

(2001) 10 RAJ CK 0029

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 450 of 1999

Mehta Krishi Kendra and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 03-10-2001

Acts Referred:

Constitution of India, 1950 — Article 19, 21
Essential Commodities Act, 1955 — Section 3, 7
Fertiliser (Control) Order, 1985 — Regulation 19, 19(1)

Citation : (2003) 1 RLW 472 : (2002) 1 WLN 264

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Ramesh Purohit, Public Prosecutor, Suresh Kumbhat, for the Appellant;

Final Decision : Allowed

Judgement

Garg, J.—These two criminal misc. petitions which have been filed by the 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. petition.

2. I am taking first the facts of criminal Misc. Petition No. 450/99. Misc. Petition No. 450/99

3. This misc. petition has been filed by the accused petitioners u/s 482 Cr.P.C. with a prayer that cognizance, which was taken on 14.5.99 for violation of Regulations 19(1)(a) and 19(1)(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 and simultaneously the complaint filed by the Fertiliser Inspector be also quashed.

4. It arises in the following circumstances:- ,

i) Rajmal Mehta, Assistant Director, Agriculture (Extension) Agriculture Sub District, Girwa (Udaipur), on July 9, 1998 went for sudden checking on the shop

of the petitioner No. 1 M/s. Mehta Krishi Kendra Dabok where he found petitioner No. 3 Ramesh. After giving his introduction and exercising powers under Regulation 28 of the Order of 1985 decided to take sample of Fertiliser Single Super Phosphate, 16% and gave notice of his such intention. He purchased samples, divided it into 3 parts each weighing five hundred grams, packed them in polyethene bags, tied it, sealed it with his brass seal, prepared a memo of inspection and seizure, delivered one sealed sample to the owner and obtained receipt therefor. One part of the sample was forwarded to State Fertiliser Quality Control Laboratory, Udaipur on July 15, 1998 and as per the report dated 1.8.98, sample was found to be sub- standard and thus, the accused petitioners from whom the sample was taken and the accused who are manufacturer of Single super Phosphate, 16% have committed offence for violation of Clause 19(1)(a) and 19(1)(c)(iii) punishable u/s 3/7 of the Essential Commodities Act.

The Food Inspector filed a complaint in the Court of Special Judge, Essential Commodities Act on 14.5.99 and from where the case was transferred to the Court of Chief Judicial Magistrate, Udaipur.

Misc. Petition No. 449/99

The facts of this case are similar to that of Misc. Petition No. 450/99. In this case also, the sample of Single Super Phosphate, 16% was taken on 9.7.98.

5. In the abovementioned misc. petitions only one following submission has been raised by the learned counsel for the petitioners:

i) That in the order of 1985 no provision has been enacted 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 16.9.1996 (Tarsem Singh v. Union of India (1), 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 and samples in the present misc. petitions were taken on 9.7.98, meaning thereby after the date when Regulation 19 of the Order of 1985 had been struck down, therefore, all the proceedings pending against the petitioners should be quashed as they are without any force of law.

6. On the other hand, the learned Public Prosecutor opposes the submission made by the learned counsel for the petitioners and submits that these misc. petitions have no force and they should be dismissed.

7. I have heard both.

8. In my considered opinion, the argument raised by the learned counsel for the petitioner carries weight. The Punjab and Haryana High Court in the case of Tarsem Singh (Supra) held that in every enactment, for example Insecticides Act, 1968, Prevention of Food Adulteration Act, 1954 and Drugs and Cosmetics Act, 1940 there is a provision to send the sample for re-testing to the Central

laboratory and since in the order of 1985 there is no such provision and for that, Regulation 19 of the Order of 1985 was struck down by Punjab and Haryana High Court.

9. It is stated that the judgment in the case of Tarsem Singh (supra) would 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 9.7.98 meaning thereby after 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 9.7.98, therefore, this judgment would be helpful to the accused petitioners. On the point of prospective operation, following cases of Hon''ble Supreme Court may be referred to:

- i) Babu Ram v. C.C. Jacob (2)
- ii) Belsund Sugar Co. Ltd. v. State of Bihar and Ors. (3)
- iii) State of Himachal Pradesh and Ors. v. Nurpur Private Bus Operators Union and Ors. (4)
- iv) Raymond Ltd. and Anr. v. Madhya Pradesh Electricity Board and Ors. (5)
- v) Gangaram Moolchandani v. State of Rajasthan (6)

For the aforesaid reasons, the case of Tarsem Singh (supra) would be helpful to the present accused petitioners.

10. For the reasons mentioned above, I am of the opinion that since Regulation 19 of the Order of 1985 is violative of Article 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.

For the aforesaid reasons, the abovementioned two misc. petitions No. 450/99 and 449/99 are allowed and all the prosecutions of the accused petitioners in both the criminal misc. petitions No. 450/99 and 449/99 for violation of Regulation 19 of the Fertiliser (Control) Order. 1985 punishable u/s 3/7 of the Essential Commodities Act are quashed.