

(1991) 11 P&H CK 0009

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8558-M of 1991

Bhai Manjit Singh and Others

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 19-11-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 22(6), 24(2), 24(3), 24(4), 29
Penal Code, 1860 (IPC) — Section 420

Citation : (1993) 1 ILR (P&H) 279

Hon'ble Judges : S.S. Grewal, J

Bench : Single Bench

Advocate : P.S. Patwalia, Harsimran Singh Sethi, Gurpreet Singh Gill and Anuj Raura, for the Appellant; Gulshan Sharma, D.A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

S.S. Grewal, J.—This petition u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred to as the Code), relates to quashment of complaint filed on behalf of the State through the Insecticide Inspector, Block Bhikhiwind, District Amritsar, against M/s Gurjeet Khad Store as Salesman, M/s Montari Industries Limited, manufacturer, and other office bearers and expert staff of the aforesaid manufacturing concern u/s 29 read with Section 3(k)(i) of the Insecticides Act, 1968 (hereinafter to be referred to as the Act) and Rules framed thereunder as well as u/s 420 of the Indian Penal Code and Essential Commodities Act, 1955 and the summoning order dated May 21, 1991 passed by the trial Court, as well as other consequent proceedings taken thereunder.

2. In brief, the facts relevant for the disposal of this case are that Shri Satnam Singh, Insecticide Inspector of Block Bhikhiwind, District Amritsar went to the premises of M/s Gurjeet Khand Store situated at Village Sur Singh, Block Bhikiwind on 9th December. 1988 and took sample of milron 75 per cent W.P. (ISI production 75 per cent W.P.) manufactured by M/s Montari Industries

Limited. The fertilizer sample so taken was transferred into three different packets which were duly sealed. One such packet was handed over to the salesman of the dealer; the second was retained by the complainant and the third was sent to the Chief Agriculture Officer, Amritsar, for analysis. The sample was sent to the Senior Analyst Insecticide Testing Laboratory, Ludhiana on 20th December, 1988. As per the report of the Analyst, the sample did not conform to the ISI specification as its active ingredients contents were 62.9 per cent against the required percentage of 75 per cent.

3. After obtaining sanction from the competent authority under the Act on 9th March, 1990, the Insecticide Inspector filed complaint in the court of Chief Judicial Magistrate, Amritsar on 21st May, 1991.

4. On behalf of the Petitioners, it was mainly submitted that the sample of Milron 75 per cent so taken by the Insecticide Inspector out of the bag which was manufactured by M/s Montari Industries Limited during October, 1988 and the expiry date of the said insecticide was September, 1990, whereas, the present complaint was filed much after the date of expiry and that the Petitioners have been deprived of the valuable right to get the sample further analysed from Central Insecticide Laboratory as contemplated u/s 24(4) of the Act.

5. On behalf of the State, it was admitted that the present complaint was filed in the court of Chief Judicial Magistrate, Amritsar on 21st May, 1991. It was however, pleaded that a show cause notice was issued to the Manufacturing firm, vide registered letter No. 3172-75, dated 15th of March, 1989 as per requirements of Section 24(2) of the Act and copy of the analysis report was also sent along-with the show cause notice. No written reply or explanation was received from the Petitioners in response to the said show cause notice. It is further submitted that even under the provisions of Section 24(4) of the Act, the accused-Petitioners are entitled to request the Insecticide Inspector or to the Court to send the sample for re-analysis to the Central Insecticide Laboratory within 28 days of the receipt of analysis report. On this basis it was further submitted that none of the Petitioners notified their intention in writing for sending the sample for re-analysis to the Central Insecticide Laboratory, the Petitioners have lost their right to request for re-analysis.

6. For the sake of convenience the relevant provisions of Sub-sections (2) (3) and (4) of the Act are reproduced as under:

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector, or the court before which any proceedings in respect of the sample are

pending that he intends to adduce evidence in controversion of the report.

(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.

7. In the instant case, admittedly, the complaint has been filed on 21st May, 1991 much after the date of expiry of the sample of Milron taken by the Insecticide Inspector in this case for analysis. The Petitioners obviously were summoned by the court after the date of expiry of sample, and, thus the accused-Petitioners have been deprived of their valuable right to get the sample of Milron reanalysed by the Central Insecticide Laboratory as contemplated u/s 24(4) of the Act.

8. The mere fact that a show cause notice was issued to the manufacturing firm, vide registered letter dated 15th March, 1989 or that copy of the analyst report was also sent alongwith the show cause notice to the manufacturing concern, would not, in any manner absolve the Insecticide Inspector from not filing the complaint in the court of Chief Judicial Magistrate, Amritsar, immediately after the receipt of the report in March, 1989 or there about. Another significant aspect of the case is that even the sanction for launching the prosecution had been granted by the competent authority in the instant case on 9th March, 1990 i.e. much before the expiry date of the sample of Milron i.e. September, 1990. No plausible explanation has been put forth on behalf of the State as to why the Insecticide Inspector concerned could not file complaint in this case within a reasonable period of grant of sanction on 9th March, 1990. It is quite evident that for no fault of their own, the Petitioners have been deprived of their valuable right for getting the sample re-analysed from the Central Insecticide Laboratory as provided u/s 24(4) of the Act.

9. I find support in my view from Single Bench Authority of this Court in case *H. Lange, A German National, Managing Director M/s Byer (India) Ltd. v. The State of Punjab and Anr.* 1986 (1) R.C.R. 176, wherein applying the test by the Supreme Court in case *Municipal Corporation of Delhi Vs. Ghisa Ram*, it was observed that unless the Petitioner was given an opportunity to controvert the correctness of the report of the Analyst, the prosecution based on the report cannot succeed. To the similar effect is the other two Single Bench Authorities of this Court reported in case *S.K. Ahooja v. State of Haryana and Anr.* 1989 R.C.R. 596 and *A.L. Batra v. State of Haryana* 1991 (2) C.L.R. 614.

10. Before parting with the judgment, competent/Appointing authority may take appropriate action against the Insecticide Inspector concerned for lapse on his part in not filing the complaint in the court immediately after sanction of competent authority to launch prosecution dated 9th March, 1990 had been received by him.

11. For the foregoing reasons, the complaint, summoning order dated 21st June, 1991 as well as consequent proceedings against the present Petitioners are ordered to be quashed. However, it would be open to the trial court to proceed on the basis of the complaint against the other accused according to law. A copy of this order be sent to the court concerned as well as to the Secretary Agricultural Department. Punjab, for compliance.

12. This petition is accordingly allowed.