
(2008) 12 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 24406 of 2003

Bansal Fertilizer, Mansa

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Insecticides Act, 1968 — Section 30(3)

Citation : (2010) 1 RCR(Criminal) 32

Hon'ble Judges : Arvind Kumar, J

Judgement

Arvind Kumar, J.

1 The petitioners are seeking quashing of criminal complaint titled as State v. M/s Bansal Fertilizers and Ors., pending before Chief Judicial Magistrate, Mansa, under Sections 3(k)(i), 17, 18, 21, 29, 30 and 33 of the Insecticides Act, 1968 (hereinafter referred to as the Act, in short) and Insecticides Rules, 1971 and consequent proceedings thereto.

2 The aforesaid complaint was filed against the petitioners and others with the allegations that on 3.8.2000 samples of Monocrotophos 36% and Fenvalrate 20%, manufactured by M/s Singhal Pesticides Industries, manufactured in July 2000, with expiry in January and June 2002 respectively from the containers were drawn from the premises of the petitioners. However, on analysis the samples were found misbranded. After completing the usual formalities, the complaint was filed, wherein the petitioners were arrayed as accused therein being distributor/dealer of the aforesaid misbranded insecticide.

3 The quashing of the impugned complaint has been sought by the petitioners on the ground that the the sample was never taken in accordance with the procedure prescribed and the mandatory provisions in drawing, preparing, storing and handling the sample has to be followed; the protection under Section 30(3) of the Act is available to the petitioners, who being the dealers, were selling the said insecticide in the original form as obtained from the registered manufacturer, as such no prosecution can be launched against them.

4 No reply on behalf of the State has been filed despite due opportunities granted for the purpose. However, it has been averred that the dealer as well as company are equally liable for selling misbranded insecticides, as such the petitioners are rightly sued for contravening the aforesaid provisions of Act.

5 I have heard learned counsel for the parties and have also gone through the paperbook carefully.

6 The present petitioners are not the manufacturer of the relevant insecticide. There is clearcut plea in the petition that they were selling the insecticide in the sealed container in the original form as obtained from the manufacturer and the sample was also taken from the original packing. This plea has not been controverted by the State. Thus, there remains no controversy that the impugned sample was obtained from the sealed containers lying in the premises of the firm and there is no material to indicate that the insecticide was not properly stored. Thus, the petitioners being the dealer, involved in the sale of insecticides, cannot be held liable for misbranding of the insecticides and only the manufacturer would be liable. In this context reliance can be placed on the cases of *M/s Kisan Beej Bhandar, Aboliar v. Chief Agricultural Officers, Ferozepur* 1990 Supreme Court Cases (Cri.) 623 and *M/s Vimal And Co. Grain Market, Mullanpur v. State of Punjab* 2002(2) RCR (Criminal) 56 (P&H). followed in the case of *Deepak Sharma & Ors. v. State of Punjab* 2008 (2) RCR (Criminal) 24 and reliance can be safely placed on the case of *M/s Punjab Beej Bhandar Bela & Anr. v. State of Punjab through Insecticide Inspector Ropar* 2008(1) RCR (Criminal) 998, wherein also this Court quashed the criminal proceedings against the licensed dealer.

7 In view of discussion above, the petition is accordingly accepted and the impugned complaint and subsequent proceedings thereto, qua the petitioners, are quashed.