(2006) 09 P&H CK 0034

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17382-M of 2005

Ashok Barpujari and another — APPELLANT

Vs

State of Punjab and others — RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:
Insecticides Act, 1968 — Section 17, 3(k)(i)

Citation : (2006) 4 RCR(Criminal) 896

Hon'ble Judges : Tej Pratap Singh Mann, J

Bench : Single Bench

Advocate : Vikas Kumar, for the Appellant; S.S. Chahal, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.P.S. Mann, J.—The petitioners have filed the present petition for seeking quashing of complaint (Annexure P-2) instituted against them under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as `the Act'') read with Rule 27(5) of the Insecticides Rules, 1971 and for setting aside the order passed by Judicial Magistrate Ist Class, Jagraon on 17.10.1997 (Annexure P-4) vide which the application of the petitioners, for dismissal of the complaint, was dismissed.

2. On 24.11.1994, sample of Arelon 75% W.P. (Isoproturan 75% W.P.) having batch No. H 1248 manufacturing date July, 1994 and expiry date June, 1996 and manufactured by M/s. Hoechst India Limited, Bombay, was taken from the premises of M/s. Sikka Sewa Kender, Link Road, Jagraon. One packet of the sample was thereafter handed over to the proprietor of M/s. Sikka Sewa Kender while the second one was sent to Insecticide Testing Laboratory, Ludhiana whereas the third one was retained by Agricultural Development Officer, Jagraon. As per the report received from Senior Analyst, Insecticides Testing Laboratory, Ludhiana, the result showed that the net contents were 456 grams against 500 grams net prescribed on the original packet. As the sample was less in weight

and less percentage ingredients contents, it was considered to be a manufacturing defect, thus, exposing the manufacturer to be liable for violating the various provisions of the Act for misbranding the insecticide. As the insecticide was manufactured by M/s. Hoechst India Limited, Bombay, persons mentioned at serial No. 1(a)(b)(c) and (d) were the persons responsible on its behalf for the quantity/quality of insecticide and, thus, responsible for the manufacturing and distribution of the misbranded insecticide.

3. An application was thereafter moved by the present petitioners for dismissal of the complaint on the ground that the deficiency in the quantity of the insecticide did not make the manufacturer and its responsible officers liable for violation of the provisions of the Act. Further that the ingredients of the sample were found to be in accordance with I.S.I. standard. The request of the manufacturing company was, however, declined by Judicial Magistrate Ist Class on 17.1.1997.

4. Learned counsel for the petitioners has drawn the attention of the Court to Annexure P-3, as per which only S. Jayraman was the responsible person of the manufacturer as required to be declared u/s 31(1) of the Act and, therefore, the petitioners, namely, Ashok Barpujari and S.S. Manhas, who were posted as Manager, Sales Administration, M/s. Hoechst India Limited and Zonal Manager (North) of M/s. Hoechst India Limited, Bombay, respectively, could not be impleaded as accused and proceeded against. Further that the deficiency in the weight of the insecticide could not make the manufacturer and its responsible officer liable as it did not amount to misbranding of the insecticide.

5. Learned counsel for the respondents has submitted that the petitioners along with others were the responsible persons of manufacturer of the insecticides and thus, liable to be proceeded against for committing various offences as alleged in the complaint. Further that any difference found in the contents of the sample from the one as mentioned on the packet amounted to misbranding of the article/ insecticide and the petitioners could not avoid the liability by claiming that the offence could fall within the ambit of Weights and Measures Act and not under the Insecticides Act.

6. Document (Annexure P-3) is apparently a self serving document issued by the manufacturer. It seems to be a clear device of the manufacturer to avoid foisting of liability on the responsible persons looking after day-to- day functioning of the company besides the manufacturing of the insecticides. Perusal of the written consent/approval u/s 31(1) of the Act clearly mentioned the present petitioners along with two others including S. Jayaraman, to be the responsible officers of the manufacturer regarding its business. As per the provisions of Section 33(1) of the Act, anyone, who was incharge of or responsible to the company for the conduct of the business is deemed to be guilty of the offence and liable to be proceeded against and punished accordingly. The petitioners were clearly mentioned as such to be the officers responsible for the business of the manufacturing company. They cannot, thus, avoid the liability on account of insecticide, manufactured by M/s. Hoechst India Limited, which was found to be

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misbranded.

7. The sample taken into possession by the Insecticide Inspector clearly described that it contained 500 grams net of the insecticide. However, on weighing the net contents, it came to be 456 grams only. As per the report of the Insecticides Testing Laboratory, it was clearly mentioned that the sample, when weighed came to be 456 grams. It was not the same weight which was prescribed on the sample itself by the manufacturer. Misbranding is defined in Section 3(k) of the Act as under :-

Section 3. Definitions. - In this Act, unless the context otherwise requires -

(a) ....

xx xx xx

(k) ....

"Misbranded" - If its label contains any statement, design or graphic representation relating thereto which is false or misleading in any material particular, or if its package is otherwise deceptive in respect of its contents, or.....

8. The label of the insecticide in the present case contained the statement that the net contents were 500 grams of insecticides. The Senior Analyst found the factual weight of the contents to be 456 grams. As the same was different from the one mentioned on the label, it was a clear case of misbranding.

9. In view of the above discussion, no relief can be granted to the petitioners. The present petition is, accordingly, dismissed.

10. However, it is made clear that any observation made while deciding the present petition may not be considered by the trial Court to be an expression on the merits or demerits of the respective pleas of the parties.

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