

(2005) 09 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 37995-M of 1999

M/s Bansal and Deol Fertilizer and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-09-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 7

Citation : (2005) 16 CriminalCC 84

Hon'ble Judges : Rajive Bhalla, J

Bench : Single Bench

Advocate : P.K. Gupta, for the Appellant; J.S. Dhillon, DAG, Punjab, for the Respondent

Judgement

Rajive Bhalla, J.—Prayer in the present petition, filed u/s 482 of the Code of Criminal Procedure, is for quashing of FIR No. 198, dated 5.11.1998, registered u/s 7 of the Essential Commodities Act, 1955 read with Sections 5, 7, 8 and 35 of the Fertilizer (Control) Order, 1985, at Police Station Jagraon, as also subsequent proceedings emanating therefrom.

2. Petitioner No.1 is a firm, dealing in fertilizers and petitioner No.2 is a partner therein. The firm is a licenced dealer under the Fertilizer (Control) Order, 1985. Pursuant to a raid, conducted on 5.11.1998, by one Kuldip Singh, Fertilizer Inspector, in the presence of Sub-Divisional Magistrate, as also the Deputy Superintendent of Police, the stock of DAP fertilizer was found to be short to the extent of 125 bags. Consequently, the aforementioned FIR was registered against the petitioners. Simultaneously, the Chief Agriculture Officer, Ludhiana issued a show-cause notice, under the Fertilizer (Control) Order 1985, for cancellation of the petitioner's licence. Vide order dated 3.12.1998 (Annexure P-5), the licence of the petitioner firm was ordered to be cancelled. The petitioner filed an appeal before the Director Agriculture, Punjab. Vide order dated 10.5.1999, the appeal was accepted, the order of cancellation (Annexure

P-5) set aside, and the licence, issued to the petitioner-firm restored.

3. It is averred in the petition that DAP fertilizer is not a controlled item under the Fertilizer (Control) Order, 1985. Pursuant to a notification, dated 10.2.1992, DAP Fertilizer has been removed from the list of articles notified as controlled items under the Fertilizer (Control) Order, 1985.

4. Counsel for the petitioners contends that the FIR, lodged against the petitioners, is liable to be quashed on two grounds. Firstly, the petitioners have been exonerated by the appellate Authority of any wrong doing under the Fertilizer (Control) Order 1985 and the Essential Commodities Act, 1955. The order of cancellation has been set aside, and as a consequence, the licence has been restored. Thus, the FIR for the same offence, namely, a shortage in the fertilizer, would not be sustainable and is liable to be quashed. The appellate Authority, while examining the matter on merits, accepted the explanation, put-forth by the petitioners that there was no shortage of fertilizer. The sale of fertilizer, on the night preceding the raid, was not recorded in the stock registered and, therefore, the raiding party, without taking note of this fact, wrongly concluded that there was a shortage. It is, thus, contended that as on the same set of facts, the petitioners have been exonerated in proceedings initiated by the Department, the FIR and the trial cannot be proceeded with. Reliance for the above contention is placed upon *Ramesh Kumar v. State (Delhi)*, 1985(2) RCR(Cr.)47, *Yogesh Sood v. State of Punjab*, 1994(3) RCR(Cr.) 394, *Ram Murti Gupta v. State of Punjab*, 1995(1) RCR(Cr.) 116 and *Gumam Singh v. State of Haryana*, 1998(1) RCR(Cr.)51. The second contention is that DAP fertilizer is no longer a controlled item, shortage thereof would not be an offence, under the Fertilizer (Control) Order, 1985 and/or the Essential Commodities Act, 1955.

5. Counsel for the respondent, on the other, hand, contends that mere exoneration by the appellate Authority would not give rise to any cause for quashing of the FIR. The onus of proof in the two sets of proceedings, namely, civil and criminal being different, the fact that an accused has been exonerated in civil proceedings would not necessarily conclude the absence of culpability in criminal proceedings. It is further contended that whether there was any shortage of fertilizer is a question of fact to be determined by trial Court. The order of the appellate authority holding that there was no shortage, is not binding upon the prosecution.

6. In so far as the assertion of counsel for the petitioners that DAP fertilizer is not a controlled item and, therefore, no offence is made out, under the Fertilizer (Control) Order, 1985 or under the Essential Commodities Act, 1955, counsel for the respondent contends that the petitioners are guilty of diverting the fertilizer, not maintaining the correct register and, therefore, they must be proceeded against, in accordance with law.

7. I have heard learned counsel for the parties, perused the record and the

judgments, cited by counsel for the petitioners.

8. The contention of counsel for the petitioners that as the appellate authority, exercising powers under the Essential Commodities Act read with the Fertilizer (Control) Order, arrived at a conclusion that the petitioners had not committed any wrong, no criminal prosecution, on the same set of facts, was maintainable, merits acceptance. In civil/departmental proceedings, initiated by authorities, conferred with statutory powers, and where civil consequences ensue, appreciation of evidence is based upon the principle of preponderance of probabilities. In criminal proceedings, however, guilt of an accused is required to be established beyond a shadow of doubt. It goes without saying that if on the same set of facts, no case is made out, against a delinquent on the principle of preponderance of probabilities, it would be impossible to establish a case on the principle of guilt beyond a shadow of doubt. Thus, where depending upon the facts and circumstances of a given case, a delinquent is exonerated in civil/departmental/statutory proceedings, he should not be proceeded against on the same set of facts, in a criminal trial.

9. Pursuant to a raid, conducted on 5.11.1998, the Fertilizer Inspector was unable to discover any entry in the stock register with respect to 125 bags of DAP fertilizer and the FIR was lodged. On the same set of facts and vide order dated 3.12.1998, the Chief Agriculture Officer, Ludhiana cancelled the petitioners' licence. The petitioners preferred a statutory appeal under the provisions of the Essential Commodities Act, to the Director Agriculture, Punjab putting forth an explanation that 125 bags of fertilizer had been sold on the evening preceding 5.11.1998. Bills in respect thereof were produced in evidence and it was contended that before the factum of sale, effected on 4.11.1998, could be entered in the stock register, the raid ensued resulting in the cancellation of the licence. The appellate authority, namely, the Director Agriculture Punjab, after an appraisal of the record, produced by the petitioners, accepted the aforementioned explanation, set aside the order of cancellation of licence and held that the petitioners had not violated any statutory provisions/obligations and, therefore, restored the licence.

10. As noticed in the earlier part of the judgment, the FIR was lodged on the fact, that the petitioners failed to account for 125 bags of fertilizer and, therefore, had violated the provisions of the Fertilizer (Control) Order, 1985 read with the provisions of the Essential Commodities Act. As the petitioners have already been exonerated by the departmental authorities in proceedings, initiated under the Fertilizer (Control) Order, 1985 read with the provisions of the Essential Commodities Act, for the same offence, it is obvious that no conviction would be possible in criminal proceedings. There is no difference or distinguishing feature between the facts before the appellate authority and the facts, contained in the FIR, and the proceedings ensuing therefrom. In this view of the matter, I have no hesitation in holding that the FIR and the proceedings emanating therefrom are liable to be quashed. Sustenance for the above conclusion is drawn

from the judgments, relied upon by counsel for the petitioners, namely, Ramesh Kumar v. State (supra), Yogesh Sood v. State of Punjab (supra), Ram Murti Gupta v. State of Punjab (supra), and Gurnam Singh v. State of Haryana (supra).

11. The next contention, raised by counsel for the petitioners that DAP fertilizer has been removed from the list of controlled items, pursuant to the notification dated 10.2.1992 and, therefore, even if the facts, contained in the present FIR, are accepted to be true, no offence is made out against the petitioners, is borne out from the notification (Annexure P-8). A perusal thereof reveals that DAP fertilizer is no longer a controlled item. The notification is dated 10.2.1992, whereas the present FIR was registered on 4.11.1998, on which date, DAP fertilizer was no longer a controlled item. The respondents, whether in their reply, or in their submissions, have failed to controvert the above notification. There is no denial of the fact that on the date of the notification, DAP fertilizer was no longer a controlled item. In this view of the matter, the Fertilizer Inspector had no jurisdiction to conduct a raid and/or lodge the FIR with respect to any shortage of fertilizer. The Fertilizer Inspector draws his jurisdiction from the Essential Commodities Act read with the Fertilizer (Control) Order, 1985. In case, an item is not a controlled item, no offence, in respect thereof, can be made out under the Fertilizer (Control) Order, 1985.

12. In view of what has been stated above, and taking into consideration the facts and circumstances of the present case, the present petition is accepted and FIR No. 198, dated 5.11.1998, registered u/s 7 of the Essential Commodities Act, 1955 read with Sections 5,7,8 and 35 of Fertilizer (Control) Order, 1985, at Police Station Jagraon, as also subsequent proceedings emanating therefrom are quashed.