

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH
CRA-S-1304-SB-2005 (O&M)
Date of Decision: January 11, 2023

Ragbir Singh

...Appellant

Versus

State of Punjab and others

...Respondents

CORAM: HON’BLE MR. JUSTICE SANJAY VASHISTH

Present: Mr. Rahul Sharma, Advocate,
for the appellant.

Mr. J.S. Arora, DAG, Punjab,
for respondent No. 1 – State.

Mr. Chander Singh, Advocate,
for respondent Nos. 2 and 3.

SANJAY VASHISTH, J.

1. Appellant – Ragbir Singh filed present appeal challenging judgment of conviction and order of sentence dated 18.07.2005, passed by learned Special Judge, Hoshiarpur, in E.C. Complaint No. 16 of 03.05.1996, recording conviction under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 (for short, ‘the Act’), for violating the provisions contained in Clause 19(1)(a) of the Fertilizer Control Order, 1985 (for short, ‘Control Order’), issued under Section 3 of the Act. Appellant was sentenced as under:-

Under Section	Sentence	Fine	In Default
7(1)(a)(ii) of the Act	1 year RI	Rs. 1,000/-	2 months RI

2. Co-accused of the appellant, namely, Gurdip Singh Chahal

(respondent No. 2), who allegedly was Shift Incharge of M/s Agro Chem. Punjab Limited, Village Singhpura, District Patiala, and responsible for compliance of Clause 24 of the Control Order, and Kewal Singh Dhillon (respondent No. 3), who was Managing Director of M/s Agro Chem. Punjab Limited, Village Singhpura, District Patiala, were acquitted, giving them benefit of doubt. Thus, the appellant was the sole convict in the present case, who was Dealer and the sole proprietor of the said firm.

3. Facts giving rise to filing of complaint, as noticed from paragraph Nos. 2 and 3 of the judgment of Trial Court, says as under:-

“2. The facts giving rise to the instant complaint are that Raghbir Singh accused no. 1 was the sole proprietor of M/s. Gill Brothers, Kot Fatuhi and the said firm was dealing with the business of fertilizer, as per the retail dealers registration certificate No, 41/143 valid upto 31.3.93 which was renewed on 1.4.93 for further three years. Balvinder Singh Agriculture officer was notified as Fertilizer Inspector vide Punjab Govt. Notification 7643-Agri.II (X) / 72 / 32532 dated 28.12.92 under clause 27 of the Control order, as such, he was duly authorised to exercise his powers as per section 28 of the control order to draw the sample of fertilizer. On 29.12.93, Balwinder Singh Chela, Fertiliser Inspector accompanied by Kulbir Singh Fertilizer Inspector Kot Fatuhi, drew sample of Single Super Phosphate (powder) 16% Jat Brand manufactured by M/s. Agro Chem Punjab Limited, Singhpura, distt. Patiala, Punjab. The said test sample was perfectly drawn absolutely in consonance with the Procedure prescribed under the Fertilizer Control Order in the presence of Raghbir Singh Sole Proprietor of the firm M/s Gill Brothers Kot Fatuhi, Hoshiarpur. There was a stock of 63 bags weighing 50 kgs. each of Single Super Phosphate 16% (powder) Jat Brand, He selected two bags at random according to the table provided in the Control Order. All the bags, out of which the sample was drawn, were of the same brand i.e. Jat Brand. Single Super Phosphate bags were stored, arranged and kept systematically in rows in the shop. The sample was taken with the help of sampling probe, made of brass which was clean and dry.

3. The fertilizer was taken out from the two selected bags of Single Super Phosphate, Jat Brand by inserting sampling probe from one corner to another diagonally, and the fertilizer so taken out was put on dry polythene sheet which was weighing approximately 4 to 5 kgs. Then it was spread, mixed thoroughly and made homogenous with the help of hard paper and was divided into four equal parts. Then he removed two diagonally opposite parts and such operation was repeated till the composite sample remained approximately 1.5 kgs. and then it was divided into three approximately equal parts weighing about 400 grams each. Each of the sample was immediately transferred into clean and dry thick gauged polythene bags and each test sample so prepared was further put into empty cloth bag along with form-J which was clean and dry. Raghbir Singh proprietor of the firm, who was present at the time of drawing sample, also appended his signatures on seizure memo i.e. form-J. Five copies of form-J were prepared at the spot by the Fertilizer Inspector Balwinder Singh who duly signed the same. Kulbir Singh Block Agriculture Officer also appended his signatures as a witness. The sample bags were also made air tight with thread and the same were sealed by Balwinder Singh Chela Fertilizer Inspector with his seal bearing impression FIH-17-KF. Then, he also filled in K-form, two in number and completed the same in the presence of Raghbir Singh accused no. 1 as well as in the presence of Kulbir Singh Agriculture Officer Kot Fatuhi. On each test sample, name of the fertilizer, brand and date of sampling etc. were mentioned. One part of the three samples alongwith form-J was handed over to Raghbir Singh accused no. 1 who acknowledged the same. Second sample alongwith form-K was deposited with the Fertilizer Quality Control Laboratory, Faridkot through Sh. Mehnga Ram, Agriculture Sub Inspector of the office of Chief Agricultural Officer, Hoshiarpur and the third sample was deposited as reference sample. As per the analysis report of the Fertilizer Quality Control Laboratory, the sample of Single Super Phosphate (powder) 16%, Jat Brand was not found according to the specifications of the Control Order and was declared non-standard. As such, Raghbir Singh accused no.1 being the proprietor of K/s. Gil, Brothers Tot Fatuli, violated the provisions of 15(1)(a) of the control Order by selling stocking nonstandard fertilizer. The said fertilizer was supplied to accused No. 1 vide bill No. 429 dated 1.10.93 by the firm M/s. Agro Chem Punjab Limited, Singhpura distt. Patiala. As such, the said firm also violated the aforesaid provisions of the Control Order. This non-standard fertilizer

was manufactured by M/s. Agro Chem Punjab Limited, Singhpura distt. Patiala and Gurdip Singh Chahal, Incharge of the said firm was appointed as person responsible for the quality of this fertilizer. Thus, he also violated the provisions of Clause 19(1)(a) of the Control Order, whereas accused No. 3 Kewal Singh Dhillon, being the managing director of M/s. Agro Chem Punjab Limited being over all responsible for the quality and production of non-standard fertilizer is also responsible for the manufacture of non-standard fertilizer.”

4. As per analysis report of the Fertilizer Control Laboratory, sample of Single Super Phosphate (powder) 16%, Jat Brand, was not found according to the specifications of the Control Order and was, thus, declared non-standard. Appellant being proprietor of M/s Gill Brothers, Kot Fatuhi, Hoshiarpur, faced the complaint and charges on account of selling/stocking non-standard fertilizer.

5. There is no dispute that non-standard fertilizer was manufactured by M/s Agro Chem. Punjab Limited, Singhpura, District Patiala, and Gurdip Singh Chahal (respondent No. 2), incharge of the said firm was appointed as person responsible for the quality of said fertilizer.

6. One and the sole argument addressed in appeal by learned counsel for the appellant is that star prosecution witness, Balwinder Singh Chela, Agriculture Information Officer, Hoshiarpur, who appeared as PW-1, has categorically admitted in his cross-examination that recovered stock was having original machine stitching and there was no tampering. Relevant cross-examination referred by learned counsel for the appellant, is reproduced here-in-below:-

“PW1 Sh. Balvinder Singh Chela, recalled for cross examination SA.

XXX by Sh. HS Saini Adv. For Raghbir Singh accused.

Shop of Raghbir Singh falls near Gill Brothers Kot Fatuhi Hpur. The bags of fertilizer lying in the shop of dealer were properly stacked. These were having original machine stitching and there was no tampering. There was print of the manufacturing concern over each of the bag. No one can see/imagine the deficiency if any in the contents of the fertiliser without opening the bags. The dealer had purchased fertiliser from Agrochem Pb. Ltd. Singhpura, Patiala copy of which is Ex.PH/D. It is wrong to suggest that the prescribed procedure was not followed for taking the sample.

XXXX”

7. While referring above reproduced extract of the cross-examination of star prosecution witness, learned counsel for the appellant argues that with such kind of admission, appellant cannot be fastened with any liability for violation of the provisions contained in Clause 19(1)(a) of the Control Order or under Section 7 of the Act, by alleging that sample of the fertilizer was found of non-standard quality or not according to the specifications. Learned counsel relied upon judgment of this Court passed in the case of **Paramjit Kaur v. State of Punjab (CRM-M-8208-2014, decided on 02.12.2022)**, wherein in similar circumstances, proceedings against the accused who was also a Dealer and not the manufacturer, were dropped. Relevant observations made in the said judgment reads as under:-

“ The undisputed fact emerging from the record are that the petitioner during the period in question was holding valid license issued by competent authority; the petitioner had purchased fertiliser in question from a reputed company whose name was duly mentioned in the license

issued by competent authority; the bag from which sample was drawn was found duly stitched; no alteration in the bag was found; the petitioner is not a manufacturer; he is a dealer.

*This Court in **State of Punjab versus Jagdish Chand and Another**, reported as **2004(2) R.C.R (Criminal) 478**, where sample of cattle feed was found to be substandard, has observed that the accused, who was a dealer, cannot be held guilty. Further, in the case of **Arun Kumar and Others versus State of Punjab; 1995 (3) R.C.R (Criminal) 231**, the accused purchased bags of fertiliser from National Fertilizer Limited and kept the same in original form without any tampering. Sample from bags were found to be sub-standard. This Court 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.*

In view of aforementioned facts and above cited judgment of this Court, the present petition deserves to be allowed and accordingly allowed. Complaint No.390 dated 23.07.2013 under Sections 19(a) (b) and 19 (c) of the Fertilizer (Control) Order, 1985 and order dated 23.07.2013 passed by learned Chief Judicial Magistrate, Tarn Taran, are quashed, qua the petitioner.”

8. Learned counsel for the appellant also relied upon another judgment of this Court in the case of **Surjeet Singh v. State of Punjab** (CRM-M-48138-2018, decided on 27.09.2022). Relevant submissions and the observations made in the said judgment, reads as under:-

“ 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 with Section 12AA of the Essential Commodities Act, 1955, as well as 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.”*

9. Learned counsel for the appellant also relied upon judgment dated 20.11.2008, passed by this Court in the case of **State of Punjab through Chief Agricultural Officer, Gurdaspur v. R.K. Thukral & others**

(CRM-A-365-MA of 2006), and relevant part from the said judgment is also reproduced hereunder:-

“Under Section 100(4) Cr.P.C., it is laid down that before making a search, the officer conducting the search and seizure shall call upon two or more independent respectable inhabitants of the locality and in the instant case, though the premises were situated in the crowded area but no independent witness was joined by the raiding party. Trial Court has further found that the bags from where the samples were drawn, were machine stitched and the prosecution has failed to prove that the bags were open and restitched as there was no reference in the complaint if any stitching machine was found in the premises. It has also found certain other contraventions which led to the acquittal of the accused. The High Court ought not to interfere with the order of acquittal unless the judgment of acquittal is perverse or highly unreasonable. In the instant case, the judgment of acquittal rendered by Special Judge, Gurdaspur, is neither perverse nor unreasonable and it cannot be said that the trial court based its findings on irrelevant or inadmissible evidence. In the circumstances, this Court is not inclined to grant leave asked for and the application is accordingly dismissed.” (Emphasis added)

10. While answering the submissions of learned counsel for the appellant, which are based upon point of law, learned State counsel could not answer in clear terms about the deposition in the shape of admission that all the recovered bags of fertilizer were properly stacked and having original stitching over it, without any tampering. There is also no answer about the admission made by Balwinder Singh Chela, Agriculture Information Officer, Hoshiarpur (PW-1), that there was print of the manufacturing concern over each of the bag and that deficiency, if any, in the contents of the fertilizer cannot be known without seeing it from inside.

11. Still learned State counsel relies upon deposition of the

prosecution witnesses and submits that there being no direct enmity or any ill motive, action taken by the prosecution agency cannot be doubted and, thus, on the basis of ample material in the shape of admissible evidence, appeal deserves to be dismissed.

12. This Court has heard both the sides on the issue addressed in appeal and has also noticed the specific stand taken by the appellant in his defence. Same is taken out from paragraph No. 7 of the impugned judgment and says as under:-

“I am innocent and have been falsely implicated in this case. I purchase the said fertilizer from Agro Chem Punjab Limited Singhpur against bill Ex. PM and I was selling the fertilizer in the same condition as I have received from the company. The alleged fertilizer bags were properly and systematically stored in the shop. Proper procedure was not followed while drawing the sample.”

13. By going through the specific stand taken in defence by the appellant and then making a conjoint reading with the admission made by the star prosecution witness, namely, Balvinder Singh Chela (PW-1), it is amply clear that only issue raised by the appellant is that once there is no allegation of recovery of fertilizer bags already used or opened, which were bearing the print of manufacturing concern also, appellant who is only a dealer, cannot be blamed in isolation, without making the manufacturer of the fertilizer as an accused. Surprisingly, in the present case, manufacturing concern, i.e. M/s Agro Chem Punjab Limited, Village Singhpur, District Patiala, has not been made an accused, for the reasons best known to the prosecution. Moreover, officials of the said manufacturing concern, who were impleaded by name in their individual

capacity, have been acquitted by learned Trial Court.

14. Having gone through the judgments cited and as noticed here above, viz-a-viz the admission of prosecution witness (PW-1) and specific defence taken by the appellant, I am of the considered view that present appeal is worth to succeed, inasmuch as, in isolation the appellant cannot be convicted for fault alleged against him.

15. In view of above discussion, this **appeal is allowed** and the impugned judgment of conviction and order of sentence, dated 18.07.2005, passed by learned Special Judge, Hoshiarpur, is set aside. Accordingly, appellant – Raghbir Singh is acquitted of the charges levelled against him.

16. Pending miscellaneous applications/IOIN, if any, are also disposed of accordingly.

17. Registry is directed to send back original lower court record alongwith a copy of this judgment.

(SANJAY VASHISTH)
JUDGE

January 11, 2023

Pkapoor

Whether Speaking/Reasoned: YES/~~NO~~
Whether Reportable: YES/~~NO~~