
(1991) 05 P&H CK 0048

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 418-DBA of 1983

State of Punjab

APPELLANT

Vs

Balak Ram and anr.

RESPONDENT

Date of Decision : 13-05-1991

Acts Referred:

Citation : (1991) 3 RCR(Criminal) 425

Hon'ble Judges : S.D.Bajaj, J and Harmohinder Kaur Sandhu, J

Advocate : Randhir Singh, Arun Chandra, Surinder Mohan Lal Arora, Ravinder Chopra, S.S. Nijjar, S.S. Dhaliwal, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. Sample of fertilizer obtained from the dealer was found to be substandard on analysis. Learned trial Court convicted the dealer vide its, impugned judgment dated November 13, 1981 and sentenced him to undergo rigorous imprisonment for a period of one year and to pay Rs. 1000/ as fine. In default of payment of fine, the convicted accused was ordered to undergo rigorous imprisonment for a further period of 3 months. In appeal, vide its impugned judgment dated May 31, 1982 learned lower Appellate Court set aside the conviction and sentence and acquitted the accused holding that the procedure prescribed for taking the sample set out in Schedule II of the Fertilizer Control JUDGMENT 1957 had not been followed. Feeling aggrieved therefrom the State of Punjab has filed Criminal Appeal No. 418DBA of 1983 in this Court.

2. We have heard Shri Randhir Singh, AAG Punjab for the appellant, Shri S. S. Nijjar, Senior Advocate, with Sarvshri S. S. Dhaliwal, Ravinder Chopra, Surinder Mohan Lal Arora and Arun Chandra, Advocates, for the respondents and carefully perused the relevant record. Three more Criminal Appeal Nos. 419, 589 and 590 all DBA of 1983 also arise from the same judgment of the learned trial Court and have, therefore, been heard and are being disposed of together through this judgment. Counsel appearing for respondents in the remaining three Criminal Appeals aforesaid have also been heard.

3. P.W. 3, Gurkaram Singh, Agricultural Inspector, Muktsar, who took the sample of fertilizer admitted in cross-examination, "The samples were taken approximately without weight. Six bags were taken out from the stock at random. The shop of the accused is situated in thickly populated area, but we did not join any witness from that locality. It is correct that this entry is : "I have taken three samples of zinc sulphate drawn out of 2570 Kg. only. Whatever I have mentioned in my endorsement in Ex. P. 3, I have stated above and beyond that I do not remember anything orally." It would thus appear that as against the prescribed quantity of 500 grams the sample obtained was admittedly of far lesser quantity. It was not put in a bottle having a tight fitting stopper as per requirement envisaged in clause 4(a)(ii) of Schedule II appended to the Fertilizer Control JUDGMENT 1957 and independent witnesses of the locality admittedly available were not called to witness the collection of sample from the respondent accused. The admissions indicate violation of the mandatory provisions of the Fertilizer Control JUDGMENT 1957.

4. It has repeatedly been held by this Court in Charan Dass and others v. State of Punjab, 1987(1) Recent Criminal Reports 285 ; Sohan Singh and another v. State of Punjab, 1988(1) Recent Criminal Reports 372 : 1988(1) All India Criminal Law Reporter 860 (P&H) ; Gian Chand Luthra v. State of Punjab, 1988(2) Recent Criminal Reports 481 : 1988(2) All India Criminal Law Reporter 985 and Hardev Singh and another v. State of Punjab, 1989(2) Recent Criminal Reports 420 that infirmities in collecting the sample in violation of the statutory requirements envisaged in Schedule II of the order vitiate the proceedings.

5. Similarly it was observed in State of Haryana v. Jagtar Singh, 1919 Criminal Law times 179 and A.K. Roy and another v. State of Punjab and others, 1986(2) Recent Criminal Reports 569 :

"The use of negative words in Section 20(1)". No prosecution for an offence under this Act, shall be instituted except by or with the written consent of plainly make the requirements of the section imperative. That conclusion of onus must necessarily follow from the well known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p. 263 in his own terse language;

"If the requirements of a statute which prescribed the manner in which something is to be done are expressed in negative language that as to say if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute and that neglect to attend to them will invalidate the whole proceeding."

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in a manner provided and not otherwise."

6. In this view of the matter all the four appeals filed by the State are rendered wholly without merit and consequently dismissed.