
(1991) 05 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 502-DBA of 1983

State of Punjab

APPELLANT

Vs

Jugal Kishore

RESPONDENT

Date of Decision : 14-05-1991

Acts Referred:

Citation : (1991) 2 PLR 357

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

Advocate : G.S. Dhillon, N.S. Virk, Randhir Singh, Advocates for appearing Parties

Judgement

S.D. Bajaj, J.

1. Fertilizer Inspector Amarjit Singh obtained a fertilizer sample from the dealer concern of M/s Jugal Kishore Ajit Kumar at Nadala district Kapurthala of Punjab State on February 26, 1978. The fertilizer had been supplied to the concern aforesaid by the manufacturer concern of M/s India Agro Chemicals Industries, Chabal district Amritsar. On analysis by the Public Analyst the sample was reported to be substandard vide report Exhibit PC. Complaint Exhibit PD was, therefore, filed by the Fertilizer Inspector against the three petitioners and the dealer concern and Charanjot Singh, Manager of the manufacturer concern.

2. On being charged with the commission of offences under sections 12A of the Essential Commodities Act read with clause 13(i)(a) of the Fertilizer Control JUDGMENT 1957 all the four persons arrayed as respondent accused in the complaint pleaded "not guilty" thereto and claimed to be tried. Vide its impugned judgment dated February 26, 1982 learned trial court acquitted all the 4 accused holding that the sample having been taken from bags of fertilizer supplied by the manufacturer to the dealer, three partners of the dealer concern could be held liable for its having been found substandard and that Charanjit Singh, manager of the manufacturer concern could not be made liable because the manufacturer concern had appointed, nominated and constituted Shri Krishan Dev Sood son of Shri Babu Ram resident of Chabal Kalan its partner as general attorney of the

firm to manage the business of the firm on 28th May, 1976; much before the date of collection of the sample viz February 26, 1978. Besides it three more legal infirmities in collecting Sample of lesser weight than the prescribed quantity of 500 grams, sample after collection having put in a bottle having tight fitting stopper as prescribed in not been clause 4(a) of Schedule appended to the Fertilizer Control JUDGMENT 1957 and of the collected sample having been sent to the laboratory for testing nearly 20 months after its collection were also mentioned as reasons for recording acquittal of the respondents. Feeling aggrieved from the impugned judgment of acquittal dated February 26, 1982 of the learned trial court the State of Punjab has filed Criminal Appeal No.502DBA of 1983 in this Court.

We have heard Randhir Singh A.A.G. Punjab for the appellant State, G.S. Dhilion, Advocate, with N.S. Virk, Adv., for respondent No.4 Nemo for respondents No.1 to 3 in spite of due service and have carefully perused the relevant record.

3. It has repeatedly been held by this Court in Charan Dass v. State of Punjab, 1987(1) Recent Criminal Reports 285, Sohan Singh v. State of Punjab, 1988(1) Recent Criminal Reports 372 : 1988(1) All India Criminal Law Reporter 860 (Punjab & Haryana) , Gian Chand Luthra v. State of Punjab 1988(2) Recent Criminal Reports 481 and Hardev Singh 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.

4. Similarly it was observed in State of Haryana v. Jagtar Singh, 1979 Cr.LT. 179 and A.K. Roy v. State of Punjab, 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 edition, p. 263 in his own tense language;

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language that is 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 proceedings.

Where a power is given to do a certain things 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."

5. Further more all the three partners proceeded against on behalf of the dealer concern and Charanjit Singh, Manager of the manufacturer concern have all been

absolved from blemish by the learned trial court for cogent reasons of being unconcerned with the running and management of their respective concerns on the relevant dates. There is thus no merit in the State appeal. Dismissed.