



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 90 OF 2024

Shrikrishna s/o Arjun Bangar
Age : 35 Years, Occu : Agril., R/o Bhayala,
Tahsil Patoda, District Beed.

.... APPLICANT

VERSUS

1. The State of Maharashtra
Through Police Inspector, Police Station,
Patoda, Tahsil Patoda, District Beed.
2. Fertilizer Inspector and District Quality
Control Inspector, Office of District
Superintendent Agricultural Officer
(Zilla Adhikshak Krushi Adhikari
Karyalaya), Near Bindusara Nursery, Beed,
Tahsil and District Beed.

.... RESPONDENTS

Mr. A. N. Nagargoje, Advocate for Applicant.
Ms. P. R. Bharaswadkar, APP for Respondents/State.

CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.

DATE : JANUARY 17, 2025.

JUDGMENT - [PER ROHIT W. JOSHI, J.]

. Heard Mr. A. N. Nagargoje, learned Counsel for the Applicant and
Ms. P. R. Bharaswadkar, learned APP for the Respondents/State.

2. The Applicant in the present matter has challenged the First

Information Report No. 0221/2021 registered with the Police Station, Amalner, District Beed for the offence punishable under Clauses 3, 4, 5, 19(a), 19(c) and 35 of the Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985 (*for short, 'the Fertilizer Control Order'*) read with Sections 3 and 7 of the Essential Commodities Act, 1955 and Sections 420, 467, 468, 120-B and 471 of the Indian Penal Code. He has also challenged the Chargesheet No. 83/2022 dated 24/2/2022 forwarded by the Respondent No.1 to the Court of learned Judicial Magistrate First Class, Patoda after conducting investigation in the matter and Regular Criminal Case No. 3/2023 registered against him which is pending on the file of the learned Judicial Magistrate First Class, Patoda.

3. The First Information Report is lodged by the Respondent No.2, who was, at the relevant time, working as Fertilizer Inspector and District Quality Control Inspector. The Respondent No.2 has stated in the First Information Report that he had received secret information regarding sale of spurious fertilizers namely, D.A.P (18:46:00) and N. P K. (12:32:16) at Patoda. He states that after having received such information, he visited Patoda on 19/10/2021 at about 11.00 a.m. along with Mr. Sonawane, who was working as Taluka Agriculture Officer at the relevant time. He states that, he and Mr. Sonawane had conducted search in the godowns of fertilizer traders in Patoda,

but did not find the above named two fertilizers in the stocks of any of the traders. He then states that they visited the market to make enquiry with agriculturists and learnt that one Babu Haribhau Shinde, R/o Belewadi had purchased six bags of D.A.P (18:46:00) on 19/10/2021.

4. It is stated in the First Information Report that on getting such information, these two Officers visited the house of Babu Shinde and found six bags of D.A.P (18:46:00) fertilizer in his house. The bags had the name of Company, "Paradip Phosphate Limited, Bhuvaneshwar" printed on them. The printed MRP was Rs.1295/-. The Informant states that said Babu Shinde revealed that the said bags were purchased by him from "Shivraj Fertilizers and Seeds", Patoda, which is a business concern of the present Applicant. The purchaser Babu Shinde informed the Respondent No. 2 that the Applicant did not issue proper bill in the prescribed format and also did not obtain thumb impression in the machine which required to be done for claiming subsidy. He states that simple hand-written receipt was issued for Rs.7530/- (Rs.7500/- for six bags of fertilizer + Rs.30/- for loading).

5. The Respondent No.2 states that immediately thereafter they had called Mr. Shridhar Shinde, authorized representative of "Zuari Grow Chemicals Limited" i.e. Importer of the product. Mr. Shridhar Shinde had

come to the house of Babu Shinde along with Mr. Mahesh Vishnu Borade, another official of the Importer. The representatives of the Company informed the Respondent No.2 that MRP of the product was Rs.1200/- and not Rs.1295/-, as was mentioned on the bags and further that the subsidy granted by the Government of India was to Rs.1211/- per bag and not Rs.520.10/-, as was printed on the said bags. The Respondent No.2 states that according to the representatives of the Importer, "Zuari Grow Chemicals Limited", the product D.A.P (18:46:00) was not imported in the month of May-2021, although the bag indicated that, the said product was imported in the said month.

6. The report of the representatives also indicates that original D.A.P (18:46:00) fertilizer is a granulated fertilizer having off-white colour and even after rubbing with hands, the fertilizer remains dry. As against which, the fertilizer detected in the house of Babu Shinde was brownish in colour and got wet and sticky on being rubbed with hands. On the basis of such observations, the representatives expressed to the Respondent No.2 that the fertilizer was spurious and not original. The Respondent No.2 then states that they had drawn samples of the fertilizer found in the house of Babu Shinde in order to send the same for analysis and instructed Babu Shinde to preserve the bags properly and not to dispose of the same.

7. It is further stated that the samples drawn from the house of Babu Shinde were sent to Fertilizer Control Laboratory, Aurangabad for analysis on the following day i.e. on 20/10/2021. It is alleged that on 20/10/2021 when the Taluka Agriculture Officer Mr. Sonawane went to the house of Babu Shinde, it was found that two bags out of six bags were already utilized by Babu Shinde, and therefore, the remaining four bags were seized and possession thereof was taken by the Taluka Agriculture Officer. It is stated that Analysis Report with respect to the seized sample was received on 25/10/2021. The Analysis Report states that the ingredients of the seized sample were different from the ingredients of the actual product.

8. On this basis, the Respondent No.2 formed opinion that the seized product was fake and spurious, and accordingly, lodged the First Information Report with the Respondent No.1 on 26/10/2021 for the offence under Clauses 3, 4, 5, 19(a), 19(c) and 35 of the Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985 read with Sections 3 and 7 of the Essential Commodities Act, 1955 and Sections 420, 467, 468, 120-B and 471 of Indian Penal Code. The First Information Report came to be registered and thereafter investigation is conducted in the matter. The Respondent No.1 has filed Chargesheet No. 83/2022 under Section 173 of the Code of Criminal Procedure on 24/12/2022 before the Court of Judicial Magistrate First Class,

Patoda. It will be pertinent to mention here that apart from the aforesaid provisions, under which First Information Report was registered, Section 201 of Indian Penal Code is also added in the Chargesheet.

9. Mr. Nagargoje, learned Counsel for the Applicant argues that no offending product was found in the godown of the Applicant on 19/10/2021. He states that the prosecution story that the Respondent No.2 and other Officers from the department got information that the alleged Babu Shinde purchased D.A.P. (18:46:00) on 19/10/2021 from the market is most unbelievable. He submits that the alleged receipt recovered from the said Babu Shinde does not bear any signature and name of the product also mentioned as 'DAP' and not "D.A.P. (18:46:00)". He further submits that the offending fertilizer is not recovered from the Applicant and the person from whom it is allegedly seized has not supported the prosecution case. The learned Counsel draws attention to the statement of Babu Shinde dated 10/1/2022 recorded under Section 161 of the Code of Criminal Procedure, wherein he has denied that he had purchased any fertilizer from the business undertaking of the Applicant and also did not support the allegation that the consignment of fertilizer at his residence was inspected or verified by the Respondent No.2.

10. He then draws attention to the provisions of the Fertilizer Control

Order and particularly Clause 28-B thereof. The contention is that when a sample is seized, it must be divided in three parts. First part should be sent to the State Government notified Laboratory for testing and second and third parts should be kept in custody of the Officer nominated by the State Government in this regard. He then states that Clause 28-B(2) provides that the company or dealer, from whom sample is drawn, has a right to make request to the Authority to send second part of the sample to the National Test House Laboratories. He states that first of all the sample was not drawn from any product seized from him and he was not even informed about drawing of any sample or forwarding the same to the State Government notified Laboratory. He contends that due to this, the Applicant could not exercise the right to make a request to forward second sample for analysis to the National Test House Laboratories.

11. The learned Counsel further submits that in case there is any variance in the result between the first and second analysis, the third part of sample is compulsorily required to be sent to the Central Fertilizer Quality Control and Training Institute, Faridabad for final referee analysis. He states that since there was no intimation to the Applicant about the seizure and forwarding sample to the State Government notified Laboratory, the Applicant could not exercise his right to make a request for sending second sample for

analysis before the National Test House Laboratories, and therefore, the entire action on the part of the Respondents stands vitiated. He also contends that the mandate under Clause 30(3) to communicate the result of analysis to the dealer is also observed in breach. He, therefore, contends that the Criminal prosecution cannot be sustained against the Applicant in the facts of the present case.

12. *Per contra*, Ms. Bharaswadkar, the learned APP appearing for the Respondents opposes the application stating that there is ample material on record to sustain prosecution against the Applicant. She contends that apart from the provisions of Fertilizer Control Order and Essential Commodities Act, an offence under Sections of Indian Penal Code referred in the First Information Report is also made out against the Applicant, and therefore, First Information Report should not be quashed.

13. We have heard rival contentions as aforesaid and have perused record of the case. We have also analyzed the provisions of the Fertilizer Control Order and other legal provisions.

14. The facts emerging from record of the case indicate that on 19/10/2021 on receiving information that fake fertilizers were being sold at Patoda, the Respondent No.2 had conducted inspection at the establishments

of fertilizer traders in Patoda. Admittedly, no fake or spurious product was found in the premises of any of the traders including that of the Applicant. It is then stated that upon making enquiry in the market, it was learnt that one Babu Shinde had purchased fertilizer D.A.P. (18:46:00), and therefore, the Respondent No.1 went to the house of said Babu Shinde at village Belewadi. This version does not inspire confidence. It is difficult to digest that on random enquiry in the market, information with respect to purchase of fertilizer by a farmer was gathered by the Respondent No.2. The quantity of fertilizer allegedly purchased is also not such that people at large would come to know about the purchase. The source of information i.e. the name of person who divulged this information is also not mentioned.

15. After having visited the house of said Babu Shinde, samples were allegedly drawn, which were forwarded to the State Government notified Laboratory. However, intimation regarding seizure of sample or forwarding the same for analysis is admittedly not issued to the Applicant. The Applicant is also not made aware about the result of sample analysis within the prescribed period. The First Information Report and other material on record does not indicate that the sample was drawn in triplicate, as provided under Clause 28-B. There is no material to infer that intimation about drawing sample was given to the Applicant in order to enable him to exercise his right to make a

request that second sample be sent to the Central Laboratory for testing. Breach of provision has resulted in infringement of statutory right vested with the Applicant to seek second opinion with respect to the alleged sample.

16. Although it is stated in the panchanama prepared in the house of Babu Shinde that samples were drawn in accordance with the provisions of Fertilizer Control Order, we do not find the seizure memos prepared as per the provisions of the Fertilizer Control Order. In view of mandate of Clause 28, three samples should have been drawn, one to be sent to State Government notified Laboratory for testing and other two to be kept with the competent authority so as to enable the manufacturer or dealer to make a request for sending second sample for testing to the National Test House Laboratories, and if there is a variance in the result between the State Government notified Laboratory namely, Fertilizer Control Laboratory, Aurangabad and the National Test House Laboratories to make a request to send referee sample for testing at Central Fertilizer Quality Control and Training Institute, Faridabad.

17. The panchanama does not indicate that the sample is drawn in three parts. There is no material in the chargesheet to indicate that other two samples were sent to the competent authority. The record also does not indicate that the Applicant was intimated about the seizure of the sample and forwarding the same to the State Government notified Laboratory for testing.

This failure on the part of the Respondent No.2 has deprived the Applicant of his valuable statutory right to have the second sample retested and if the occasion arises to get the referee sample tested. Since the Respondent No.2 has failed to observe and follow the provisions of Fertilizer Control Order, it will not be proper to continue criminal prosecution against the Applicant for the offence punishable under Clauses 19(a) and 19(c) which provide for punishment for sale of spurious or fake fertilizer.

18. As regards Clause 3(3) of the Fertilizer Control Order, the same provides that no dealer shall sell or offer for sale any fertilizer at a price exceeding the maximum price or rate fixed under Clauses 3(1) and (2). In this regard, it needs to be mentioned that it is the prosecution case that the Applicant had sold the fertilizer in question to one Babu Shinde. However, this Babu Shinde has not supported the prosecution case that he had purchased any fertilizer from the Applicant.

19. Violation of Clause 4 is alleged against the Applicant on the ground that the price list and list of fertilizers was displayed in the business premises. It needs to be mentioned that as per the prosecution case, the Respondent No.2 had visited business premises and the godown of the Applicant in the morning on 19/10/2021. The Respondent No.2 has not

prepared any panchanama in the business premises of the Applicant when he had allegedly visited the same in the morning on 19/10/2021. The panchanama in the present case is prepared at the time of alleged seizure of material in the house of Babu Shinde. There is no panchanama on record with respect to inspection of business premises of the Applicant. There is no material on record to indicate that price list and list of fertilizers was not displayed. In that view of the matter, continuation of prosecution for breach of Clause 4 of the Fertilizer Control Order is not justified.

20. As regards Clause 5, which provides that cash/credit memo should be issued in prescribed Form 'M', the case of prosecution is that the Applicant had sold the product to Babu Shinde by issuing a memo which is not in prescribed format. However, as stated above, the said Babu Shinde has not supported the prosecution case regarding purchase of fertilizer from the Applicant. There is no material on record to indicate that the Applicant had issued memo in breach of mandate of Clause 5 of the Fertilizer Control Order.

21. The offence under Sections 3 and 7 of the Essential Commodities Act is not made out, since breach of the provisions of Fertilizer Control Order is not made out on the basis of material on record in the chargesheet. Therefore, offence under Sections 3 and 7 of Essential Commodities Act is also

not made out. As regards Indian Penal Code Sections, the same are invoked on the ground of breach of provisions of Fertilizer Control Order. The material on record does not establish that the Applicant had sold any fake or spurious or adulterated fertilizer to Babu Shinde, which is a foundation of the prosecution case.

22. The case of prosecution is fatally dented by statement of Babu Shinde, who has denied that the alleged sample was drawn from his house. He has categorically denied that he had purchased any fertilizer from the Applicant. This fact is required to be appreciated in view of the admitted fact that on 19/10/2021 no spurious or fake fertilizer was found in the business premises of the Applicant or from any other trader at Patoda. The prosecution story, even if it is taken on its face value, is not enough to *prima facie* show any connection between the alleged spurious fertilizer and the Applicant.

23. The other allegations in the First Information Report are in relation to the fertilizer N.PK. (12:32:16), with which we are not concerned, since the said fertilizer was not found to be marketed by the present Applicant.

24. In view of the breach of statutory provisions under the Fertilizer Control Order by the Respondent No.2, which results in breach of valuable statutory rights vested with the Applicant, it will be unjust to maintain

prosecution against the Applicant for offence relating to alleged breach of provisions thereof. The person, from whom the alleged fertilizer is seized, has not supported the prosecution case. There is no tangible material to relate the Applicant with the offence. The prosecution case stands on a very weak footing. The prosecution case is absolutely lame and without any firm footing. Such prosecution is bound to fail and prove abortive.

25. In view of the aforesaid, having regard to the law laid down by the Hon'ble Supreme Court in the case of *Madhavrao Jiwajirao Scindia and Ors. V/s Sambhajirao Chandrojirao Angre and Ors.*¹ and *Sathish Mehra V/s State of N.C.T. of Delhi And Anr.*², we are of the considered opinion that the Applicant has made out a case for quashing of First Information Report and criminal prosecution against him. The Applicant has also made out a case for quashing of First Information Report as per clauses (1) and (3) in the celebrated case of *State of Haryana and Others V/s Bhajan Lal and Others*³.

26. For the reasons aforesaid, we are of the considered opinion that the Application deserves to be allowed. Hence, we pass following order.

¹ AIR 1988 SC 709

² AIR 2013 SC 506

³ 1992 Supp (1) Supreme Court Cases 335

ORDER

1. Criminal Application is allowed.
2. The First Information Report No. 0221/2021 registered with the Police Station, Amalner, District Beed for the offence punishable under Clauses 3, 4, 5, 19(a), 19(c) and 35 of the Fertilizer (Inorganic, Organic or Mixed) (Control) Order, 1985 read with Sections 3 and 7 of the Essential Commodities Act, 1955 and Sections 420, 467, 468, 120-B and 471 of the Indian Penal Code, the Chargesheet No. 83/2022 dated 24/2/2022 and Regular Criminal Case No. 3/2023, pending on the file of the learned Judicial Magistrate First Class, Patoda are quashed against the Applicant - Shrikrishna Arjun Bangar.

(ROHIT W. JOSHI, J.)

(SMT. VIBHA KANKANWADI, J.)