

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Crl. Misc. No. M-19185 of 2019

Date of Decision: January 23, 2023

M/s S.S. Fertilizers Ludhiana and another

.....Petitioners

versus

State of Punjab

.....Respondent

CORAM: HON'BLE MR.JUSTICE SUDHIR MITTAL

Present:- Mr. Arun Chandra, Advocate
for the petitioners

Mr. Pankaj Khullar, AAG Punjab

Sudhir Mittal, J. (Oral)

Short affidavit on behalf of the Chief Agriculture Officer, Ludhiana has been filed in the Court. The same is taken on record. A copy of the same has been supplied to learned counsel for the petitioners.

The petitioners have been summoned in a complaint filed under Clause 19 of the Fertilizer (Control) Order 1985 read with Section 3 of the Essential Commodities Act, 1955 punishable under Section 7 of the said Act vide summoning order dated 07.03.2019.

Learned counsel for the petitioners has submitted that a sample was drawn by the Fertilizer Inspector on 28.11.2016. The report thereof as well as the complaint clearly show that the sample was taken from machine stitched sealed bags at random. This factum is admitted even in the reply filed on behalf of the State. In such circumstances the dealer i.e. petitioner No. 1 can not be held liable as has been held by this Court in judgment dated 30.07.2012 passed in CRM No.

28723 of 2010 titled as ***Ghanvir Singh vs. State of Punjab and another.***

In response, learned State counsel submits that in view of Section 19-A of the Fertilizers (Inorganic, Organic or Mixed) (Control) Order, 1985, even the dealer is liable.

Learned counsel for the petitioners submits that the submission on behalf of the State is meaningless as said Section 19-A was brought on the statute only vide amendment dated 07.03.2022 and w.e.f. 08.03.2022. Thus, the same is not applicable to the case of the petitioners where the inspection was conducted in the year 2016 and sampling was done on 28.11.2016.

A perusal of the judgment in ***Ghanvir Singh (supra)*** shows that this Court has held that in view of Section 30(3) of the Insecticides Act, 1968, liability can not be imposed upon a dealer. Reliance has been placed upon ***M/s Kisan Beej Bhandar, Abohar vs. Chief Agricultural Officers, Ferozepur and another, 1990 Supreme Court Cases (Crl.) 623***. In this case, admittedly the sample was drawn from machine stitched bags and, thus, the ratio of the said judgment is squarely applicable.

The argument based upon Section 19-A of the Order can not be accepted as the said provision was inserted for the first time in the year 2022 and w.e.f. 08.03.2022.

In view of the above, the petition succeeds. The complaint and summoning order dated 07.03.2019 and subsequent proceedings are, accordingly, quashed qua the petitioners.

(SUDHIR MITTAL)
JUDGE

January 23, 2023
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No