

(1997) 03 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 17586-M of 1996

Ashok Kumar

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 21-03-1997

Acts Referred:

Citation : (1997) 4 AICLR 24 : (1997) CrLJ 4700 : (1997) 2 RCR(Criminal) 679

Hon'ble Judges : V.S. Aggarwal, J

Advocate : Ravinder Chopra, M.S. Gill, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. Ashok Kumar is the sole proprietor of M/s. Tanda Khad and Pesticide Store, Tanda. He holds a licence for purposes of selling stocking of different types of insecticides and pesticides. M/s. Shivalik Agro Chemicals is stated to be a registered manufacturer of insecticide, 2, 4D Ethyl Ester 34% EC. It is manufactured by the said company.

2. Inspector Insecticides had filed a complaint against the petitioner and another alleging that he inspected the premises of the petitioner on 4.1.1994 and took a sample of the insecticide mentioned above with its expiry date as May, 1995. After taking the sample one part was given to the petitioner and other was sent for analysis to the Senior Analyst, Insecticides Testing Laboratory, Amritsar. The third sample was kept by the department. Report of the Senior Analyst was received. The sample was found to be misbranded and did not conform to ISI specifications. On these facts a complaint was filed against the petitioner and another.

3. When the sample was found to be misbranded, the Chief Agriculture Officer cancelled the licence of the petitioner under Section 14 of the Insecticides Act. The petitioner filed an appeal before the Joint Director, Agriculture who was exercising the powers under Section 15 of the Insecticides Act. The appeal was accepted and protection of Section 30(3) of the Act was given to the petitioner.

The licence of the petitioner was restored. By virtue of the present petition, it is claimed that the complaint and the proceedings qua the petitioner should be quashed because the licence of the petitioner had been restored and in any case the petitioner was selling the insecticide in the original container. He is neither the agent nor the manufacturer. He has not tampered with the said container. Simply the same was stored in the proper form and, therefore, he is entitled to the benefit of Section 30(3) of the Insecticides Act.

4. In the reply filed, the same has been contested. It is pointed that petitionerfirm availed the opportunity of reanalysis under Section 24 of the Insecticides Act. The Central Insecticides Laboratory reported that sample was misbranded. The petitionerfirm has violated Sections 3K(1), 17, 18 and 33 of the Insecticides Act. It is not denied that appeal of the petitioner had been allowed by the Joint Director, Agriculture but he has banned the sale of misbranded product. As per the respondent keeping in view Section 18 of the Act, the petitioner is liable to be prosecuted.

5. Learned counsel for the petitioner urged that the licence of the petitioner had been suspended. He had filed an appeal which had been allowed by the Appellate Authority namely the Joint Director, Agriculture Development and the petitioner has been given the benefit of Section 30(3) of the Act. Therefore, the petitioner cannot be prosecuted. The second limb of the arguments advanced was that the said articles had been purchased from the manufacturer. It had simply been stored. The petitioner could not know if the same was misbranded and consequently in terms of Section 30(3) of the Insecticides Act, the petitioner cannot be prosecuted.

6. Taking up the first argument of the learned counsel, it can be re mentioned at the risk of the repetition that the licence of the petitioner had been suspended under Section 14 of the Insecticides Act, 1968. He has preferred an appeal prescribed under Section 15 of the said Act and the Appellate Authority awarded the benefit of Section 30(3) of the Act and had accepted the appeal. It is somewhat strange that the appeal was accepted on a premise which was only to the considered as a defence is the prosecution. Section 30 of the said Act reads :

"30. Defences which may or may not be allowed in prosecutions under this Act.
(1) Save as hereinafter provided in this section, it shall be no defence in a prosecution under this Act to prove merely that the accused was ignorant of the nature or quality of the insecticide in respect of which the offence was committed or of the risk involved in the manufacture, sale or use of such insecticide or of the circumstances of its manufacture or import.

(2) For the purposes of Section 17, an insecticide shall not be deemed to be misbranded only by reason of the fact that

(a) there has been added thereto some innocuous substance or ingredient because the same is required for the manufacture or the preparation of the insecticide as an article of commerce in a state fit for carriage or consumption,

and not to increase the bulk, weight or measure of the insecticide or to conceal its inferior quality or other defect; or

(b) in the process of manufacture, preparation or conveyance some extraneous substance has unavoidably become intermixed with it.

(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provision of this Act, if he proves

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it."

The provisions of Section 30 reproduced above reveal that it is not a defence in a prosecution to prove merely because the accused was ignorant of the quality of the insecticide. Under subsection (3) of Section 30, if the accused proves that he could not know with reasonable diligence that the insecticide in any way contravened the provisions of the Act and further that while the insecticide was in his possession, it was rightly stored, he would not be liable. But the said defence is only open in the prosecution. One wonders as to how when appeal against the order suspending the licence was filed, the Appellate Authority under Section 15 of the Act could look into a defence under Section 30(3) of the said Act. It could only be pressed into service in defence to a prosecution. The said findings in that regard that benefit of Section 30(3) of the Act could be given to the petitioner must be ignored.

7. So far as the second limb of the arguments is concerned, the learned counsel as already mentioned, referred to Section 30(3) of the Act to urge the same that he was simply a dealer and could not know and ascertain the contents of the articles. In support of his argument, reliance was placed on number of precedents. In the case of *M/s. Siri Ram Sat Paul v. State of Punjab*, 1992(1) RCR 613 the sample of the insecticide was found to be of substandard. The firm was a dealer in insecticide and not the manufacturer. It was noted that there was no denial that petitioner acquired the insecticide from a duly authorised manufacturer and that the sample while it remained in possession of the petitioner, was properly stored. In these circumstances taking note of Section 30(3) of the Act, the proceedings were quashed. Same view prevailed with this Court in the case of *Birbal v. State of Punjab*, 1993(1) RCR 687 and more recently in the case of *Amar Khad Store v. State of Punjab*, 1996(3) RCR 140 besides *M/s. Sudesh Traders, Mandi No. 1, Abohar and another v. State of Punjab*, Criminal Misc. No. 14847M of 1996 decided on 1.10.1996. There is no

dispute with the proposition of law in these precedents. But they proceed on the premise that with due diligence the dealer could not know that it was misbranded and that there was nothing to indicate that it was not stored properly. If we come to such a conclusion, one would accept the ratio of these decisions. Can we do so in the present case ? The answer is in the negative. This is a defence open to an accused. He has to prove in the prosecution that with due diligence he could not know that the insecticide in any way contravened any provision of the Act while it was in his possession. It was properly stored and remained in the same state when he acquired it. This is to be gone into and decided by the trial Court. This Court will not exercise its inherent powers in going into a fact which has yet to be proved. One wonders as to what would be the position if the alleged manufacturer shows that the article was not manufactured by it. In these circumstances, at this stage, exercising the inherent powers and quashing the proceedings would be improper.

8. For these reasons, the petition being without merit fails and is dismissed. The trial court would be at liberty to consider the defences in accordance with law during the course of trial.