

**HIGH COURT OF M.P. BENCH AT INDORE**  
(SINGLE BENCH HON'BLE SHRI JUS. SHAIENDRA SHUKLA)

**M.Cr.C. No.9324/2016**

Harish Chandra Singh S/o. Lt. Shri Ram Kumar  
Singh, Aged 53 years, Occupation – Service,  
Paradeep Phospate Ltd. R/o. PPL Township,  
Paradeep, Jagatsinghpur (Odisha).

**Vs.**

(1) State of M.P.  
Through State House Officer,  
Police Station – Industrial Area Jaora,  
District – Ratlam (M.P.)

(2) Deputy Director cum Licensing Authority,  
Office of License Authority and Deputy Director  
Agriculture, District Ratlam (M.P.)

(3) Fertilizer Inspector & Senior Agriculture Development  
Officer, Block – Jaora, District – Ratlam (M.P.)

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Shri Piyush Mathur, learned Senior counsel with Shri P.M.  
Bhargava, Advocate with Shri Akash Vijayvargiya, Advocate for  
the petitioner.

Shri Anil Ojha, public prosecutor for State.

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**ORDER**  
**(20.02.2020)**

The petitioner has filed the present petition under Section  
482 of Code of Criminal Procedure, 1973 (for short 'Cr.PC')  
seeking quashment of FIR dated 31.08.2016 in Crime  
No.493/2016, registered at Police Station Industrial Area, Jaora,  
District-Ratlam (MP), under E.C. Act.

2. The facts contained in the petition are that the petitioner is the Quality Compliance Officer of Paradeep Phosphate Ltd., a company registered under Companies Act, 1956, having its registered office at Bhubaneswar at Orissa. The petitioner is responsible for quality of fertilizer.

3. That, the Paradeep Phosphate Ltd., Company is into the business of manufacturing, storing, packing, distributing, transporting of fertilizers, chemicals. The company manufactures and supply Di Ammonium Phosphates, Several Grades of N.P. and N.P.K. fertilizers. Company is one of the leading company and has been issued ISO 9001 :2008 certificate which is valid upto 24.07.2018. Copy of the ISO certificate is submitted herewith and marked as Annexure P/2.

4. That since fertilizers fall into the Union list of the Constitution of India; therefore the Central Government had promulgated the Fertilizer (Control) Order, 1985 in exercise of its powers available to it under the provision of the Essential Commodities Act, 1955, (hereinafter referred as 'the E.C. Act') for the purposes of regulating the Manufacture, Sale and Distribution of the Fertilizers, in the entire Territories of the country.

5. That, the company applied for the registration and authorization in the state of Madhya Pradesh for entitling the company to carry on the business related to the fertilizers. The

State of M.P. vide its order dated 25.6.2014, issued the letter of authorization in accordance with the provisions of Control Order 1985.

6. That the company is having the manufacturing plant at Orissa where the different grades of N.P.K. are manufactured in accordance with the Schedules of Control Order, 1985. It is pertinent to mention that the company sales the fertilizer through the authorized dealer in different states who in turn sales the fertilizer through dealer. In the present case also the company is having the authorized dealer at District Ratlam namely Kothari Agencies and Jaora Fertilizer Company.

7. That during the process of manufacturing of the Fertilizers, the company takes absolute care in adhering to the prescribed Standards and dispatches the Fertilizer, from out of the Factory premises, in the shape of properly Sealed and Stitched Bags, for avoiding any possibilities of Fertilizer being spoiled, however when the Bags sometimes gets opened up in loose shunting and/or get exposed to the Moisture, it changes the Phosphorous Contents of the Fertilizer, being Water Soluble.

8. That, the company vide the dispatch dated 4.6.2015 sent the N.P.K. Fertilizer 20:20:0:13 through Railway Racks for sale in State of Madhya Pradesh. To consignments from the said rack were sent to Ratlam, which were received on 4.7.2015. The

company operates through the authorized dealers therefore, the required quantity was delivered to Kothari Agencies as well as the Jaora Fertilizer Company.

**9.** The petitioner submits that the samples were collected from Agency Arvind and Company which was after analysis found to be sub-standard. The other sample was sent to Hamirpur at Uttar Pradesh which also showed that the sample was sub-standard. Samples were also collected from one more agency called Atlas Iron Works, Jaora. Its first sample was found to be sub-standard and the second sample was sent to Ratlam where the same was found on reanalysis as conforming to the prescribed standards.

**10.** In view of the fact that both the samples drawn from Arvind and Company Agency gave adverse reports, an order was issued by the respondent No.2 to stop sale and action was directed to be initiated against the concerned persons by the respondent No.2 to respondent No.3. Despite clarification offered by the petitioner, FIR was registered on 31.8.2016 bearing crime no.493/2016.

**11.** The petitioner submits that the very fact that the sample of Atlas Iron Works, Jaora which was sent for reanalysis was found to be proper, itself shows that the adverse report in respect of other samples was a result of mishandling by the agent or the dealers to which fertilizers got exposed to the moisture and therefore the sample failed. It is further stated that police was not authorized to

take action and that the court could have taken cognizance only if a written complaint by Inspector was filed before the court. Only the Inspector was empowered to take action under Section 11 of the E.C. Act in view of the clause 26, 27 and 28 of the F.C.O, that there was huge delay of six months of lodging of FIR, that action at the instance of respondent No.2 ie., Deputy Director was illegal and the respondent No.3 was only a responsible for taking action and that the petitioner had no mens rea in the commission of the alleged offence. On these grounds the criminal investigation and the FIR bearing crime no.439/16 has been sought to be quashed.

**12.** In their reply, respondents have submitted that as regard the objection pertaining to not complying with Clause 24 of the Fertilizer Control Order, the applicant and the manufacturing company has never informed the answering respondents about their appointed officers (compliance officer) and first time in the present application the name of the compliance officer has been disclosed and therefore the petitioner cannot seek shelter under Clause 24. Regarding delay in lodging FIR, it has been stated that after collecting of sample, the same is analyzed by the State Laboratory and thereafter the second sample was sent for the analysis and the delay is attributable to such long drawn procedure which takes substantial time. The deficiency was found in the manufacturing process. Hence, the persons responsible in

manufacturing and in maintaining quality control have been made accused. The petition has been sought to be rejected on the aforesaid ground.

13. The question before this court is whether in view of the grounds contained in petition, the desired relief of quashment can be afforded to the petitioner or not.

14. Clause 24 of the Fertilizer (Control) Order, 1985, is reproduced as below :-

*“24. Manufacturers/[importers]/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.”*

15. The petitioner himself has admitted that he is a compliance officer of Paradeep Phosphate Ltd. Hence FIR could be lodged against him as per Section 24 of FCO which has been done in this case.

16. Learned counsel during the course of his oral submissions has laid stress on the fact that in view of the express language of Section 10 of the E.C. Act, the company ought to have been included as an accused and the prosecution could not have lied only against the petitioner. In support, a citation of ***Sharad Kumar Sanghi vs. Sangita Rane***, (2015) 12 SCC 781 has been referred to, in which it has been laid down that where company has not

been arrayed as a party, criminal proceedings against the Managing Director alone were not maintainable.

17. This citation was considered. The facts reveal that the complainant had purchased a vehicle. It was later found by him that the engine number inscribed on the engine was different from the engine number written on the papers given to him. It was further revealed that the car had got damaged while being brought after its manufacture from factory due to accident and its engine had to be changed. In such circumstances, it was held that the car company ought to have been impleaded as accused apart from the petitioner.

18. The present case is in respect of Essential Commodities Act and a citation in respect of such act would have precedence over the citation submitted by the learned counsel. Learned counsel for the State has brought court's attention towards the citation of *State (Govt. of NCT of Delhi) vs. D.A.M. Prabhu & Anr., (2009) 3 SCC 264* in which in para 13 it has been laid down that if the contravention of the order made under Section 3 of the E.C. Act is by a company, the persons who may be held guilty and punished are one the company itself. Para 13 of the judgment reads as under :-

*“8. The section appears to our mind to be plain enough. If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are (1) the company itself, (2)*

*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 whom, for short, we shall describe as the person- in-charge of the company, and (3) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom, for short, we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person-in-charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made Section 3 of the Essential Commodities Act. Naturally, before the person in-charge or an officer of the company is held guilty in that capacity it must be established that there has been a contravention of the order by the company.*

8. *The above position was highlighted in Sheoratan Agarwal v. State of M.P., (1984) 4 SCC 352.”*

19. In respect of the ground that Inspector only could have lodged the prosecution under Section 11 shall not be considered.

20. FIR Annexure P/13 was perused. The complainant is Fertilizer Inspector, who has submitted written complaint. Section 11 of E.C. Act is reproduced below :-

*“11. Cognizance of offences.- No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting*



*such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code (45 of 1860) [or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not].”*

**21.** This section nowhere states that the complaint be made only to the court. All it says is the complaint in writing is to be made by the concerned competent person which in this case is Inspector who has filed written complaint and Section 154 of Cr.P.C provides that on receiving information relating to cognizable offence FIR shall be registered. This has been done in this case and there is no illegality in the procedure adopted.

**22.** Regarding the delay in FIR, the respondents have explained the cause for delay and the cause shown is appropriate. Other submissions do not strike at the root of prosecution which has been initiated against the petitioner. These submissions can be raised at the time of final arguments.

**23.** Regarding submission that the sample collected from Atlas Iron Works conformed to the specifications on reanalysis and therefore the error had occurred in respect of sample collected from Arvind Steel Agency due to mishandling, is a subject matter of evidence which cannot be looked into at this stage.

**24.** After due consideration, the grounds contained in petition filed under Section 482 of Cr.P.C. seeking quashment of investigation and FIR are rejected as being without any basis.

25. Consequently, the petition filed under Section 482 of Cr.P.C is dismissed.

26. It can be seen that Harischandra Singh was appointed as compliance officer in the year 2016 whereas, the manufacture of fertilizer in question and its sampling dates back to the year 2015. Hence, the investigating agency will be required to see as to who was the quality control officer of the Paradeep Phosphate Company at that point of time. He shall also be required to be impleaded as an accused. Shri Harishchandra Singh is accused by virtue of being compliance officer. However, if he was not responsible for the quality control in the year 2015 then apart from him the concerned officer shall also be required to be impleaded.

**(SHAIENDRA SHUKLA)**  
**JUDGE**

SS/-

**HIGH COURT OF M.P. BENCH AT INDORE**  
**(SINGLE BENCH HON'BLE SHRI JUS. SHAILENDRA SHUKLA)**

**M.Cr.C. No.9324/2016**

Harish Chandra Singh

**Vs.**

State of M.P. & Ors.

Post for 20.2.2020

(Shailendra Shukla)  
Judge

**HIGH COURT OF M.P. BENCH AT INDORE**  
(SINGLE BENCH HON'BLE SHRI JUS. SHAIENDRA SHUKLA)

**M.Cr.C. No.9324/2016**

**Indore dt.13.2.2020**

Shri Piyush Mathur, learned Senior counsel with Shri P.M. Bhargava, Advocate with Shri Akash Vijayvargiya, Advocate for the petitioner.

Shri Anil Ojha, public prosecutor for State.

Arguments heard.

Reserved for orders.

(Shailendra Shukla)  
Judge.

20.2.2020

Order passed separately, signed and dated.

(Shailendra Shukla)  
Judge

**THE HIGH COURT OF MADHYA PRADESH : BENCH**  
**AT INDORE**  
**BEFORE SINGLE BENCH: JUSTICE SHRI**  
**SHAIENDRA SHUKLA**

Case No.	:	<b>M.Cr.C.No.9324 of 2016</b>
Parties name	:	<b>Harish Chandra Singh vs. State of M.P. &amp; Ors.</b>
Date of Judgement	:	20.2.2020
Bench constituted of	:	Hon'ble Justice Shri Shailendra Shukla
Judgement delivered by	:	Hon'ble Justice Shailendra Shukla
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Shri Piyush Mathur, learned Senior Advocate with Shri P.M. Bhargava, Advocate for the petitioner.
Law laid down	:	Section 482 of Cr.P.C – FIR registered against petitioner under E.C. Act, challenged on the ground that the company was not enjoined as co-accused. Judgment of <b>Sharad Kumar Sanghi vs. Sangeeta Rane (2015) 12 SCC 781</b> cited. <b>Held</b> – The aforesaid citation would not apply in view of specific citation in respect of E.C. Act in <b>State (Govt. of NCT of Delhi) vs. DAM Prabhu &amp; Anr. (2009) 3 SCC 264</b> as per which either company alone or officer in-charge alone or both may be proceeded against.
Significant paragraph numbers	:	16, 17, 18