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

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Date of Decision:- 16.09.2024

M/s API Crop Science Ltd. and Another

...Petitioners

Versus

State of Punjab

...Respondent

CORAM:- HON'BLE MRS. JUSTICE AMARJOT BHATTI

Present:- Mr. Achin Gupta, Advocate
for the petitioners.

Mr. Neeraj Madaan, Sr. DAG, Punjab.

* * * *

AMARJOT BHATTI, J.

1. Petitioners M/s API Crop Science Limited through its Regional Manager Hanuman Dutt and Hanuman Dutt in his personal capacity as Regional Manager filed petition under Section 482 Cr.P.C. for quashing of complaint No. COMA-153 of 2019 dated 25.11.2019 titled “State of Punjab through Chief Agriculture Officer, Ferozepur vs. M/s Sidhu Pesticide and others”, under Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 and Section 7 of Essential Commodities Act, 1955 read with Section 12 AA of Essential Commodities Act, 1955 (Annexure P-1) pending in the Court of learned Chief Judicial Magistrate, Ferozepur and summoning order dated 25.11.2019 passed by learned Chief Judicial Magistrate, Ferozepur vide which petitioners along with co-accused have

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been summoned under Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 and Section 7 of Essential Commodities Act, 1955 read with Section 12 AA of Essential Commodities Act, 1955 (Annexure P-2) and further to stay the proceedings qua petitioners pending in aforesaid Court.

2. Brief facts of the case are State of Punjab through Chief Agriculture Officer, Ferozepur filed complaint under Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 and Section 7 of Essential Commodities Act, 1955 read with Section 12 AA of Essential Commodities Act, 1955 against M/s Sidhu Pesticide, Kamal Wala Road, Mallanwala through its proprietor Balkar Singh and others in which petitioners are arrayed as accused No. 5 and 6. On 04.03.2013, Balwinder Singh, Fertilizer Inspector, Block Makhu visited the shop of M/s Sidhu Pesticide Kamal Wala Road, Mallanwala, District Ferozepur under the powers vested vide Clause 28 of Fertilizer (Control) Order, 1985 and inspected the premises. Balkar Singh, Proprietor of said firm was present at that time. After disclosing his (Fertilizer Inspector) identity, he intimated his desire to draw sample of Azospirillum Spp. (5×10^7 CFU/gm), manufactured by M/s Antecedent Pabulum Inc and marketed by M/s API Crop Science Limited. He checked record and found 60 packets i.e. 3.5 Kg packet each bearing Batch No. GA-07, date of manufacturing 02.12.2012 of Azospirillum Spp. in stock as per stock register of the firm. These packets were machine stitched. He prepared three Form J-1 and Balkar Singh, Proprietor signed these forms in token of drawing sample. Balwinder Singh prepared five Form P, three Form K1. He tried to associate some customer as a witness but nobody was willing to join. Fertilizer Inspector selected three sealed packets randomly

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from stock of 60 packets, according to Fertilizer (Control) Order, 1985. Samples were drawn by Fertilizer Inspector by taking original sealed packets as such and same were put in cloth bags and three Form P were also kept along with cloth bags and mouths of these cloth bags were tied with a strong twine separately to keep fertilizer sample packets airtight and same were sealed with letter F.1(4)ZIRA. One sealed sample and one Form J-1 was handed to Balkar Singh, Proprietor at the spot and other portions of sample along with Form J-1, Form K-1 and Form-P were deposited in the office of Chief Agriculture Officer by said Fertilizer Inspector, Block Makhu on 05.03.2013 vide letter No. 20 dated 05.03.2013, duly signed by Fertilizer Inspector and in the office of CAO, Ranbir Singh ADO (Enf.) received samples and retained under his possession and gave receipt to Balwinder Singh. CAO Paramjit Singh Sandhu sent one sample with other samples to Biofertilizer Testing Laboratory, Regional Centre of Organic Farming, Hisar, Haryana vide letter No. 1547 dated 06.03.2013 with Form K-1 through Rajinder Kumar, ASI, Ferozepur against proper receipt. Expert analyzed the samples and declared it sub-standard as only 3.0×10^6 Viable Cell Count was found instead of 5×10^7 /gm (minimum). Copies of these reports were served upon dealer/proprietor, manufacturer and marketing company along with show cause notices through registered post. Replies to show cause notices were received. Chance of personal hearing was provided on 01.07.2013 to dealer, manufacturer and marketing company. Manufacturer firm filed an appeal to Joint Director, Agriculture(Inputs)-cum-Appellate Authority, Punjab Chandigarh on 20.06.2013 for retesting one of two remaining reference samples and on



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23.12.2013, order was passed by Joint Director, Agriculture (Inputs)-cum-Appellate Authority, Punjab Chandigarh, wherein it was held that there is no provision of reanalysis of sample of biofertilizer and organic fertilizer in Fertilizer (Control) Order, 1985. Thereafter, complaint was filed.

3. Learned counsel for petitioners argued that complainant has unnecessarily and deliberately dragged present petitioners into this complaint. On their part, there is no violation of provisions of Fertilizer (Control) Order, 1985 and Essential Commodities Act, 1955. Sample of fertilizer was taken by Balwinder Singh, Fertilizer Inspector but present complaint has been filed by Gurmail Singh, Chief Agriculture Officer, Ferozepur. As per facts, sample was drawn from dealer firm M/s Sidhu Pesticide on 04.03.2013 and afterwards, fertilizer was found to be substandard. No case was registered at that point of time and present complaint has been filed on 25.11.2019, after more than 6 years. Fertilizer in question was purchased by dealer firm from the manufacturing company through proper bill and in stitched bags. Stitched bag was taken as sample by Fertilizer Inspector. Therefore, it would be the liability of manufacturer of fertilizer in question regarding quality of fertilizer and not the liability of marketing company i.e., present petitioner No. 1. To support his arguments, learned counsel for petitioners relied upon the judgment of Coordinate Bench in **CRM No. M-4582 of 2008, decided on 15.12.2009**, titled **“Manoj Grover Vs. State of Punjab”**, where it was held in the concluding paragraph as under :-

“Thus, even from the perusal of the F.I.R., no offence under Section 7(1)(a) of Essential Commodities Act, 1955 is made out qua the petitioner, who is only a dealer and is not



responsible for the sub-standard fertilizer in the bag lying in his custody duly stitched and then sealed and which was ordered from Indian Potash Company Limited, Ludhiana, who had further actually received the DAP from M/s Oswal Chemicals and Fertilizers, Misadia, Village Orissa. As such, nowhere either the Government Agency Indian Potash Limited or the petitioner's firm M/s Deepak Fertilizers and Chemicals, Amloh or M/s Guru Nanak Khad Store, Fatehgarh Sahib are actual manufacturers of the said DAP (Oswal) which was recovered by the complainant. There is no allegation that the stitched bags were tampered with. Thus, the non-compliance of the sub-standard, if at all, can only be attributed to the manufacturer M/s Oswal Chemicals and Fertilizers, Misadia, Village Orissa and not to either the M/s Deepak Fertilizers and Chemicals or the Chief Manager, Indian Potash Company Limited.

Accordingly, the present petition is allowed and the F.I.R. No. 114 dated 10.09.2005 registered under Sections 7(1)(a) of Essential Commodities Act, 1955, 19(1)(a) of Fertilizer Control Order, 1985 at Police Station Khamano, District Fatehgarh Sahib qua the present petitioner in Crl. Misc. No. M-4582 of 2008 and the petitioner in Crl. Misc. No. M-12668 of 2008 is, accordingly, quashed."

He has further relied upon another judgment of Coordinate Bench in **CRM-M No. 49611 of 2021 (O&M)**, titled **"M/s Gagan Trading Co. and Anr. Versus State of Punjab"** with another connected **case**, where in that case in para no. 18, it was again held in a criminal complaint filed under the provisions of the Insecticide Act, 1968 and rules thereunder, that *"the Insecticide Inspector had drawn a sample of insecticide from the original packing as had been supplied by the*



manufacturer to the distributor who further supplied it to the dealer from whom the sample had been taken, neither the distributor nor the dealer could be held to be liable as they could possibly have known even with due diligence that the insecticide was mis-branded as the same was received by the distributor in a sealed condition who supplied it to the dealer in same condition and the dealer was also selling the same ahead in sealed condition.”

It is pointed out that facts of present case are similar, as the samples were taken from stitched bag as a whole. Learned Chief Judicial Magistrate, Ferozepur, without appreciating the facts, passed summoning order dated 25.11.2019, Annexure P-2. There are no allegations of connivance or negligence on the part of present petitioners. Complaint filed against petitioners and summoning order passed thereon is non-speaking order and proceedings on complaint qua them are abuse of process of law. Therefore, complaint, Annexure P-1 and summoning order dated 25.11.2019, Annexure P-2, are liable to be quashed.

4. On the other hand, respondent/complainant filed status report taking the stand that proper procedure was followed while drawing sample and sending it to laboratory. Sample tested in laboratory came out to be sub-standard, thereafter, complaint was filed. Trial Court rightly held that *prima facie* ingredients of offence under Section 19 (a) (c) and (v) of Fertilizer (Control) Order, 1985 and Section 7 of Essential Commodities Act, 1955 read with Section 12 AA of Essential Commodities Act, 1955 were made out against present petitioners and other co-accused. Therefore, they were rightly summoned thereunder. The petitioners are liable to face

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trial in said complaint and they are at liberty to take their defence, if any. Present petitioners are liable under the provisions of Section 19 A of Fertilizer (Control) Order, 1985 as, M/s API Crop Science Ltd. through its Regional Manager Hanuman Dutt, is the marketing company. Summoning order dated 25.11.2019 (Annexure P-2) does not require any interference. All accused including present petitioners are necessary parties and complaint cannot proceed further without their presence. Therefore, petition filed by petitioners may be dismissed.

5. I have considered the arguments advanced by learned counsel for petitioners, learned State counsel and have gone through the record with their able assistance. State of Punjab, through its Chief Agriculture Officer, Ferozepur filed a complaint against dealer firm i.e., accused No. 1 and 2, manufacturing company i.e., accused No. 3 and 4 and marketing company i.e., accused No. 5 and 6, as detailed in complaint (Annexure P-1). Present petition has been filed by accused No. 5 and 6 i.e. marketing company and responsible person i.e. petitioners. On the filing of complaint, all accused referred above were ordered to be summoned under Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 and Section 7 of Essential Commodities Act, 1955 read with Section 12 AA of Essential Commodities Act, 1955, vide order dated 25.11.2019 (Annexure P-2). As per the facts narrated in complaint, Balwinder Singh, Fertilizer Inspector, on 04.03.2013, had drawn a sample of Azospirillum Spp. (5×10^7 CFU/gm) manufactured by M/s Antecedent Pabulum Inc, from the premises of M/s Sidhu Pesticide, Kamal Wala Road, Mallanwala, District Ferozepur, in the presence of Balkar Singh, Proprietor of said firm. Procedure followed by Fertilizer Inspector is



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detailed in Para No. 5 of complaint. CAO Paramjit Singh Sidhu had sent one sample with other samples to Biofertilizer Testing Laboratory, Regional Centre of Organic Farming, Hisar, Haryana and as per report of expert, it was declared as sub-standard as only 3.0×10^6 Viable Cell Count was found instead of 5×10^7 /gm (minimum). Facts of case indicate that when samples were drawn, it is specifically mentioned that packets were machine stitched and three of sealed packets were randomly selected from the stock of 60 packets and same were sealed in cloth parcel. Since, packets were in their original packing as received from manufacturing company, therefore, present petitioners, who are marketing company through its Regional Manager, had no occasion to tamper with the contents of said sealed packets. Therefore, judgments relied upon by learned counsel for petitioners i.e. **“Manoj Grover Versus State of Punjab” (supra)** and **“M/s Gagan Trading Co. and Anr. Versus State of Punjab and another connected case” (supra)** are applicable to the facts of present case.

6. Present petitioners i.e. Marketing Company through its responsible person are summoned to face trial under Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 and Section 7 read with Section 12 AA of Essential Commodities Act, 1955. Relevant provisions of Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 runs as under :-

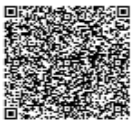
“19. Restriction on manufacture/ [import], sale and distribution of fertilisers - No person shall himself or by any other person on his behalf -

(a) manufacture/[import] for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertilizer which is not of prescribed standard;

(b) xxx

xxx

xxx



- (c) sell, offer for sale, stock or exhibit for sale or distribute-
- (i) any fertilizer the container whereof is not packed and marked in the manner laid down in this Order;
- (ii) any fertilizer which is an imitation of or a substitute for another fertilizer under the name of which it is sold;
- (iii) any fertilizer which is adulterated.

Explanation. - A fertilizer shall be deemed to be adulterated, if it contains any substance the addition of which is likely to eliminate or decrease its nutrient contents or make the fertilizer not conforming to the prescribed standard.

- (v) any fertilizer, the label or container whereof or anything accompanying therewith bears any statement which makes a false claim for the fertilizer or which is false or misleading in any material particular;

- (vi) xxx xxx xxx
- (vii) xxx xxx xxx”

Careful reading of aforesaid provisions and contents of complaint as it is does not show that it fits in any of the provisions as referred above. Section 19-A of Fertilizer (Control) Order, 1985 was inserted later on and it was applicable with effect from 08.03.2022, whereas present complaint was filed in the year 2019.

7. Considering the aforesaid factual position, I find merits in the arguments advanced by learned counsel for petitioners, who is a marketing company i.e. M/s API Crop Science Ltd., through its Regional Manager Hanuman Dutt. Thus continuation of trial in the aforesaid complaint qua petitioners would amount to misuse of process of law. Therefore, petition filed by present petitioners i.e. M/s API Crop Science Limited through its Regional Manager Hanuman Dutt and Hanuman Dutt in his personal



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capacity stands allowed and complaint No. COMA-153 of 2019 dated 25.11.2019 titled “State of Punjab through Chief Agriculture Officer, Ferozepur vs. M/s Sidhu Pesticide and others”, under Section 19 (a) (c) (v) of Fertilizer (Control) Order, 1985 and Section 7 of Essential Commodities Act, 1955 read with Section 12 AA of Essential Commodities Act, 1955 (Annexure P-1) alongwith summoning order dated 25.11.2019 (Annexure P-2) passed by learned Chief Judicial Magistrate, Ferozepur qua the present petitioners, are hereby quashed.

- 8. Petition is accordingly disposed of.
- 9. Pending miscellaneous application(s), if any, stand disposed of accordingly as well.

16.09.2024
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(AMARJOT BHATTI)
JUDGE

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