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

CRA-S No.475-SB of 2004 (O&M)
Reserved on: 14.01.2026
Pronounced on: 30.03.2026

Achil Kumar and another

......Appellants

Versus

State of Punjab

...... Respondent

CRA-S No.449-SB of 2004 (O&M)
Reserved on: 14.01.2026

Shakti Chem. and another

......Appellants

Versus

State of Punjab

...... Respondent

CORAM: HON'BLE MR.JUSTICE SURYA PARTAP SINGH

Present: Mr. Jugansh Goyal, Advocate for
Mr. Denesh Goyal, Advocate for the appellants
in CRA-S No.449-SB of 2004; and
Mr. Sangram Singh Saron and
Mr. Madhav Rao Rajwade, Advocate
for the appellants in CRA-S No.475-SB of 2004.

Mr. Eklavya Darshi, DAG, Punjab.

SURYA PARTAP SINGH, J. (Oral):

Since the issue involved in both the appeals is identical, these appeals are being disposed of, vide a common order and judgment. However, the facts are being derived from CRA-S-449-SB-2004.

2. A complaint filed by the State of Punjab through Chief Agricultural Officer, Kapurthala alleging the commission of offence punishable under Sections 7 and 12AA of 'Essential Commodities Act 1955', read with clause 19(1)(a), 19(1)(c)(v) of 'Fertilizer Control Order 1985', culminated into judgment of conviction of four accused namely 'Achil Kumar Anand', 'Rajiv Kumar Anand', 'M/s Shiv Shakti Chemicals' and 'Suresh Kumar', by virtue of judgment of conviction dated 19.02.2004. By virtue of order on the quantum of sentence of even date following sentence was awarded to them:

1.Achil Kumar Anand 2. Rajiv Kumar Anand 3. Suresh Kumar	7 of Essential Commodities Act	Rigorous imprisonment for 2 years each and to pay a fine of Rs.5,000/- each and in default of payment of fine to undergo further rigorous imprisonment for a period of two months
M/s Shiv Shakti Chemicals, Amritsar	7 of Essential Commodities Act	Pay a fine of Rs.5,000/-

3. Aggrieved of the above mentioned judgment of conviction and order of sentence two appeals have been preferred. The appeal No.1, i.e. CRA-S-475-SB-2004 has been jointly filed by the convicts, i.e. 'Achil Kumar' and 'Rajiv Kumar,' and subsequent appeal has been jointly filed by firm 'M/s Shakti Chemicals' and 'Suresh Kumar', all of them hereinafter being referred to as 'appellants' only.

4. It shall not be out of place to mention here that the above mentioned complaint was filed against five accused. In the complaint 'M/s Madan Rice Mill', Kapurthala through proprietor 'Achil Kumar', as accused No.1, however, no judgment of conviction or order of sentence has been passed against the above named firm.

5. In nut-shell the facts emerging from record are that the above mentioned complaint was filed with the allegations that 'M/s Madan Rice Mill' Kapurthala (Accused No.1 in the complaint) was an authorized dealer of the manufacturing firm 'M/s Shakti Chemicals Limited' (accused No.4 in the complaint and appellant No.5 herein) for the sale of zinc sulphate 21 & 'Shakti Brand' as per principal certificate issued by the manufacturing firm. According to complaint on 07.09.1995 Fertilizer Inspector, namely 'Balwinder Singh along with Development Officer, namely 'Kuldeep Singh', inspected the premises of accused No.1 in the presence of 'Rajiv Kumar Anand' (accused No.3 in the complaint and appellant No.2 herein). As per complaint after disclosing his identity Fertilizer Inspector served a notice showing his intention to collect samples of fertilizer for the purpose of its analysis under the Fertilizer Control Order 1985, hereinafter being referred to as 'Order' only.

6. It was further alleged in the complaint that the appellant No.2 had received the above mentioned notice and as a token of receipt signed the same and affix the seal impression of the firm thereupon. The complainant further alleged that after the above mentioned proceedings the register of the accused No.1-firm was checked and at page No.31 of the stock register 198 bags of

zinc Sulphate 21% 'Shakti Brand' fertilizer was recorded. The record further reveals that the above mentioned stock of fertilizer was received on 01.04.1995 vide bill No.104 dated 10.03.1995 issued by the appellant No.3.

7. According to complaint the above named Fertilizer Inspector prepared the sampling details in Form-J (in duplicate) in the presence of appellant No.2 and the above named Agriculture Development Officer, both of whom signed the above mentioned Form-J. It has been further alleged that one copy of Form-J was handed over to appellant No.2.

8. With regard to procedure adopted for collection of sampling it had been alleged in the complaint that in accordance with previsions of clause 2(1) (c) of Schedule II of the Order the Fertilizer Inspector selected 3 bags at random, bearing No.5, 60 and 112, and inserted sampling probe into the selected bags from one corner to another diagonally and collected the fertilizer on clean and dry polythene sheet. As per complaint the collected fertilizer was mixed properly and divided into four equal parts removing diagonally the opposite parts and the remaining parts were mixed together forming a composite sample of 1.5 Kg. As per complaint the composite sample was again spread on dry clean thick polythene sheet and divided into three equal parts having equal weight and each of the sample part was put into dry clean and tick polythene sheet bags and the same were tied to make the sample air-tight.

9. It was further alleged that thereafter four detailed descriptions as specified in Form-J and three Form-K under the relevant provisions were filled

in the presence of appellant No.2 and above named Agricultural Development Officer (who had signed Form-J) and then detailed description in from-J along with polythene bag were put into three cloths bag sealed with the seal bearing impression "MMLP" and serial No.4/ADO/Kpt on the cloth bags for identification of sample. Thereafter one sample portion was handed over to appellant No.2 and with regard to above mentioned proceedings his signature was obtained on Form-J.

10. According to complaint on 08.09.1995 Agricultural Development Officer deposited the sample in the office of Chief Agricultural Officer, wherein 'Baldev Singh' had received the same and recorded entry in sample register, thereafter Code No.49/ADO(E) was assigned to the sample and one portion of the sample along with form-K was sent to Fertilizer Control Laboratory, Ludhaina, Punjab vide letter dated 11.09.1995 through 'Charanjit Singh' who deposited the same in the laboratory on the same day. As per complaint vide letter dated 15.09.1995 the Analytical Chemist (Incharge) sent the analysis report, wherein it was mentioned that the sample was not in accordance with the specifications, and therefore, it was mis-printed. It was also mentioned in the complaint that at the time of examination by Analytical Chemist the seals were intact and the samples were not tampered.

11. Once the report of Analytical Chemist was received as per procedure the same was sent to accused No.1 'M/s Madan Rice Mills' vide letter dated 29.09.1995, which was acknowledged by 'Achil Kumar Anand' (accused No.2-appellant No.1 herein). It was also informed by the appellant

No.1 that being sole proprietor of the above mentioned concern he was incharge and responsible for the business of accused No.1. It was further stated that the fertilizer was kept in stock for the purpose of sale, and that appellant No.3 was the manufacturer firm of the above said fertilizer and appellant No.4 its incharge.

12. According to complaint when the above mentioned formalities were complete, for the contravention of clause-9 of the Order, Punishable under Section 7 of Essential Commodities Act 1995, the complaint in question was filed. Once the complaint was filed the Special Judge Kapurthala, vide order dated 17.11.1998, observed that there was sufficient ground to take cognizance on the complaint and summoning the accused No.1 vis-a-vis accused Nos.2, 3 and 4, to face trial for the commission of offence punishable under Section 7 of Essential Commodities Act 1995, accordingly they were summoned and subjected to trial which culminated into their conviction.

13. Heard.

14. The record has been perused carefully.

15. While assailing the impugned judgment of conviction and order of sentence it has been contended by learned counsel for the appellants that the impugned judgment of conviction and order of sentence are the offspring of improper appreciation of evidence and non-application of judicial mind. According to learned counsel for the appellants an error of judgment has been committed by the learned trial Court while holding the appellants guilty for the commission of offence punishable under Section 7 of Essential Commodities

Act, and awarding sentence to undergo imprisonment for a period of two years. The learned counsel for the appellants has contended that evidence adduced by the prosecution for proving the charge was not reliable and good enough to discharge the burden of the prosecution as per law.

16. According to learned counsel for the appellants the inconsistencies and deficiencies in the prosecution evidence were so grave that this inference should not have been drawn that the prosecution has been successful to prove charge against the accused beyond the shadow of all reasonable doubts. While claiming that merely on the basis of conjectures and surmises the learned trial Court has held the appellants guilty for the commission of above mentioned offence, it has been contended by learned counsel for the appellants that the impugned judgment of conviction is not sustainable.

17. However, the learned counsel for the appellant during the course of arguments has come forward with a plea that at this stage when the appellants who are facing the agony of trial for more than 30 years are not inclined to press this appeal with regard to judgment of conviction. As per learned counsel for the appellants the appellants do not want to assail the judgment of conviction and want to press appeals with regard to order of quantum of sentence only.

18. The learned counsel for the appellants has further contended that in the present case the sentence of two years has been awarded to the appellants no.2 to 5. As per learned counsel for the appellants, with regard to above mentioned conviction it is relevant to note here that the appellants are

not the previous convict and even after the above mentioned alleged offence they have not indulged in any kind of criminal activity. In view of above, the learned counsel for the appellants has claimed the appellants are entitled for benefit of probation of good conduct.

19. In support of his above mentioned arguments, the learned counsel for the appellants has referred to the observations recorded by this Court in various judicial pronouncements. The Division Bench of this Court in the case of 'State of Punjab Vs. Manohar Lal, 1982(1) CLR 415, while dealing with an appeal against the judgment of acquittal, in a case pertaining to commission of offence under Section 7 of Essential Commodities Act, accorded the benefit of probation to the respondent-accused.

20. Similarly in the case of 'Satinder Singh Vs. Punjab State', 2003(4) RCR (Criminal) 616, the appellant 'Satinder Singh' was convicted for the commission of offence under Section-7 of 'Essential Commodities Act' by the learned Special Judge, designated under "the Essential Commodities Act". While dealing with appeal arising out of above mentioned judgment the benefit of probation was accorded to the appellant 'Satinder Singh'. The similar view was taken by this Court in the case of 'Rajender Vs. State of Haryana' 2004(4) RCR (Criminal) 910 and 'State of Punjab Vs. Arun Kumar', 2005(2) RCR (Criminal) 254.

21. In the case of 'Vijay Singh Vs. State of Haryana', 2008(4) RCR (Criminal) 703, the appellant was convicted for the offence under Section-7 of Essential Commodities Act 1955, by the learned Special Judge under Essential

Commodities Act. He was sentenced to undergo imprisonment for a period of four years. However, taking into consideration the fact that the appellant had already faced the agony of protracted trial for a period of 13 years and that he was first offender, the benefit of probation was afforded to him by this Court. Similar view was taken by this Court in the case of 'M/s Shiva Sales and others Vs. State of Punjab' 2011(2) RCR (Criminal) 819 and 'M/s Vishnu Trading and others Vs. State of Punjab', Criminal Appeal No.S-436-SB of 2004 and also in the case of 'M/s Kanshi Ram Mehar Chand and others Vs. State of Punjab', Criminal Appeal No.S-358-SB of 2003.

22. The above mentioned arguments have been controverted by the learned State counsel.

23. It has been contended by the learned State counsel that in the present case there are very specific and categorical allegations against the appellants that with regard to commission of offence punishable under Section 7 of Essential Commodities Act 1955, read with clause 19(1)(a), 19(1)(c)(v) of Fertilizer Control Order. As per learned State counsel each and every formalities right from the very beginning, i.e. collection of sample, till the filing of complaint were meticulously completed by the complainant in accordance with laid down procedure and that charge against the appellants were duly proved beyond the shadow of reasonable doubt. As per learned State counsel in view of large scale implications of the action of the appellants, which could have resulted into permanent damage to the crops, the appellants are not entitled for a lenient view. According to learned State counsel the

present appeal is devoid of merit and deserves dismissal.

24. After giving due consideration to the facts and circumstances of the instant case and the relevant law, it transpires that:

i) that the agony of trial and appeal is being faced by the appellants for a period of more than 31 years;

ii) that admittedly the appellants at the time of commission of alleged offence were first offender.

iii) that there is nothing on record to show that after the prosecution in the present case there has been any other prosecution of the appellants;

iv) that the punishment awarded to the appellants is two years and otherwise also under Section-7 read with Section 12AA of Essential of Commodities Act, provides for the maximum punishment up to seven years.

25. Following the precedents as discussed above, and taking into consideration the above mentioned factors it is hereby observed that the ends of justice would be adequately met if the benefit of probation is accorded to the appellants and they are released on probation of good conduct, instead of awarding sentence to undergo imprisonment.

26. Accordingly, it is hereby held that by upholding the judgment of conviction of the appellants, for the charge framed against them, it shall be appropriate that all the four appellants are released on probation of good conduct on their furnishing requisite bonds to the satisfaction of learned trial

Court.

27. With the above mentioned observations the instant appeal with regard to judgment of conviction is hereby dismissed and the judgment of conviction passed by the learned trial Court is hereby upheld. However, the instant appeal is partly allowed with regard to order on quantum of sentence and the same is hereby modified to the extent that the appellants shall be released on probation for a period of one year on furnishing requisite bonds before the learned trial Court. The appeal stands **partly allowed** accordingly. The appellants shall undertake to keep peace and maintain good behaviour for a period of one year and in case of default receive sentence as and when called upon to do so during the probation period. It is however, made clear that the above mentioned probation shall be without supervision of Probationary Officer.

(SURYA PARTAP SINGH)
JUDGE

30.03.2026
Manoj Bhutani

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