

S. N. Pandey v. State of Punjab (M. M. Punchhi, J.)

'land-owner' and not the term 'landlord' and defined in Section 4 of the Act. A Division Bench of the Pepsu High Court in *Inder Singh v. Lal Singh and another*; (3) and later on Mehar Singh, C.J. in *Gordhan Dass's case* (supra) also took the view that a suit by a land-owner against a person in wrongful possession of the land would be cognizable only by the Revenue Court, though on different reasons. We are, therefore, of the considered view that *Faqir Singh's case* (supra) was not correctly decided and overrule the same.

(5) In result, this revision is allowed, the impugned order reversed and the case remanded to the trial Court for return of the plaint for presentation in the Revenue Court of competent jurisdiction. No costs.

N.K.S.

Before : M. M. Punchhi, J.

S. N. PANDEY,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Misc. No. 1182-M of 1984.

August 29, 1985.

Essential Commodities Act (X of 1955)—Section 7—Fertilizer Control Order, 1957—Clauses 13 and 13(B)—Fertilizer imported from a foreign country—Such fertilizer not in accordance with the standard prescribed by control order—Disposal of this non-standard fertilizer entrusted to a dealer through governmental agencies—Disposal of non-standard fertilizer permitted subject to the conditions contained in clause 13(B)—Conditions not satisfied by the dealer—Government directing dealers to dispose of the fertilizer—Central Government having powers to exempt the fulfilment of the conditions—Prosecution of the dealer—Whether unjust and could be launched without proof of non-exemption of the conditions.

Held, that the non-obstante clause in clause 13(B) of the Fertilizer Control Order, 1957 brings but prominently its paramountcy. The object for such provision is not far to seek. Fertilizer is not an item of human consumption. Its ingredients were drawn out of the soil and air and are meant to go back into the soil and possibly air. Violating the prescribed standards may,

(3) 1955 I.L.R. 115.

in any event, be objectionable and punishable as a crime, but disposal of non-standard fertilizers subject to fulfilment of other conditions is not a crime, for, it was advisedly thought that even non-standard fertilizers should find way back to the soil. A bare reading of clause 13-B of the Control Order would disclose that the conditions to be fulfilled by a person selling non-standard fertilizers are mentioned therein and the Central Government may by notification in the Official Gazette exempt such agencies from complying with the conditions in sub-clauses (a) and (b) of the clause. Imported fertilizer was brought to the country by the Central Government and its distribution was facilitated through the agency engaged in the distribution of fertilizers and admittedly none of the agents complied with the requirements of clause 13-B of the Control Order. 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 such a situation, when the agents have acted on the directions of the Government of India to dispose of fertilizers which turned out to be sub-standard on analysis, the agents should not be made to suffer merely because they could not lay hands on such exemption or the State prosecuting them shrugs its shoulders not to detect, if there is any. It is beyond doubt that the Central Government has ample powers 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 commodities 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 resorted to by the agents and that too at the instance of the Central Government. In view of this the apparent gap in the pursuit of prosecution and its faulty launching is utterly unjust to let the prosecution continue against the agents.

(Paras 3 and 4).

Petition Under Section 482 of the Code of Cr. P. C. praying that the case registered against the petitioner and the further steps taken with a view to prosecution of the petitioner may be quashed.

It is further prayed that further proceedings in this case may be stayed during the pendency of this case.

H. L. Sibal, Sr. Advocate and T. S. Doabia, Advocate with him,
for the Petitioner.

Nemo, for Respondent.

S. N. Pandey v. State of Punjab (M. M. Punchhi, J.)

JUDGMENT

M. M. Punchhi, J. (Oral):—

(1) In these two petitions, Criminal Miscellaneous No. 1182-M and 1545-M of 1984, a Marketing Manager of Messrs National Fertilizers Limited, Nangal a Government of India Undertaking, and 10 partners of a private firm, named, as Messers Hindson to stall proceedings pending against them under section 7 of the Essential Commodities Act read with Clause 13 of the Fertilizer Control Order, 1957.

(2) The relevant facts which would go to decide these petitions are not much in dispute. There are restrictions under section 13 of the Fertilizer Control Order, 1957, on manufacture, sale and distribution of fertilizers, which are not of prescribed standard. The standard is prescribed in Schedule-I which is a part of the Control Order. The Government of India imported from a foreign country a sizeable stock of fertilizer known as Diammonium Phosphate, referred to in item No. 13 of the Schedule. The requirements of standard of Diammonium Phosphate are obviously supposed to be known by the manufactures and dealers doing business in this country. They are even required to obtain suitable certificates of registration and licenses under the Control Order. The foreign manufacturer obviously is not bound by any such fetters or requirements. Now the foreign seller in his own country manufactured the substance described as Diammonium Phosphate and that substance was purchased by the Government of India and imported to this country. At the relevant time, its quota allotted to the State of Punjab was lying with the Food Corporation of India and was required to be distributed to the agriculturists through the agency of the National Fertilizers Limited, for, it was a Government of India Undertaking fully cognizant with the marketing conditions of the fertilizer through its distribution agencies. At one such agency, Messrs Hindsons Associates, Patiala, when such fertilizer was being offered for sale, the Chief Agricultural Officer inspected the premises and obtained a sample therefrom for analysis. Undisputably, the analysis brought the result that it did not conform to the standards prescribed in the schedule and thus was sub-standard. It is on these allegations that a complaint was filed against the partners of Messrs Hindsons Associates, Patiala. And during the course thereof, necessity arose to summon the Marketing Manager of the National Fertilizers Limited as a co-accused. Since the learned trial Magistrate

decided to keep prosecution pending before him despite objections and to the arraignment of all the partners of the concern, these two petitions have been filed to challenge the continuance of the prosecution.

(3) Mr. H. L. Sibal, learned counsel for the petitioners, had in mind to raise a number of points, but the first one which has appealed to me, has obviated the necessity of his urging other points. That point is that though there are restrictions on manufacture, sale and distribution of fertilizers which are not of prescribed standard, but disposal of non-standard fertilizers is not at all prohibited. Sale of non-standard fertilizers is permitted subject to the fulfilment of certain conditions. Mr. Sibal urges that there is no absolute prohibition from manufacturing for sale, or offering for sale, stocking or exhibit for sale or distributing any fertilizer, which is not of the prescribed standard. And in my view the contention is valid in view of the provision next referred to. At this stage, Clause 13-B of the Control Order be taken specifically note of:

“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 fertilizer) 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 colours; 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 or authorisation with regard to their disposal and price is obtained in Form “G”.

Provided that the price per unit of 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

S. N. Pandey v. State of Punjab (M. M. Punchhi, J.)

determined on the basis of a chemical analysis of the non-standard fertiliser.

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

The *non-obstante clause* brings out prominently its paramountcy. The object for such provision is not far to seek. Fertilizer is not an item of human consumption. Its ingredients were drawn out of the soil and air and are meant to go back into the soil and possibly air. Violating the prescribed standards may, any event, be objectionable and punishable as a crime, but disposal of non-standard fertilizers subject to fulfilment of other condition is not a crime, for, it was advisedly thought that even non-standard fertilizers should find way back to the soil. Now a bare reading of Clause 13-B of the Control Order would disclose that the conditions to be fulfilled by a person selling non-standard fertilizers, etc., are these:

- (1) He should bring the container to a specific design;
- (2) Obtain a certificate of registration for sale; and
- (3) Obtain a certificate of authorisation with regard to its disposal and price from the Registering Authority.

Yet 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 in sub-clauses (a) and (b) of the clause, wherefrom have been spelled out the three requirements afore serialised.

(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 in the distribution of fertilizers, Messrs Hindsons Associates, Patiala, being one of them. That neither Messrs National Fertilizers Limited nor Messrs 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 turned out to be substandard on analysis (it is nobody's case that the fertilizers was substandardised further to what it was imported, should the petitioners be made to suffer merely because the petitioners cannot lay hands on such exemption or 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 resorted 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.

(5) For the foregoing reasons, these petitions are allowed and the proceedings against the petitioners are quashed.

N.K.S.

Before J. V. Gupta, J.

ANANG PAL,—*Petitioner.*

versus

PEAREY LAL and others,—*Respondents.*

Civil Revision No. 1937 of 1985.

September 9, 1985.

Code of Civil Procedure (V of 1908)—Section 2(II) and Order 22 Rules 5 and 10—Application by a person for being impleaded as a