

**(2005) 01 P&H CK 0200**

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

**Case No:** Criminal Miscellaneous No. 11296-M of 2003

M/s Madan Gopal Kashmiri Lal  
and Company

APPELLANT

Vs

State of Punjab

RESPONDENT

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**Date of Decision:** Jan. 31, 2005

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Essential Commodities Act, 1955 - Section 7

**Citation:** (2005) 13 CriminalCC 55

**Hon'ble Judges:** M.M. Kumar, J

**Bench:** Single Bench

**Advocate:** Rakesh Verma, for the Appellant;

**Final Decision:** Allowed

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**Judgement**

M.M. Kumar, J.

This petition filed under 482 of the Code of Criminal Procedure, 1973 (for brevity, "Cr.P.C.") prays for quashing order dated 15.11.1995 passed by the Special Judge, Faridkot in connection with case FIR No.84 dated 20.7.1989 registered under 7 of the Essential Commodities Act, 1955 (for brevity, "the Act") read with Clause 19(i)(a) of the Fertilizer Control Order, 1985 (for brevity, "the Order") at Police Station City, Malout, District Muktsar. By the aforementioned order, the petitioner-firm who was kept in column No.2 has been summoned to face charges in the FIR because the learned Special Judge has found that Surinder Kumar partner of the firm was present at the time of raid. This fact has been revealed by Shri Rattan Singh, A.D.O., PW-2 when he had made a statement to the effect that when he raided the shop of firm M/s.Madan Lal Kashmiri Lal, Malout on 14.12.1988, the partner of the firm Surinder Kumar was present.

2. Brief facts of the case are that on 14.12.1988, the Fertilizer Inspector took two samples of DAP Fertilizer from the godown situated at Malout, District Muktsar belonging to the company. M/s.Madan Gopal Kashmiri Lal & Company, Malout (hereinafter to be referred as "the firm") was the Warehousing agent of the company. One of the partners of the firm Surinder Kumar who was present at the time of raid and obtaining of samples had also signed all the "J" forms in token of acknowledging the fact of taking of the samples. After chemical examination, those samples were found to be sub-standard and misbranded. On 20.7.1989, FIR No.84 was registered at Police Station City Malout under 7 of the Act read with Clause 19((1)(a) of the Fertilizer Control Order (Annexure P-1). On 20.7.1992, the challan was presented under 173 Cr.P.C. against one V.R.Narayanan who was the officer of the company (Annexure P-2). However, the name of the firm was kept in column No.2. During the pendency of the trial, the learned Special Judge passed an order on 15.11.1995 concluding that Surinder Kumar partner of the firm was present at the time of raid as it was revealed in the statement made by one Shri Rattan Singh, A.D.O. who appeared as PW-2. It has already come in the FIR that Surinder Kumar Partner has signed various "J" forms by acknowledging the fact that the samples were taken. Order dated 15.11.1995 which is impugned in the present case reads as under: -

"The prosecution has moved an application that M/s.Madan Lal Kashmiri Lal and Co., Malout has also violated the provisions of Fertilizer Control Order, 1985 but during investigation in the police has wrongly mentioned the aforesaid firm under column No.2 of the report u/s 173 Cr.P.C. I have gone through the letter addressed by the Chief Agricultural Officer, Faridkot to the S.S.P., Faridkot and it is mentioned that Shri Rattan Singh, Fertilizer Inspector, Faridkot along with other officials of the agricultural department raided the godown of M/s.Madan Lal Kashmiri Lal and Co., Malout. Shri Surinder Kumar Partner of the firm was present at the time of raid. Rattan Singh took the sample of DAP Fertilizer 18:46 from the fertilizer bags lying in the godown of the aforesaid firm. Statement of Rattan Singh ADO-P. W.2 was recorded in the court on 8.2.1995 and he has again stated that he along with other officials of the department raided the shop of firm M/s.Madan Lal Kashmiri Lal Co., Malout on 14.12.1988 and Surinder Kumar, Partner of the firm was present at the time of the raid. 675 bags of DAP fertilizer were in the stock of the firm according to the stock register maintained by the firm. The sample of DAP 18:46 was drawn from the bags containing DAP fertilizer. After going through the letter and statement made by Rattan Singh, P. W.2, I am of the view that the police has wrongly mentioned the name of the firm under column No.2 of the report u/s 173 Cr.P.C. rather the firm is the main accused because sample was drawn from the fertilizer bags lying in the godown of the firm, which was (found) non-standard on analysis. In view of the foregoing circumstances, notice be issued to firm Madan Lal Kashmiri Lal and Co. through Surinder Kumar Jindal for 20.10.1995."

3. Thereafter, on 2.12.1997 Kashmiri Lal has been charge-sheeted by the Special Judge along with responsible officer of the company, namely, V.R.Narayanan, A copy of the charge-sheet has been placed on record as Annexure P-5.

4. The Chief Agricultural Officer, Faridkot vide his order dated 13.6.1989 under Clause 31 has cancelled the dealer registration certificate of the petitioner-firm by exercising powers under the Fertilizer Control Order. On an appeal filed under Clause 32 of the Fertilizer Control Order, the Director vide his order dated 23.10.1989 restored the license and the order dated 13.6.1989 passed by the Chief Agriculture Officer, Faridkot was set aside. The operative part of the order passed by the Director reads as under: -

"I have heard the appellant and the respondent at length. From the record produced before me it transpires that this stock of 675 bags of DAP relate to the pool handling agency M/s.Mangalore Chemicals and Fertilizers limited. It is correct that the pool handling agency can standardise the material, but it should be in the knowledge of the Registering Authority. The representatives of M/s.Mangalore Chemicals were also summoned from Delhi on 23.10.1989 with regard to the hearing of the appeal. They produced the documents that the appellant firm M/s.Madan Gopal Kashmiri Lal and Company are their disbursing agent at Malout and were deputed by them to get the standardisation of this material on their behalf and that this stock of DAP fertilizer was still with them and they have not sold this stock either to the appellant firm or to any other dealer, as the standardisation of this material was still doing (going?) on. With regard to their omission to inform the Registering Authority, CAO Faridkot regarding the standardisation of this material, they regretfully stated that due to the shortage of DAP in the district this act of omission was not intentional and they were not in the know of this procedure. In future they assured to follow it.

From the record and the evidence produced before me, it can be concluded that this stock of 675 bags of DAP, from which the samples were drawn, relates to M/s.Mangalore Chemicals and Fertilizers Limited, New Delhi and does not belong to the appellant firm.

In view of the above discussion, the appeal of the appellant firm M/s.Madan Gopal Kashmiri Lal and Company, Malout, district Faridkot, is accepted and the order dated 13.6.1989 of the Registering Authority, Chief Agricultural Officer, Faridkot, cancelling the Dealer Registration Certificate of the appellant firm, is set aside." (emphasis added).

5. Mr.Rakesh Verma, learned counsel for the petitioner has argued that once the departmental authority has exonerated the petitioner, by restoring his licence, then no substance survived in the case of the prosecution. In support of his submission, he has placed reliance on a Division Bench judgment of this Court in the case of Rajinder Kumar v. State of Punjab, 2003(2) RCR (Criminal 244 wherein under the

Insecticides Act, 1968 the sample was found to be misbranded and the departmental authorities exonerated the accused by restoring his licence. On that basis, this Court has quashed the proceedings by exercising its jurisdiction under 482 Cr.P.C.

6. No one has appeared for the respondent-State of Punjab.

7. Before dealing with the facts of the present case and application of the view taken by the Division Bench to the facts of the present case, it would be necessary to make a reference to the Fertilizer Control Order which is issued by the Central Government in exercise of powers conferred on it by Section 3 of the Act. Clause 19 of the Order incorporates absolute prohibition on manufacturing, setting (selling?) and distribution of fertilizer which is not of prescribed standard. Section 7 of the Act provides for penalties and sentence if a person is found guilty of violating the provisions of Clause 19 of the order. One feature which emerges from the reading of Clause 19 of the Fertilizer Control Order and Section 7 of the Act is that the fertilizer which is found to be of sub-standard grade must belong to the person accused of such an allegation. If the complainant or his superior authority concludes that the fertilizer did not belong to the person accused of the offence or that he was not associated with it, then obviously no prosecution can be permitted.

8. In this case sample was taken on 14.12.1988 and after chemical analysis of the sample FIR bearing No.84 dated 20.7.1989 was registered under 7 of the Act read with Clause 19(1)(a) of the order. The petitioners were kept in column No.2. After more than six years the petitioners were summoned to face the charge on a statement made by Shri Rattan Singh, A.D.O., PW-2. It is evident that on 13.6.1989 the Chief Agricultural Officer, Faridkot has cancelled the Dealer Registration Certificate of the petitioner and on appeal filed by the firm the order of the Chief Agricultural Officer was set aside on 23.10.1989 (Annexure P-7). The operative part of the order which has already been reproduced above shows categorical finding that the sample was taken out of 675 bags of DAP Fertilizer which belonged to the Pool Handling Agency M/s. Mangalore Chemicals and Fertilizers Ltd. The Pool Handling Agency was entitled to get the material standardised. On 23.10.1989, the representatives of the company were also summoned from Delhi who produced the documents showing that the firm was the disbursing agent at Malout and it was deputed by them to get the standardisation of the material on their behalf. A further finding has been recorded by the Appellate Authority that 675 bags of DAP Fertilizer were still with them and they had not sold the stock either to the petitioner or to any other dealer. The Appellate Authority-cum-Director Agriculture also accepted their explanation with regard to their failure to inform the Registering Authority which was on account of the afore-mentioned finding that the stock did not belong to the petitioner. The Appellate Authority-cum-Director set aside the order of the Chief Agricultural Officer, Faridkot and restored the Dealer Registration Certificate to the petitioner. It is in view of these findings that the contention raised on behalf of the

petitioner has to be examined.

9. In the case of Kisan Beej Bhandar Abohar v. Chief Agricultural Officer, 1990 (Suppl.) SCC 111 similar point came up for consideration of the Supreme Court which arose under the Insecticides Act, 1968. In that case, the Appellate Authority of the Department restored the licence of the dealer after recording the finding that the sample was taken from the original packing which was stored at a proper place. The accused was held entitled to approach this court under 482 Cr.P.C. for quashment of the criminal proceedings. A Division Bench of this Court in the case of Rajinder Kumar (supra) has dealt with the afore-mentioned proposition which also arose under the Insecticides Act by holding that if on appeal, the competent authority has restored the licence of the dealer by recording a finding on merits then even the criminal complaint filed by the Insecticides Inspector is liable to be quashed. The observations of the Division Bench in para 27 reads as under:-

"However, there is one exception to the aforesaid legal position. If on the basis of the report of Public Analyst, in which the sample of insecticide taken from the dealer was found to be misbranded, the licence of the said dealer had been suspended or revoked u/s 14 of the Act by the Licensing Authority and if such dealer filed appeal against that order or revocation and suspension of his license before the Appellate Authority u/s 15 of the Act and such authority had set aside that order by recording a finding that the dealer is entitled for protection available to him under 30(3) of the Act, as he sold the misbranded insecticide in the sealed container in which he acquired it and he stored the same in proper condition and cannot be presumed to know that the contents of the insecticide were misbranded. In that situation, the criminal complaint filed against such dealer by the appellate authority, the complaint filed against such dealer cannot be proceeded further as it will amount to misuse of the judicial process. Once the Appellate Authority under the same Act has accepted the defence available to the dealer, in the proceedings relating to the cancellation of his license and a finding to that effect has been recorded, then the defence available to the dealer in the criminal prosecution cannot be deferred till the final conclusion of the trial. In such situation, where the defence has been established before the Appellate Authority u/s 15 of the Act, criminal complaint filed against the dealer is liable to be quashed by the High Court, in exercise of powers conferred upon it u/s 482 of the Code, as the continuation of such proceedings, after the recording of such finding by the Appellate Authority, will be an abuse of process of law."

10. In view of the finding of the Appellate Authority-cum-Director and the law laid down by the Supreme Court in Kishan Beej Bhandar's case (supra) as well as the views expressed by the Division Bench in Rajinder Kumar's case (supra) there is no escape from the conclusion that the prosecution initiated against the petitioner is liable to be quashed. The Appellate Authority has recorded a categorical finding that 675 bags of DAP Fertilizer did not belong to the petitioner firm. The firm was

deployed by the company to get the standardisation of 675 bags. The DAP Fertilizer and the stock was not yet sold either to the petitioner firm or to any other dealer because the standardisation of the stock was awaited. On that premises, the Dealer Registration Certificate of the firm was restored. When on merits, the petitioner firm has not been found to be incharge of the goods then there is no question of proceeding with the prosecution of the petitioner-firm.

Even otherwise, under the Criminal Procedure Code, 1973 when an accused is kept under column No.2 and he is summoned u/s 319 Cr. P.C., then it is incumbent upon the Court to examine the case closely. The power conferred on the Court under 319 Cr.P.C. is to be exercised only when the Court is convinced about reasonable prospect of the case as against the newly brought accused ending in conviction for the offence concerned, as has been held by the Supreme Court in [Michael Machado and Another Vs. Central Bureau of Investigation and Another](#), . Similar view has been taken in the case of [Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others](#), In the present case, there is no possibility of conviction of the petitioner in view of the order dated 23.10.1989 passed by the Appellate Authority-cum-Director whose subordinate had filed the complaint. Therefore, the petition deserves to be allowed.

11. In view of the above, this petition is allowed. The order dated 15.11.1995 summoning the petitioner-firm is quashed along with the proceedings, if any, undertaken against it.