

(2007) 01 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc No. 428-MA of 2006

State of Punjab	Vs	APPELLANT
M/s. Ravinder Kumar and Bros. and Others		RESPONDENT

Date of Decision : 15-01-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100(4)
Essential Commodities Act, 1955 — Section 7

Citation : (2007) 2 RCR(Criminal) 307

Hon'ble Judges : H.S. Bhalla, J;A.K. Goel, J

Bench : Division Bench

Advocate : K.S. Boparai,A.A.G., Punjab, for the Appellant;

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—This application has been filed by the State of Punjab against acquittal of Respondents of the charges under Clause 19(1)(a) of Fertilizer (Control) Order, 1985 (for short, "the 1985 Order") read with Sections 7 and 12AA of Essential Commodities Act, 1955.

2. The State through Chief Agricultural Officer, Gurdaspur filed a complaint alleging that Respondent No. 1 was a dealer registered under the provisions of the 1985 Order for sale of fertilizer. Respondent No. 1 was dealing with fertilizer manufactured by Respondent No. 3, Respondent No. 2 is the proprietor of Respondent No. 1 and Respondent No. 4 is the Production Manager of Respondent No. 3.

3. On 27.11.1997, Block Agricultural Officer, Gurdaspur inspected the premises of Respondent No. 1 and took the sample of fertilizer. On analysis, the same was declared to be non-standard vide report Exh.PH. The accused denied the prosecution allegations.

4. Learned Special Judge, Gurdaspur after considering the evidence on record, held that case of the prosecution was not proved against the Respondents for the

following reasons:

- i) The sample was not taken as per the procedure laid down in the Control Order and the same was not kept in a suitable, clean, dry and air- tight glass or screwed hard polythene bottle.
- ii) There was no averment in the complaint that Respondent Nos. 2 and 4 were responsible for the business of the dealer or manufacturer.
- iii) No independent witness having been joined, there was violation of Section 100(4) Code of Criminal Procedure and Clause 28(2) of the Control Order,
- iv) The company itself having not been impleaded, the employees could not be prosecuted.
- v) Sample was taken by approximation, which was not permissible.
- vi) Sample was taken from stitched bags, in which case, the dealer could not be held responsible for the sample being sub-standard.

5. We have heard learned Counsel for the State and perused the findings recorded by the trial Court. We do find that the reasons given by the trial Court cannot be held to be valid in law and the approach adopted by the trial Court is highly technical. Irregularities pointed out by the trial Court may not have been enough to record acquittal of the Respondents.

6. As regards reasons Nos. (i) and (v), prosecution could not be held to be vitiated merely on these grounds, unless prejudice to the accused was shown.

7. In Dalchand Vs. Municipal Corporation, Bhopal and Another, the Hon''ble Supreme Court observed as under:

The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory. Where the design of the statute is the avoidance or prevention of public mischief, but the enforcement of a particular provision literally to its letter will tend to defeat that design, the provision must be held to be directory, so that proof of prejudice in addition to non-compliance of the provision is necessary to invalidate the act complained of. It is well to remember that quite often many rules, though couched in language which appears to be imperative, are no more than mere instructions to those entrusted with the task of discharging statutory duties of public benefit. The negligence of those to whom public duties are entrusted cannot by statutory interpretation be allowed to promote public mischief and cause public inconvenience and defeat the main object of the statute.

8. As regards reason Nos. (ii) and (iv), we are of the view that Respondent No. 2 being proprietor and Respondent No. 4 being Production Manager, could not be exonerated on the ground that they were not responsible for the business of the dealer or the manufacturer.

9. Absence of company being impleaded, could also be no ground for proceeding with the prosecution.

10. It has been held by the Hon''ble Supreme Court in State of Madras Vs. C.V. Parekh and Another, that even if the company has not been proceeded against, the accused persons, who are the functionaries of the company, are not absolved from being proceeded against only on that ground. This view was affirmed by the Hon''ble Supreme Court in Sheoratan Agarwal and Another Vs. State of Madhya Pradesh, and Moreover, in the present case,. Respondent Nos. 1 and 3 had been duly impleaded.

11. As regards reason No. (iii), prosecution was not vitiated merely for not joining of independent witnesses, as per the requirement of Section 100(4) of Code of Criminal Procedure. Procedure u/s 100(4) Code of Criminal Procedure and Clause 28(2) of the 1985 Order, cannot be held to be mandatory so as to vitiate taking of sample. In considering the fact of not joining of independent witnesses as required u/s 100(4) Cr.P.C., Hon''ble Supreme Court observed:

29. If there is intrinsic merit in the evidence of the witness of search the same cannot be rejected solely on the ground that witness is not from the locality of search or that he was brought by the police with it.

Again in Hon''ble Supreme Court observed:

90.... Non-examination of independent witness or even presence of such witness during police raid would cast an added duty on the Court to adopt greater care while scrutinizing the evidence of the police officers. If the evidence of the police officer is found acceptable it would be an erroneous proposition that Court must reject the prosecution version solely on the ground that no independent witness was examined

12. As regards reason No. (vi) i.e. taking of samples from the stitched bags there is no rigid principle that the sample is taken from stitched bags, dealer is not responsible for the sample being non-standard. Moreover, in the present case, manufacturer was also an accused.

13. Even though we are of the view that all the reasons given by the trial Court are not legally sound, we cannot lose sight of the fact that the sample was taken 10 years back and the Respondents-accused have faced proceedings for a long period. If the impugned order is to be set-aside, the case will have to be remanded for a fresh decision as the trial Court has not gone into the merits of the case, but decided the same on preliminary points. Leave to appeal is not a matter of course and Court is to weigh the interest of justice. Though delay may not be a conclusive factor for not setting aside an order of acquittal, having regard to all the circumstances, including the nature of offence, we do not find it necessary to remand the case for fresh trial. There is a provision for cancellation of licence and in normal course, on sample having been found to be non-standard, proceedings for cancellation of the licence of the Respondents may

have already taken. It is well settled that mere acquittal in a criminal case, does affect departmental action where standard of proof required is different. We do not record any finding on merits. It will be for the department to take such action in accordance with law as may be called for.

14. With above observations, we dismiss this petition for leave to appeal.