

206 IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

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CRM-M-48138-2018

DECIDED ON: 27<sup>th</sup> SEPTEMBER, 2022

SURJEET SINGH

PETITIONER

VERSUS

STATE OF PUNJAB

RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Naresh Kumar Manchanda, Advocate  
for the petitioner.

Mr. Rajiv Verma, DAG, Punjab.

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**SANDEEP MOUDGIL, J**

The petitioner has assailed the complaint No. 74, dated 22.03.2018 under Section 19(a) (c) (v) of the Fertilizer (Control) Order 1985 (Annexure P-1) as well as summoning order dated 29.07.2018 (Annexure P-2) vide which he has been summoned to face trial in respect of offence under Section 7 of the Essential Commodities Act, 1955 read with Section 12AA of the Essential Commodities Act, 1955.

The factual matrix of the case culminate in the form that on 02.12.2014, Sh. Sandeep Bhateja, Fertilizer Inspector, Gidderbaha along with Sh. Bhagat Singh, Agriculture Sub Inspector, Gidderbaha visited the premises of the firm namely M/s Shiv Narain Periwal and Sons, Roshan Market, Gidderbaha and took the sample of Sulphur 90% (Elemental Sulphur) Fertilizer, from the stitched bag of 3 Kg packing, bearing batch No. SPL-2-232, manufactured on 20.04.2014 by manufacturing unit of M/s Sulphur Mills Limited, Gujarat and supplied by the Company vide

invoice No. SF/14-15/058 dated 31.05.2014. Then, above Sandeep Bhateja prepared Form 'J' in duplicate which were signed by Rajesh Kumar, representative of the above dealer firm in token of his acceptance to draw the sample. Sh. Bhagat Singh, Agriculture Sub Inspector, Gidderbaha also signed the Form 'J' as witness whereas customers present there allegedly refused to become witnesses. It is further the case of prosecution that on 03.12.2014, Sh. Sandeep Bhateja, Fertilizer Inspector, deposited two sample portions in the office of Chief Agriculture Officer, Sri Muktsar Sahib, who retained one sample in his store and second one was deposited in the Fertilizer Testing Laboratory, Ludhiana, vide letter No. 48 dated 05.12.2014. The expert after analyzing the sample declared it of Non-standard as total Sulphur as S percent by weight was found to be 87.88% instead of 90.00 % having a variation of 2.12% whereas permissible tolerance limit for this is 0.50, hence the sample failed in nutrient content. Thereafter, on the request of the dealer firm, the sample was sent for re-analyzation to Fertilizer Testing Laboratory, Bangalore-1 (Karnataka) and again it was found not according to the prescribed specification.

Mr. Sandeep Bhateja, Fertilizer Inspector and Mr. Bhagat Singh, Agriculture Sub Inspector drew samples from M/s Shiv Narain Periwal and Sons. Admittedly, the samples were taken from the sealed and stitched bags which were originally supplied by M/s Sulphur Mills Limited, Gujarat. The concerned official opened a sealed bag and took sample which was sent for chemical examination and according to the report the said sample was not upto the specifications. The said sample was taken on 02.12.2014 from stitched bag.

complaint against the petitioner and its firm M/s Shiv Narain Periwai & Sons and others. It is the complaint and the subsequent order of summoning therein, have been sought to be quashed in the present petition.

Learned counsel for the petitioner submits that he is sought to be prosecuted for having been found in possession of such fertilizer which upon analysis was found to be of sub-standard quality. He further submits that the petitioner is merely authorized person being the dealer of the manufacturing company and that admittedly the sample of the fertilizers was drawn from sealed bags and that there is nothing to show that the sealed bags had ever been tampered with and that in these circumstances it is for the manufacturer who can be held liable and not the dealer or representative or authorized person of the dealer.

Learned counsel for the petitioner relies upon the judgment of this Court rendered in the case of **“Manoj Grover vs. State of Punjab”** decided on 15.12.2009 being CRM-M-4582-2008 wherein, the petition was allowed and FIR under Section 7(1)(a) of the Essential Commodities Act, 1955, clause 19(1) (a) for Fertilizer Control Order, 1985 was ordered to be quashed holding that it cannot be said that the accused had any culpable mental state for committing offence and for manufacturing defect, who is only a dealer where there is no allegation that the stitched bags were tampered with.

In the instant petition as well the learned State counsel has not been able to dispute the fact that the bags containing Sulphur were stitched and actually manufactured by M/s Sulphur Mills Limited, Gujarat and were not tampered with.

Thus, it is apparent that the fertilizer was supplied in stitched

bags by above-said company viz. M/s Sulphur Mills Limited, Gujarat.

It would be worth noticing here that the Regulation 19 of the Fertilizer Control Order, 1985 also came to be tested in this Court in a case titled as ***Tarsem Singh vs. Union of India, 1996(2) 283*** wherein, the said piece of legislation was held to be violative of Articles 19 and 21 of the Constitution of India while striking it down with the observation that it has snatched a valuable right of a person who deals in a trade of fertilizer and sells the sealed and stitched bags as supplied to him by the manufacturer holding even such dealer liable for punishment who has properly stored the essential commodities such as 'fertilizer'. It would be apt to produce para 12 and 13 of the afore-said judgment, which reads as under:-

*“12. Summing up Regulation 19 of the impugned Fertilizer Control Order, 1985 in a piece of unfair legislation, it has given an arbitrary power to the Government to prosecute a person, who cannot show in a Court of Law that the report of the Public Analyst who has declared the sample of the fertilizer as 'sub-standard' could possibly fall in an error leading to his conclusions while testing the sample. It has also snatched a valuable right of a person who deals in the trade of fertilizer and sells the sealed and stitched bags as supplied to him by the manufacturer. Even this piece of legislation has made such dealer punishable who has properly stored the essential commodities as such 'fertilizer'. I am of the opinion that Regulation 19 of the impugned Fertilizer Control Order, 1985 is violative of Article 19 read with Article 21 of the Constitution of India and in its present shape cannot be allowed to operate/stand and as such Regulation 19 of the Control Order is hereby struck down. Thus the first proposition is answered in the affirmative.*

*13. The second proposition propounded above can also be answered with ease. When the foundation of the*

*prosecution is based upon a piece of legislation, which has not been able to stand the test of scrutiny, all prosecutions launched by the authorities under Regulation 19 read with Section 7 of the Essential Commodities Act are bound to be quashed and it is ordered accordingly.”*

This Court in a similar case of ***State of Punjab vs. Jagdish Chand and another*** reported as 2004(2) R.C.R. (Criminal) 478, wherein also sample of cattle feed was found to be substandard, and was taken from a stitched bag and in the case of ***Arun Kumar and others vs. State of Punjab*** reported as 1995(3) R.C.R. (Criminal) 231, the accused purchased bags of fertilizer from National Fertilizer Limited and kept the same in original form without any tampering. Sample from bags was found to be sub- standard, this Court has held that it could not be said that accused had any culpable mental state for committing offence and for manufacturing defect, accused cannot be held responsible.

Thus, even from the perusal of complaint in the case in hand, the petitioner is only an authorized person of the firm and is not responsible for the sub-standard fertilizer in the bag lying in his custody which is duly stitched and which was ordered from M/s Sulphur Mills Limited, Gujarat. There is no evidence to the effect that the stitched bags were found to be tampered with. Since, the non-compliance of the standard specifications, if at all, can only be attributed to the manufacturer i.e M/s Sulphur Mills Limited, Gujarat and not to the petitioner who is an authorized person of the dealer firm.

In the light of the above, even from the perusal of FIR no offence under Section 7(1)(a) of Essential Commodities Act, 1955 is made out qua the petitioner, who is only an authorized person, if at all as alleged,

of the dealer firm i.e. M/s Shiv Narain Periwai and Sons, Gidderbaha. Above all vide dissolution deed dated 31.03.2013 (Annexure P-4), he left the business of the dealer firm and as such has no concern with the business affairs with the said dealer firm and other partners, as per new partnership deed dated 01.04.2013 wherein the sample was taken much later to the said date on 02.12.2014.

A perusal of the record further shows that the present complaint has been filed after a lapse of more than three years on 20.03.2018 and no explanation is coming forth with regard to such delay. Further it is also apparent from the order dated 07.04.2018 the trial Court has summoned the petitioner without giving reasons based on any cogent and material evidence against him.

As far as the question of vicarious liability qua the petitioner is concerned, it is an exception to the normal rule of criminal jurisprudence wherein, no one can be held for criminal liability arising out of an Act on the part of other person. Even the basic essence of specific averment against the petitioner in the complaint with regard to holding the charge and responsibility for conduct of the business of the firm is absent.

This Court is of the considered view having examined the material on record and after considering the submissions made by the counsel for the parties that the petition deserves to be allowed and therefore, accordingly, the complaint No. 74 dated 22.03.2018, titled as **“State Vs. M/s Shiv Narain Periwai and Sons and others”** (Annexure P-1) under Section 19(a) (c) (v) of the Fertilizer (Control) Order 1985, punishable under Section 7 of the Essential Commodities Act, 1955 read

summoning order dated 29.07.2018 (Annexure P-2) summoning the petitioner to face trial of complaint under Section 7 of Essential Commodities Act, 1955, read with Section 12AA of the Essential Commodities Act, 1955, qua the petitioner is quashed.

**SANDEEP MOUDGIL  
JUDGE**

**27<sup>th</sup> SEPTEMBER, 2022.**

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|---------------------------------|----------|
| 1. Whether speaking/ reasoned : | Yes / No |
| 2. Whether reportable :         | Yes / No |