

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

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**CWP-30645-2018
Date of Decision: 12.09.2023**

**THE SIKANDERPUR CO-OPERATIVE AGRICULTURE
MULTIPURPOSE, SERVICE SOCIETY LTD.**

... Petitioner

VERSUS

STATE OF PUNJAB AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. G.S. Bajwa, Advocate
for the petitioner.

Ms. Anju Sharma Kaushik, DAG, Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the show cause notice dated 28.12.2015 issued by respondent No.2 i.e. Chief Agriculture Officer-cum-Notified Authority, Jalandhar, District Jalandhar.

The petitioner which is a Multipurpose Agriculture Cooperative Society purchased fertilizers, seeds, insecticides etc. for its members from the dealers. The petitioner is neither a Dealer nor a distributor of any of the fertilizers, seeds, insecticides and does not require any licence. The joint purchase of seeds, pesticides and fertilizers is done for the mutual benefit of the members of the Co-operative Society. However, vide show cause notice bearing Memo No.6390-91 dated 28.12.2015, it was informed that Fertilizer Inspector, Adampur, District Jalandhar had drawn a sample of Urea Phosphate with SOP (18:18:18) manufactured by IFFCO, Kandla, Gujarat from the premises of the petitioner- Co-operative Society on 13.11.2015. The said sample was declared

as non-standard by the Analyst Fertilizer Quality Control Lab, Faridkot vide Lab Report No.1464 dated 08.12.2015. The nutrients detected in the said sample were not up to the parameters prescribed. A show cause notice was accordingly issued to the petitioner Co-operative Society to explain as to why proceedings under the provisions of Fertilizer Control Order, 1985 and the Essential Commodities Act, 1955 be not initiated against the petitioner-Co-operative Society.

A reply was filed by the petitioners to the officer concerned pointing out that the petitioner-Co-operative Society is neither a Dealer nor a Manufacturer/Distributor of the fertilizer and that it distributes the procured supply amongst its members only; and that the petitioner-Co-operative Society cannot be prosecuted for any defect or deficiency in the nutrients of the fertilizers procured by the petitioner-Co-operative Society from the authorised dealer.

Notwithstanding the abovesaid response, a complaint case bearing COMA/673/2017 was filed by the respondent No.2 before the competent Court. After considering the complaint and hearing the complainant on the same, the petitioner-Co-operative Society was summoned vide order dated 08.05.2018.

It is further averred that the order of summoning is not sustainable against the petitioner-Co-operative Society in view of the law laid down by this Court in CWP-7206 of 2013 titled as 'M/s Grangan Multipurpose Cooperative Agricultural Service Society Ltd. Versus State of Punjab and another' decided on 31.08.2016.

Written statement on behalf of the respondents has been filed as per which the petitioner already stands summoned to face trial and that the petitioner has further already preferred a Criminal Revision No.495 of 2018

before the Addl. Sessions Judge, Jalandhar. Since an alternative remedy against the order of summoning has already been availed by the petitioner, hence, there is no occasion for consideration of the present writ petition against a show cause notice especially when the petitioner has already taken recourse to the alternative efficacious remedy by challenging the order of summoning and the same is already subjudice before the Addl. Sessions Judge, Jalandhar. Insofar as the judgment of this Court passed in **CWP-7206 of 2013** titled as **‘M/s Grangan Multipurpose Cooperative Agricultural Service Society Ltd. Versus State of Punjab and another’ (supra)** is concerned, the respondent-State of Punjab has nowhere disputed the applicability of the said judgment. The only response submitted is that as the petitioner has already availed alternative remedy and that it would rather be apt for the petitioner to approach the Revisional Court for seeking redressal of the said grievance.

The aforesaid contention of the respondent-State of Punjab is responded to by the learned counsel for the petitioner by submitting that they had approached this Court earlier in point in time and that the order of summoning and the Revision Petition were subsequent developments since there was no interim stay granted by this Court. He further contends that the respondents have not disputed the applicability of the judgment as well as the preposition of law as per which a Agricultural Cooperative Society is neither a Dealer nor a Distributor under Clause 2(f) of Fertilizer Control Order, 1985 read with 7 of the Essential Commodities Act. He further contends that the said judgment passed by the Single Judge was subject matter of challenge in LPA No.364 of 2017 titled as ‘State of Punjab and others Vs. M/s Grangan Multipurpose Cooperative Agricultural Service Society Ltd.’ and even the same was dismissed vide judgment dated 11.10.2018 by a Division Bench of this

Court. It was specifically held by the Division Bench that Agricultural Services Societies cannot be held responsible for any substandard manufacturing of fertilizer since they are neither the dealers nor the manufacturer of the fertilizers nor the stockists of the fertilizers on behalf of the manufacturer.

It is also argued that mere filing of a criminal revision petition before the Revisional Court and taking recourse against the subsequent development should not stand in the way of relief to which the petitioner is entitled and to compel the petitioner to pursue his remedy under the criminal law more so when the position of law is neither in dispute nor denied.

I have heard the learned counsel for the respective parties and have also gone through the documents appended alongwith the present petition with their able assistance.

The factual aspects as contended above have remained undisputed in the reply filed by the respondents and that the Criminal Revision was filed against the order of summoning and that the Revision is pending. Besides, the complaint before the Illaqa Magistrate is also pending at the same stage of summoning and has not progressed any further. Hence, the same is still at initial stages. Be that as it may, the respondents have also not disputed the fact that the petitioner-Co-operative Society was not a Distributor or Dealer of the fertilizer manufactured by IFFCO and that the same was procured by the petitioner-Co-operative Society only for the benefit of its other members. Further, the applicability of the judgment of this Court passed in **CWP-7206 of 2013** (*supra*) as affirmed by the Division Bench vide judgment dated **11.10.2018** (*supra*) are not disputed. The abovesaid judgments are based on the judgment of Hon'ble the Supreme Court in the matter of **'State of Punjab Vs. Guno**

Majra Co-operative Agriculture Service Society Ltd.’ reported as **(2000) 9**

SCC 210. The relevant extract of the judgment is extracted as under:

“1. The only question that arises in this appeal is whether the Agriculture Service Society is a "dealer" within the meaning of clause 2(f) of the Fertiliser (Control) Order, 1985 (hereinafter referred to as "the Order") for the purposes of clause 7 of the said Order. Clause 2(f) and clause 7 of the Order read as under :

"2(f). 'dealer' means a person carrying on the business of selling fertilisers, whether wholesale or retail (or industrial use), and includes a manufacturer and a pool-handling agency carrying on such business and the agents of such person, manufacturer or pool-handling agency;

* * *

7. Dealers to be registered. - No person, including a manufacturer, a pool-handling agency, a wholesale dealer, a retail dealer and an industrial dealer shall offer for sale or carry on the business of selling fertilisers at any place except under and in accordance with the terms and conditions of a certificate of registration granted to him under clause 9. Provided that a State Government may, by notification in the Official Gazette, exempt from the provisions of this clause any person selling fertilisers to farmers in such areas and subject to such conditions as may be specified in that notification."

2. A perusal of clause 2(f) and clause 7 of the Order shows that any person carrying on the business of selling of fertilisers has to obtain a certificate of registration which is to be granted under clause 9 of the Order. The respondent is the Cooperative Agriculture Service Society and is registered under the Punjab Cooperative Societies Act, 1961. The Society has its own registered bye-law. The appellants herein required the respondent Society to obtain a certificate of registration under clause 7 of the Order. This was disputed by the respondents. Under such circumstances, the respondents filed a petition under Article 226 of

the Constitution before the Punjab and Haryana High Court and the same was allowed, and it was held that since the respondent Society is not carrying on any business in fertilisers, therefore, the Society is not required to obtain a certificate of registration. Under such circumstances, the appellants are in appeal before us.

3. It is not disputed that the respondent Society is the Agriculture Service Society and it has got its own bye-law. The members of the Society are agriculturists, who require manure, fertilisers and implements for cultivation. The object for which the respondent Society was formed is to render service to its members for carrying out agricultural activities. One of the objects of the Society, as indicated in the bye-law, is to make arrangement for supply of agricultural requirements for its members as well as to supply manure, fertilisers, improved seeds, insecticides and other production requisites with a view to promote increased agricultural production. Another object of the Society is to give loans and also to give manure, fertilisers and improved seeds to its members on credit on "no-profit-no-loss" basis. Under the bye-law, it is not permissible for the respondent Society to sell fertilisers in open market or to anybody else other than its members. From the aforesaid functions of the Society it is apparent that there is no commercial or business activity involved when the Society distributes and supplies fertilisers to its members. The purpose for which the Society has been formed is to help its members in the matter of cultivation. In fact, fertilisers purchased by the Society are for supply and distribution to its members and not for any commercial or business activity. In the absence of any business activity, the respondent Society could not be said to be a "dealer" within the meaning of clause 2(f) of the Order and, therefore, they were not required to take licence under Clause 7 of the Order. We are in agreement with the views taken by the High Court."

Once the position of law has remained uncontroverted and undisputed and no reasons have come forth in the response filed by the respondents as to the circumstances necessitating the initiation of criminal action against the petitioner-Co-operative Society and as to how the petitioner-Co-operative Society would be liable for prosecution, merely because it has taken recourse to the alternative remedy. Filing a Criminal Revision Petition should not stand in the way of substantive justice and to force the petitioners to undergo the rigours of a criminal trial so as to prove its innocence. The respondents have also not referred to any material on the basis whereof it may be primarily recorded that the petitioner-Co-operative Society would fall within the definition of a Dealer of Distributor of the fertilizer.

The Hon'ble Supreme Court has also held in the matter of **'Krishan Lal Chawla Versus State of U.P. and another'** reported as **2021 SCC Online SC 191** that where a proceeding is *per-se* illegal and unsustainable, the same need to be nipped into the bud instead of compelling the aggrieved person to face the trial and prove his innocence. The relevant extract of the said judgment reads thus:

*"17. Frivolous litigation should not become the order of the day in India. From misusing the Public Interest Litigation jurisdiction of the Indian courts to abusing the criminal procedure for harassing their adversaries, the justice delivery system should not be used as a tool to fulfil personal vendetta. The Indian judiciary has taken cognizance of this issue. In 2014, this Court elucidated as follows, the plight of a litigant caught in the cobweb of frivolous proceedings in **Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470:***

"191...One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of

every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his..."

While the Court's ruling pertained to civil proceedings, these observations ring true for the criminal justice machinery as well. We note, with regret, that 7 years hence, and there has still been no reduction in such plight. A falsely accused person not only suffers monetary damages but is exposed to disrepute and stigma from society. While running from pillar to post to find a lawyer to represent his case and arranging finances to defend himself before the court of law, he loses a part of himself.

18. As aforesaid, the trial courts and the Magistrates have an important role in curbing this injustice. They are the first lines of defence for both the integrity of the criminal justice system, and the harassed and distraught litigant. We are of the considered opinion that the trial courts have the power to not merely decide on acquittal or conviction of the accused person after the trial, but also the duty to nip frivolous litigations in the bud even before they reach the stage of trial by discharging the accused in fit cases. This would not only save judicial time that comes at the cost of public money, but would also protect the right to liberty that every person is entitled to under Article 21 of the Constitution. In this context, the trial Judges have as much, if not more, responsibility in safeguarding the fundamental rights of the citizens of India as the highest court of this land.

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21. It is a settled canon of law that this Court has inherent powers to prevent the abuse of its own processes, that this Court shall not suffer a litigant utilising the institution of justice for unjust means. Thus, it would be only proper for this Court to deny any relief to a litigant who attempts to pollute the stream of justice by coming to it with his unclean hands. Similarly, a litigant pursuing frivolous and vexatious proceedings cannot claim unlimited right upon court time and public money to achieve his ends.”

Even though the Criminal Revision has been filed against the order of summoning, however, the said development is during the pendency of the list and was not a remedy available when the present petition was filed. The alternative remedy accrued much after this Court was seized of the matter. If the issue would have involved question of fact, it would've been apt to relegate the parties to the remedy availed/available but where the issue is purely legal and not a mixed question of law and fact and the illegality would vitiate the entire outcome, the same can always be examined in writ jurisdiction.

The High Court, being a Court of Law and equity, may, in the larger interest of justice and to prevent injustice and/or delayed dispensation of justice, exercise its jurisdiction. A litigant may highlight such illegalities and impugned initiation of such proceedings to prevent the harassment, humiliation and affliction of injury on account of facing a criminal trial even when the defect of jurisdiction permeates the proceedings and vitiates the outcome.

Having heard learned counsel for the respective parties and after going through the documents appended alongwith the present petition as well as the judgments of the Single Bench as well as the Division Bench and also the judgment of the Hon'ble Supreme Court referred above, I feel that mere filing

of a Criminal Revision Petition before the Revisional Court would not stand in the way of substantive justice more so, the proceeding is *per se* contrary to law.

In view of the above, the present petition is allowed. The impugned show cause notice dated 28.12.2015 as well as all consequential proceedings including and not restricted to the criminal complaint and the criminal revision arising therefrom are hereby set aside.

SEPTEMBER 12, 2023
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No