

**(1988) 01 P&H CK 0010**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Amended Criminal Miscellaneous No. 3238-M of 1986 & Criminal Miscellaneous  
No. 2464 of 1987

Sohan Singh and anr.

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Jan. 27, 1988

**Citation:** (1988) 1 AICLR 860 : (1988) 1 RCR(Criminal) 372

**Hon'ble Judges:** Ujagar Singh, J

**Advocate:** Bachittar Singh, A.K. Mittal, Ashok Bhan, Advocates for appearing Parties

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**Judgement**

Ujagar Singh, J.

1. First Information Report No. 154 dated 14.6.1983 was registered against the petitioners under Section 7 of the Essential Commodities Act (briefly the Act) read with Clause 13.1(a) of the Fertilizer Control JUDGMENT 1957 as also against M/s Sujan Sons. Industrial Area Phase II, Chandigarh. The petitioners are dealers with registration certificate granted to them under the said order. Shri Rajinder Singh, Fertilizer Inspector took a sample on 4.3.1983 from the Depot/Store/Godown of M/s Sohan Singh Jaura & Co., Sunam strictly according to Schedule II of the aforesaid JUDGMENT Full opportunity of putting their own seal upon the sample was provided to the dealers in presence of Shri Gurcharan Singh Sekhon, Agriculture Inspector, Sunam. The sample was deposited in the office of the Chief Agricultural Officer, Sangrur by Shri Rajinder Singh and sent to Fertilizer Testing Laboratory, Ludhiana for analysis. The sample was analysed and its report is as under :

"Sample No. 1 : Name of Fertilizer Zinc Sulphate 21% specification according to Scheme of FCO 1957 Zinc content per cent by weight maximum 21.0 permissible limits for variation 0.2"....

The sample, on analysis, was declared as substandard by the said Laboratory, and it was not found according to the specifications, as prescribed in Schedule to the JUDGMENT i.e. clause 13(1)(a) read with section 12(a) of the Act and, therefore,

offence under the said provisions was made out. The aforesaid JUDGMENT is a special order and under section 12A of the Act has been declared as such for the purpose of summary trial. M/s Sohan Singh Jaura & Co. are dealers and the said M/s Sujan Sons Industries are manufactures and both of them have contravened the said provisions and therefore they are liable to be prosecuted and punished. The case was put in the Court and the trial Court examined Shri Gurdev Singh Brar, Chief Agricultural Officer, Amritsar as a witness. Notice framing the charge dated 16.7.1984 was given and the trial court passed an order holding that grounds existed for presuming that all the four accused had committed the offences alleged against them. This order is Annexure P. 2 and on the basis of this order, notice under Section 7 of the Act, read with clause 13.1 (a) of the aforesaid JUDGMENT was directed to be served on all the four accused.

2. The petitioners have prayed for quashing of the First Information Report and further proceedings before the Special Judge, Sangrur, vide this Criminal Misc.

3. The main argument of the learned counsel for the petitioners is that Sujan Singh and Harbhajan Singh, out of the four accused persons, filed a similar petition for quashing the First Information Report, as well as the proceedings and their petition was accepted and the charge was quashed against them on 27.2.1986 by this Court, vide Annexure P 3. It is further argued that the sample of the fertilizers from batch Nos. 558, 561, 562 and 563 which was purchased by the petitioners vide bail No. 1296, Chandigarh from a sealed bag, to which warranty label of the manufacturer was attached, was taken by the said Fertilizer Inspector, although the contents of the sample by weight should have been 21% with permissible tolerance limit for variation of 0.2%. The sample was taken out of the sealed bag of fertilizers, therefore, the petitioners cannot be said to have committed any offence so long as the manufacturer of the fertilizers is not an accused.

4. In reply to the said argument, learned counsel for the respondent has submitted that the petition filed by Sujan Singh and Harbhajan Singh accused was accepted vide Annexure P 3 only on a technical ground and not on merits; inasmuch as it has been observed in that order that partners of the firm could not be dragged into trial in the absence of an allegation or evidence to show that they were responsible for the management of the affairs of the firm. Therefore, they could not be held liable for the offence. Criminal Misc 613M/1976. Bhagwan Dass and others v. The State of Haryana and also another case Manohar Singh and others v. Municipal corporation of Delhi, 1970 Chandigarh Law Reporter (Delhi) 43 were relied upon.

5. Another argument raised by the learned counsel for the petitioner is that admittedly, the sample was not put in a suitable clean, dry and airtight glass or other suitable containers and stored in shade. Merely putting the sample in 3 polythene bags was not sufficient and did not conform to the mandatory rules. Learned counsel for the petitioner has placed reliance on Charan Dass & ors. v. The State of Punjab, 1987(1) Recent Criminal Reports 285 : 1987 CC Cases 89 decided by

Pritpal singh, J. (as he then was).

6. I have gone through the requirements of Schedule II of the aforesaid order wherein there is a definite provision that a sample has to be placed in suitable clean, dry and air tight glass or other suitable containers and stored in shade. It is not disputed by the counsel for the respondent that sample was taken in polythene bags in the present case. As per clause 4 (2)(ii) of the said Schedule II, each test sample shall be immediately transferred to a suitable container as described under 1(e) and 1(f) provided with a tight fitting stopper or lid so that the original composition of the fertilizer remains unchanged. The requirements above noted are not satisfied in this case.

7. After considering the arguments and the facts of the case, this Criminal Miscellaneous is accepted and the First Information Report and the proceedings based thereon are quashed.