

(1992) 01 P&H CK 0038

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 14720-M of 1990

Bhai Manjit Singh, Managing Director, Montari Industries Ltd. and Another APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 15-01-1992

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 24(4), 31

Citation : (1992) 101 PLR 535 : (1992) 1 RCR(Criminal) 552

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Bench : Single Bench

Advocate : P.S. Patwalia, H.S. Sethi, G.S. Gill and Anuj Raura, for the Appellant;
A.S. Jatana, AAG., for the Respondent

Final Decision : Allowed

Judgement

Harmohinder Kaur Sandhu, J.—The present petition has been filed u/s 482 Cr. P. C. for quashing the complaint, Annexure P/I, pending before the Chief Judicial Magistrate Gurdaspur and all proceedings arising therefrom.

2. The petitioners are Managing Director and Sales Manager of M/S Montari Industries Limited, a registered company having its head office at village Toansa, Tehsil Balachaur, District Hoshiarpur. M/s Montari Industries manufacture weedicide. The complaint Annexure P/I was filed against the petitioners and others on the allegations that on 17.12.1987 Shri Lakhbir Singh, Insecticide Inspector, inspected the premises of M/s S.S. Aggarwal & Company, G.T. Road, Mandi Gurdaspur and took a sample of Milron 75% WP (Isoproturon) which were alleged to have been manufactured by Montari Industries Limited. One of the sealed packets containing samples was sent to Senior Analyst, Insecticide Testing Laboratory, Ludhiana and in the test report it was stated that the sample did not conform to ISI specification in respect of its percentage of active ingredient contents. On the basis of this report a complaint was lodged against the

petitioners and others under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (Act for short) read with rule 27 (b) of the Insecticides Rules, 1971.

3. Before filing of the complaint a show-cause notice was served on M/s Montari Industries Limited on 17.3.1988 to which Shri B. B. Nagpal, Secretary, had duly filed a reply on 22.3.1988. Thereafter, nothing was heard in the matter by M/s Montari Industries. The petitioners came to know of the complaint only on 16.11.1990.

4. The petitioners assailed their prosecution on the ground that they were never served with copy of analyst report. u/s 24 of the Act, opportunity to rebut the report was provided to all persons who were sought to be prosecuted on the basis of the report of Insecticides Analyst. They were deprived of a valuable right to get the sample analysed from the Central Insecticides Laboratory. The product of which the sample was taken was manufactured in December 1987 and its expiry date was November, 1989. The petitioners had no knowledge of the complaint till November, 1990 by which time the sample had already expired. It was further contended that there was no evidence against the petitioners nor there was any allegation against them in the complaint. There was no sanction to prosecute them in their individual capacity. The sanction to institute complaint was given only against M/s Montari Industries Limited and no sanction was granted to prosecute the petitioners. The sanction was in cyclo-styled form and the blanks were filed in with hand. There was no application of mind before granting the sanction.

5. In the return filed by respondent No. 1 it was admitted that show-cause notice was sent to the company i.e. M/s Montari Industries Limited, but the company was not a party to the complaint. It was however, contended that company was fully aware of the facts that its product was misbranded but it did not approach the trial Court for the benefit of Section 24(4) of Insecticides Act, 1968 for the purpose of analysis of the sample.

6. I have heard the learned counsel for the parties and have gone through the relevant record.

7. Learned counsel for the petitioners has argued that the sample was manufactured in December, 1987 and it expired in November, 1989. Although the complaint was filed much earlier but the petitioners had no knowledge of the complaint till November, 1990 by which time the sample had already expired. The petitioners were, thus, deprived of their important and valuable right to get the sample re-analysed by the Central Insecticides Laboratory under sub-section 4 of Section 24 of the Act. In the written reply it was admitted that the power to send the sample for re-analysis is vested with the Court alone and the petitioner could not move the Court for getting the sample re-analysed till it had notice of the prosecution launched against them. Moreover, copy of the report of the analysis was also not supplied to the petitioners and to the show-cause notice

received by the petitioners an appropriate reply was immediately sent assailing the report that the product did not conform to IS I specification. In support of the contention, the learned counsel placed reliance on the case of S.K. Ahooja v. State of Haryana and Ors. 1989 (1) R. C. R. 596, and also on the case of Trilok Singh v. State of Punjab and Anr. (1990) 17 C. L. T. 185.

8. The case of S. K. Ahooja referred to above rested on identical facts. The Sample of pesticide taken in the case was found substandard by Analyst on the basis of which complaint was lodged but the accused was summoned by the Court after expiry date of pesticide. It was held that this deprived the accused of its right to get the second sample examined by Central Insecticides Laboratory u/s 24(4) of the Act and the proceedings were quashed. In, this case also, the petitioners learnt about the prosecution only after the process was served on them and by the time they came to know about the complaint, the product of which sample was taken was no longer effective. The petitioners, thus, could not avail of their right to get the second sample analysed as per provisions of the law and in this way to controvert the correctness of the report of the analyst on which the prosecution was based. As regards the delivery of copy of the report to the manufacturer it has been observed in the case of H. Lange v. The State of Punjab and Ors. (1985) 12 C. L. T. 323, as follows :-

"It is correct that under Sub-Section 2 of Section 24, there is no obligation on the Insecticide Inspector to supply a copy of the report of the Analyst to the manufacturer of the insecticide, but if the manufacturer of Insecticide is sought to be prosecuted, there is no reason why a copy of the report should not be supplied to him. The object of making provision for delivery of the copy of the report is to give an opportunity to the person concerned to controvert the report in case he is prosecuted. Therefore, irrespective of the provisions contained in sub-section (2) the ends of justice demand that the person who is sought to be prosecuted must be supplied with a copy of the report. The valuable right to get the sample analysed u/s 24(4) of the Act before the expiry date, has been denied to the manufacturer. Thus, undue and unexplained delay in launching the prosecution even after more than ten months of the receipt of the report of the Analyst, or the continuance of proceedings against the manufacturer of the basis of such a report in my opinion, would amount to abuse of the process of the Court, in the present case."

This authority was also relied upon in the case of Trilok Singh (supra).

9. It was next urged on behalf of the petitioners that the petitioners could not be sued in their individual capacity as there was no sanction granted for their prosecution. u/s 31 of the Act no prosecution for an offence under this Act shall be instituted except by order with the written consent of the State Government or a person authorised in this behalf by the State Government. Annexure P/2 is the sanction granted in the present case vide which permission to launch prosecution against M/s S. S Aggarwal and Company, Gurdaspur, dealer, and M/s Montari Industries Limited, New Delhi, manufacturers, was granted. No sanction

was granted to launch prosecution against the Managing Director Bhai Manjit Singh and Sales Manager Shri S. P. S. Saini. Even the sanction to institute prosecution against M/s Montari Industries Limited was not legal and proper as no material pertaining to Montari Industries Limited was placed before the sanctioning authority.

10. The contention of the learned counsel is well merited and the complaint is liable to be quashed on this ground also that no proper sanction was granted for the prosecution of the petitioners. There were no allegations at all against the Managing Director and the Sales Manager in the complaint nor they were shown to be responsible for conduct of business of disputed sample. Bhai Manjit Singh was not even the Managing Director at the time the sample was taken. The Insecticides Inspector visited the premises of M/s S. S. Aggarwal on 17.12.1987 and took sample while the document Annexure P/5 shows that the Central Government approved the appointment of Bhai Manjit Singh as Managing Director of the Company for a period of five years with effect from 1.10.1988. The person who was not holding any office in the Company at the time the product was manufactured and its sample was taken cannot be prosecuted for any offence. The petitioners even otherwise could not be prosecuted unless there was some nexus between them and the commission of the crime. Filling of the names of the dealer and manufacturer in a cyclo-styled form without application of mind even otherwise will not constitute a valid sanction and the complaint is to be quashed on this ground also.

11. Since there is no valid sanction for the prosecution of the petitioners and they were also deprived of their valuable right to get the sample analysed by Central Insecticides Laboratory, the complaint and the proceedings arising therefrom are liable to be quashed. As a result the petition succeeds and is hereby accepted. The complaint Annexure P/I and proceedings arising therefrom are quashed qua the petitioners. Trial Court be informed accordingly.