
(2011) 04 P&H CK 0351

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM No. M-6949 of 2010

Vishwapal Singh alias V.P. Singh

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision: April 27, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Essential Commodities Act, 1955 - Section 19, 7
- Penal Code, 1860 (IPC) - Section 420

Citation: (2011) 3 RCR(Criminal) 232

Hon'ble Judges: Nirmaljit Kaur, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Nirmaljit Kaur, J.

This is a petition u/s 482 Cr.P.C seeking quashing of FIR No. 184 dated 19.10.2002 u/s 420 IPC, Section 7 EC Act and Section 19 of Fertilizer Control Order, 1985, P S Qadian, Police District Batala, District Gurdaspur and all the subsequent proceedings arising out of the same.

2. While praying for quashing of the said FIR, learned counsel for the petitioner contended that as per Clause 24 of the Fertilizer Control Order, 1985 (hereinafter to be referred as "FCO, 1985"), every manufacturing organization is required to appoint an officer in consultation with the Central Government, who shall be responsible for the compliance of the provisions of the FCO, 1985. The Government of India, Ministry of Agriculture, vide its letter dated 01.08.1997 had directed all the Enforcement Officers to file cases against the officers designated under Clause 24 of the FCO, 1985 in the event of any offence having been committed and not against anybody else who is not designated for the purpose.

3. In the present case, M/s Oswal Chemicals and Fertilizers Limited (hereinafter to be referred as "the Company") appointed one Vishnu Prasad, who was working as Manager Technical Services as the said responsible officer in compliance with the provisions of Clause 24 of the FCO, 1985. Information to the said effect was also sent to the Director of Agriculture, vide letter dated 20.01.2000 (P3). The said Vishnu Prasad, has also filed his affidavit, stating therein that he was solely responsible for the quality control of the product under Clause 24 of the FCO, 1985. In spite of the same, the present petitioner who is only an employee of the company and not the officer designated as per Clause of 24 of the FCO, 1985 has been proceeded against in total violation of the said provision of the FCO, 1985.

4. Reply has been filed by the State. It is contended by the learned State counsel that the petitioner was fully responsible for the compliance of Clause 24 of the FCO, 1985 and for the quality of the product manufactured by the Company and submitted that the said fact was evident from the reply filed by the DSP, Qadian, Police District Batala dated 13/23.08.2010 as well as from the letter dated 24.01.2002 (R1) which shows that the petitioner was responsible for the deficiency in the quality supplied by the Company. Moreover, R-1 was written by the petitioner himself to the Director of Agriculture, Government of Punjab, Chandigarh, acknowledging that he was responsible for the deficiency in the quality of DAP supplied to Punjab Agro Industries Corporation.

5. Heard.

6. Clause 24 of the FCO, 1985 reads as under :-

24. Manufacturers/Pool handling agencies to appoint officers responsible with compliance of the order. Every Manufacturing organization, importer and pool handling agency shall appoint in that organization and in consultation with the Central Government, an officer, who shall be responsible for compliance with the provisions of this order.

7. After hearing the learned counsel for the parties and having gone through the written statement as well as the provisions of law, it emerges that the following facts are not disputed :-

a) That in compliance with Clause 24 of the FCO, 1985, every manufacturer is required to appoint an Officer who shall be responsible for any defect in quality of Fertilizer manufactured by that Company and also for compliance with the other provisions of FCO, 1985;

b) That in terms of Clause 24 of the FCO, 1985, Government of India, Ministry of Agriculture has issued a letter dated 01.08.1997 to the Secretary, Agriculture of all States and UTs directing the enforcement Officers to file cases against officers designated under Clause 24 of the FCO in the event of any offence is committed and not against anybody else who is not designated for the purpose;

c) That the main accused Vishnu Prasad was working in the Company as Manager Technical Services. In compliance with Clause 24 of the FCO 1985, Vishnu Prasad and not the present petitioner who was appointed as officer responsible for the compliance of the provision of the FCO and for the quality of Fertilizer manufactured/handled by the Oswal Chemicals and Fertilizers Limited.

8. Once, it is admitted that only an officer appointed under Clause 24 of the FCO, 1985 is liable to be prosecuted, there is no merit in the argument raised by the learned State counsel that the present petitioner had himself written a letter (R1) to the Director of Agriculture, Government of Punjab, Chandigarh taking responsibility for any deficiency in the quality of the fertilizer manufactured by the Company. The said letter is written by the petitioner as General Manager on behalf of the Company, whereas, he is not the authorized officer as per Clause 24 of the FCO, 1985 which is mandatory requirement before an officer can be held responsible for the violation of the provisions of the FCO, 1985.

9. Moreover, it is admitted that the Government of India vide its letter dated 01.08.1997 (1) to all the Enforcement Officers directed them to file cases against officers designated under Clause 24 of the FCO, 1985 in the event of any offence having been committed. It is not disputed that the said Vishnu Prasad and not the present petitioner who was appointed as the said officer under Clause 24 of the FCO, 1985. The said fact was also conveyed to the Director of Agriculture, Government of Punjab, vide letter dated 20.01.2000 (P3). The said Vishnu Prasad has also submitted his affidavit, stating therein that he alone was responsible for the quality control of the product under Clause 24 of the FCO, 1985.

10. It is also admitted that the said Vishnu Prasad is also one of the accused and proceedings have already been initiated against him in the said FIR.

11. In view of the above, the proceedings against the present petitioner are nothing but an abuse of the process of law.

12. In view of the aforesaid discussion, the present petition is allowed and FIR No. 184 dated 19.10.2002 u/s 420 IPC, Section 7 EC Act and Section 19 of Fertilizer Control Order, 1985, P S Qadian, Police District Batala, District Gurdaspur and all the subsequent proceedings arising out of the same are quashed qua the present petitioner.