
(1998) 04 AHC CK 0142

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 829 of 1996

U.P. Agro Bhathat and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-04-1998

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (1999) CriLJ 3749

Hon'ble Judges : S.K. Phaujdar, J;J.C. Mishra, J

Bench : Division Bench

Advocate : A.P. Srivastava, for the Appellant; A.G.A., for the Respondent

Final Decision : Disposed Of

Judgement

J.C. Mishra, J.—This petition has been filed by U.P. Agro Bhathat and its Branch Sales Officer for a writ of certiorari for quashing the First Information Report in Crime No. 780 of 1997 u/s 3/7 Essential Commodities Act PS. Gulharia, district Gorakhpur and mandamus directing the respondents not to arrest petitioner No. 2.

2. The prosecution case as contained in the First Information Report lodged on 6th October, 1997 is that the respondent No. 3, Additional District Agriculture Officer, Gorakhpur inspected the shop of the petitioner "U. P. Agro" and took a sample of D.A.P. fertilizer, which on analysis was found to be deficient in phosphorous and nitrogen. It is alleged that sale of non-standard fertilizer is violation of Fertilizer Control Orders, 1985 punishable u/s 3/7 E.C. Act.

3. Sri A. P. Srivastava, learned counsel for the petitioners contended that the sample of D.A.P. fertilizer was drawn from machine stitched sealed bag fertilizer supplied by the manufacturer and, therefore, the petitioners are not liable of nor they can said to have committed any violation of the Control Orders. Secondly, he contended that the licence of the petitioners in view of sale of non-standard fertilizer was suspended. The petitioners made representation and in pursuance

of cause shown by them the order of suspension was recalled. Thirdly, it has been contended that the First Information Report was lodged after a delay of 9 months and as no explanation for delay was shown it is liable to be quashed. Fourthly, it has been contended that petitioner No. 2 who is only a salesman cannot be said to have committed any offence by sale of machine stitched sealed fertilizer which was received as such from the manufacturer. Fifthly, it has been contended that the result of the chemical analysis which ought to have been sent within 60 day was not communicated to the petitioners within the statutory period and, therefore, the petitioners cannot be prosecuted.

4. Coming to the ground No. 1 it may be pointed out that Clause 23 of the Fertiliser (Control) Order prohibits the sale, offer of sale, stock or exhibit for sale of non-standard fertiliser unless the following conditions are satisfied ;-

(a) the container of such non-standard fertiliser is conspicuously superscribed in red colour with the words "non-standard" and also with the sign "X"; and

(b) an application for the disposal of non-standard fertilisers in Form His submitted to the registering authority to grant a certificate of authorisation for sale of such fertilisers and a certificate of authorisation with regard to their disposal and price is obtained in Form I;

(c) such non-standard fertiliser shall be sold only to the manufacturers of mixtures of fertilisers or special mixtures of fertilisers or research farms of Government or universities or such bodies.

5. There is no averment in the petition that these conditions were fulfilled. In absence of fulfillment of these conditions the petitioners had no right to stock or exhibit for sale of non-standard fertiliser. Moreover, Clause 19 prohibits stock, sale or offer for sale of non-standard fertiliser.

6. The recalling of suspension of licence is not relevant for the inquiry whether any offence is made out on the allegations contained in the F.I.R. If there is any violation of Control Order and an offence is made out punishable u/s 3/7 E.C. Act the dealer can be prosecuted despite the licence granted to the accused is not suspended or revoked.

7. The delay in filing the First Information Report can hardly be any ground for its quashing unless there is some express provision providing limitation for filing such report. No such provision has been brought to our notice. It is for the trial Court to consider as to what weight should be given to the delayed First Information Report.

8. The petitioner No. 2 was Branch Sales Officer of M/s. U.P. Agro at the time when the sample was drawn. The learned counsel contended that in his capacity as salesman he had no authority to refuse to stock fertiliser received from the manufacturer.

9. The case is at the investigation stage and only after collecting evidence it can

be found what offence, if any, was committed by the Branch Sales Officer. It may be that in view of his duties he may be guilty of the offence or it is equally possible that some senior officer may also be guilty. At this stage it would suffice to say that the First Information Report cannot be quashed on the ground that the petitioner No. 2 was merely a salesman.

10. The petitioners have challenged the authenticity of the First Information Report on the ground of delay. Clause 30 of the Control Order provides that the sample shall be despatched for analysis within a period of seven days from the date of its drawal, and; laboratory shall analyse the sample and forward the analysis report in Form L within 60 days from the date of receipt of the sample in the laboratory to the authority specified in memorandum. Sub-clause (3) provides that the result of the analysis will be communicated to the dealer within 30 days from the date of receipt of analysis report of the laboratory. Thus the result should be communicated to the dealer within approximately 100 days from the date of drawal of the sample.

11. The learned counsel for the petitioners contended that as the result of the analysis was not communicated within time provided the First Information Report is liable to be quashed.

12. From the First Information Report it appears that the sample was drawn on 5-12-96 and after analysis the result was communicated to the Additional District Agriculture Officer by letter dated 19-2-97. The Additional District Agriculture Officer communicated the result to the petitioner No. 1 vide annexure-2. While communicating the result the petitioner No. 1 was given opportunity to show cause by 12 March, 1997. From the order Annexure-3 it appears that the petitioner had shown cause on 5-3-97. Thus the result was communicated within 30 days from the date of receipt of result of the analysis. There was no violation of Sub-clause (3) of Clause 30 of the Control Order.

13. In view of the above discussion we find that the First Information Report is not liable to be quashed.

14. However, the petition stands disposed of with a direction that until the Investigating Officer is satisfied after collecting credible evidence about the involvement of the petitioner No. 1 in Case Crime No. 780 of 1996 u/s 3/7 E.C. Act P.S. Gulharia, district Gorakhpur and charge-sheet is submitted he shall not be arrested.