

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRR-728-2006

Date of Decision: 31.10.2022

Pukhraj Mittal

... Petitioner

VS.

State of Punjab

... Respondent

CRR-1527-2005

BN Puranmalka

... Petitioner

VS.

State of Punjab

... Respondent

CRM-M-33778-2006

RS Chhabra

... Petitioner

VS.

State of Punjab

... Respondent

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Denesh Goyal, Advocate for the petitioner

Mr. Shubham Kaushik, AAG Punjab

Sandeep Moudgil, J. (Oral)

This order shall dispose of the above-cited two criminal revision petitions and one criminal miscellaneous petition arising out of the common order dated 25.04.2005 vide which the petitioners have been summoned under Section 319 CrPC to face trial. For the purpose of facts and order, CRR-728-2006 is being treated as the lead case.

The petitioner-Pukhraj Mittal has filed the present revision petition which is directed against the order dated 25.04.2005 (Annexure P1) vide which the petitioner, being responsible in the conduct of business of M/s Indo Gulf Fertilizers and Chemicals Corporation Ltd., has been summoned under Section 319 CrPC to face trial for the offence punishable under Section 7 of the Essential Commodities Act, 1955 (for short, '1955 Act').

Briefly stated the facts of the case are that a complaint was filed stating that Palwinder Singh Aulakh, Chief Agricultural Officer, Moga was authorized, by the President of India, to make complaint, vide notification No. 50-34-/CA-10/55/5-12AA/912 dated 10th July, 1991. Shri Rachhpal Singh, Agriculture Development Officer was appointed as Agricultural Inspector vide endorsement No. 14879-953/2-2853/E-1(2) Chandigarh dated 7.11.1986 and he had been declared as Fertilizer Inspector, vide notification dated 5.8.1991. His designation was changed as Agricultural Development Officer, vide notification No. 10/56/80G.P.I/395 dated 22.01.1991. On 17.06.1993 Shri Rachhpal Singh, Fertilizer Inspector, Baghapurana, along with Shri Surjit Singh, Composite Inspector, Baghapurana, had visited shop of M/s Ashok Kumar Garg and Co., Baghapurana under powers vested with him under Clause 28 of Fertilizer (Control) Order, 1985. He had disclosed his identity and intimated his desire to draw sample of D.A.P. 18.46%. He had checked records and found 120 bags of fertilizer in stock register. He had prepared six "J" forms. Shri Dev Raj, salesman of firm was present, who had signed above said "J" forms in token of drawing sample. Some customers were present there. He wanted to associate them but nobody was willing to associate. Then Shri Surjit Singh Composite Inspector, Baghapurana had signed all "J" forms as witness. Then he had drawn sample from three bags out of stock of 120 bags according to table provided in Schedule on a dry and clean newspaper. The composite sample was drawn with sampler, which was dry and clean. Weight of this composite sample was not less than 1.5 kg. Same was mixed with dry wooden rod to make it homogeneous. Then it was filled in three thick gauge polythene bags. Mouth of these bags were tied with

a thread to keep fertilizer air tight. These were put in three separate cloth bags along with 'J' form in each portion of the samples. Mouth of these bags were sealed with seal bearing letters "Agri. Deptt./FDK-3". Particulars of these samples were written on cloth bags. One sealed sample and one J form was handed over to Shri Dev Raj, salesman of M/s Ashok Kumar Garg & Co, Baghapurana at the spot and other two portions of the samples were submitted in office of Chief Agricultural Officer, Faridkot through Shri Paramjit Singh, Beldar, Baghapurana with Shri Sukhwant Singh, Agriculture Development Officer, Faridkot, on 21.06.1993, who had retained one sample in store and third one, he had deposited in Fertilizer testing laboratory, Faridkot on 22.06.1993 with form 'K'. It is further alleged in complaint that expert analyzed the sample and declared it non-standard as he had found only 43.42% active ingredient contents instead of 46% vide analysis report in form 'L'. Copies of the same were served upon dealer, distributor and manufacturer along with show cause notice. M/s Ashok Kumar Garg & Co., Baghaurana, Shri Ashok Kumar son of Shri Hem Raj, Prop. M/s Ashok Kumar Garg & Co, Baghapurana, and Shri Dev Raj, Salesman of M/s Ashok Kumar Garg & Co., Baghapurana are responsible for conduct of business, selling this non standard fertilizer and have violated Section 19(i) (a) of FCO, 1985, whereas distributor M/s Kanshi Ram Mehar Chand, Moga, Shri Jagdish Kumar son of Mehar Chand and Pawan Kumar son of Shri Mehar Chand, partners of M/s Kanshi Ram, Mehar Chand, Moga and manufacturer M/s Indo Gulf, Fertilizers and Chemicals Corp. Ltd and Shri K.K. Aggarwal, General Manager, (P. & AQ) of M/s Indo Gulf Fertilizers & Chemical Corp. Ltd. are

responsible for conduct of business and have violated Section 19(i)(a) of FCO, 1985 by distributing and manufacturing this non-standard fertilizer.

The accused were summoned to face trial under Section 19(i)(a) of Fertilizer (Control), Order, 1985 and Section 7 of the Essential Commodities Act, 1955 and after recording pre-charge evidence firstly, charges against Ashok Kumar, Dev Raj, Jagdish Kumar and Pawan Kumar were framed on 08.04.2002. Thereafter, firms M/s Ashok Kumar Garg & Co. and M/s Kanshi Ram Mehar Chand, were arrayed as accused and fresh charges were framed on 04.01.2005.

On 05.03.2005, application was filed by the prosecution under Section 319 CrPC for summoning the petitioner, along with 5 others including BN Puranmalka and RS Chhabra, to face trial. The said application has been accepted by the trial court on the ground that in view of Section 10(1) of the 1955 Act, every person, who was incharge of, or responsible to the company, for the conduct of its business, at the time of commission of contravention, shall be deemed to be guilty of Section 10(2) of the 1955 Act and as such, the petitioner, being Joint President of M/s Indo Gulf Fertilizers and Chemical Corporation Ltd., is also liable to be proceeded against in such capacity.

Notice of motion was issued on 30.05.2006 and further proceedings *qua* the petitioner were ordered to remain stayed. Thereafter, numerous adjournments were sought, on one pretext or the other, and also on the ground that reference in case of **Hardeep Singh vs. State of Punjab 2008(4) RCR (CrL) 947**, is pending before the Apex Court on the point whether the accused can be summoned on the basis of an evidence, which is

yet to be cross-examined. In the meantime, the co-accused of the petitioner were acquitted by the trial court, vide its judgment dated 28.05.2015. Besides, the reference was also answered by the Apex Court reported as **2014(1) RCR (CrL.) 623**. It was in this backdrop, this Court, vide order dated 18.05.2016, granted time to the learned counsel for the petitioner, who sought time to seek instructions, if the petitioner is inclined to withdraw the present petition with liberty to face trial. However, the petitioner proceeded to address the arguments on merit as is evident from the order dated 26.05.2016.

The foremost contention raised by learned counsel for the petitioner is that the co-accused in the present case, who faced trial, have earned acquittal, on the basis of evidence led by both the parties. That being so, summoning of the petitioner to face trial on the similar set of allegations, would be an exercise in futility and sheer wastage of court time.

Learned counsel for the petitioner further contends that the proceedings initiated by the Department are contrary to Section 10 of the 1995 Act and Clause 24 of the Fertilizer (Control) Order, 1985 inasmuch as, if a person is nominated by the company, then it is the duty of the concerned Department to first verify, whether the concerned person is actually having any control on the quality of the product produced or not, and the nomination made by the Department is further subject to approval by the Central Government, which is absent in the present case.

It is further contended that the petitioner is an ex-employee. The sample in question was drawn on 17.06.1993, complaint was filed on 22.06.1993 and after re-examination of the same witnesses, the application under Section 319 CrPC has been filed on 16.02.2005 i.e. after more than 12

years from the date of sampling. Reliance is placed on 2002(4) RCR 113 to contend that where there is inordinate delay in prosecuting the case, the trial of the accused would be an abuse of process of law.

Learned State counsel contended that the petitioner is the Joint Director of the Corporation and as such was very much responsible for manufacturing/supplying the sub-standard fertilizer, therefore, the order passed by the trial court summoning the petitioner to face trial is just, notwithstanding the acquittal of other co-accused.

I have heard learned counsel for the parties and gone through the record.

Specific allegation has been made only against RS Chhabra that he manufactured misbranded fertilizers and supplied it to the firms, namely, M/s Kanshi Ram Mehar Chand, Moga and M/s Ashok Kumar Garg & Co., Baghapurana, whereas, no allegation has been leveled against BN Puranmalka and Pukhraj Mittal as only they were responsible in the conduct of business of M/s Indo Gulf Fertilizers and Chemical Corporation Ltd.

A perusal of the judgment passed by the trial court shows that PW1 Rachhpal Singh, who drew samples, was required to issue cash memo in accordance with form 'M' of Fertilizer Control Order mentioning the brand name, batch number etc. as issued by the manufacturing company, but no such document has been adduced in evidence by the prosecution. As such, the prosecution was not able to bring home guilt of the accused beyond shadow of reasonable doubt.

The nature of allegations leveled against the co-accused and the present petitioner is, by and large, identical. If at all, the order of summoning

the petitioner is sustained, the net result would, certainly, end in acquittal of the petitioner, as the evidence adduced before the trial court in the other case in which the co-accused have earned acquittal, would be the same. In my considered view, it would be an abuse of process of law if the order of summoning the petitioner is allowed to sustain.

Moreover, the observation made by the trial court, while passing the summoning order dated 25.04.2005, is equally important as it raises serious question on the genuineness of the complaint. The trial court highlighted the conduct of the Agriculture Department in adopting pick and choose for prosecuting accused persons where intentionally responsible persons have been left to be arrayed as accused due to some underhand understanding with such firm and such misdeed is aligning the complainant-Department at par with the accused.

In such circumstances, the allegations leveled by the complainant against the petitioner smacks of *mala fide* and ulteriorly motivated.

Accordingly, this petition is allowed and the order dated 25.04.2005, passed by the Special Judge, Moga, and all the proceedings arising therefrom, are quashed.

31.10.2022
V.Vishal

(Sandeep Moudgil)
Judge

- 1. Whether speaking/reasoned?
- 2. Whether reportable?

Yes/No
Yes/No