

## **Judgment Sheet**

PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

*JUDICIAL DEPARTMENT*

**Cr.M.Q No.22-A of 2017**

### **JUDGMENT**

*Date of hearing.....13.07.2017.....*

*Appellant...(Ahmad Shah) by Mr. Ghulam Mustafa Khan Swati, Advocate.....*

*Respondent...(Agriculture Inspector, SMS Plant Protection, Agriculture Department  
Mansehra etc) by Mr. Yasir Zahoore Abbasi, Assistant Advocate  
General .....*

### **SYED MUHAMMAD ATTIQUE SHAH, J:-**

Through instant petition under section 561-A Cr.P.C, petitioner, Ahmad Shah, is seeking quashment of order dated 29.05.2017 vide which the revision petition filed by petitioner for de-sealing of shop was dismissed by Additional Sessions Judge-V, Mansehra, in case F.I.R No.1090 dated 28.09.2016 under Sections 419/420 PPC read with section 20 sub-section (a),(b) and (c ) of the Khyber Pakhtunkhwa Fertilizer Control Act, 1999.

2. Brief facts leading to institution of instant petition are that Agriculture

Inspector/respondent No.1 alongwith local police under supervision of Additional Assistant Commissioner, Mansehra raided a basement in Mashhadi Plaza, opposite Yaseen Academy Doraha Mansehra on 28.09.2016 and has recovered fake fertilizer, a case was registered against Saif Ali etc and the basement alongwith fertilizer was sealed. Thereafter, present petitioner moved an application to Senior Civil Judge/Judicial Magistrate, Mansehra for de-sealing of premises and shifting of fertilizer therefrom. The said application was dismissed by learned Senior Civil Judge/Judicial Magistrate, Mansehra vide order dated 30.03.2017. Aggrieved thereof, the petitioner filed revision petition against the said order, which was dismissed by learned Additional Sessions Judge-V, Mansehra vide order dated 29.05.2016. Hence, the present petition before this Court.

4. Learned counsel for petitioner argued that petitioner is not an accused person in the present case and thus has nothing to do with the recovered fake fertilizer, the petitioner being lawful owner of premises has rented out the same to accused Saif Ali, who has already been released on bail, whereas the recovered fertilizer is still lying in the basement owned by the petitioner right from 28.09.2016 and respondent No.1 is not removing/shifting the same which has created a lot of problems for the petitioner and under the law, respondent No.1 is required to shift the same from the said premises, and prayed for acceptance of the present petition.

6. Learned AAG appearing on behalf of respondent, however, controverted the contentions of the learned counsel for petitioner and stated that the present petitioner was in league with the main accused, who has dumped the fake fertilizer in

the premises and therefore the respondent No.1 has sealed the same in accordance with the law. In this respect he referred to section 23 of the Khyber Pakhtunkhwa Fertilizer Control Act, 1999 and to Rule 24(5) of the Khyber Pakhtunkhwa Fertilizer Control Rules, 2003 and argued that the respondent No.1 is legally authorized to keep under seal the fake fertilizer under provisions of ibid rules, which cannot be removed from there unless and until the trial is concluded. Learned AAG prayed for dismissal of the present petition.

7. Arguments of learned counsel for petitioner and learned AAG heard and record perused with their able assistance.

8. Perusal of record reveals that present petitioner is not involved in any manner in storing, selling or manufacturing of fake fertilizer nor he has been made accused in the present case by respondent No.1. Moreover, there is also no previous history of

the petitioner's involvement and indulgence in such like matters. It is also revealed from record of the present case that main accused Saif Ali has been released on bail by the competent Court of law and the complainant has not sought for the cancellation of his bail.

8. Now moving on to the provision of sub-rule (5) of Rule 24 of the Rules (ibid), wherein, it is provided that:

**"24. Duties of Inspector.--- An inspector may, within the local limits of the area for which he is appointed:**

**(1).....**

**(2).....**

**(3).....**

**(4).....**

**(5) Any fertilizer or fertilizer material seized can be kept or stored in the building or place, where it was seized or can be removed to any other place."**

In view of above rule, the respondent-Inspector can either store the recovered fertilizer in the same building or place or to remove it to any other place. However, in the present case, as the present petitioner is not

involved in any manner with the fake fertilizer and he has only rented out the basement to the main accused in the case, who has admitted this fact in his statement recorded under section 161 Cr.P.C. Therefore, keeping the seized fertilizer for indefinite period in the said premises is highly unjustified, by not shifting the same, the respondent No.1 has deprived the petitioner from lawful use of his property. Moreover, there is no provision in the Act and the Rules (ibid), which gives the respondent power and authority to seal the premises from where fake fertilizer is recovered. Thus, in view of peculiar facts and circumstances of the present case, it is held that the findings rendered by both the Courts below are not based on proper appreciation of material available on record of the case, and the law applicable thereto, thus warranting interference by this Court in its

inherent jurisdiction provided under section 561-A Cr.P.C.

9. Therefore, Keeping in view the above stated facts and circumstances and discussions made thereupon, the present petition is accepted and respondent No.1 is directed to shift/remove the fertilizer lying in the basement owned by the petitioner within thirty days from today and hand over the premises to the petitioner.

**J U D G E**

**Announced.**

**Dt.13/07/2017.**

**\*/M. S.Awan/\***