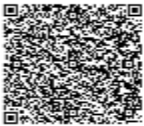


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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-689-2024 (O&M)
Date of decision: 01.03.2025

M/s Indo Gulf Fertilizers Ltd. and another

... Petitioners

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Viren Jain, Advocate
for the petitioners.

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J.

1. Present petition has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') [now Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')] seeking quashing of criminal complaint bearing No.COMA/111/2019 dated 20.03.2019 registered under Clause 19 of the Fertilizer (Control) Order, 1985 (for short 'FC Order') read with Section 3 of the Essential Commodities Act 1955 (for short 'EC Act') punishable under Section 7 of EC Act (Annexure P-1) and the summoning order dated 20.03.2019 (Annexure P-3) passed by learned Sub

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Divisional Judicial Magistrate, Jagraon, District Ludhiana.

2. Succinctly, the facts of the case are that on 11.05.2017, the Fertilizer Inspector visited the shop premises of M/s Brij Lal and sons, Grain Market Jagraon, Ludhiana. The Fertilizer Inspector took the sample of a product i.e. Zinc Sulphate 33% Monohydrate, bearing Batch No.CCM16J1803, which was manufactured in October 2016 by M/s Chakardhar Chemical Private Limited, Muzaffarnagar, Uttar Pradesh and marketed by the petitioner. Two machine stitched sealed bags of 05 kgs each were selected from a lot of 22 bags, in accordance with the procedure laid down in EC Act. Thereafter, he prepared sealed test samples out of composite fertilizer sample material at the spot on 11.05.2017 and were sent for forensic examination to State Notified Fertilizers Quality Control Laboratory, Ludhiana. Since the analysis report proved that the product was unfit to be sold, complaint (*supra*) was filed.

3. Learned counsel of the petitioners, *inter alia*, contends that the petitioners were only marketing the fertilizer and they have no role in its production. The present complaint has been instituted on the allegation that the sample of fertilizer was found to be not according to specifications. He refers to Form 'J' (Annexure P-3) to submit that the samples were drawn from the machine stitched bags. As such, the samples were taken from the original packaging as provided by the manufacturer. Moreover, nothing indicates that

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the packaging was tampered with. Further, learned trial Court does not have the jurisdiction to try the complaint (*supra*).

4. Learned counsel for the petitioners further submits that for any alleged shortfall in any nutrient content of a fertilizer, it is only the manufacturer, who can be said to be liable and not its marketers, in case where there is no allegation of tampering with the packing etc. Reliance in this regard is placed on the judgments rendered by this Court in ***Kehar Singh Vs. State of Punjab and another***, CRM-M-8021-2010 decided on 15.09.2011; ***Tata Chemicals Ltd. and another Vs. State of Haryana***, CRM-M-42904-2013 decided on 24.9.2014; ***Manoj Grover Vs. State of Punjab***, CRM-M-4582-2008 decided on 15.12.2009; ***Kulwinder Singh Vs. State of Punjab***, CRM-M-16232-2010 titled as decided on 09.11.2010 and ***Kehar Singh Vs. State of Punjab***, CRM-M-34742-2011 decided on 01.09.2014.

5. *Per contra*, learned State counsel opposes the prayer made by the petitioners on the ground that the probable defence of the petitioners cannot be looked into 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 by learned trial Court.

6. Having heard learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that admittedly, the samples in question had been drawn from the stitched bags, as provided by the

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manufacturer-M/s Chakardhar Chemicals Private Limited. The petitioners were only concerned with marketing of the said fertilizer. As such, neither the petitioners are the manufacturers of the fertilizer in question nor there is any allegation qua tampering of the bags. Thus, if the samples were found to be substandard then only the manufacturer can be held to be liable.

7. Further still, the reply dated 05.02.2025 filed by way of affidavit by Gurdeep Singh, Chief Agriculture Officer, Ludhiana, affirms the abovesaid facts. Therefore, the petitioners cannot be held vicariously liable and as such, they cannot be penalized for misbranding of the product, as they are not at all involved in the manufacturing process.

8. A Coordinate Bench of this Court in case ***Bhupinder Garg and others Vs. State of Punjab, CRM-M-43605-2018***, speaking through Justice J.S. Bedi, opined as follows:

"In Kehar Singh (supra), it was held as under:-

"The pleadings which are not in dispute and has been referred to above, clearly indicates that the samples which were drawn from the bags were taken from the stitched bags. Form J, which is required to be issued at the time when the sample is taken wherein signatures of not only Authorized Authority under the Fertilizer Control Order 1985 is put but also that of the dealer/manufacturer as also the fertilizer inspector, there is no mention in the said form that there was either any tampering with the bags or that the packaging of the bags was not as per rules and regulations. What has been

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*stated merely is that the bags were stitched. If any irregularity or discrepancy had been found by the raiding party, the same would have found mention in Form J but there is none. The additional presumptions which the counsel for the State intend to draw during arguments cannot be accepted. **In case the samples were drawn from the stitched bags wherein no irregularity or discrepancy was found therein, the dealers cannot be held liable and it is only the manufacturer who has to respond to the sample having failed or did not fulfill the specifications required. In the absence of any evidence on record, or the statement to the effect that the petitioners were in any manner associated in the manufacture of the fertilizer contained in the bags, they cannot be held liable for the contents of the fertilizer.***

Counsel for the respondents could not point out any provision of the Act or the Fertilizer Control Order, 1985 and or any Regulations, Rules or instructions framed/issued under these, which have been violated or would bring the petitioners within the ambit of the offences alleged to have been committed by them for which the FIR and or the complaint was filed against them by the respondents.

*It would not be out of way to mention that purchase receipts and vouchers have been placed on record, authenticity of which is not challenged by the respondents, showing that they have purchased the fertilizer in the form of bags. **Further as per the instructions issued by the Government of India on 14.5.2004, Annexure P10, clause L thereof clearly holds that in case of any contravention***

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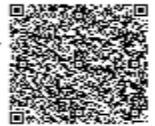
ordeclaration of fertilizer to be sub standard, the responsibility is of the manufacturer alone. This would obviously mean that apart from the manufacturer and the Department of Fertilizer, others cannot be held liable, however, this sweeping statement cannot be made applicable to all cases as it would depend upon facts of each case.

In the present case, there is no such assertion with regard to tampering with the packing or manhandling, non proper storage etc. of the fertilizer or the bags by the petitioners and therefore, in the above facts and circumstances, it cannot be said that an offence is prima facie made out against the petitioners or they had violated any provision of the Act Read with the Fertilizer Control Order, 1985. My this opinion is further strengthened by an earlier judgment of this Court in Manoj Grover's case (supra) wherein the same opinion has been expressed by this Court on virtually same facts.

In view of the above, the present petitions are allowed. The impugned FIRs /complaints are hereby quashed alongwith all consequential proceedings arising therefrom qua the petitioners alone, who are neither manufacturers or the officers or employees of the manufacturer and are in no manner associated with the manufacturing process.”

9. In another petition i.e. CRM-M-36052-2021 arising out of criminal complaint (*supra*), this Court quashed the proceedings qua the co-accused i.e. M/s Brij Lal and Sons, Grain Market Jagaon, Ludhiana and its proprietor Ashok Kumar (petitioner No.1 and petitioner No.2 therein

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respectively) on the ground that the petitioners cannot be held vicariously liable and penalized for misbranding of the product, as they were only the dealers of the product and had nothing to do with its manufacturing process.

10. In view of the above discussion, present petition is allowed and the impugned complaint No.111/2019 dated 20.03.2019 (Annexure P-1) filed under Clause 19 of FC Order read with Section 3 of EC Act punishable under Section 7 of EC Act and summoning order dated 20.03.2019 (Annexure P-2) as well as all the subsequent proceedings arising therefrom, are hereby quashed qua the petitioners.

[HARPREET SINGH BRAR]
JUDGE

01.03.2025
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No