

IN THE HIGH COURT OF SINDH, AT KARACHI

Present:

Justice Ms. Kausar Sultana Hussain

Criminal Revision Application No. 147 of 2016

Muhammad Khalid and two others Appellants

Versus

The State Respondent

Dates of hearing: **27.06.2018.**

Date of order: **09.08.2018.**

Mr. Farrukh Zia Shaikh, Advocate for the appellants.

Ms. Seema Zaidi, D.P.G for the State a/w Shankar Lal, Assistant Director
Agriculture Extension Department.

ORDER

KAUSAR SULTANA HUSSAIN, J:---- This Criminal Revision Application No. 147 of 2016, under section 435/439, read with Section 561-A Cr.P.C is directed against the judgment dated 10.10.2016 passed by the learned IInd Additional Sessions Judge Thatta, in Criminal Appeal No. 14 of 2015, whereby maintaining the sentence has been challenged awarded to the appellants by the learned IInd Judicial Magistrate Thatta, in Private/Direct Complaint No. 02 of 2015 (old case No. 01 of 2014), whereby the learned trial Court convicted the appellants under Section 21 (1) of Agricultural Pesticide Ordinance, 1971, punishable under Section 21(2)(b) of Agricultural Pesticide Ordinance, 1971, and sentenced them to suffer rigorous imprisonment for six months each and fine of Rs. 500,000/-each and in case of failure to pay fine to suffer simple imprisonment for one month each and since the imprisonment awarded to the appellants are six months and the appellants are ready to furnish bail to the satisfaction of the trial Court, for their appearance before the Appellate Court, during statutory period for filing appeal,

as such, the sentence is postponed till expiry of the Appeal period under Section 382-A, Cr.P.C, subject to bail bond of Rs. 25,000/-each, which has been furnished to the satisfaction of the trial Court.

2. Brief facts of the prosecution case are that complainant Shankar Lal is a Pesticide Inspector under the Agriculture Pesticide Ordinance, 1971 and is authorized under Section 16 of the Ordinance, for inspection of pesticides. On 07.01.2014 in between 04.40 p.m to 05.15 p.m, he being authorized under Section 15, 16 and 17 of Agricultural Pesticide Ordinance, 1971 (herein after referred to as APO), and rule 32 of Agricultural Pesticide Rules, 1973 (herein after referred to as APR), drawn two pesticide samples for checking of quality of (1) Rozol 5% Batch No. LFR-130906 of M/s. Warble (Pvt) Ltd and (2) Emamectin Benzoate 1.0% EC (2.11% w/w), Batch No. NAGG 11044 of M/s. Granulars (Pvt) Limited, from Mr. Muhammad Khalid son of Muhammad Rasheed Aslam, CNIC No. 41103-7819928-7, registered Pesticide Dealer, Buhara Thaluka Mirpur Sakro, on prescribed Form-10 and Memorandum in presence of witness Insaf Ali Joyo. That the pesticide samples (1) Rozol 5% EC declared as "standard", vide report No. 20 dated 17.1.2014, through letter No. (PL-A1) 22/2014 dated 17.01.2014 whereas pesticide sample (2) Emamectin Benzoate 1.09% EC (2.11% w/w), Batch No. NAGG 11044 of M/s. Granulars (Pvt) Limited, was declared as "substandard", vide specification on Form-7, Test Report No. (AP-A1) 42/2014 dated 23.01.2014, received through letter No. (PL-A1) 43/2014 dated 23.01.2014. Accordingly, analysis report was delivered to concerned pesticide dealer through letter and mashirnama for seizure of stock. As per statement of concerned pesticide dealer, the substandard product and stock was purchased from Granulars Pvt. Limited, thorough sale invoice/delivery challan No. 100942 dated 04.02.2014, through Company's Area Manager Ishtiaque Hussain, hence this Direct Complaint under Section 26-A of Agricultural Pesticide Ordinance for offence under Sections

21(2)(b) of Agricultural Pesticide Ordinance, 1971 as amended up to date and Agricultural Pesticide Ordinance, 1973.

3. The learned counsel appearing on behalf of appellants/convicts in his memo of appeal and so also during the course of arguments drawn attention of this Court towards various controversies and short comings emanating from the facts and proceedings of the case. His submissions mainly based on various material flaws in the case of prosecution that the appellant/convict Dealer Muhammad Khalid was admittedly not present at his shop during sampling and other proceedings of pesticides which vitiates the whole narration of prosecution; that during cross examination, PW-1/complainant namely Shankar Lal clearly stated that he does not know the name of the person, who was present at the shop during such sampling proceedings, however, the said person introduced himself as brother of above named dealer; that CNIC number of the dealer was noted from the dealership certificate; that the specimen so taken was not sent forthwith to government analyst; that the Naib Qasid, who was entrusted to dispatch the sample to Deputy Director Office has not been cited as witness; that the column of witness No. 2 is blank in Form No. 5 though it is mandatory to fill the names of witnesses in the provided column space; that evidently the Government Analyst Muhammad Akbar Zardari is un-qualified person as he did not possess required qualification and experience as stipulated in relevant rules; that PW-2 in his cross-examination categorically admitted that he is subordinate to complainant/PW-1 and deposing on the behest of him; that required formalities and processes were completed in the office and not at the place of occurrence; that no private witnesses has been cited in the case, which is in contravention of section 103 of Cr.P.C and that the only witness present during whole process of sampling is departmental employee. He also contended that appellants No. 2 and 3 were implicated in the present case subsequently under Section 190 (1) Cr.P.C by the trial Court on the basis of statement of complainant during the course of trial, but no evidence

adduced against both of them during such trial. He concluded that the learned trial Court erred in placing burden of proof upon the appellant to prove their innocence though it is settled principle of justice that the onus of proof of an offence lies on the shoulders of prosecution.

4. The learned D.P.G appearing for the State vehemently opposed the locus standi of the appellants and emphasized that judgment/order passed by the Courts below do not invite interference and the judgment may be maintained. She contended that minor irregularities and mere technicalities do not vitiate the proceedings in a case, where substantive material come on record against the appellant.

5. The learned trial Court upon commencement of trial, examined complainant and on the basis of such examination-in-chief, cognizance was taken against Ishtiaq Hussain, Area Manager of M/s. Granulars (Pvt) Limited, vide order dated 28.10.2014 on the grounds that substandard pesticide i.e. Emamection Benzoate 1.0 EC (2.11% w/w), Batch No. GG11044 is imported, marketed and sold by the above named company and in the instant case it was sold vide sale invoice No. 100942 dated 04.02.2014, delivered through Ishtiaque Hussain, who was the Area Manager of the Company at the relevant time. Subsequently M/s Granulars (Pvt) Limited through its Board of Directors had authorized Shoaib Anwar, the Manager Marketing of the Company to face the prosecution on behalf of the Company. Thereafter, amended charges was framed against all the three accused persons to which they did not plead guilty and preferred to face the trial. Upon culmination of trial, being satisfied with the evidence brought on Court record, the learned Court of IInd Judicial Magistrate, Thatta convicted all the accused persons/appellants for the offence under Section 21 (1) of Agriculture Pesticide Ordinance, 1971 and sentenced them R.I for six months and fine of Rs. 5,00,000/- (five laces) only and in case of default in payment of fine, further S.I for one month. Being dissatisfied with the above judgment, the appellants preferred appeal before

the Court of Sessions. The learned Additional Sessions Judge Thatta, after hearing both side and upon due appraisal of the case record, maintained the conviction and dismissed the appeal.

6. No doubt that there are many material discrepancies and flaws in the case of prosecution as already spelled out above. It is established dictum that benefit of doubt, if any, shall go to the accused and not to prosecution. Having said that, question at hand is that whether the alleged offence was actually committed by the appellants or otherwise. Nothing on record reveals that the pesticide available at the shop of the appellant No. 1/ dealer was counterfeit or spurious neither it was ever alleged that the seals of the pesticides collected for sample purpose was tampered with or broken. The appellant No. 1 is an pesticide dealer of M/s. Granulars (Pvt) Limited and admittedly was a bonafide purchaser of alleged sub-standard pesticide from the said Company. His role was limited to buying and subsequent selling of products supplied to him by a limited Company. He, in no sense, was required to get the branded products of a reputable Company analyzed from laboratory. Appellant No. 2 Ishtiaque Hussain is the Area Manager of M/s. Granulars (Pvt) Limited Logically being a paid employee of the Company, he was also not required to assure or examine the quality of the product of the Company, his prime function, as is evident from his designation was to manage the operations of the product of the Company in area of his jurisdiction. The third accused Shoaib Anwar is also an employee of the Company designated as Manager Marketing. He was made accused when trial Court indicted the Company as accused, vide order dated 28.10.2014, whereupon, the Board of Directors/Board Members of Company (Mrs. Amina Jaffar & Mr. Abdul Razzak Jaffar) vide Resolution No. 11/14 dated 25.11.2014 unanimously decided that Shoaib Anwar, Manager Marketing/convict nominated by the Board Members to appear and face the case of prosecution on behalf of the Company viz; M/s. Granulars (Pvt) Limited before learned Court of IInd Civil Judge & Judicial

Magistrate, Thatta. It is also evident that said Shoaib Anwar/convict is an employee of the Company and entrusted with the duties of Marketing. Apparently his job title also illustrate that he is performing duties relevant to Marketing of products.

7. In the present case, the culpability of the alleged offence, logically lies on the Company itself as a legal person within the meaning of section 11 PPC and the “chief executive” of the Company appointed within the meaning of section 2 (14) Companies Act, 2017. However, the Company viz; M/s Granulars (Pvt) Limited after the passage of 10 months of the commission of alleged offence, nominated its Manager Marketing to face the penal charges on behalf and behest of the Company to protect and shelter its “Chief Executive” from the penal trial.

8. From the above deliberations, it is evident that all the appellants in this case have no role for knowingly selling or intentionally allowing to sale substandard pesticide. They were performing such acts and discharging such duties as were assigned to or expected from them. They could at most, be cited as witness in the case. Accordingly, *actus reus* cannot be attributed to them as no one can be punished for a crime he did not commit.

9. For the forgoing discussion, it is clear that prosecution failed to prove the case beyond the shadow of reasonable doubt against appellant/convicts, consequently impugned conviction is set aside and appellants in the case are acquitted of charge(s). They are on bail, their bail bonds are discharged and surety released.

Faheem/PA

J U D G E