parties and thus, the aforesaid judgments cited by the counsel for the petitioner are not applicable in the present case.

In view of above, this Court is of the view that as regular appeal filed by the petitioner is pending before the first appellate Court, so, at this stage, no interference under Section 482 Cr.P.C. is called for. Further, as the appeal is pending before the appellate Court, this Court refrains from making any observations on the merits of the case that will have bearing on the said criminal appeal.

Consequently, the present petition is hereby disposed of giving

issues which are raised in the present petition before the Appellate court at the time of final hearing of the appeal by the said Court. The appeal being of the year 2018, the appellate Court is directed to decide the same in accordance with law, expeditiously, preferably within next 3 months of the receipt of a copy of this order.

Nothing stated hereinabove shall be treated as an expression of opinion on the merits of the appeal pending before the Court of learned Additional Sessions Judge.

(KARAMJIT SINGH)
JUDGE

November 4, 2022
Paritosh Kumar

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