
(2002) 08 DEL CK 0155

In the Delhi High Court

Case No : Criminal M. (M) No. 1287 of 2001

Balsara Hygiene Products Ltd. and Another

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319
Drugs and Cosmetics Act, 1940 — Section 23(4), 25(1), 25(4)
Insecticides Act, 1968 — Section 19, 20, 22(1), 22(6), 24(3)
Insecticides Rules, 1971 — Rule 27

Citation : (2002) 64 DRJ 411

Hon'ble Judges : Surinder Kumar Aggarwal, J

Bench : Single Bench

**Advocate : Surender Singh, Prakash Shah and Reena Bagga, for the Appellant;
Richa Kapur, for the Respondent**

Final Decision : Dismissed

Judgement

S.K. Agarwal, J.—Petitioner No. 1 is a company holding license under the Insecticide Act, 1971 for storage and sale of insecticides and petitioner No. 2 is the director of petitioner No. 1 company. They filed the writ petition for quashing of complaint No. 136/97, instituted against them by the Plant Protection Officer/Licensing Officer, respondent No. 2, u/s 29(1)(a) read with Sub-clause (i) of Clause (k) of Section 3 of the Insecticides Act (hereinafter referred to as the "Act") read with Rule 27 of the Rules framed under the Act, for manufacturing, selling and distributing misbranded Insecticides/Mats. The complaint was also filed against the Retailer as well as Manufacturers, respondents 3 to 6. By orders dated 9th April, 2001 passed by Division Bench, the writ petition was registered as a CrI.M.(Main).

2. Facts in brief are: on 22.9.1995 the Notified Insecticide Officer, Government of NCT of Delhi visited shop and sale counter of M/s. Singhla Agencies (respondent No. 3) and purchased three packets of allethrin 4% WW mats, each packet containing 30 mats, marked batch No. 51, manufactured by M/s. Genesis

Chempest Pvt. Ltd. (respondent No. 5) on 7/95 with expiry date of 6/97, and marketed by petitioner No. 1. The purchase was effected through cash memo for the purpose of analysis. The purchased mats were converted into three containers and were duly sealed as per rules. one packet was handed over to the retailer, another packet was retained in the office and the third packet was sent to the Government Analyst for analysis. The report of the analyst revealed that the sample/insecticide was misbranded. On receipt of the test report dated 23.11.95 the retailer was called upon to explain for selling misbranded insecticides. The retailer firm, M/s. Singla Agencies, in their reply dated 25.1.1996, informed that the said mats were purchased by them from petitioners vide invoice dated 11.9.1995. On 27.5.96 petitioners were called upon to explain and their reply dated 22.7.1996 was found to be not satisfactory.

3. On the above allegations complaint u/s 29(1)(a) read with Sub-clause (i) of Clause (k) of Section 3 of the Act and Rule 27 of the Rules framed under the Act, was filed on 23.9.1997 against petitioners, retailers as well as manufacturers. The learned trial court took cognizance and summoned the accused persons. Petitioners remained unserved for quite some time. Accused No. 1 M/s. Singla Agencies and accused No. 2, Khushi Ram, Partner of accused No. 1, moved an application pleading guilty, stating that samples were taken from their shop, that the other accused persons in the complaint were not being served and trial was being delayed. Taking into consideration the fact that applicants were neither manufacturers nor were their agents, a lenient view was taken and both the accused were sentenced to pay fine of Rs. 1,000/- each. Petitioners who are arrayed as accused 3 & 4 in the complaint have now come up for quashing of the complaint and the proceedings thereon. I have heard learned counsel for the parties and have been taken through the record.

4. Learned counsel for the petitioners argued that one portion of the samples drawn by the Insecticide Inspector was sent for analysis to the Central Insecticide Laboratory (for short "CIL"), Faridabad, in contravention of Section 26(6) of the Act; and that it was incumbent on the Insecticide Inspector to send one portion of the samples to the Insecticide Analyst for test analysis. The sample having been analysed by the CIL in the first instance prejudiced the right of the petitioners to have a second test analysis by CIL in terms of Section 24(4) of the Act. In support of his submission, reliance was placed on the decisions in Gupta Chemicals Pvt. Limited and Ors. v. State of Rajasthan and Ors. 2000 IAC 222 [decided on 17th November, 1995]; Jot Ram Dharmchand Thapa v. State of Punjab through Insecticides Inspector, Barnala 2000 IAC 135 (P&H) [decided on 9th February, 1993]; and S.N. Chemicals v. State of Rajasthan [decided on 8th December, 1999] Learned counsel for respondents argued to the contrary and filed affidavit of Mr. D.K. Thakur, Project Officer on behalf of State submitting therein, that the samples were sent to the CIL Faridabad, as this laboratory is meant for the whole of India, including NCT of Delhi. He placed on record copies of notifications in support of the same. It is also stated that the testing facility for Allethrin 4% was available only at the CIL and not at the Regional Pesticide

Testing Laboratory (for short "RPTL") either at Chandigarh or Kanpur, Therefore, sample for analysis could not have been sent to RPTL in the first instance.

5. In order to appreciate rival contentions, it would be appropriate to quote Section 22(6) and Section 24(4) of the Act, which read as under:

"22. Procedure to be followed by Insecticide Inspector.- (1) to (5) xxxxx (6) The Insecticide Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it and shall retain the remainder and dispose of the same as follows:-

(i) one portion of container, he shall forthwith send to the Insecticide Analyst for test or analysis; and

(ii) the second, he shall produce to the court before which proceedings, if any, are instituted in respect of the insecticide."

"24. Report of Insecticide Analyst.-(1) to (3) xxxxx

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the magistrate under Sub-section (6) of Section 22 to be sent for test or analysis to the said laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) xxx xxx xxx"

6. Under Clause (i) of Sub-section (6) of Section 22, the Insecticide Inspector is required to send one portion of the sample to the "Insecticide Analyst" and the second sample under Clause 2 is to be produced before the court in which the proceedings are instituted. "Insecticide Analyst" is defined u/s 3(f) to mean an "Insecticide Analyst appointed u/s 19 of the Act; and Section 19 of the Act provides that "the Central Government or the State Government may, by notification in the Official Gazette, appoint any person, in such numbers as it thinks fit, possessing such technical and other qualifications, as may be prescribed to be Insecticide Analyst for such areas and in respect of such insecticides or class of insecticides, as may be specified in the notification, provided that no person who has any financial interest in the manufacture, import or sale or any insecticide, shall be so appointed." Thus Insecticide Analyst referred to in Clause (1) of Sub-section 6 of Section 22 would include the Insecticide Analyst appointed either by the Central Government or the State Government, as the case may. This view stands clarified from Sub-section (4) of Section 24, which begin with the words, "Unless the sample has already been tested or analysed by the Central Insecticide Laboratory..." The opening word

"Unless" in the Section provides an exception to the right conferred by this rule. The Section envisages sending of the sample to the CIL only if it has not already been tested there. In case the sample, at the first instance itself is tested at the CIL, the question of the accused losing the right of getting a second testing at the CIL cannot be said to have been violated. The Supreme Court in *Ram Shankar Misra Vs. State of U.P.*, while rejecting a similar contention, based on Sections 23(4) and 25(1) & (4) of the Drugs and Cosmetics Act, 1940, held that the words, "unless sample has been tested or analysed in the Central Drugs Laboratory" clearly indicates that the provision u/s 25(4) for sending the sample through the Court is one method of sending it to the Director of Central Drugs Laboratory, the other one being sending it directly. It was held:-

"3. According to the learned counsel for the appellant, the sample ought to have been given to the Analyst at Lucknow u/s 25(1) of the Act and should not have been sent direct to the Director of Central Drugs Laboratory, Calcutta. The submission is that by sending the sample straight to the Director, Central Drugs Laboratory, Calcutta, the appellant was deprived of his right u/s 25(4) of requesting the Court to send the sample for analysis by the Central Drugs Laboratory. We do not see any substance in this contention. Section 25(1) deals with the reports of Government Analyst. Section 25(1) provides that the Government Analyst to whom a sample of any drug or cosmetic has been submitted for test or analysis, shall deliver to the Inspector submitting it a signed report in triplicate in the prescribed form. The sub-section contemplates two modes of sending samples, one by sending the drug for test under Sub-section (4) of Section 23. There is no restriction as to how a sample of the drug or cosmetic has to be submitted by the Drugs Inspector. Section 25(4) contemplates sending of the sample through court. It provides that unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in controversion of Government Analyst's report at the request either of the complainant or the accused cause the sample of the drug or cosmetic produced before the Magistrate under Sub-section (4) of Section 23 to be sent for test or analysis to the laboratory.

4. The mode prescribed u/s 25(4) is one method of sending it to the Director of the Central Drugs Laboratory. The other method is by the Drugs Inspector sending it direct as contemplated under the first part of Section 25(1). It is significant that Sub-section (4) starts with the words "unless sample has been tested or analysed in the Central Drugs Laboratory". These words clearly indicate that apart from the mode prescribed in Section 25(4), the sample can be sent for analysis to the Central Drugs Laboratory.

5. The words "Government Analyst" is defined u/s 3(c)(2) as meaning analyst of drugs or cosmetics appointed by the Central Government or State Government u/s 20. Section 20 empowers the State Government and the Central Government by notification in appropriate cases to appoint persons having the prescribed

qualifications to be government Analyst. As the definition as well as Section 20 makes it clear that the Government Analyst would include all analysts appointed by the State Government as well as the Central Government. It is not in dispute that the Director of Central Laboratory is also a Government Analyst."

7. The law laid down by the Supreme Court is fully applicable to the facts of this case. In view of the authoritative pronouncement of the Supreme Court, I am unable to agree with the decisions relied upon by learned counsel for the petitioners. The contention raised by learned counsel for the petitioners, that in the first instance the sample could only be sent to the analyst appointed by the State Government, is without any merit and is rejected. I would like to note that the cases cited by the petitioners were decided in the year 1993 or 1995 but were shown to be reported in IAC 2000 to give an impression that these are recent decisions. Such practice and publications ought to be discouraged.

8. Learned counsel for the petitioners next argued that if the procedure adopted for testing of samples is contravened to the prejudice of the accused, they have a right to seek dismissal of the complaint. Reliance was placed on the Supreme Court decision in *State of Haryana Vs. Unique Farmaid P. Ltd. Ors.*, . There cannot be any dispute about the observations made by the Supreme Court, but the facts of the said case were entirely different. No action was taken by the Insecticide Inspector to have the sample tested from CIL, as requested by the accused manufacturer and sales officer of the firm and the shelf life of the insecticide had expired by the time the accused were asked to appear in Court to stand trial. It is not the case here. Section 24(4) of the Act does not apply to the present case, as the samples were duly tested at the CIL.

9. Learned counsel for the petitioners next argued that there is delay in filing of the complaint, which deprived the petitioners of their valuable right as the complaint was filed and/or service of summons was effected on them after the expiry of shelf life of the insecticide and even sanction u/s 31(1) of the Act was obtained after the expiry of the shelf life of the active ingredient. It was argued that valuable right of the petitioner to get the sample re-analyzed was violated. The submission, again, is without any merit. As noticed above, the samples were seized on 25.9.1995 and CIL report was obtained on 23.11.95. On receipt of letter from the retailer M/s. Singla Agencies on 25.1.1996, petitioners were asked to explain and on receipt of their Explanation, complaint was filed on 23.9.1997. Shelf life of the active ingredient had yet not expired and, in any case, as noticed above, the question of getting the samples re-analyzed in this case did not arise as the samples were got analysed at the CIL in the first instance itself since the testing facility at the regional centres for such analysis was not available.

10. Learned counsel for the petitioners lastly argued that there is no allegation in the complaint that petitioner No. 2 was responsible for the conduct of the business of petitioner No. 1 company and he has been arrayed as an accused only because he was the director. He further argued that petitioner No. 2 is

located at Mumbai and was not responsible for the conduct of business of petitioner No. 1. In support of this submission, reliance was placed on the Supreme Court decision in Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, . It was a case under the Prevention of Food Adulteration Act. In that case the Manager (accused No. 2) and all the directors (accused Nos. 4 to 7) were charged. The complaint against the Manager was upheld looking into the nature of his duties and the complaint against the directors was quashed observing that if during the trial some evidence comes on record, cognizance could be taken against the directors as well u/s 319 Cr.P.C. Each case depends upon its own facts. Here, in reply to the notice served upon them by the Insecticide Inspector before filing of the complaint, petitioners did not take any stand as to who was responsible for the conduct of business of the company (petitioner No. 1). This fact is especially within their knowledge and the onus to prove the same would lie upon them after the initial burden is discharged by the prosecution that the sale was effected by the company as provided by Section 106 of the Indian Evidence Act. Even in the petition before this Court it is not stated as to who was responsible for the conduct of business of petitioner No. 1. Petitioner No. 2 has not yet appeared before the trial court. In view of the same, I do not find any merit in this contention and reject the same.

11. For the foregoing reasons, I not find any merit in the petition and the same is dismissed. Trial court is directed to expedite the trial. Trial court record be sent back.