

(2005) 09 P&H CK 0046

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Appeal No"s. 14-SB and 22-SB of 1994

Sat Pal and Kuldip Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: Sept. 26, 2005

Acts Referred:

- Essential Commodities Act, 1955 - Section 7

Citation: (2006) 2 RCR(Criminal) 223

Hon'ble Judges: M.M. Aggarwal, J

Bench: Single Bench

Advocate: Dinesh Goyal and Mr. Sukhbir Singh, for the Appellant; Ramandeep Sandhu, D.A.G., Punjab, for the Respondent

Final Decision: Allowed

Judgement

M.M. Aggarwal, J.

This judgment shall dispose of Criminal Appeal No. 14-SB of 1994 and Criminal Appeal No. 22-SB of 1994, as they arise out of common judgment dated 7.1.1994 of Special Judge, Gurdaspur.

2. Sat Pal and Kuldip Singh accused-Appellants who had been convicted for offence u/s 7 of the Essential Commodities Act, vide judgment dated 7.1.1994 of Special Judge, Gurdaspur, had filed two separate appeals. Vide that judgment both the accused had been sentenced to undergo RI for two years each and to pay fine of Rs. 5,000/-. In default of payment of fine to further undergo RI for three months.

3. The police had originally challaned Sat Pal for offence u/s 7 of the Essential Commodities Act for violating Clause 19(1)(a) of the Fertilizer Control Order, 1985 issued u/s 3 of the Act. During trial, Kuldip Singh manufacturer was also summoned to face trial.

4. The prosecution case against accused Appellants was that on 26.5.1988 Kanwaljit Singh Fertilizer Inspector Gurdaspur Block had visited the godown of IFFCO situated on G.T. Road, Gurdaspur. Sat Pal accused was present as employee/salesman. There were 707 bags of Zinc sulphate weighing 20 kgs each in the stock. The inspector picked up 7 bags. Samples were drawn as per the prescribed procedure. Various formalities of filling up of forms were completed and one sample was sent to Analytical Chemist Punjab (Fertilizer) Testing Laboratory, Punjab Agriculture University, Ludhiana. According to the report, content No. 3, the zinc sulphate was 21% whereas actual contents were 19.40%. There was a variation of 1.60% i.e. 0.20% against the permissible tolerance limit for variation. The sample was thus found to be substandard and, as such, the accused Sat Pal who was salesman/employee of the IFFCO had committed offence.

5. During trial, it was found that fertilizer had been manufactured by M/s S.S. Chemicals Amritsar of which Kuldip Singh was a partner responsible for the conduct of business of the company. He was added as accused and summoned to face trial. After trial, the case was found to be proved. They were convicted and sentenced as aforesaid.

6. In this case, sample had been taken on 26.5.1988. Sat Pal had been shown as employee/salesman of IFFCO. However, IFFCO was not shown as accused. As per statement of PW-3 Tarsem Lal, Sat Pal was working as salesman in IFFCO Sales Depot at Gurdaspur. Sat Pal had joined as salesman there only on 20.5.1988, whereas the goods from which sample was drawn had been received on 9.5.1988 by Amarjit Singh, who was salesman at that time and entry had been in the stock registered by Amarjit Singh. It means that when the stock was received, Sat Pal was not working as salesman/employee even at the place (Sales Depot Gurdaspur) from which sample was taken. He had just joined on 20.5.1988 and sample had been taken on 26.5.1988. IFFCO had not been made accused. It is admitted that sample had been taken from sealed bags.

7. Under these circumstances, it cannot be said that Sat Pal was liable for storing/sale of any substandard Zinc Sulphate Fertilizer.

8. No documents had been produced on the file that articles from which sample had been drawn had been manufactured by M/s S.S. Chemicals, Amritsar. In the form of "J" Exhibit PA, it is drawn that it was Sardar Brand Zinc Sulphate and other chemicals manufactured by M/s S.S. Chemicals Amritsar. The sample had been taken from the sales depot of IFFCO. Unless it had been proved by some record that IFFCO had purchased these bags from which sample was taken from M/s S.S. Chemicals it could not be said that merely because on the bags it is written - Sardar Brand and name of manufacturer is M/s S.S. Chemicals, Kuldip Singh happens to be partner or Incharge of affairs of M/s S.S. Chemicals, he shall be liable for the Zinc Sulphate lying in the sales depot of IFFCO from which sample had been drawn. It would have been very easy for the Investigating Agency to have taken in possession the document

whereby IFFCO had purchased Zinc Sulphate, but that had not been done. In the absence of that document, no liability can be fastened on Kuldip Singh Appellant.

From the above discussion, both the appeals are accepted. Accused-Appellants are acquitted of the charges.

Appeals allowed.