
(1991) 04 P&H CK 0099

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous Nos. 8903-M of 1988 and 4300 and 3924 of 1989

A.L.Batra

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Citation : (1991) 3 RCR(Criminal) 106

Hon'ble Judges : S.S.Grewal, J

Advocate : Sidharath Sarup, Mr A.C. Jain, Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Code) relates to quashment of complaint, Annexure P/s filed under Section 29 of the Insecticides Act, 1968 (hereinafter. referred to as the Act) against M/s. Surindera Pesticides who holds licence for stock and sale of insecticides through its partner Varinder Kumar (hereinafter referred to as the licenced dealer) as well against M/s. Jai Chemicals, Fridabad and its partners A. L. Batra and D.V, Batra, (hereinafter referred to as the manufacturers) and consequent proceedings taken thereunder, including, summoning order dated 27th of September, 1988 passed by Chief Judicial Magistrate, Karnal.

2. In brief facts relevant for the disposal of this petition as emerge from complaint Annexure P/1 are that on 2291987 Shri Ram Pal Singh, Insecticides Inspector took sample of Benzene Hexa Chloride (B.H.C.) 10 per cent dust (having Concentration of 1.3 per cent Gamma Isomer from, the premises or the licenced dealer in the presence of its representative Bhim Singh, Technical Operator. The aforesaid pesticides were manufactured by the manufacturer. The sample so taken was divided into three portions, each portion was separately sealed. One such sample was sent for analysis to Senior Analyst Quality Control (Insecticides) Laboratory, Karnal. After analysis the said sample was found misbranded, as per report of the Senior Analyst conveyed to the complainant

through letter No. 779 dated 30th of September, 1987. The report revealed that there was variation of the Technical contents Garmna isomer., by 0.2 per cent from I.C.I. specification of 1.3 per cent. Copy of the analysis report and show cause notice was sent to the licenced dealer, and after obtaining consent the impugned complaint has been filed both against the manufacturer as well as the licenced dealer.

3. The learned counsel for the parties were heard.

4. The first point raised by the learned counsel for the petitioner is that the Assistant Plant Protection Officer is not legally empowered to file the complaint, or launch prosecution under Section 31 of the Act on the basis of the consent given by Director of Agriculture Haryana. This argument is based mainly on the ground that the State Government had delegated powers for filing the complaint to the Director Agriculture Haryana, vide Government notification dated 24th April, 1977 and the Director Agriculture was not empowered to further delegate those powers to the present complainant.

5. Reliance in this respect was placed on authority of the Apex Court in case A.K. Roy and anr. v. State of Punjab and ors., 1986(2) Recent Criminal Reports 569 : 1986(2) Chandigarh Law Reporter 97. wherein it was held that the impugned notification dated September 7, 1972 issued by the Food (Health) Authority must be declared as ultra vires the Food (Health) Authority, in so far as he purported to delegate his powers to institute prosecutions for an offence under the Act under Section 20(1) to the Food Inspector, Faridkot. It must accordingly follow that the Food Inspector, Faridkot was not competent to lodge the complaint against the appellants for having committed an offence punishable under Section 16(1)(a)(ii) read with S. 9 of the Prevention of Food Adulteration Act, 1954.

6. The authority in A.K. Roy's (supra) was followed in Single Bench authority of this Court in Shakti Chand v. The State of Punjab, 1988(1) Prevention of Food Adulteration Cases 131 and it was held that the prosecution of the petitioner was based on a complaint filed by the Food Inspector, who was authorised by the Director to file the same. The impugned complaint has, therefore, been filed by an incompetent person who had no authority to do so.

7. Both these authorities which deal with the scope of powers of the Food Inspector to launch prosecution are not applicable to the facts and circumstances of the case in hand and are clearly distinguishable.

8. It is true that under Section 31 of the Act no prosecution for an offence under the said Act could be instituted except by, or with the written consent of the State Govt., or a person authorised in this behalf by the State Government. However, the fact remains that the Director of Agriculture Haryana, who was competent to give consent for launching prosecution vide notification No. 2700Agri1(2)77/7/50 dated 21/7/77 gave his consent for launching prosecution in the instant case to the Assistant plant Protection Officer, Karnal. Besides, the present complaint has been filed much after authorisation of Assistant Plant

Protection Officer, Karnal, with the powers of insecticides Inspector in the year 1986 whereas the latter himself had powers to institute such proceedings under Rule 27 (5) of the Insecticides Rules, 1971. Thus it cannot be held in the instant case that the impugned complaint has been filed to by incompetent person. The argument advanced by the counsel for the petitioner is hardly tenable in the circumstances of the case.

9. It was further submitted that the petitioner who is a manufacturer was neither provided with the sample of Insecticides taken from the licensed dealer in the instant case, nor the copy of the report of the Insecticides Analyst was supplied to the manufacturer. No show cause notice was issued to the manufacturer before filing the impugned complaint in the Court of Chief Judicial Magistrate on 27988 against the petitioner, who too had a valuable right under Section 24(3) of the Act to get the sample analysed from the Central Insecticide & Laboratory, which would supersede the report of Analyst.

10. Persons from whom the sample is not taken cannot insist upon being given a sample and cannot complain of any discrimination visavis, the person from whom the sample is drawn in view of the Division Bench authority of Andhra Pradesh High Court in Y.R.S. Rao v. Deputy Director of Agriculture and others, 1980 Criminal Law Journal 1934. Thus mere fact that no sample of Insecticides taken in the instant case from the dealer was supplied to the manufacturer, would not per se be sufficient to hold that the manufacturer had been deprived of valuable right to get such sample analysed from the Central Insecticides Laboratory. However, the fact remains that there is no specific allegation in the impugned complaint that the copy of the report of Insecticides Analyst was sent to the manufacturer against whom the prosecution has been launched on the basis of the said report. In the impugned complaint, Annexure P/1 it is merely mentioned that Analyst report and show cause notice was sent to M/s. Surindera Pesticides licenced dealer from whom the sample was taken for analysis. The manufacturer in the instant case would thus be materially prejudiced in his defence because of following defective procedure.

11. I find support on this point from the authority in Y.R.S. Rao's case (supra) which reveals that the report of the test or analysis of the Central Insecticides Laboratory made under Subsection (4) of Section 24, displaces the report of the Analyst referred to in subsection (3) of Section 24. This opportunity to rebut the report is provided under the Act to all persons (including the manufacturer) who are sought to be prosecuted on the basis of the Insecticides Analyst's report with regard to the sample of insecticides taken by the Insecticide Inspector under Section 21 of the Act. While the report may be conclusive of the facts stated therein, both against the person from whom the sample is drawn, as well as the persons who are sought to be prosecuted on the basis of that report both have an opportunity to rebut the report of the Insecticides Analyst in the case of the former by sending the sample in the possession of the person from whom the sample is drawn and in other cases by sending the sample deposited with the

Magistrate, for analysis by and report of the Central Insecticides Laboratory. Thus defence is open to all those that are likely to be prosecuted on the strength of an Analyst's report in respect of a sample not taken from them to question its correctness by requiring the Court to send the sample deposited with it for analysis by the Central Laboratory. There is no discrimination between the person from whom the sample is drawn, and other persons who are sought to be proceeded against on the basis of the same report, as both are given an opportunity of rebutting the correctness of the Analyst's Report. The inference against the person from whom the sample is drawn may be stronger, and, the defences open to him may be different or fewer than the defences that may be open to person other than those from whom the samples are drawn but are sought to be made liable. That apart these persons fall into two different categories. Other persons from whom the sample is not taken cannot insist upon being given a sample and cannot complain of any discrimination visavis the person from whom the sample is drawn.

12. Similar is the view expressed in Single Bench authority of this Court in *H. Lange v. The State of Punjab and others*, 1986(1) Recent Criminal Reports 176 : 1986(1) Chandigarh Law Reporter 383 wherein it was observed that under subsection 2 of S. 24 there is no obligation on the Insecticide Inspector to supply a copy of the report of the Analyst to the manufacturer of the Insecticide, but if the manufacturer of insecticides is sought to be prosecuted, there is no reason why a copy of the report should not be supplied to him. The object of making the provision for delivery of the copy of the report is to give an opportunity to the person concerned to controvert the report in case he is prosecuted. Therefore, irrespective of the provision contained in sub section (2) the ends of justice demand that the person who is sought to be prosecuted must be supplied with a copy of the report.

13. To the same effect is another Single Bench authority of this Court in *Tarlok Singh v. State of Punjab and another*, 1991(1) Recent Criminal Reports 194 : 1991(1) Chandigarh Law Report 376.

14. In the present case the impugned complaint was filed almost after about a year of the taking of the sample whereby valuable right of the manufacturer to rebut the correctness of the report of the Insecticide Analyst by getting the sample of insecticides produced before the Magistrate, under SubSection (f) of section 22 of the Act to be sent to the Central Insecticide Laboratory under subsection (4) of Section 24 of the Act has been materially effected.

15. For the forgoing reasons, the impugned complaint Annexure P/1 and consequent proceedings including summoning order as far as manufacturer is concerned cannot be legally sustained and the same are hereby quashed qua manufacturer only. However, the trial Court would proceed against the licenced dealer expeditiously according to law.

JUDGMENT accordingly.