
(2002) 11 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 5651-M of 1999

Tarsem Chand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 13-11-2002

Acts Referred:

Citation : (2003) 1 CCC 162 : (2003) 1 RCR(Criminal) 196

Hon'ble Judges : Adarsh Kumar Goel, J

Advocate : Mr. R.K. Singla, Advocate. Mr. G.S. Gill, Senior DAG, Punjab.,
Advocates for appearing Parties

Judgement

Adarsh Kumar Goel, J.

1. This petition seeks quashing of FIR No. 102 dated 15.9.1998 registered at Police Station City, Mansa (Annexure P.1) under Section 7 of the Essential Commodities Act, 1955 read with Rule 19(1) of the Fertilizer (Control) JUDGMENT 1985 (for short, the Control JUDGMENT).

2. In the said FIR, it is alleged that on 19.12.1994, Fertilizer Inspector inspected the premises of M/s. Shivalik Sales Agencies, Mansa and took a sample of fertilizer and divided the same in three portions. One of the portions was sent for chemical analysis and vide report dated 18.1.1995 sample was found to be nonstandard as it contained only 9.22% P2O5 actual ingredient contents instead of 16%. The FIR was registered on the basis of letter from Chief Agricultural Officer dated 11.10.1995. It appears that FIR was not registered immediately on account of issue of validity of the Control JUDGMENT being pending in this court and a Single Judge of this Court vide judgment dated 16.9.1996 struck down Clause 19 of the Control JUDGMENT on the ground that there was no provision in the said JUDGMENT for second analysis. The said view of the learned Single Judge was overruled by a Division Bench vide judgment dated 29.7.1997 reported in The Director Agriculture, Punjab and others v. M/s. Gurmukh Mal Shibba Mal, 1997(4) Recent Criminal Reports 780. The Division Bench held that though accused had not been given a right of seeking second analysis done, he

had right under Section 293(2) of the Code of Criminal Procedure, in exercise of which he could cross-examine the expert who had given the report and also had right to examine another expert or to rely upon some celebrated authority on law and as a last resort could make out a case of the Court to send the third sample for its analysis by another laboratory. The said view was also affirmed by a Full Bench of this Court [2000(4) RCR(Cri.) 526] which has been affirmed by the Apex Court in Civil Appeal No. 1465 of 2001, A.S. Parmar v. State of Punjab and others, decided on 27.8.2002.

3. Present petition was filed at a time when matter was pending consideration before a Full Bench of this Court and further proceedings were stayed on the ground that the matter was pending before the Full Bench. Since the question of validity of the Control JUDGMENT no longer survives, counsel for the petitioners contended that the proceedings were liable to be quashed on account of delay in registering the FIR and that petitioners were merely dealers and liability for adulteration can be fastened only on the manufacturer. Reliance was placed on judgment in Shiv Dayal and others v. The State of Punjab, Criminal Misc. No. 31914 of 2000 decided on 22.9.2000. It was also submitted that respondent No. 2 had not been notified as Controller under Clause 3(e) of the Control JUDGMENT and on that ground also, prosecution of the petitioners was barred.

4. Counsel for the State opposed the prayer for quashing and submitted that delay was on account of pendency of issue of validity of the Control JUDGMENT in this Court and cannot be a ground for quashing. It was also submitted that there was nothing to show that respondent No. 2 had not been notified as Controller and even if that was so, no prejudice is shown to other petitioner nor it is shown as to how validity of prosecution is affected.

5. I have considered the rival submissions. I am unable to accept the contention on behalf of the petitioner that there is no valid explanation for the delay. No prejudice is shown to the petitioner.

6. Judgment of this Court in Shiv Dayal's case (supra) has been rendered on the facts of its own case and cannot be read as holding that no person other than manufacturer was liable to prosecution. Clause 19 of the Control JUDGMENT contains restrictions not only on manufacturer but also on sale or distribution of substandard fertilizer in the manner laid down in this clause. The said clause is reproduced below :

"19. Restriction on manufacture, sale and distribution of fertilizers No person shall himself or by any other person on his behalf

(a) manufacture for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertilizer which is not of prescribed standard;

(b) manufacture for sale, sell, offer for sale, stock or exhibit for sale or distribute any mixture of fertilizers which is not of prescribed standard subject to such limits of permissible variation as may be specified from time to time by the

Central Government or special mixture of fertilizers which does not conform to the particulars specified in the certificate of manufacture granted to him under this JUDGMENT in respect of such special mixture;

(c) sell, offer for sale, stock or exhibit for sale or distribute

(i) any fertilizer the container whereof is not packed and marked in the manner laid down in this JUDGMENT;

(ii) any fertilizer which is an imitation or a substitute for another fertilizer under the name of which it is sold;

(iii) any fertilizer which is adulterated :

Explanation A fertilizer shall be deemed to be adulterated, if it contains any substance the addition of which is likely to eliminate or decrease its nutrient contents or make the fertilizer not conforming to the prescribed standard;

(iv) Any fertilizer the label or container whereof bears the name of any individual firm or company purporting to be manufacturer of the fertilizer, which individual, firm or company is fictitious or does not exist;

(v) any fertilizer, the label or container whereof or anything accompanying therewith bears any statement which makes a false claim for the fertilizer or which is false or misleading in any material particular;

(vi) any substance as a fertilizer which substance is not in fact, a fertilizer; or

(vii) any fertilizer without exhibiting the minimum guaranteed percentage by weight of plant nutrient".

7. In view of the above statutory provision, contention of the petitioners that only manufacturer could be held liable cannot be accepted. Every person falling within the restriction placed by the above clause is liable to be proceeded against.

8. For the above reasons, I do not find any merit in the prayer for quashing at this stage. The petition is dismissed. The petitioners will be free to contest the matter in the trial Court in accordance with law. The parties are directed to appear before the trial Court on February 3, 2003.