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CRM-M No.19157 of 2019 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M No.19157 of 2019 (O&M)

Reserved on: 17.05.2024

Date of Decision: 28.05.2024

M/S R S FETILIZERS LUDHIANA AND ORSPetitioner(s)

Vs

STATE OF PUNJAB AND ORSRespondent(s)

CORAM: *HON'BLE MR. JUSTICE HARKESH MANUJA*Present: Mr. Arun Chandra, Advocate
for the petitioners.Mr. Siddharth Sandhu, Asstt. A.G., Punjab
for respondent No. 1.

None for respondent Nos.2 and 3

HARKESH MANUJA, J.

By way of present petition filed under Section 482 of Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C") petitioners have prayed for quashing of complaint No.COMA/3296/2019 dated 11.03.2019 (Annexure P-2) under Clause 19 of the Fertilizers (Control) Order 1985 read with Section 3 of the Essential Commodities Act 1955 punishable under Section 7 of the Essential Commodities Act 1955 including the Summoning order dated 11.03.2019 (Annexure P-3) and all consequential proceedings arising thereof.

[2] Brief facts of the case are that on 01.06.2017, Sh. Harinder Singh, Fertilizer Inspector, Bhadowal, inspected the premises of petitioner No.1 (hereinafter referred to as "Dealer Firm") and found that Dealer Firm was holding

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a stock of 7500 kgs (150 bags X 50 kg) of Single super Phosphate with Zinc (16% P₂O₅ granulated) (NACS P₂O₅ 16% min, WS P₂O₅ 14.5% min, Zinc 0.5% min) manufactured by M/s Coromandel International Limited, Telangana (hereinafter referred to as “Manufacturing Company”) which were supplied to it by petitioner No.3 (hereinafter referred to as “Distributor”) in machine stitched bags. The Fertilizer Inspector selected 3 random bags of aforesaid fertilizer and took samples thereof for its analysis and these were later found to be not according to specification and standard quality by Fertilizer Quality Control Laboratory, Faridkot vide its report AR No.313 dated 19.06.2017 (**Annexure P-5**). The said samples were re-analyzed on an appeal filed by the petitioners and were again found to be not according to the specifications and failed in Phosphate and Zinc by Fertilizer Control Laboratory, Vaddarahatti, Gangavathi, District Koppal, Karnataka vide its report No.DDA/FCT.GVT/Ana.Rep/RA-11/2017-18 dated 25.11.2017 (Annexure P-6). Thereafter, the Fertilizer Inspector filed the aforesaid Complaint and petitioners were summoned by the Court of Chief Judicial Magistrate, Ludhiana to face trial vide order dated 11.03.2019.

[3] Learned Counsel representing the petitioners contended that Fertilizer Inspector-complainant visited the premises of Dealer Firm on 01.06.2017 and drew samples of fertilizer Single super Phosphate with Zinc (16% P₂O₅ granulated) (NACS P₂O₅ 16% min, WS P₂O₅ 14.5% min, Zinc 0.5% min) from machine stitched bags manufactured by Manufacturing Company and supplied by Distributor. He further asserted that the sub-standard quality of fertilizer sample could not be fastened upon the petitioners as the same were drawn from machine stitched bags. For this he placed reliance upon Form ‘J’ (Annexure P-1) which

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would indicate that the bags were sealed and machine stitched. He even contended that the respondent-State did not controvert the factum of bags being machine stitched in its reply filed by way of an Affidavit by Sh. Baldev Singh, Chief Agricultural Officer, Ludhiana.

[3.1] Learned Counsel for the petitioners further contended that amendment to Clause 19 of Fertilizer (Inorganic, Organic, Mixed) (Control) Order, 1985 whereby Clause 19-A was introduced which made both dealer and manufacturer liable in case of sub-standard fertilizers drawn from original sealed and stitched bags (without any proof of tampering) would not apply to the present case as the said amendment was brought only on 07.03.2022 and came into effect only upon its publication on 08.03.2022 which was much after the samples were drawn in the present case i.e. 01.06.2017. Learned Counsel also placed reliance upon judgment dated 30.07.2012 passed by this Court in CRM-M No.28723 of 2010 titled ***“Ghanvir Singh vs State of Punjab and another”*** to contend that the present case was squarely covered by the proposition of law laid therein.

[4] Conversely, learned State Counsel opposed the prayer made by learned Counsel for the petitioners on the ground that probable defence of petitioners cannot be looked into by this Court at this stage being matter of evidence and can only be gone into during trial.

[5] Having heard learned counsel for both the parties and gone through the paper-book, this Court in its humble opinion, finds substance in the submissions made on behalf of the petitioners.

[6] Upon careful examination of the record, it can be traced out that the samples of fertilizer in this case were drawn from machine stitched bags and the

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same fact was even admitted in the reply filed on behalf of State (page-66).

Relevant excerpt thereof is reproduced hereunder: -

“3. That in reply to the contents of para 3 of the Petition, it is submitted that Sh.Harinder Singh, Notified Fertilizer Inspector, Ludhiana had drawn this sample. on 01.06.2017 from the shop premises ofPetitioner No.1 He had randomly selected 3 original machinestitched bags of this fertilizer Single Super Phosphate 16%(G)fortified with Zinc 0.5% bearing Batch No.Zn/G-10 & 11/46manufactured by M/s Coromandel International Limited, Telangana out of stock of 150 machine stitched bags of 50 kg each.....”

Even the factum of bags being machine stitched and sealed could be ascertained from the complaint wherein the complainant himself stated that samples were drawn from machine stitched bags by Fertilizer Inspector. Relevant excerpt thereof from para 8 of complaint is reproduced hereunder: -

“.....That it is submitted that Sh. Harinder Singh, Notified Fertilizer Inspector, Baddowal had checked and counted all the machine stitched bags of the fertilizer Single Super Phosphate fortified with Zinc (16% P205 Granulated) (NACS P205 16% min., WS P205 14.5% min., Sulphur 11% min., Zinc 0.5% min.) bearing Batch No. ZN/G-10 & 11/16 at the spot. Then he had selected 3 machine stitched sealed bags at random out of this lot material of 150 bags of 50 kgs each of this fertilizer. He had first prepared composite sample as per prescribed procedure out of the selected 3 sealed bags of 50 kgs each.....”

[7] Under similar circumstances, this Court in the case of ***Ghanvir Singh (supra)*** while placing reliance upon judgment of the Hon’ble Supreme Court in ***“M/s Kisan Beej Bhandar, Abohar vs. Chief Agricultural Officers, Ferozepur and another”***, 1990 Supreme Court Cases (Crl.) 623, held that dealers could not be made liable in case sample drawn from machine stitched bag was found to be of sub-standard quality. In the present case as well, the record makes it apparent that the samples were drawn evidently from machine stitched bags and thus the ratio of

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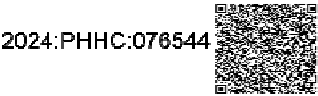
the said judgment is squarely applicable. Relevant paragraph of **Ghanvir Singh** (*supra*) is reproduced hereunder: -

“Hon'ble the Supreme Court, in the case of M/s KisanBeej Bhandar, Abohar vs. Chief Agricultural Officers, Ferozepur and another reported as 1990 Supreme Court Cases (Crl.) 623, in para-No. 4, held as under: -

" The High Court took the view that by enacting subsection (1) of Section 30 of the Act, Parliament had taken out the element of mens rea from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that protection of sub-section (3) is available not only to prosecutions but also to every contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by sub-section (3). We are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding - and it has not been established - the appellant is entitled to the protection of sub-section (3), In the facts once the appellant's contention that it was a sealed tin intact has been found, the burden that lay on him under the provisions of sub-section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs."

[8] The argument put forth by learned Counsel for the petitioners that amendment to Clause 19 of Fertilizer (Inorganic, Organic, Mixed) (Control) Order, 1985 whereby Clause 19-A was introduced which made even the dealers liable, cannot be made applicable to the present facts. A perusal of the said amendment clearly shows that it came into effect on 08.03.2022 whereas the samples in the present case were drawn on 01.06.2017. Somewhat similar view was taken by a

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Co-ordinate Bench of this Court in *CRM-M-19185-2019* titled “*M/s S.S Fertilizers Ludhiana and another vs State of Punjab*”.

[9] Resultantly, in view of the discussion made hereinabove, this petition is allowed and complaint No.COMA/3296/2019 dated 11.03.2019 under Clause 19 of the Fertilizers (Control) Order 1985 read with Section 3 of the Essential Commodities Act 1955 punishable under Section 7 of the Essential Commodities Act 1955, including the summoning order dated 11.03.2019 as well as all consequential proceedings arising therefrom are hereby quashed.

[10] Pending miscellaneous application(s) if any, shall also stand disposed of.

May 28, 2024
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Whether speaking/reasoned
Whether reportable

(HARKESH MANUJA)
JUDGE
Yes/No
Yes/No