

(2000) 12 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 11426-M of 1993

Amrit Lal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 22-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 24(4), 30(3), 31

Citation : (2001) 1 RCR(Criminal) 599

Hon'ble Judges : N.C. Khichi, J

Bench : Single Bench

Advocate : Mr. K.S. Chahal, for the Appellant; Mr. K.S. Sivia, AAG, for the Respondent

Judgement

N.C. Khichi, J.—This is a petition u/s 482 of the Code of Criminal Procedure for quashing of the complaint Annexure P-I filed by the Insecticide Inspector, Rampura and subsequent proceedings taken thereunder pending in the Court of Sub-Divisional Judicial Magistrate, Phul.

2. Briefly stated, the facts of the case are that on 12.8.2000, Insecticide Inspector, Bhatinda visited the shop of the petitioner and took sample of Manocrptophos 36% S.L. in the presence of Gurdial Singh, Agricultural Officer, Rampura according to the rules prescribed under the Insecticide Act. At the time of taking the sample, the detail of the pesticide was mentioned in Form XII in the presence of Amrit Lal petitioner-Proprietor of M/s Amrit Lal and Brothers and got his signatures. Thereafter pesticide was stored in three plastic bottles weighting about 250 ml in each by opening three sealed containers of 5 litres each which have been purchased and manufactured by M/s Tropical Agro System Limited 118, Broad Way, Madras, bearing batch No. 210. The date of manufacturing was July 1990 and expiry date was December, 1991. The samples were sealed properly. One sealed sample was given to the petitioner. Second sample was deposited in the office of the Chief Agricultural Officer, Bhatinda and the Illrd

sample was sent to the Insecticide Testing Laboratory, Department of Agricultural, PAU Campus, Ludhiana vide report dated 27.8.1990. After analysis, the sample was found mis-branded as it did not conform to the ISI specifications as it contained 33.47% instead of 36%. Show cause notice was sent to the petitioner vide registered letter No. f 26 i 2 dated 25.10.1990. Thereafter the complaint Annexure dated 2.4.1991 was filed in the Court of Sub-Divisional Judicial Magistrate, Phul, District Bhatinda.

3. The petitioner seeks quashing of the complaint on the ground that opportunity of re-analysis of the other sample by the Central Insecticide Laboratory was not afforded even though in reply dated 22.11.1990 to show cause notice dated 25.10.1990, he has specifically made a request for sending the sample for re-analysis. Without considering the request of the petitioner for sending the sample for re-analysis to the Central Insecticide Laboratory, complaint was filed on 2.4.1991. The petitioner was summoned by the Court of Sub Divisional Judicial Magistrate for 20.9.1991 and on that day the petitioner appeared and the petitioner was released on bail. On the same day, the petitioner filed an application for sending the sample for re-analysis, copy of which was given to the State for 5.10.1991 and a direction was given to the Insecticide Inspector to produce the second sample in the Court. The Insecticide Inspector did not produce the sample and was adjourned from time to time. By the time, the sample was produced in the Court, the shelf life of the sample had expired. Thus valuable right granted to the petitioner under the provisions of the Insecticides Act, 1968 has been taken away. It was further contended by the petitioner that the complaint is liable to be quashed because the petitioner is a dealer, who has obtained the insecticide from the registered manufacturer and was selling in the same condition as it obtained from the manufacturer and selling the insecticide in sealed container and did not tamper with the seal. The seal was intact when the sample was taken by the Insecticide Inspector and he is entitled for protection of subsection (3) of Section 30 of the Insecticides Act. It was further contended that the complaint is liable to be quashed since there is no valid sanction granted before filing the complaint as required u/s 31 of the Insecticides Act.

4. Notice was issued to the respondents who filed his written statement. In the written statement it has been averred that the petitioner firm intentionally did not follow the proper procedure for getting the second sample analysed and knowingly delayed the whole process of re-testing. As per clause 24(4) of the Act, the petitioner never approached the concerned Court for re-analysis. It was further averred that all grounds mentioned in Section 30(3) of the Insecticide Act are questions of fact and must be proved like any other fact by leading evidence in the trial Court. It was further averred that the consent was issued by the competent authority after applying its mind to the facts of the case and relevant provisions of the Act, 1968 and the Rules, 1971.

5. I have heard learned counsel for the parties and perused the record of the case.

6. Learned Counsel for the petitioner argued that in the present case the accused-petitioner was summoned by the trial Court on 20.9.1991, and on the same day the request was made by the petitioner for sending the sample for re-analysis. It was further argued by the learned Counsel that the petitioner was denied the opportunity of getting the sample re-analysed and the present complaint is liable to be quashed. In support of his arguments, reliance has been placed on M/s. Shelja Pesticides Centre, Abohar v. State of Punjab 1998(4) RCR 533 M/s. Charan Singh and Company and others v. State of Punjab 1996(3) RCR 117 State of Punjab v. M/s. National Organic Chemical Industries Limited 1998(4) RCR 578 SC and State of Haryana v. M/s. Unique Farmaid Private Limited 1999(4) RCR 540 SC. The learned counsel has thus contended that continuation of the complaint would be an abuse of the process of the Court.

7. The learned counsel contended that the petitioner is entitled to protection u/s 30(3) of the Insecticide Act as he has purchased the insecticide from the registered manufacturer and was selling the sample in the sealed container. It is nowhere mentioned in the complaint that the petitioner ever tampered with the seal or was not selling the insecticide in the same state from which it was purchased. In support of this learned counsel has referred Kisltan Beej Bhandar v. Chief Agriculture Officer 1992 CCR 768 SC and argued that in case of prosecution or contravention leading to cancellation, sub-section (3) shall apply. The learned counsel has thus argued that when it is established that when the petitioner has sold insecticide in the sealed container, there is no proof on record that the petitioner has misbranded the insecticide and, therefore, the petitioner cannot be held liable to have committed any offence under the provisions of the Insecticides Act, 1968. In support of this contention the learned counsel has relied upon M/s. Delhi Agriculture Store v. State of Punjab 1997(1) RCR 42 M/s. Smt. Chander Kama v. State of Punjab 1997(1) RCR 453 Bahadur Singh v. State of Punjab 1998(1) RCR 562 M/s. AmarKhad Store v. State of Punjab 1996(3) RCR 140 and argued that when the sample was taken from the sealed container and no averment is made in the complaint that the seal was tampered with, the petitioner did not comply with the conditions as mentioned in Section 30(3) of the Act, the complaint is liable to be quashed on this ground also.

8. Shri Sivia, learned counsel appearing on behalf of the State argued that the petitioner firm intentionally did not follow the proper procedure for getting the second sample analysed and knowingly delayed the whole process of re-testing and as per clause 24(4) of the Act, the petitioner never approached the concerned Court for re-analysis, therefore, the complaint is not to be quashed.

9. I have given my thoughtful consideration to the respective submissions made by the learned counsel for the parties, and am of the opinion that the present petition deserves to succeed. The petitioner was not afforded opportunity of re-analysing the second sample by the Central Insecticide Laboratory. It is pertinent to mention that in reply dated 22.11.1990 to the show cause notice dated 25.10.1990, the petitioner has specifically made a request for sending the

sample for re-analysis to the Central Insecticide Laboratory. On summoning the petitioner by the Court of Sub-Divisional Judicial Magistrate, he was released on bail and on the same day he has moved an application for re-analysis of the sample. The Court gave the direction to the Insecticide Inspector to produce the sample but the same was not produced. By the time the sample was produced, the shelf life of the sample had expired and thus a valuable right granted to the petitioner under the provisions of the Act has been taken away.

10. I am in full agreement with the second submission made by the learned counsel that it is nowhere mentioned in the complaint that the petitioner ever tampered with the seal or was not selling the insecticide in the same state from which it was purchased. From a perusal of the complaint, this fact does not find mention. In *M/s. Delhi Agriculture Store*, *M/s. Smt. Chander Kanta, Bahadur Singh* and *M/s. Amar Khad Store* (supra) it has been held that when the sample was taken from the sealed container and no averment is made in the complaint that the seal was tampered with or the petitioner did not comply with the conditions as mentioned in Section 30(3) of the Act, the complaint is liable to be quashed.

As a sequel to my aforesaid discussion, the present petition succeeds. The complaint Annexure P-1 and the consequential proceedings arising therefrom are hereby quashed.

11. Petition allowed.