

203 IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH

CRM-M-36052-2021 (O&M)

Date of Decision: 19.12.2023

M/S BRIJ LAL AND SONS AND ANOTHER

...Petitioners

V/S

STATE OF PUNJAB

...Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

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

Mr. I.P.S. Sabharwal, DAG Punjab.

HARPREET SINGH BRAR J. (Oral)

1. Present petition has been filed under Section 482 of Cr.P.C. seeking quashing of the complaint 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 Essential Commodities Act 1955 dated 20.03.2019 (Annexure P-2) vide complaint No. 111/2019 District Ludhiana as well as the summoning order dated 20.03.2019 (Annexure P-3).

2. Learned counsel for the petitioners admittedly contends that the Fertilizer Inspector-complainant has visited the premises of petitioner No. 1 on 11.05.2017 and drew the sample of fertilizer Zinc Sulphate 33% Monohydrate from the machine stitched sealed bags, out of the stock of 22 bags of 5 kg each. This fertilizer is manufactured by M/s. Chakardhar Chemicals Private Ltd., E-3, UPSIDC, Industrial Area, Bagraipur, Muzaffarnagar (UP) and it has been supplied through M/s. Indo Gulf Fertilizers. The petitioner No. 1-Firm is only a dealer and is not involved in the process of manufacturing the fertilizers.

to show the factum of sample drawn from the machine stitched bags, which is available on record as Annexure P-1. The perusal of the same would indicate that the sample has been drawn from the stitched bags. Further this fact is admitted in para 1 of the preliminary submissions of the reply filed on behalf of the respondent-State, which is reproduced hereinbelow:

“That it is respectfully submitted that the brief facts of this case are that on 11.05.2017, Sh. Remander Singh, Agriculture Development Officer - cum- Notified Fertilizer Inspector, Jagraon, Ludhiana had drawn a fertilizer sample of Zinc Sulphate Monohydrate 33% (Powder) manufactured by M/s Chakradhar Chemicals Private Limited, Muzaffarnagar (U.P) and marketed by M/s Indo Gulf Fertilizers (A unit of Aditya Birla Novo Ltd., CSM Nagar(U.P) from the selected 2 machine stitched sealed bags at random out of stock of 22 machine stitched bags of 5 kgs each from the shop premises of Petitioner No.1.”

4. Learned counsel for the petitioners relied upon **M/s. Rallis India Limited and Others Vs. State of Punjab 2022(3) RCR Criminal 880, Deepak Sharma Vs. State of Punjab 2008 RCR Criminal 24** and **CRM-M-30924-2021** titled as **Jaswinder Singh and Another Vs. State of Punjab decided on 05.12.2023**, **CRM-M-28723-2010** titled as **Ghanvir Singh Vs. State of Punjab and Another** decided on 30.01.2012, **CRM-M-1403-2013** titled as **The Binjal CASS Ltd. Vs. State of Punjab through Chief Agriculture Officer Ludhiana** decided on 05.10.2018, **CRM-M-4582-2008** titled as **Manoj Grover Vs. State of Punjab** decided on 15.12.2009 and **CRM-M-19185-2019** titled as **M/s. S.S. Fertilizers Ludhiana and Another Vs State of Punjab** decided on 23.01.2023.

5. Per contra, learned State counsel opposes the prayer made by

learned counsel for the petitioner on the ground that the probable defence of the petitioner cannot be looked by this Court at this stage as it is a matter of trial and only on the basis of the evidence led by the parties, a conclusion can be drawn in favour of the petitioners by the learned trial Court.

6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the sample was taken from the original packing. The reply 29.09.2022 filed by way of affidavit of Mr. Amanjit Singh, Chief Agriculture Officer, Ludhiana has affirmed the abovesaid fact. As such it is an undisputed case set up by the complainant that the petitioners are the dealers of the manufacturers M/s. Chakardhar Chemicals Private Limited and the sample was drawn from the original packing for the purpose of sampling. The petitioner cannot be held liable or punished as a person who has committed an offence under the Act. The petitioner cannot be held vicariously liable and penalized for mis-branding of the product, for which they are not at all involved in the manufacturing process.

7. In view of the above, the present petition is allowed and the impugned complaint No. 111/2019 dated 20.03.2019 (Annexure P-2) 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 Essential Commodities Act 1955, summoning order dated 20.03.2019 (Annexure P-3) and all subsequent proceedings arising therefrom, are hereby quashed qua the petitioners only.

19.12.2023
Ajay Goswami

(HARPREET SINGH BRAR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No