
(2012) 08 RAJ CK 0023

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 403-404 of 2010

Chiranji Lal Jhalani

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 13-08-2012

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2012) 4 WLN 235

Hon'ble Judges : Nisha Gupta, J

Bench : Single Bench

Advocate : Naina Saraf, for the Appellant; Sanjeev Mahla, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Nisha Gupta, J.—These revision petitions have been filed against the order 25.11.1997 passed by the Judge, Special Court(Essential Commodities Act), Jaipur to quash the trial initiate against the petitioner. The short facts of the case are that the accused-petitioner is running a firm Shankar Khad Beej Bhandar on Agra Road, Kanota, District Jaipur and he is having Fertilizer Licence issued by the Registration Officer, Jaipur (Deputy Director, Agriculture Extension, Jaipur). On 27.09.1996, respondent no. 2 Assistant Director Agriculture(Quality Control), Rajasthan, Jaipur had taken a sample of fertilizer having brand name Shakti Brand. One sample was given to the accused petitioner and other one was sent to Public Analysist (Government Fertilizer Quality Control Laboratory, Dungarpura) for analysis on 28.9.1996 and the third sealed sample was kept as a referee sample and at the same time the accused petitioner was directed not to sell or transfer the above fertilizer.

2. The Government Laboratory has reported that the said fertilizer was of sub-standard and, therefore, a complaint was filed against the accused-petitioner under the Fertilizer Control Order 1985 Division 19(1)(a) issued under Sec. 3/ 7

of the Essential Commodities Act.

3. The only contention of the present petitioner is that the Fertilizer Control Order was challenged and it was declared ultra virus and unconstitutional by the Punjab and Haryana High Court and reliance has been placed on Tarsem Singh Vs. Union of India (UOI) and Others, wherein it has been held as under:-

Summing up Regulation 19 of the impugned Fertilizer Control Order, 1985 is a piece of unfair legislation. It has given an arbitrary power, to the Government to prosecute a person, who cannot show in a Court of Law that the report of the Public Analyst who has declared the sample of the fertilizer as "sub-standard", could possibly fall in an error leading to his conclusions while testing the sample. It has also snatched a valuable right of a person who deals in the trade of fertilizer and sells the sealed and stitched bags as supplied to him by the manufacturer. Even this piece of legislation has made such dealer punishable who has properly stored the essential commodities as such "fertilizer". I am of the opinion that Regulation 19 of the impugned Fertilizer Control Order, 1985 is violative of Article 19 read with Article 21 of the Constitution of India and in its present shape cannot be allowed to operate/stand and as such Regulation 19 of the Control Order is hereby struck down. Thus the first proposition is answered in the affirmative.

The second proposition propounded above can also be answered with case. When the foundation of the prosecution is based upon a piece of legislation, which has not been able to stand the test of scrutiny, all prosecutions launched by the authorities under Regulation 19 read with Section 7 of the Essential Commodities Act bound to be quashed and it is ordered accordingly.

4. Further reliance has been placed on Mehta Krishi Kendra and Others Vs. State of Rajasthan, wherein it has been held as under:- For the reasons mentioned above, I am of the opinion that since Regulation 19 of the Order of 1985 is violative of Articles 19 read with Article 21 of the Constitution of India and in the present shape was not allowed to operate/stand and was struck down by Punjab and Haryana High Court, prosecution of the accused-petitioners for violation of Regulation 19 of the Order of 1985 punishable u/s 3/ 7 of the Essential Commodities Act is bound to be quashed.

Looking at the above law laid down, these revision petitions are allowed and the prosecution of the present petitioner in Criminal Cases No. 16/1997 and 18/1997 are hereby quashed.