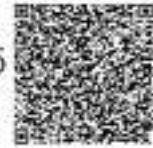


2026.PHHC.019515



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

118

CRM-M-12477-2015 (O&M)
Date of decision : 18.02.2026

Jai Narain and another**...Petitioners**

Versus

State of Punjab**...Respondent****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

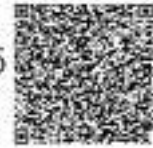
Present:- Mr. R. K. Girdhar, Advocate
for the petitioners.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed by the petitioners under Section 482 of the Code of Criminal Procedure (*for short 'the Code'*) seeking quashing of Criminal complaint bearing No. 47/2014 dated 03.04.2014, titled as ***State of Punjab through Chief Agriculture Officer vs. Jain Narain and another***, filed under Sections 7, 8 and 19(a)(c)(v) of the Fertilizer (Control) Order, 1985 and Section 7 read with Section 12AA of the Essential Commodities Act, 1955, pending before the Court of learned Sub Divisional Judicial Magistrate, Gidderbaha as well as for quashing of order dated 21.07.2014 passed therein, whereby the petitioners were ordered to be summoned as accused to face trial for commission of aforementioned offences.
2. Brief facts of the case relevant for the purpose of disposal of the present petition are that the aforementioned complaint was filed on 03.04.2014 by the Chief Agriculture Officer, Sri Muktsar Sahib on the

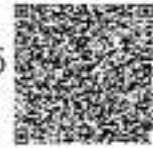
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allegations that on 21.07.2007, during routine inspection, he along with the Agriculture Development Officer visited the premises of M/s Om Parkash Hari Ram, Pesticides and Fertilizers, Gidderbaha (*for short 'the firm'*), where petitioner No.1, the proprietor, was present. During inspection, one packet (5 kg) of Zinc Sulphate 33% fertilizer in polythene packing was found, allegedly without batch number, manufacturing date or name of manufacturer. It was further alleged that the firm was selling fertilizers without a valid licence, had not maintained stock registers, the fertilizer in question was not entered in the licence, the godown was unauthorized, the licence was not displayed and the bills issued did not bear farmers' signatures. The Fertilizer Inspector, after following the prescribed procedure under Schedule II of the Fertilizer (Control) Order, 1985, drew samples, prepared statutory forms, sealed three samples, handed over one sealed sample to the proprietor at the spot and transmitted the remaining samples through official channel, one of which was sent to the Fertilizer Testing Laboratory, Ludhiana on the same day.

3. As per the further allegations, the Fertilizer Testing Laboratory, Ludhiana, vide analysis report dated 27.07.2007, declared the sample sub-standard, as zinc content by weight was found to be 25.60% against the prescribed standard of 33.00%, showing a variation of 7.40% against the permissible tolerance of 0.20%. A copy of the analysis report along with show-cause notice dated 23.08.2007 was served upon the dealer, who replied claiming that the fertilizer was of small quantity and not meant for sale, but the explanation was found unsatisfactory. Despite opportunity of personal

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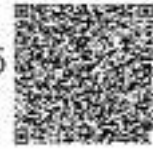


hearing, no satisfactory reply was furnished and no appeal for re-testing under Section 32-A of the Fertilizer (Control) Order, 1985 was preferred. Consequently, alleging that the petitioners, as responsible persons of the firm, had stocked, offered for sale and sold non-standard fertilizer without licence in violation of Clauses 7, 8 and 19(a)(c)(v) of the Fertilizer (Control) Order, 1985, the complaint was filed, pursuant to which the Sub-Divisional Magistrate, Gidderbaha, vide summoning order dated 21.07.2014, summoned the petitioners for offences punishable under Section 7 of the Essential Commodities Act, 1955.

4. It is argued by learned counsel for the petitioners that the impugned complaint, summoning order dated 21.07.2014 and all consequential proceedings arising therefrom are a sheer abuse of the process of law and are liable to be quashed. It is argued that a bare perusal of the complaint shows that the proceedings have been initiated only against the petitioners in their individual capacity, describing them as proprietors, whereas the firm M/s Om Parkash Hari Ram, Gidderbaha, from whose premises the alleged fertilizer was recovered, has not been impleaded as an accused. In the absence of the firm being arraigned as an accused, the prosecution of the petitioners alone is legally unsustainable.

5. It is further argued by learned counsel for the petitioners that even as per the prosecution case, only one packet of 5 kg Zinc Sulphate fertilizer was found at the premises, which, as specifically pleaded in the reply to the show-cause notice, was not meant for sale and was kept by a farmer at the shop along with other goods. There is no specific allegation or material on

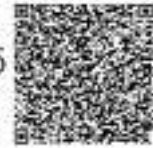
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record to establish that the petitioners were manufacturing, selling or offering the said fertilizer for sale so as to attract Clause 19 of the Fertilizer (Control) Order, 1985. Mere presence of a small quantity of fertilizer, without proof of sale or intent to sell, does not constitute an offence under Section 7 of the Essential Commodities Act, 1955. The complaint is self-contradictory and suffers from serious legal infirmities. On the one hand, it is alleged that the firm was selling fertilizer without licence, while on the other hand, it is admitted that M/s Om Parkash Hari Ram was not issued any dealer's registration certificate by the competent authority. In such circumstances, the very invocation of provisions relating to violation of licence conditions is misconceived. No specific overt act to each of the petitioners so as to fasten criminal liability has been attributed. The complaint has been filed on vague and omnibus allegations after a delay of about 07 years as the analysis report was received on 27.07.2007, whereas the complaint was filed on 03.04.2014. On the ground alone, the complaint is liable to be quashed.

6. It is further argued that the summoning order has been passed in a mechanical manner, without application of judicial mind to the material on record and without recording satisfaction as to the essential ingredients of the alleged offences. It is, therefore, submitted that the impugned complaint as well as the summoning order are not sustainable against the petitioners and are liable to be quashed qua them. To fortify his arguments, learned counsel for the petitioners has relied upon the authorities cited as ***Suresh Kumar Kochhar and another v. State of Punjab, 2014 (2) RCR (Criminal) 206, Diwan Chand v. The State of Punjab, 2003 (3) RCR (Criminal) 848, R. K. Thukral v. State***

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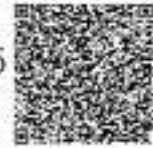
of Punjab, 2003 (1) RCR (Criminal) 187, S. H. Chisty v. State of Haryana, 1991 (2) RCR (Criminal) 565 and Hasmukhlal D. Vora and another v. The State of Tamil Nadu, 2022 SCC Online SC 1732.

7. Reply has been filed by the respondent-State. It is argued by learned State Counsel that there is no illegality or infirmity in the impugned order, whereby the petitioners have been summoned to face trial. The sample of Zinc Sulphate fertilizer drawn from the premises of the petitioners was duly analyzed by the Fertilizer Testing Laboratory, Ludhiana and was found to be grossly sub-standard, far beyond the permissible tolerance limit. The petitioners were found stocking and offering for sale non-standard fertilizer without a valid license and had committed multiple violations of the Fertilizer (Control) Order, 1985, attracting punishment under Section 7 of the Essential Commodities Act, 1955. It is further submitted that the summoning order reflects due application of mind and no ground for quashing of the complaint or the proceedings is made out. Hence, it is urged that the petition is liable to be dismissed.

8. This Court has heard the rival submissions, besides perusing the material placed on record carefully.

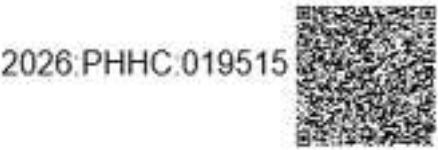
9. A bare reading of the complaint reveals that the alleged recovery was effected from the premises of M/s Om Parkash Hari Ram. However, the said firm itself has not been impleaded as an accused and the prosecution has been launched only against the petitioners in their individual capacity, which strikes at the very root of the proceedings. Such prosecution is impermissible in law. Reliance in this regard can be placed upon **Suresh Kumar Kochhar's**

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case (supra), wherein this Court had held that arraigning of the company or firm is a mandatory prerequisite for fastening vicarious liability upon its directors, partners or office bearers, the expression “as well as the company” used in the statute being of decisive significance. The said principle flows from the authoritative pronouncement of the Hon’ble Supreme Court in ***Aneeta Hada v. M/s Godfather Travels & Tours Pvt. Ltd., 2012(2) RCR (Criminal) 854***, wherein it was categorically held that prosecution of persons in charge without impleading the company itself is not maintainable. The Hon’ble Supreme Court, while approving the ratio of law laid down in ***State of Madras v. C.V. Parekh, (1973) 2 SCC 491*** held that vicarious liability can arise only when the principal offender, i.e. the company or firm, is before the Court. This statutory requirement has not been complied with in the present case.

10. This Court also finds substance in the submission of learned counsel for the petitioner regarding inordinate and unexplained delay in institution of the impugned complaint. In the present case, the fertilizer sample was analysed and the analysis report declaring the same as sub-standard was admittedly received on 27.07.2007. However, the impugned complaint was filed only on 03.04.2014, after an unexplained delay of nearly 07 years. No plausible or satisfactory explanation for this extraordinary delay is forthcoming from the prosecution. The Hon’ble Supreme Court in ***Hashmukhlal D. Vora’s case (supra)*** has held that though delay by itself may not always be fatal, however, inordinate and unexplained delay assumes great significance while exercising inherent jurisdiction, particularly where such



delay reflects lack of diligence and causes undue harassment to the accused. Reliance can also be placed upon *Bijoy Singh and another v. State of Bihar, (2002) 9 SCC 147*, wherein it was categorically held that delay must be explained by the prosecution and failure to do so obliges the Court to closely scrutinize the prosecution case, as unexplained delay may itself be indicative of abuse of process. Applying the aforesaid principles, this Court is of the view that the unexplained lapse of several years between receipt of the analysis report and filing of the complaint vitiates the prosecution and permitting such proceedings to continue would amount to misuse of the criminal process, warranting interference by this Court.

11. In view of the aforesaid discussion and the settled legal position, this Court is of the considered opinion that the impugned complaint as well as the summoning order suffer from several legal infirmities and cannot be sustained. The prosecution of the petitioners without impleading the firm and the inordinate, unexplained delay of nearly seven years in filing the complaint cumulatively render the continuation of criminal proceedings an abuse of the process of law. Accordingly, the petition is allowed and the impugned complaint bearing No. 47/2014 dated 03.04.2014, titled *State of Punjab through Chief Agriculture Officer v. Jain Narain and another*, along with summoning order dated 21.07.2014 and all consequential proceedings arising therefrom, are hereby quashed qua the petitioners.

18.02.2026
Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No