
(2010) 04 P&H CK 0092
In the Punjab And Haryana At Chandigarh

Anand Trading Co. and Another	Vs	APPELLANT
State of Punjab		RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 17, 18, 22, 29, 3

Citation : (2010) 3 RCR(Criminal) 662

Hon'ble Judges : Daya Chaudhary, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Daya Chaudhary, J.—The present petition has been filed u/s 482 Cr.P.C. for quashing of complaint No. 230 dated 30.4.2005 (Annexure P-1) under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Section 27(5) of the Insecticides Rules, 1971 and the summoning order dated 30.4.2005 (Annexure P-2) and all subsequent proceedings arising out of the said complaint.

2. Notice of motion was issued and in response thereto, reply has been filed by the respondent-State which is on record.

3. Briefly, the fact of the case as given in the petition are that shop of the petitioners was inspected by Shri Rachhpal Singh, Insecticide Inspector, Moga-II, on 21.11.2001 and sample of Isoproturon 75% manufactured in September 2003 by M/s Coromandal Indag Products India Limited was drawn. After drawing the sample and dividing the same into three parts, one part of the sample was given to the petitioners and two parts were retained by the Inspector, out of which one part of the sample was sent to the Insecticide Testing Laboratory, Ludhiana and the sample was found misbranded on analysis. On receipt of report from the Analyst, the present complaint dated 30.4.2005 was filed in the Court of JMIC, Moga and the petitioners were summoned accordingly.

4. Learned Counsel for the petitioner has challenged the complaint as well as the

summoning order on the ground of delay as the samples were sent after a delay of 6 days, which is violative of the mandatory provisions of Section 22(6) of the Insecticides Act, 1968 and the complaint as well as summoning order are liable to be set aside only on this ground as it has been held by the Hon''ble Suprme Court in Kishan Beej Bhandar, Abohar v. Chief Agricultural Officers Ferozepur and Anr. 1990 SCC (Cri) 623 that if the sample is not sent for analysis forthwith, the complaint as well as the consequential proceedings are considered to be abuse of the process of the Court. The word "forthwith" has been explained in the above-said judgment by explanation that the sample should be sent for analysis without any delay and it can be sent within 24 hours, maximum.

5. Learned Counsel for the petitioners further submits that the procedure for taking sample was also defective and the samples were not taken in accordance with the procedure prescribed by ISI which is also mandatory in nature. The mandatory provisions for drawing, preparing, storing and handling its sample have to be followed. He further submits that the sample was taken from the Dealer and the petitioners should not have been proceeded as protection u/s 30(3) of the Act was available to the petitioners. The petitioners were selling insecticide in sealed container in original form as obtained from registered manufacturer and proceedings cannot be initiated against the petitioners as they were not in a position to ascertain whether the insecticide in any manner had contravened any provisions of the Act. Learned Counsel also relied upon the judgment of Hon''ble Supreme Court in M/s Kishan Beej Bhandar's case (supra) as it has been held that the Act would be applicable only if the Dealer is selling insecticide in the original container and he is not entitled for protection u/s 30(3) of the Act and whole of the proceedings against the petitioners are liable to be set aside. The case of the petitioners is squarely covered by the ratio of the above-said judgment.

6. Learned Counsel for the State has argued that the samples were taken in the presence of the petitioners and the same were drawn in accordance with the procedure laid down in the Insecticide Act, 1968 and the rules framed thereunder. All the three bags were sealed with the metal seal and one sample was handed over to the petitioners. Mr. Sra, learned Counsel for the State further submits that Chief Agriculture Officer sent the sealed sample to the Senior Analyst, Ludhiana through Teja Singh, Beldar office of CAO and same was deposited in the Laboratory on 27.11.2001 and there is no time frame for sending the sample.

7. I have heard the arguments of learned Counsel for the parties and have also gone through the complaint as well as the summoning order.

8. Admittedly, petitioner No. 1 is a dealer and petitioner No. 2 is salesman and they are not the manufacturer of the relevant insecticide.

9. There is a clear-cut plea in the petition that they were selling insecticide from the sealed container in original formation as obtained from the manufacturer and

the samples were also drawn from the original packing. This plea has not been controverted by the learned Counsel for the State. It is also an admitted fact that the samples were drawn from the sealed containers lying in the premises of the firm and there is no material to show that the insecticide was not properly stored. The petitioner being the dealer and the salesman cannot be held liable for misbranding of the insecticide as only the manufacturer would be liable. This view has been supported by the judgment of the Hon''ble Supreme Court in M/s Kishan Beej Bhandar's case (supra) and the present case is squarely covered by the ratio of the said judgment. The relevant portion of the judgment in M/s Kishan Beej Bhandar's case (supra) is reproduced as under:

The High Court took the view that by enacting Sub-section (1) of Section 30 of the Act, Parliament had taken out the element of mens rea from consideration and, therefore, knowledge was not at all material. Appellant's counsel has argued that protection of Sub-section (3) is available not only to prosecution but also to every contravention of the Act and cancellation of licence for contravention of the Act is also a matter covered by Sub-section (3). We are inclined to accept the submission and take the view that whether it is prosecution or contravention leading to cancellation, Sub-section (3) applies. In that view of the matter, on the facts found that it was a full tin in a sealed condition, the liability arising out of misbranding was not of the appellant. Unless he had any other source of information about misbranding--and it has not been established--the appellant is entitled to the protection of Sub-section (3). In the facts once the appellant's contention that it was a sealed tin intact has been found, the burden that lay on him under the provisions of Sub-section (3) had been satisfactorily discharged, even in the matter of considering the question of cancellation of licence and, therefore, his licence should not have been cancelled. We allow the appeal, reverse the order of the High Court and the authorities and restore the licence. The appeal is disposed of accordingly. No costs.

10. In view of above discussion and the legal position, the present petition is allowed and complaint Annexure P-1 as well as summoning order dated 30.4.2005 Annexure P-2 and all subsequent proceedings arising out of the said complaint are quashed.