

(2005) 03 P&H CK 0202

High Court Of Punjab And Haryana At Chandigarh

Case No: Criminal Miscellaneous No. 31529-M of 1998 (O and M)

M/s Oswal Agro Sales
Corporation and Others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 22, 2005

Acts Referred:

- Essential Commodities Act, 1955 - Section 10

Citation: (2005) 13 CriminalCC 911

Hon'ble Judges: Uma Nath Singh, J

Bench: Single Bench

Advocate: Rajesh Verma, for the Appellant; Ashok Bhardwaj, AAG, Punjab, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Uma Nath Singh, J.

Heard learned counsel for the parties and perused the record.

2. Learned counsel for the petitioners at the outset does not press the petition qua petitioners No.1 and 3 regards petitioners No. 3 and 4, learned counsel submitted that though they were partners of a dealer firm but only Anil Kumar Jain was the working/ managing partner and thus, he was in charge of and responsible for conduct of business of the firm. Learned counsel also submitted that Section .10 of the Essential Commodities Act, 1955 categorically mentions that the person being in charge of and responsible for conduct of the business of the company so also the company alone would be liable under the Act. Learned counsel, this, submitted that in respect of allegation for contravention of provisions of clause 19(1)(a) of the Fertiliser (Control) Order, 1985, the petitioners not being associated with dealership of the commodity in question, cannot be held liable. Learned counsel also referred

to various judgments of Hon'ble the Supreme Court to contend that there should be specific averments in the complaint that the person being prosecuted was in charge of an responsible for day-to-day conduct of business of the firm Learned counsel also pointed out from para 8 of the complaint that there is no such specific allegation at all. To substantiate his submission, learned counsel placed heavy reliance on three judgments of Hon'ble the Apex Court reported as : (i) Sham Sunder and others v. State of Haryana, 1989(2) Recent Criminal Reports 494; (ii) State of Haryana v. Brij Lal Mittal, 1998(2) Recent Criminal Reports 608 and (iii) Monaben Ketanbhai Shah and another v. State of Gujarat and others, 2004(3) Recent Criminal Reports 799.

3. On the other hand, learned counsel for the State of Punjab only referred to relevant provisions of the said Fertiliser (Control Order, 1985 which read as under:-

"19. Restriction on manufacture, sale and distribution of fertilisers-

(i) No person shall himself or by any other person on his behalf-

(a) manufacture for sale, sell, offer for sale, stock or exhibit for sale or distribute any fertiliser which is not of prescribed standard."

4. According to him, from bare perusal of the said provisions, it would appear that not only the person being in charge of and responsible for conduct of business of the company, but also the partner or director on whose behalf such manufacturing was done would be liable for that.

5. Having given anxious considerations to the rival submissions from perusal of the record and the judgments cited, it would appear that the position is very clear that only a partner being in charge of and responsible for conduct of day-to-day business of the company/firm can be prosecuted for contravention of provisions of the Act or Control Order and none else. Needless to say that Hon'ble the Supreme Court has reiterated this principle time and again in successive judgments on this point. This submissions of learned State counsel do not carry any force as the aforesaid provisions cannot be construed and understood in the manner he has submitted. That apart, this being a Control Order, has to be subservient to and should also be in conformity with the provisions of the Act.

Hence, Criminal Misc. No.31529-M of 1998 is hereby allowed. Resultantly, the complaint (Annexure P-1) so also the summoning order (Annexure P-7) in respect of petitioner Nos.2 and 4 are hereby quashed.