
(2001) 10 RAJ CK 0098

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 476 of 1996

Indian Farmers Fertiliser Cooperative Ltd.

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7
Fertiliser (Control) Order, 1985 — Regulation 19, 19(1)

Citation : (2003) 3 RLW 1882 : (2002) 4 WLN 414

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : D.S. Shishodia and N.K. Rastogi, for the Appellant; Ramesh Purohit, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Garg, J.—These two criminal misc. petitions which have been filed by the accused petitioners u/s 482 Cr.P.C. are being decided by a common order as common questions of law and facts are involved in these misc. petitions.

2. In both these criminal misc. petition it has been prayed that complaint No. 148/2000 pending in the Court of ACJM, Nimbahera be quashed and also order dated 15.6.96 by which the learned Special Judge, Essential Commodities Act Cases, Pratapgarh took cognizance against the petitioners for violation of Regulation 19(1)(a) and 19(c)(iii) of the Fertiliser (Control) Order/1985 (hereinafter referred to as the Order of 1985) punishable u/s 3/7 of the Essential Commodities Act be quashed.

3. They arise in the following circumstances :

(i) That on 14.6.96, the Fertiliser Inspector of the Office of Agriculture, Chittorgarh filed a complaint in the Court of Special Judge, Essential Commodities Act Cases, Pratapgarh alleging that on 2.9.95 he went for sudden

checking of M/s. Karunda Gram Sewa Sahkari Samiti Ltd. After giving his introduction, exercising powers under Regulation 28 of the Order of 1985, he decided to take sample of the Urea, gave notice of his such intention, purchased samples, divided it into 3 parts, prepared a memo of inspection and seizure, delivered one sealed sample to the owner and obtained receipt therefor. It is further alleged that Parasmal Jain was Manager of the Samiti who is one the accused in S.B. Criminal Misc. Petition No. 500/96 and thereafter the sample was sent to State Fertiliser Quality Control Laboratory, Jodhpur on 7.9.95 for analysis and from where a report dated 17.10.95 was received which shows that the sample was found to be sub-standard. Further case of the prosecution is that the accused petitioner in criminal Misc. Petition No. 476/96 was manufacturer of Urea of which samples were taken.

4. On this complaint, the learned Special Judge, Essential Commodities Act, Chittorgarh took cognizance against the petitioners for offence u/s 3/7 of the Essential Commodities Act on 15.6.96.

5. Aggrieved from the order dated 15.6.96, the petitioners have filed these two misc. petitions.

6. In the abovementioned misc. petitions following submissions have been raised by the learned counsel for the petitioners :

(i) The order of 1985 has provided various safeguards in Schedule II appended to the Order of 1985 for drawing samples of fertiliser by the Inspector and since none of the safeguards have been taken by the Inspector while taking samples from M/s. Karunda Gram Sewa-Sahkari Samiti, therefore, the report of Public analyst is no report in the eye of law and on this ground, the whole proceedings should be quashed and for that reliance has been placed on a case Chandra Prakash v. State of Rajasthan (1).

(ii) That in the order of 1985 no provisions has been made to send the sample for re-testing from any independent Laboratory and hence it has been contended by the learned counsel for the accused that since Punjab and Haryana High Court in Writ Petition No. 5643/1995 decided on 16.9.96 (Tarsem Singh v. Union of India (2) has held that Regulation 19(1) of the Order of 1985 is violative of . Article 19 as well as 21 of the Constitution and it cannot be allowed to operate and as such Regulation 19 of the Order of 1985 was struck down. Therefore, all the proceedings pending against the petitioners should be quashed as they are without any force of law.

7. On the other hand, the learned P.P. opposes the submissions made by the learned counsel for the petitioners and submits that these misc. petitions have no force and they should be dismissed.

8. I have heard both.

9. In my opinion the first argument would not be helpful for quashing proceedings u/s 482 Cr.P.C. as whether at the time of taking sample safeguards

provided in Schedule II appended to the Order of 1985 have been followed or not, is a question of fact and therefore, in absence of evidence or in absence of statement of the Inspector who took the sample, this point cannot be decided. Apart from this in my considered opinion, whether there was breach of procedure or not, that can be decided only after recording of evidence and simply from the face value of the inspection report, this fact cannot be decided. For the above reasons the authority in the case of Chandra Prakash (supra) is distinguishable from the facts of present case.

10. So far as second argument is concerned, it is stated that the judgment in the case of Tarsem Singh (supra) would not be helpful to the accused petitioners "as the Judgment in that case was delivered on 16.9.96 while the sample in the present case was taken on 2.9.95 meaning thereby before Regulation 19 of the Order of 1985 was struck down. The Hon"ble Supreme Court in so many cases has held that when a law is declared to be invalid, it should be declared prospectively and not retrospectively. Since in the present case Section 19 was declared violative of article 19 of the Constitution of India on 16.9.96 and sample was taken on 2.9.95, therefore, this judgment would not be helpful to the accused petitioner. On the point of prospective operation, following cases of Hon"ble Supreme Court may be referred to :

- (i) Babu Ram v. C.C. Jacob (3)
- (ii) Belsund Sugar Co. Ltd. v. State of Bihar and Ors. (4)
- (iii) State of Himachal Pradesh and Ors. v. Nurpur Private Bus operators Union and Ors. (5)
- (iv) M/s. Raymond Ltd. and Anr. v. Madhya Pradesh Electricity Board and Ors. (6)
- (v) Gangaram Moolchandani v. State of Rajasthan (7).

For the aforesaid reasons, the case of Tarsem Singh (Supra) would not be helpful to the present accused petitioners.

11. So far as quashing of proceedings u/s 482 Cr.P.C. by the High Court is concerned, the rest is that taking the allegations and the complaint as they are without adding or subtracting anything, if no offence is made out, then the High Court will be justified in quashing the proceedings in exercise of its power u/s 482 Cr.P.C. as held by Hon"ble Supreme Court in the case of Municipal Corporation of Delhi v. Ram Kishan Rastogi (8).

12. For the purpose of quashing complaint, it is necessary to consider whether the allegations in the complaint prima facie make out an offence or not. In the present case from the report of public analyst, the sample was found to be substandard. Hence, prima facie case is there in the present case. So far as allegations that the sample was not taken in accordance with law are concerned that has to be proved by the prosecution through evidence and that would be only when an opportunity to prosecution to lead evidence is given. Prior to that,

to hold otherwise would amount to deprivation of right of the prosecution. Therefore, it is not a fit case where the complaint and cognizance should be quashed.

13. For the aforesaid reasons, the abovementioned two misc. petitions No. 476/1996 and 500/96 filed by the petitioners u/s 482 Cr.P.C. are hereby dismissed.