

(2010) 01 BOM CK 0044

In the Bombay High Court

Case No : Criminal Writ Petition No. 81 of 2003

The State of Maharashtra

APPELLANT

Vs

Anilkumar Jinabhai Patel and Darshan Anilkumar Patel

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 169, 227, 245
Essential Commodities Act, 1955 — Section 10, 11, 12, 13, 14

Citation : (2010) 01 BOM CK 0044

Hon'ble Judges : A.V. Potdar, J

Bench : Single Bench

Advocate : U.S. Malte, Special Prosecutor, for the Appellant; S.S. Jadhav, h/f.
A.B. Kale, Learned Counsel, for the Respondent

Final Decision : Dismissed

Judgement

A.V. Potdar, J.—In this writ petition, rule came to be issued vide order dated 19/09/2003.

2. By the present writ petition, the State has approached this Court challenging the legality and validity of the judgment and order dated 29/10/2002 passed by the Sessions Judge, Jalgaon in Criminal Revision Application No. 225/2002 and to confirm the order passed by the learned J.M.F.C. in RCC No. 539/2000 by which the application filed by the respondents for discharge, below Exh.10 is came to be dismissed.

3. Such of the facts which are necessary before considering the submissions of parties, for the just decision of the present writ petition can be summarized as follows:

a) On the basis of complaint lodged by one Shri.Vasantrao Shripatrao Salunkhe on 29/07/1998, crime No. 57/98 came to be registered in Jalgaon Taluka Police Station of Dist. Jalgaon. The complainant claimed that he is Fertilizer Inspector and District Quality Control Inspector. The said offence was appeared to be

registered against the respondents for the prosecution u/s 3 and 7 of The Essential Commodities Act.

b) It further appears that in the said offence, earlier on 05/08/1999, Investigating Officer, investigating the said crime, had submitted a report u/s 169 of The Cr.P.C. It further appears that vide order dated 06/08/1999, the said report was accepted as the evidence against respondents herein was deficient. It further appears that on 04/11/1999, an application was moved before the Learned 2nd Additional Sessions Judge, Jalgaon by the Dy. S.P., Jalgaon that on further investigation, now the evidence is available against these respondents, hence the order dated 06/08/2009 to be recalled. It appears that vide order dated 13/12/1999, the request/application moved by the Dy. S.P. Jalgaon was accepted by the then 2nd Additional Sessions Judge, Jalgaon with directions to the Investigation Officer that he may present the charge sheet and summons be issued against the respondents accused. It further appear that on 14/12/1999, challan/charge sheet came to be filed in the Court of J.M.F.C. Jalgaon and on the basis of said challan/ charge sheet, case was registered vide RCC No. 539/2000,

c) It further appears that on 07/03/2002, the respondents herein have filed an application for discharge u/s 227, 245 of The Cr.P.C. from the accusation before the Learned J.M.F.C. Jalgaon, inter-alia contending that:

(i) The kind of fertilizers manufactured and sold by the company is de-controlled on and from 25/08/1992 (It appears that no such document is produced before any of the Court showing the production of the company was de-controlled by the competent authority).

(ii) The complaint lodged by the Officer is not authorized to lodge the complaint under the provisions of Clause 27 and 28 of The Fertilizer (Control) Order of 1985.

(iii) Since the year 1982 to 1998, no objection is raised by the competent authority that this respondent company is not holding any valid license for sale of the manufactured fertilizers sold by them, hence they are under the bonafide belief that the manufacturing license hold by them included authority to sale the fertilizer manufactured by them without separate license as they are holding requisite license under Clause 12 of The Fertilizer (Control) Order of 1985.

(iv) According to these respondents that it is admitted by the Registering Authority that the company of the respondents is not required to take separate license for sale in view of the provisions as per Clause (5) of The Fertilizer (Control) Order of 1957.

(v) As per Clause 24 of The Fertilizer (Control) Order 1985, designated officer to be appointed who will be held responsible for the compliance of the various provisions of the orders under The Fertilizer (Control) Order, 1985. The respondents have also appointed such designated officer (the entire discharge application nowhere whispers about as and when the name of the designated

officer responsible, was informed to the competent authority and the said correspondence was accepted by the competent authority. On the contrary, the papers received from the Lower Court shows that the communication vide I"along with Exh.16 marked before the trial court do not show the date on which this communication was communicated to the competent authority.) After giving the necessary notice to the prosecution and after obtaining the say from the prosecution/State, it appears that the learned J.M.F.C. gave the full fledged hearing to this application. Record shows that vide order dated 08/05/2002, the Learned J.M.F.C. pleased to reject this discharge application.

d) It further appear that being aggrieved by the said order, the respondent herein have filed Criminal Revision Application No. 225/2002 before the Learned Sessions Judge, Jalgaon. Vide his order dated 29/10/2002, the Learned Sessions Judge pleased to set aside the order passed by the learned J.M.F.C. dated 08/05/2002 and pleased to discharge the respondents accused mainly on the ground that the respondents have applied for the license for sale of the fertilizers manufactured by them on 13/12/1997. The license was prepared by the authority but was cancelled before issuance of the said license to the respondents on 28/07/1998. As the FIR was filed for the sale transactions during the pendency of the application for license moved by the respondents, respondents were discharged from the criminal prosecution. This judgment and order passed by the Learned Sessions Judge is impugned in the present writ petition for the grounds No. (i) to (x) of para No. 4 in the memo of the present writ petition.

e) It is to be noted that the manufactured fertilizers were confiscated /seized in the proceedings based on the complaint lodged against these respondents. The respondents have challenged this action of confiscation/of seizure of fertilizers by filing the writ petition No. 370/99, which was dismissed by the Division Bench of this Court. Against the said order of dismissal of writ petition No. 370/1999, it appears that an appeal is preferred by the respondents before the Apex Court which is pending. It is observed by the Division Bench of this Court to sale the manufactured fertilizer, "Dealers Registration Certificate" (In short D.R.C.) is necessary which the respondents are not holding.

f) It appears that while rejecting the discharge application by Learned J.M.F.C. in her order, she had dealt with all the objections raised by the present respondents.

g) It appears that while allowing the criminal application No. 225/2002 and setting aside the order passed by the Learned J.M.F.C., learned Sessions Judge have not at all dealt with these observations of the Trial Court on all the issues dealt by the learned J.M.F.C. Jalgaon.

4. During the course of submissions across the bar, both the sides have taken me through the entire record of the case filed before the trial court as well as before the Revisional Court and also drawn my attention to the legal proposition about the legal position under The Essential Commodities as well as the Fertilizer

(Control) Order of 1985 which was in force at the material time when the complaint was lodged against the respondents.

5. During the course of submissions, other than the grounds raised for discharge before the trial court, an additional ground was raised before this Court that on bare perusal of the complaint lodged against these respondents, it appears that these respondents are the Directors of the company and it is an act of the company as per the allegations in the FIR that the company sold the manufactured fertilizers without holding the requisite license. In other words, according to the counsel for respondents, the alleged offence is committed by the company. Section 10 of The Essential Commodities Act, deals with the offences against the companies. At the same time, it is tried to urge across the bar that on bare perusal of the complaint as well as the challan filed before the trial court by the prosecution agency, the company is not arrayed as an accused. In the premise, if there are no allegations that the company who suppose to hold a valid license for sale of the fertilizers and if not arrayed as the party accused in the said complaint, then the accusation against these respondents in absence of the company is joined as an accused to fail.

6. It can not be disputed that the respondents were not holding the requisite license/certificate for sale of the manufactured fertilizers by them in their factory. As per the contents of the respondents, as they are holding the license under Clause 12 of the Fertilizer (Control) order of 1985, no separate license is required for the sale of manufactured fertilizers by them. As per the contents of the complaint dated 29/07/1998, it appears that the complainant gave visit to the factory of these respondents by name Fertiland Industries, situated at 153, Polan Peth, Jalgaon, Nimkhedi Kh., Jalgaon, the respondents were not found holding license for sale of the fertilizers as per Clause 7 & 9, even though they are holding the license of manufacturing u/s 14 and 15, hence the accusation u/s 7 r/w. 3 of The Essential Commodities Act. Thus from these contents of the complaint, the said offence appears to be committed by the respondents company during the period 1997-98, then it is necessary to consider the legal proposition about the provisions under the Fertilizer (Control) Order, 1985.

7. Considering the submissions across the bar by both the sides, and it is not under dispute that originally the Fertilizer (Control) Order, 1957 came into force in the year 1957, and was later on amended/modified in the year 1985, 1991, 1993 and from time to time thereafter.

8. In the Fertilizer (Control) Order of 1957, Section 5 deals with the dealers to obtain certificate of registration, which do not include the certificate of registration by the manufacturer. Section 11 of the said order of 1957 deals with application for registration of fertilizer mixtures while Section 13 speaks for restriction on manufacturing, sale and distribution of fertilizer. This Order of 1957 appears to be amended in the year 1991. In the Fertilizer (Control) Order 1985, Chapter (IV) speaks for registration of dealers while Chapter (V) speaks for manufacturer of mixtures of fertilizers. On bare perusal of Section 7-11 under

the head "Registration of dealers" in which Section 7 speaks for dealers to be registered. For clarity, this section require to be reproduced which read as follows:

Section 7 : Dealers to be registered : No person, including a manufacturer, a pool handling agency, (a wholesale dealer, a retail dealer and in industrial dealer) shall offer for sale or carry on the business of selling fertilizers at any place except under and in accordance with the terms and conditions of a certificate of registration granted to him under Clause 9:

Provided that a State Government may, by notification in the Official Gazette, exempt from the provisions of this clause any person selling fertilisers to farmers in such areas and subject to such conditions as may be specified in that notification.

Under Chapter (V) of the said order which speaks under the head "Manufacturer of mixtures of fertilizers", it covers Section 12-18. Section 12 under the said chapter read as follows:

Section 12 : No person shall carry on the business of preparing any mixture of fertilizers (* * *) or special mixture of fertilizers except under and in accordance with the terms and conditions of a certificate of manufacture granted to him under Clause (15 or 16)

On clear perusal of Section 7, it revealed that it was substituted by notification No. SO 795(E) dated 22/11/1991 to which effect is given from 22/11/1991. As against this, Section 12 was substituted with effect from 03/06/1993. On clear reading of the language, registration u/s 7 speaks for "Registration of Dealers" while Section 12 speaks to carry on the business of preparing any mixture of fertilizer and so on. Thus the registration u/s 7 and registration u/s 12 are under two different heads. As per the say of respondents, the respondent's company is holding the license under clause/section 12 of the order, but not holding the license under Clause 7 which came into force w.e.f. 22/11/1991. Even though much emphasis were given on Clause 22 under Chapter (VI) which speaks for restrictions on manufacturing, sale etc. on fertilizers and it is urged that no separate license is required by virtue of the provisions under Clause 12 r/w. 22(b) of the order as modified in the order of 1991/1993 as the Law was in force at the material time. It is to be read in the light of Clause 25 of the order of year 1991 which put restrictions on the sale and use of fertilizers. On clear reading of the provisions there under, even the manufacturer want to sale the manufactured fertilizers, then the manufacturer require to hold the license to that effect.

9. It is undisputed that The Fertilizer (Control) Order 1985 were prepared in exercise of the powers conferred by Section 3 of The Essential Commodities Act, 1955 (10 of 1955), the Central Government makes the order to that effect. Thus it clearly indicates that the Fertilizer (Control) Order, 1985, is the offshoot of the exercise of the powers vested in the Central Government by the Statute. In Section 2(a) of this The Fertilizer (Control) Order, 1985 defined the "Act" means

the Essential Commodities Act, 1955. From this, one can easily gather that if there is any violation of the Order of 1985, then it will amount to an offence under the provisions of The Essential Commodities Act. Thus from the discussion of the legal provisions has prevailed that the company who is the manufacturer of the fertilizers, intend to sale the manufactured fertilizers, then, they require to hold the requisite license to sale those manufactured fertilizers under the provisions as required under Clause 7 as per the law prevailed at the material time, but the company of the respondents was not holding the requisite license.

10. During the course of submissions across the bar, in support of the submissions, learned Counsel appearing for the petitioner placed reliance on the rulling reported in Smt. Parayankandiyal Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, , about the Heydon's rule about sound rule of construction of a statute which is discussed in para No. 69,70,71 and 72. This proposition is not disputed by either of the sides, hence not require the detailed discussion. Further reliance is placed by the counsel for petitioner on the ratio laid down in the matter of Nelson Motis Vs. Union of India and another, wherein it is observed that "it is well established that if the words of a statute are clear and free from any vagueness and are, therefore, reasonably susceptible to only one meaning, it must be construed by giving effect to that meaning, it must be construed by giving effect to that meaning, irrespective of consequences." There is no dispute about this proposition also between the parties to the proceeding of which I have already made my observations in the paragraph supra. In reply to these submissions, counsel for respondents placed their reliance on the rulling reported in 1987 EFR, page 302 in the matter of Kishori Lal Bihani Vs. The Addl. Collector and District Magistrate, Kanpur and Others, in the matter of Radhey Shyam Kalwalia Vs. The State, in the matter of Century Spinning and Manufacturing Co. Ltd. and Others Vs. State of Maharashtra, in the matter of Century Spinning and Manufacturing Co. Ltd. and Ors. v. State of Maharashtra on the point of if there is absence of mens rea, then there shall not be any prosecution against the applicant accused. All these citations are not applicable in the present case as after the concerned applicant accused in those cases face the trial wherein positive evidence came on record that the act of the accused in those cases do not contemplate that there was any mens rea behind the acts committed by these applicants, and hence it is held by the Court of Law in all these judgments that in absence of mens rea, there shall not be prosecution against the respective applicant accused in those cases.

11. Reliance is also placed by the counsel for respondents on the rulling reported in 2006(1) EFR 348 in the matter of Bansal and Deol Fertilizer (M/s.) and Anr. v. State of Punjab in which it is observed that in case the production of the fertilizer company is decontrolled by the competent authority, then for violation of The Fertilizer (Control) Order, such manufacturer have not to be held responsible and there shall not be any accusation against those manufacturers. It is to be noted that even though such stand is taken by the respondents that the fertilizer product of their fertilizer company were de-controlled by the competent authority

under The Fertilizer (Control) Order, 1985, modified from time to time, any such record has not come before this Court. In the premise, this Court can not consider the ratio as laid down in the said ruling.

12. Then the last question require consideration is that if the offence is committed by the company, and the company is not arrayed as an accused, then whether the Directors of the Company who are respondents in this writ petition, can be held responsible for the offence allegedly committed by the company. Section 10 of The Essential Commodities Act speaks for the offences against the company which read as follows:

Section 10 : Standards for mixture of fertilizers : (1) Subject to the other provisions of this Order, no person shall, with effect from such date as may be fixed by the State Government by notification in the Official Gazette in this behalf (hereinafter in this clause referred to as "the said date"), carry on the business of selling any mixture of fertilizers, unless such mixture complies with the standards set out in such notification [in so far as total nitrogen,] and water soluble phosphoric acid (as P2 O5) and water soluble potash (as K2) is concerned.

[(2) With effect from the said date, no certificate of registration shall be granted in respect of any mixture of fertilizers which does not comply with standard set out in the notification referred to in Sub-clause (1).]

(3) Where before the said date, any certificate of registration has been obtained in respect of any mixture of fertilisers and such mixture does not comply with the standards set out in the notification referred to in Sub-clause (1) such certificate shall, after the expiry of three months from the said date, cease to be operative.

(4) Notwithstanding anything contained in this clause, any mixture of fertilisers [not complying with the standards set out in the notification referred to in Sub-clause (1)] manufactured, stocked or exhibited for sale before the expiry of three months from the said date, and in respect of which certificate of registration has been obtained before the said date may, for a period of one year from the said date, be sold, offered for sale, stocked or exhibited for sale or distributed.

(5) Nothing in this clause shall apply to special mixture of fertilizers.

13. Undisputedly, the offence was registered on the basis of complaint lodged by the complainant Vasantrao Salunkhe, an offence came to be registered u/s 3 and 7 of The Essential Commodities Act, but the company namely Fertiland Industries is not arrayed as an accused in the said complaint. It is observed in the matter of State of Madras Vs. C.V. Parekh and Another, that if the offence is committed by the company as u/s 10 of The Essential Commodities Act the company to be held liable for such offence. Here the respondents are the Directors of the Company and the offence is committed by the company, but as it is the company who is a legal entity and holding the license under Clause 12 of The Fertilizer (Control) Order 1985 as modified in the year 1991 and not holding the license/registration u/s 7 of the Act, but the company is not arrayed as an accused. In the premise,

the actual contravention of the provisions under the Fertilizer (Control) Order by the company, and in absence of the company is arrayed as an accused, there shall not be any accusation against these respondents, and this view require to be fortified from the view taken in the matter of Yogpal Malik v. State of Haryana reported in 2003 EFR 150, wherein it is held that on perusal of the complaint, wherein it is noticed that the company was not arrayed as an co-accused and therefore in absence of the aforesaid company, the complaint could not be filed against the Managing Director of the Company. This view is supported by the judgments in C.H. Chishti v. State, N.N. Kakkar's Case and Sureshchandra's case, which are respectively reported in 1997 (2) EFR 210, 1997(2) RCri C 695 and in the unreported judgment from the Punjab and Haryana High Court in Cri. M.A. No. 10011-M of 1997. In the case in hand also the facts clearly discloses that even if there is a violation of Clause (7) of The Fertilizer (Control) Order, but it was the company who require to hold the license and not respondents. In the premise, in absence of Fertiland Industries is arrayed as an accused then there is substance in the submissions of learned Counsel appearing for the respondents that in absence of the company arrayed as an accused, there shall not be any accusation against these respondents. Even though these respondents are discharged by the Revisional Court vide judgment and order in Criminal Revision Application No. 225/2002, but considering this legal aspect, even though the order of discharge passed in the Criminal Revision Application by the learned Sessions Judge is not well founded, but for this ground, it is to be up-held. In the premise, in writ jurisdiction, the jurisdiction of this Court is not like the jurisdiction of the Appellate Court, but in the writ jurisdiction, this Court require to consider the legality of the order in view of the legal provisions under the relevant law. This Court do not feel it necessary to interfere in the impugned order.

14. In the premise, the petition failed. The rule discharged accordingly. Petition stands dismissed.