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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 04.03.2025

1. CRA-S-436-SB-2004 (O&M)

M/s Vishnu Trading and others

... Appellants

Vs.

State of Punjab

... Respondent

2. CRA-S-438-SB-2004 (O&M)

M/s National Fertilizers Limited and another

... Appellants

Vs.

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Jugansh Goyal, Advocate for
Mr. Denesh Goyal, Advocate
for the appellants (in both appeals).

Mr. Subhash Godara, Addl. A.G., Punjab.



HARPREET SINGH BRAR, J.

1. This common judgment shall dispose of aforementioned two appeals preferred against the judgment of conviction dated 10.02.2004 and the order of sentence of even date passed by learned Special Judge, Kapurthala, in Complaint case No.3 of 23.05.2001, RBT No.27 of 01.08.2002 under Sections 7 & 12AA of Essential Commodities Act, 1955 (for short 'EC Act') read with Clause 19(1)(a), 19(1)(c) and (v) of Fertilizer Control Order, 1985 (for short 'FC Order'), vide which the appellants were convicted under Section 7 of EC Act and were sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.5,000/- along with default mechanism and in addition to that, the appellants-firms were also ordered to pay a fine of Rs.5,000/- each.

2. In nutshell, the facts of the case are that M/s Kalgidhar Khad Store, Bholath, District Kapurthala, of which Jaswant Singh was sole proprietor at the relevant time, was an authorized dealer of manufacturing firm M/s National Fertilizer Ltd., Nangal, for the sale of CAN 25% Kissan Khad and was holding dealership registration certificate No.9/300 dated 08.04.1992 issued by Chief Agricultural Officer, Kapurthala, which was valid upto 07.04.1995. On 04.10.1994, Raghbir Singh, Fertilizer Inspector along with Harbhajan Singh, Agricultural Development Officer, Nadala inspected the premises of M/s Kalgidhar Khad Store and Jaswant Singh was present there.



Raghubir Singh, Fertilizer Inspector, after disclosing his identity to him, served a notice under FC Order to analyze the fertilizer, which was received on 15.09.1994 by the firm of Jaswant Singh, who put his signatures alongwith seal impression 'Key'. Thereafter, stock register was checked by Fertilizer Inspector, according to which, there were 49 CAN bags each containing 50 kg fertilizer and he signed the stock register at page No.36. Then he randomly selected two bags bearing No.24 & 48 and inserted the sampling probe from one corner to another diagonally in it and then fertilizer was collected on clean and dry polythene sheet. The said fertilizer was properly mixed and divided into four equal parts. Two diagonally opposite parts were removed and remaining parts were mixed together forming a composite sample of 1.500 kgs, which was spread on the dry, clean and thick polythene sheet and divided into three equal parts, each in equal weight and were tied to make them air tight. Thereafter, four detailed descriptions, as specified in Form J, and three Form K under Clause 30(1) of FC Order were filled in the presence of Jaswant Singh and Harbhajan Singh, Agricultural Development Officer, who put their signatures on Form J and Raghubir Singh, Fertilizer Inspector put descriptions in Form J along with polythene bags, into cloth bags, which were sealed with seal bearing FI/II/18 NDL. Jaswant Singh also put his seal impression 'Key' and Fertilizer Inspector put No.16 NDL on the cloth bags as identification of sample. One part of sample was given to Jaswant Singh and his signatures were obtained on Form J, as receipt of the sample. On 05.10.1994,



Agricultural Development Officer, Bholath, vide letter No.58 dated 05.10.1994, deposited the sample in the office of Chief Agriculture Officer, Kapurthala and the said sample was received by Balwinder Singh, Agricultural Development Officer, who entered the same in sample register and allotted Code No.59(E) on the same day i.e. 05.10.1994. One sample parcel along with Form K was sent to Fertilizer Quality Control Laboratory, Faridkot, vide letter No.6787 dated 06.10.1994 through Joginder Singh, Beldar, who deposited it on the same day. As per analysis report submitted by Analytical Chemist (Incharge), the sample was not in accordance with the specifications, hence non-standard and photocopy of the analysis report was sent to M/s Kalgidhar Khad Store on 29.11.1994 by Chief Agricultural Officer, Kapurthala, which was acknowledged by Jaswant Singh, summoning him for personal hearing on 20.04.1995. It is further alleged that the fertilizer was manufactured by appellant-firm M/s National Fertilizer Ltd., Nangal and was distributed by appellant-firm M/s Vishnu Trading Company, Kapurthala, as such, separate show cause notices dated 04.05.1995 along with copy of analysis report were sent to the said firms, on which, Jaswant Singh Pannu, Regional Marketing Manager of M/s National Fertilizer Ltd., Nangal was deputed as responsible officer and photocopy of the analysis report was sent to him vide letter dated 04.05.1995 and he acknowledged the same vide letter dated 30.05.1995. As such, appellants Parma Nand, Jaswant Singh and Jaswant Singh Pannu, being proprietors/dealers of the appellants-firms and



responsible to the said firms for the conduct of its business, have contravened the provisions of Clause 19 of FC Order, thereby committing the offence punishable under Section 7 of EC Act. Hence the complaint (*supra*).

3. Learned counsel for the appellants, at the very outset, submits that on 06.07.2023, the appellants were directed to file their respective affidavits in the format as indicated by this Court.

4. In compliance of the aforementioned order dated 06.07.2023, the affidavits of appellants Parma Nand, Jaswant Singh and Jaswant Singh Pannu, complete in all respects declaring the mitigating circumstances, have already been filed in the Court on 27.07.2023 and perusal thereof indicates that appellant No.2 Jaswant Singh Pannu, in CRA-S-438-SB-2004, was aged about 79 years and 07 months and appellant No.2 Parma Nand and appellant No.3 Jaswant Singh, in CRA-S-436-SB-2004, were 58 and 80 years of age, respectively, when the affidavits dated 15.07.2023 were filed.

5. Learned counsel for the appellants submits that the judgment passed by learned trial Court is based on conjectures and surmises. It is further submitted that appellants Parma Nand, Jaswant Singh and Jaswant Singh Pannu are having clean antecedents and are not involved in any other case and they have to look after their respective families. They are facing trial for the last about 24 years and therefore, learned trial Court ought to have considered the case of the appellants for releasing them on probation under Section 361 Cr.P.C. (for short 'Cr.P.C.) read with Sections 3 & 4 of the Probation of



Offenders Act, 1958 (for short 'PO Act').

6. *Per contra*, learned State counsel supports the judgment passed by learned trial Court, while contending that the appellants had misused and abused the process of law by giving false evidence on oath before the Court and therefore, they were rightly convicted and sentenced by learned Court below.

7. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

8. Sections 3 & 4 of PO Act empower the Courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. Similarly, Sections 360 & 361 of Cr.P.C. also empower the Courts to release the offenders on probation of good conduct in the cases and circumstances mentioned therein. A two Judge Bench of the Hon'ble Supreme Court in *Som Dutt and others Vs. State of Himachal Pradesh, (2022) 6 SCC 722* speaking through Justice Bela M. Trivedi, has held as under:-

“6....having regard to the fact there are no criminal antecedents against the appellants, the Court is inclined to give them the benefit of releasing them on probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that the appellants shall be released on probation of good conduct.....”

9. A two Judge Bench of the Hon'ble Supreme Court in *Lakhvir Singh Vs. State of Punjab, (2021) 2 SCC 763* speaking through Justice Sanjay



Kishan Kaul, has held as under:-

“6. We may notice that the Statement of Objects and Reasons of the said Act explains the rationale for the enactment and its amendments: to give the benefit of release of offenders on probation of good conduct instead of sentencing them to imprisonment. Thus, increasing emphasis on the reformation and rehabilitation of offenders as useful and self-reliant members of society without subjecting them to the deleterious effects of jail life is what is sought to be subserved.”

10. In view of the aforesaid facts and circumstances, judgment passed by learned Special Judge, Kapurthala, convicting the appellants, is upheld, however, having regard to the fact that there are no criminal antecedents against appellants Parma Nand, Jaswant Singh and Jaswant Singh Pannu and their sentence was suspended by learned trial Court vide order dated 10.02.2004, this Court is inclined to give them the benefit of probation of good conduct. In that view of the matter, while maintaining the conviction and sentence imposed on the appellants, it is directed that appellants Parma Nand, Jaswant Singh and Jaswant Singh Pannu shall be released on probation for good conduct on furnishing a personal bond of Rs.10,000/- each with surety of the like amount and on further furnishing an undertaking to keep the peace and good behaviour for a period of one year, to the satisfaction of learned trial Court concerned. Appellants Parma Nand, Jaswant Singh and Jaswant Singh Pannu shall remain under the supervision of the concerned Probation Officer during the aforesaid period. It is further directed that if appellants Parma



Nand, Jaswant Singh and Jaswant Singh Pannu failed to comply with the said directions or commit breach of the undertaking given by them, they will be called upon to undergo the sentence imposed upon them by learned Special Judge, Kapurthala.

11. Resultantly, with the aforesaid observations made and directions issued, both these appeals stand disposed of.

12. All the pending miscellaneous application(s), if any, shall also stand disposed of.

13. Photocopy of this order be placed on the file of connected case.

04.03.2025
vishnu

**[HARPREET SINGH BRAR]
JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No