

(1998) 03 P&H CK 0132

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 22195-M of 1996

Bharat Pesticides

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 02-03-1998

Acts Referred:

Citation : (1998) 3 RCR(Criminal) 189

Hon'ble Judges : B.Rai, J

Advocate : Ravinder Chopra, P.S. Tiwana, Advocates for appearing Parties

Judgement

B. Rai, J.

1. This is a petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India for quashing the complaint under Section 29 read with Section (k)(1) and Sections 17, 18, 33 of the Insecticides Act, 1968 (hereinafter referred to as the Act) and Rule 10 of the Insecticide Rules, 1971 read with terms and conditions of the licence with a further prayer for quashing the subsequent proceedings arising out of the said complaint.

2. Brief facts of the case are that the petitioners being licensed dealers of pesticides are doing the business of selling pesticides under the name and style of M/s Bharat Pesticides, G.T. Road, Tangra, District Amritsar. Respondent No. 2 is the proprietor of the said firm. On 31.5.1995, Insecticide Inspector visited the premises of respondent No. 1 and drew three samples of phorate 10G from the sealed container lying in the premises of the petitioner manufactured by M/s Jay Shree Agro Industries Private Limited, Nathupur District Sonapat. On sample was sent to the Senior Analyst, Insecticide Testing Laboratory, Amritsar for analysis. The said laboratory vide its report dated 5.6.1995 found the sample misbranded being not in accordance with ISI specifications with respect to its percent active ingredients. On the basis of the said report, the complaint was filed against the petitioners. Copy of the complaint is annexed as Annexure P1 with this petition.

3. It is further pleaded that the licence of the petitioners was cancelled by the

Chief Agricultural Officer, Amritsar, dated February 8, 1996 on the ground that the sample was found misbranded. The said order was challenged in appeal before the Joint Director (Plant Protection) Punjab, Chandigarh under Section 15 of the Act. That appeal was accepted and the benefit of the provisions of section 30(3) of the Act was given to the petitioners. Consequently, the licence of the petitioners was restored by the Appellate authority vide its order dated 27.5.1996. Copy of the said order is annexed as Annexure P2 with the petition. On these premises, it has been contended that under no circumstances, petitioners can be prosecuted for misbranded insecticide. As such the continuation of the criminal proceedings under the Act amounts to abuse of process of the Court as the proceedings are not to end in conviction of the petitioner. On these premises, the petitioners have prayed for quashing of the complaint as well as all other subsequent proceedings taken up before the Chief Judicial Magistrate, Amritsar and that they should be discharged.

4. In response to the notice of motion issued to the respondents, reply by way of affidavit of Gurdial Singh Bal, Insecticide Inspector has been filed on behalf of the respondents.

5. I have heard the learned counsel for the parties and have given my thoughtful consideration to the rival contentions raised and have perused the record.

6. The endeavour of the petitioners is to seek protection of the provisions of subsection (3) of section 30 of the Act. The provisions of section 30(3) of the Act came to be considered by this Court in *Puneet Gupta v. State of Haryana*, 1996(3) RCR 587. It was held therein that where the accused was only a licensed dealer of the manufacturer, he could not be held liable for misbranding the insecticide as in view of the provisions of section 30(3) of the Act, dealer could not have been prosecuted when the dealer supplied insecticide to the Insecticide Inspector in the same condition in which it had been purchased by him from the manufacturer. In *M/s Siri Ram Satpal v. State of Haryana*, 1992(1) RCR 613, it was held by this Court that where the accused was a dealer and had purchased the insecticide from the licensed manufacturer and the samples when taken were in original packing and the sample was found misbranded, he could not be held liable if the insecticide was found misbranded or substandard. In *M/s Delhi Agriculture Store v. State of Punjab*, 1997(1) RCR 42, it was held that where the petitioners were retail dealers in insecticides and pesticides and selling the same in packed condition as packed by the manufacturing company, they were protected under Section 30 clause (3) of the Act. It was further held that if the container was found to be properly intact and sealed, the retailer could not be charged with the offence of misbranding or that with reasonable diligence and care it could be found that the insecticide contravened the provisions of the Act in any manner. Similar view was also taken in *Bahadur Singh and another v. State of Punjab*, 1998(1) RCR(Cr.) 562 : 1998(1) RCC 314 and *M/s Hindustan Pesticides and another v. State of Haryana*, 1997(4) RCC 452.

7. It is admitted case of the parties that on receipt of report of Senior Analyst,

Insecticide Testing Laboratory dated 5.6.1996, licence of the petitioners was cancelled by the Chief Agricultural Officer. That order was challenged in appeal before the Joint Director Agriculture (Plant Protection) Punjab, Chandigarh, under section 15 of the Act. The appeal of the petitioners was accepted finding that the petitioners were selling the insecticide in the sealed container and it purchased the insecticide from the registered manufacturer. Even the representatives of the Chief Agricultural Officer admitted during hearing of the appeal that the seal of the container was intact when the sample was taken. Consequently, the benefit of the provisions of section 30(3) of the Act was granted to the petitioner and their licence was restored to them. In view of the finding recorded by the Appellate Authority and in view of the fact that the licence was restored, though with the condition that the petitioners shall not sell the insecticide manufactured by M/s Jay Shree Agro Industries Private Limited Nathupur District Sonapat, there appears to be no justification in filing the impugned complaint by the Insecticide Inspector especially when it is not the case of the respondent that the insecticide was not acquired by the petitioners from a licensed manufacturer or that the insecticide while in possession of the petitioners, was not properly stored and was not in the same state when it was acquired by them. Once it was found that the insecticide was acquired from a licensed manufacturer in sealed containers and while in possession of the petitioners, the insecticide was properly stored and remained in the same condition when it was acquired. It is not the case of the respondents that the containers of the insecticide were found to be tampered with. The facts and circumstances stated do persuade me to form a firm opinion that filing of the impugned complaint against the petitioners is abuse of the process of the Court. I am, therefore, of the considered view that the impugned complaint Annexure P1 and all subsequent proceedings thereto taken therein by the Chief Judicial Magistrate, Amritsar, deserve to be quashed.

8. Accordingly, this petition is allowed, the complaint Annexure P1 and all subsequent proceedings thereto are quashed and the petitioners are discharged.