

Before J. S. Sekhon, J.

SHAM SUNDER BASSI,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 6744-M of 1987.

8th May, 1991.

*Essential Commodities Act, 1955—Ss. 7 & 10—Fertilizer (Control) Order, 1957—Cl. 13(1) (a) & (b) (iii)—DAP fertilizer imported by the Government of India distributed in the State of Punjab by Punjab Agro Industries Corporation—Sample of DAP fertilizer taken from a dealer—Sample found to be sub-standard—Action taken against the Manager of Corporation without arranging Corporation as an accused person is illegal—Complaint and proceedings liable to be quashed.*

*Held, that the liability of an Area Manager of the company would arise only if the Punjab Agro Industries Corporation is held to have violated the provisions of Fertilizer (Control) Order and liable for the alleged offences. Without arraigning the company as an accused person there would hardly be any scope for the trial-court to hold it so liable. Consequently, this flaw in the prosecution of the petitioner would ultimately prove fatal to the prosecution case even if the entire allegations contained in the complaint are taken to be true.*

(Para 7)

*Petition Under Sections 482 of the Code of Criminal Procedure, 1973 praying that the proceedings initiated against the petitioner by Agriculture Officer and further framing a charge sheet may kindly be quashed.*

*It is further prayed that during the pendency of this petition further proceedings in the court below may kindly be stayed.*

T. S. Doabia, Advocate, with Sukhjinder Singh Behal, Advocate,  
for the Petitioner.

G. S. Cheema, AAG, for the State.

#### JUDGMENT

J. S. Sekhon, J. (Oral).

(1) Sham Sunder accused-petitioner was posted as Area Manager at Bhatinda on 19th of November, 1984 under the Punjab Agro Industries Corporation. During this period Diammonium

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Phosphate fertilizer imported by the Government of India from abroad and entrusted to the Food Corporation of India for distribution in the country came for distribution in the State of Punjab through the Punjab Agro Industries Corporation. This fertilizer was being distributed by the Corporation to different dealers including M/s S. C. Mittal & Co. of village Bhagta Bhai. On 19th November, 1984, Jarnail Singh, Agricultural Inspector went to Bhagta Bhai and took sample of fertilizer from the premises of the aforesaid dealer, as per rules. The sample of DAP fertilizer was sent to the Analyst who,—*vide* report Annexure P. 2 found the sample to be sub-standard as water soluble phosphate contents therein were 39.60 per cent as against the required standard of 41 per cent. On receipt of this report, the Chief Agricultural Officer, Bhatinda, lodged complaint Annexure P. 3 against the petitioner for offences under sections 7 of the Essential Commodities Act, 1955 (hereinafter referred to as 'the Act') read with clause 13(1) (a) and (b) and sub-clause (iii) of the Fertilizer (Control) Order, 1957 (hereinafter referred to as 'the Control Order'). The trial-court,—*vide* order Annexure P. 6 framed charge against the petitioner for offences punishable under section 7 of the Essential Commodities Act in view of violation of the provisions of clause 13(1) (a), (b) (iii) of the Fertilizer (Control) Order, 1957.

(2) The accused petitioner seeks quashment of complaint as well as order of the trial-court framing charge on the ground that the Area Manager is not liable under the provisions of section 10 of the Act as he is not directly concerned with the distribution of the fertilizer and that, too, without arraigning Corporation as one of the accused. Various other objections like sample having been taken improperly and not sealed in container were taken. It is also maintained that the provisions of the Act, 1955, or the Control Order, 1957, would not be attracted to the fertilizer in question, which has been imported from abroad as its manufacturer is not bound by the specifications given in the Control Order.

(3) In return, filed by the respondent, it is stated that the petitioner is clearly liable for the distribution of sub-standard fertilizer and that onus was on the accused petitioner to prove that he was not in any way directly concerned with the distribution of the fertilizer while performing his duties as an Area Manager under the Corporation.

(4) I have heard the learned counsel for the parties besides perusing the record.

(5) It is not disputed that the fertilizer was imported by the Government of India from abroad and that it was initially entrusted to the Food Corporation of India for distribution purposes to different States and that the Food Corporation in turn had entrusted it for distribution to the Punjab Agro Industries Corporation. Written arguments Annexure P. 4 submitted by the accused-petitioner before the trial-court also reveal that the Punjab Agro Industries Corporation was authorised to repack the fertilizer before its distribution or sale. The provisions of clause 13 of the Control Order, 1957, placed restrictions on the manufacture, sale or distribution of sub-standard fertilizer not conforming to the prescribed standard. The provisions of clause 13 of sub-clause 1(a) (aa) (b) (iii) of the Control Order reads as under:—

“13. Restrictions on manufacture, sale and distribution of fertilizers.

(1) 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 fertilizer which is not of prescribed standard;

(aa) manufacture for sale, sell, offer for sale, stock or exhibit for sale, or distribute any mixture of fertilizers or special mixture of fertilizers which (subject to such limits of permissible variations in relation to total nitrogen, total and water soluble phosphoric acid (as P<sub>2</sub> O<sub>5</sub>) and water soluble potash (as K<sub>2</sub>O) as may be specified from time to time by the Central Government) does not conform to the particulars specified in the certificate of registration granted to him under the order in respect of such mixture:

(b) sell, offer for sale, stock or exhibit for sale or distribute—

(i) \*\*\*

(ii) \*\*\*

(iii) any fertilizer which is adulterated;... ..”

A bare glance through the same leaves no doubt that clause 13 reproduced above not only makes manufacturer of sub-standard fertilizer liable for offence under section 7 of the Act, but also persons who indulge in the sale and distribution of such fertilizer.

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Thus merely because the fertilizer was imported from abroad and the standard prescribed in the Control Order is not applicable to the manufacturer of this fertilizer is of no help to the petitioner in this case as fertilizer was certainly being distributed through the Punjab Agro Industries Corporation.

(6) The question then arises whether the Area Manager of the Corporation, i.e., the Company, would be liable under section 10 of the Essential Commodities Act without the company or the Corporation having been arraigned as an accused person. The provisions of section 10 of the Act reads as under:—

“10. Offences by Companies—

- (1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proved that contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

- (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:—For the purposes of this section— (a) ‘company’ means any body corporate, and includes a firm or other association of individual and (b) ‘director’ in relation to a firm means a partner in the firm.”

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A bare glance through these provisions reveals that the company has been made principal accused person and since juristic person i.e., the company, acts through its officers/officials, the official directly involved in the manufacture sale or the distribution, as the case may be, and is answerable to the company, in this regard has also been made liable. Obviously intention of the Legislature in enacting these provisions was to provide deterrent effect to the officials of the company in order to restrain them from indulging in the sale, distribution etc., of sub-standard fertilizer or other goods on one side and to pin-point the liability of the officials of the company on the other. Thus non-arraigning the company as an accused person is fatal flaw in the prosecution of the accused-petitioner for the above referred offences, which would vitiate the entire proceedings as held by the Apex Court in *The State of Madras vs. C. V. Parekh and others* (1). In para No. 3 of the judgment while dealing with the liability of the employees of a company for violation of the provisions of section 5 of the Iron & Steel Control Order, 1956, the Apex Court had discussed the import of section 10 of the Essential Commodities Act as under :—

- “3. ....It was urged that the two respondents were incharge of, and were responsible to, the company for the conduct of the business of the company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause 5 of the Iron and Steel (Control) Order. This argument cannot be accepted, because it ignores the first condition for the applicability of S. 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause 5 of the Iron & Steel (Control) Order was made by the Company. In fact, the company was not charged with the offences at all. The liability of the persons incharge of the company only arises when the contravention is by the company itself. Since, in this case, there is no evidence and no finding that the Company contravened Cl. 5 of the Iron and Steel (Control) Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Villabhadas

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(1) A.I.R. 1971 S.C. 447.

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Thacker and any contravention by them would not fasten responsibility on the respondents. The acquittal of the respondents is, therefore, fully justified. The appeal fails and is dismissed“

(7) In the present case, in the light of ratio of decision of Apex Court reproduced above, it transpires that the liability of an Area Manager of the company i.e., the petitioner, would arise only if the Punjab Agro Industries Corporation is held to have violated the provisions of the above referred Control Order and liable for the above referred offences. Without arraigning the company as an accused person there would hardly be any scope for the trial-court to hold it so liable. Consequently, this flaw in the prosecution of the petitioner would ultimately prove fatal to the prosecution case even if the entire allegations contained in the complaint are taken to be true.

8. There is no force in the contention of Mr. Cheema, learned Assistant Advocate General, that since sub-standard fertilizer was being sold by the accused petitioner through its dealers it was incumbent upon him under clause 13-B of the Control Order to have indicated it as such by a red cross thereon. The provisions of section 13-B of the Control Order reads as under:—

“13-B. Disposal of non-standard fertilizers:—Notwithstanding anything contained in the Order, a person may sell, offer for sale, stock, or exhibit for sale or distribute, any fertilizer not conforming to the prescribed standard (hereinafter in this Order referred to as non-standard fertiliser) subject to the conditions that—

- (a) the container of such non-standard fertilizer is conspicuously superscribed with the words “non-standard” and also with the sign ‘X’, both in red colour; and
- (b) an application for the disposal of non-standard fertilizers in Form “F” is submitted to the registering authority to grant certificate of registration for sale of such fertilizers and a certificate of authorisation with regard to their disposal and price is obtained in Form ‘G’.

Provided that the price per unit of the non-standard fertilizer shall be fixed by such registering authority after satisfying itself that the sample taken is a representative

one, and after considering the nutrient content in the sample determined on the basis of a chemical analysis of the non-standard fertilizer.

Provided further that the Central Government may by notification in the official Gazette exempt such agencies as distribute fertilizers on behalf of the Central Government, from complying with the conditions laid down in sub-clause (a) and (b) of the clause.”.

(9) The above referred provisions of clause 13-B of the Control Order came directly under the controversy in *Dr. S. N. Pandey vs. State of Punjab* (2) before Mr. Justice M. M. Punchhi (now Hon'ble Judge of the Supreme Court). In that case also sale and distribution of same fertilizer, as in the case in hand, imported from abroad by the Government of India was involved. In para No. 4 of the judgment while quashing the prosecution of the dealer of that fertilizer for the same offence, as in the case in hand, it was observed as under :—

“4. To go back to the source, it is apparent that imported fertilizer was brought to this country by the Central Government, it was placed with the Food Corporation of India at the instance of the Central Government and its distribution was facilitated through the agency of the National Fertilizers Limited and the latter's agencies engaged on the distribution of fertilizers, M/s Hindsons Associates, Patiala, being one of them. That neither M/s National Fertilizers Limited nor M/s Hindsons Associates, Patiala, complied with the requirements of clause 13-B of the Control Order is also beyond doubt. But it seems innocuous that the Central Government having put these helping agencies to achieve its objects, should have over-looked to provide such an exemption as conceived of in the proviso to clause 13-B of the Control Order. In this situation, when the petitioners have acted on the directions of the Government of India to dispose of fertilizers which turn out to be sub-standard on the analysis it is nobody's case that the fertilizer was sub-standardised further to what it was imported. should the petitioners be made to suffer merely because the petitioners cannot lay hands on such exemption on

the State prosecuting them shrugs its shoulders not to detect, if there is any? It is equally beyond doubt that the Central Government has ample power under the Act and the Control Order to issue orders and exemptions so as to carry out the purposes of the Act. The primary purpose of the Act is to maintain increased supplies of any essential commodity or for securing its equitable distribution and availability at fair prices. Punishment of offenders, standing in the way of such primary object, is a matter ancillary. In a matter like the present one, in launching and pursuing the prosecution, the State has in the first instance categorically to state that the Central Government had not made any such exemption to do away with the requirements before disposal of non-standard fertilizers could be restored to by the petitioners and that too at the instance of the Central Government. In view of this apparent gap in the pursuit of prosecution and its faulty launching, I find it utterly unjust to let the prosecution continue against the petitioners. Thus, necessarily the proceedings against the petitioners need be and are hereby quashed, leaving it open to the prosecution to supply the requisite information in categorical terms whereafter the Magistrate may, if so advised proceed afresh in accordance with law. In the situation, no other point need be considered."

(10) Consequently, for the foregoing reasons, the impugned complaint Annexure P. 3 as well as order Annexure P. 6 of framing charge, Annexure P. 5 and other proceedings resulting therefrom are, hereby, quashed by accepting this petition. However, the complainant shall be at liberty to launch prosecution against the concerned persons in accordance with law subject to the legal objections regarding limitation etc.