
(2008) 03 P&H CK 0223

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 53101-M of 2006

B.S. Rana

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 18-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 17, 18, 22, 22(6), 24

Citation : (2008) 3 RCR(Criminal) 210

Hon'ble Judges : Harbans Lal, J

Bench : Single Bench

Advocate : Arun Chandra, for the Appellant; K.S. Sidhu, D.A.G., Punjab, for the Respondent

Final Decision : Allowed

Judgement

Harbans Lal, J.—This petition has been filed u/s 482 of the Code of Criminal Procedure by Mr. B.S. Rana for quashing the complaint No. 271 of 2005 (Annexure P-10) titled State v. M/s Suraj Kheti Store, Ajnala and others pending in the Court of Sub Divisional Judicial Magistrate, Ajnala, District Amritsar, under Sections 3(k)(i), 17, 18 and 33 of The Insecticides Act, 1968 (for brevity 'the Act') and subsequent proceedings arising therefrom.

2. The brief facts giving rise to this petition are that on 29th October, 2003, Baljinder Singh Sandhu, Insecticide Inspector Chogawan, District Amritsar inspected the premises of M/s Suraj Kheti Store, Ajnala Road, Chogawan, District Amritsar and drew the sample of Glyphosate 41% S.L. having its manufacturing date June, 2003 and expiry date May, 2005. The sample was divided into three parts, one part was sent for its analysis to the Regional Pesticides Testing Laboratory, Chandigarh. After its analysis, the sample was found misbranded on 18th November, 2004. On receipt of analysis report, a show cause notice was served to the petitioner. After the receipt of the show cause notice, the petitioner company filed a detailed reply thereto, stating therein that in the present case,

the sample was tested after more than 365 days, which is a violation of the provisions of Section 24(1) of the Act. Another show cause notice/personal hearing dated 4th May, 2005 and 17th March, 2005 was served to the petitioner. Reply was filed thereto stating therein that the sample was tested after the period of 30 days, which is violation of the above-mentioned Section. Secondly, the details of the test report i.e. Chromatic Chart of the failure of the sample was not supplied to the petitioner in compliance with the letter issued by the Government of India, Ministry of Agriculture, New Delhi. Instead of sending the aforesaid chart to the petitioner company by the Department of Agriculture, the present complaint dated 11th May, 2005 was filed in the aforementioned Court, which summoned the petitioner for 12th July, 2005. The shelf life of the sample had already expired, with the result, the petitioner has lost his fundamental right to get the refer sample re-analysed from the Central Insecticides Laboratory, Faridabad, Sequelly, the complaint as well as subsequent proceedings arising there from are liable to be quashed.

3. In reply filed by way of Affidavit of Baljinder Singh Sandhu, Insecticide Inspector, Chogawan, Tehsil Ajnala, District Amritsar on behalf of the State it has been denied that the sample was tested after more than 305 days. The sample was sent to the laboratory in the company's pack of 250 ML in the same state in which it was taken and there was no tampering from the side of answering respondent or anyone else who handled the sample. The sample was sent to the Central Insecticide Laboratory, Faridabad and report of it is the conclusive proof. The provisions of Section 24(1) and other parts of it, is applicable, when the sample is tested by the laboratory other than Central Insecticide Laboratory as per Section 24(3) of the Act. As the sample was tested by the Regional Testing Laboratory of Central Insecticide Laboratory, Faridabad the remedy u/s 24 (3) and (4) of the Act is not available to the petitioner and no prejudice has been caused to the petitioner as the expiry of the sample was May, 2005. The notice dated 4th March, 2005 and 17th March, 2005 were served on the petitioner as he did not appear in time in response to the show cause notice dated 14th February, 2005 to explain the position with regard to the misbranding of the sample in question and the report of the Director, Central Insecticide Laboratory, Faridabad. The reply dated 29th March, 2005 of the petitioner was received after the prescribed period. Moreover, the right to get the second sample tested from the Central Insecticide Laboratory is not available to the petitioner on the ground that the sample had already been tested by the said laboratory through the Regional insecticide Laboratory. No Chromatic chart of the sample was supplied by the aforesaid laboratory alongwith the report as it is not required to be supplied as per the provisions of the Act. The letter of the Secretary, Agriculture, and Government of India is not mandatory and in these circumstances this petition may be dismissed.

4. I have heard the learned counsel for both the parties, besides perusing the record with due care and circumspection.

5. Mr. Arun Chandra, Advocate appearing on behalf of the petitioner canvassed at the bar that the sample was drawn on 29th October, 2003 and as per Annexure P-1, the sample part was received in the laboratory on 17th November, 2003. It implies that the same was not despatched forthwith in adherence to the provisions of Section 22(6) of the Act. He further pressed into service that as transpires from the analysis report Annexure P-1, vide which the sample part was found to be misbranded, was signed on 18th November, 2004, which is obviously after 365 days, though, according to the provisions of Section 24(1) of the Act, this report should have been delivered to the Insecticide Inspector duly signed in duplicate in the prescribed form within 30 days. Furthermore, the Chromatic chart in compliance with Annexure P-8 issued by the Government of India, Ministry of Agriculture should have been supplied to the party/firm with the report but the same was not sent. He further agitated at the bar that the complaint was filed on 11th May, 2005. The petitioner was summoned for 12th July, 2005. Thus obviously, the petitioner was summoned after the expiry of the shelf life of sample part, with the result, the petitioner has been deprived of his valuable right to get the sample part re-analysed. In these premises, the complaints as well as the subsequent proceedings arising therefrom are liable to be quashed.

6. To controvert these submissions, Mr. K.S. Sidhu, Deputy Advocate General, Punjab maintained that the sample was sent to the Central Insecticide Laboratory, Faridabad and the report of it is the conclusive proof. The provisions of Section 24(1) or 24(3) of the Act would have come into play, if the sample had been tested by a laboratory other than Central Insecticide Laboratory. As such, obviously no prejudice has been occasioned to the petitioner. Therefore, this petition is liable to be dismissed.

7. Mr. Arun Chandra, Advocate on behalf of the petitioner countered this argument by urging that the sample part was not analysed by the Central Insecticide Laboratory, rather the same was admittedly got analysed from the Regional Testing Laboratory at Chandigarh. That being so, the petitioner had got the right to get the second part of the sample re-analysed from the Central Insecticide Laboratory. To buttress this stance, he has relied upon the observations rendered in *re: M/s Kissan Trading Co. v. State of Punjab*, 1996 (1) RCR(Cr.) 132 as well as *Raj Kumar v. State of Punjab* and another 1984 SLJ (P&H) 467.

8. On giving a deep and thoughtful consideration to the rival contentions, the view I am disposed to take is that the contentions raised by Mr. K.S. Sidhu, DAG, Punjab are untenable for the reasons to be recorded hereinafter.

Section 22(6) of the Act reads as under:

"22. Procedure to be followed by Insecticide Inspector:

(1) to (5) xx xx

(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 or container, he shall forthwith send to the Insecticide Analyst 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."

9. Adverting to the facts of the instant case, there is no gainsaying the fact that the sample was drawn on 29th October, 2003 though, as per Annexure P-1, the same was received in the Insecticide Laboratory on 17th November, 2003. It leads to an illation that the sample was not despatched forthwith in compliance with the provisions of Section 22(6) of the Act. In *Re: Raj Kumar (supra)*, the sample was taken on February 25, 1981, but it was despatched for analysis to Hyderabad on March 26, 1981, and the same was actually analysed on May 27, 1981. It was held by this Court that there was a violation of mandatory provisions and this has vitiated the impugned orders. The interpretation which obviously can be put on the construction of the language of Section 22(6) *ibid* is that the Insecticide Inspector is obligated to send one portion of the sample forthwith for analysis. Thus, the relevant provisions of Section 22(6) *ibid* were not observed in letter and spirit. So, in view of the observations rendered in *re: Raj Kumar (supra)*, the impugned order is vitiated. It is own case of the State that the sample part was got tested by the Central Insecticide Laboratory through the Regional Insecticide Laboratory. It imports that the Central Insecticide Laboratory itself did not analyse the sample part.

10. In *re: M/s Kissan Trading Company (supra)*, sample of insecticide was found misbranded by Regional Testing Laboratory. It was held that the second sample has to be reanalyzed by the by the Central Insecticide Laboratory, if a request was made by the accused and the contention that re-analysis was not required as sample was analysed by Regional Testing Laboratory, which was a unit of Central Insecticide Laboratory, is not tenable.

11. In view of these observations, the contention of Mr. Sidhu is not maintainable for the reason that the sample was not tested by the Central Insecticide Laboratory rather by the Regional Testing Laboratory, Chandigarh. As would be apparent from the report Annexure P-1, the same was signed on 18th November, 2004 whereas the sample was drawn on 29th October, 2003. Apparently, the report was submitted after about one year.

Section 24(1) *ibid* runs as under:

"24. Report of Insecticide Analyst. - (1) The Insecticide Analyst to whom a sample of any insecticide has been submitted for test or analysis under sub-section (6) of Section 22, shall, within a period of thirty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed

form."

12. From a bare reading of the above language, it transpires that it was obligatory upon the laboratory to deliver the test report duly signed in duplicate in the prescribed form to the Insecticide Inspector within 30 days from the date receipt of the sample part, whereas in the case in hand, the same was signed after about one year. Thus, evidently the test report was not delivered within the stipulated period as laid down in Section 24(l) *ibid*. A glance through Annexure P-6, reply to the show cause notice would reveal that a similar objection has been taken therein by the petitioner.

13. In re: M/s Kissan Trading Company (*supra*), the expiry date of Insecticide sample was June, 1992. The complaint was filed on 9th April, 1993. The petitioner was summoned by the Court for 18th August, 1993 after the expiry the shelf life of the insecticide. The complaint as well as subsequent proceedings arising therefrom were quashed.

14. In the instant case, the shelf life of the insecticide sample was to expire in the Month of May, 2005. In reply filed by the State, the specific date of expiry has not been disclosed. As revealed by Annexure P-10, the complaint was filed on 11th May, 2005. On the same day, the accused were ordered to be summoned to face the trial for 12th July, 2005.

15. State of Haryana Vs. Unique Farmaid P. Ltd. Ors., the accused was summoned by the Court when shelf life of the second sample had expired. It was held by the Apex Court that the he has been deprived of his valuable right to get the second sample retested by the Central Insecticides Laboratory and that the complaint has been rightly quashed by the High Court u/s 482 of Cr.P.C. An identical observation has been made in re: Sanjay Aggarwal v. State of Punjab, 2006 (3) RCR(CrL) 800 (P&H). The manufacturing company could avail its right only after filing of the complaint in the Court. The petitioner lost his right to get the second part of the insecticides sample reanalyzed, as the shelf life of the same had expired at the time of the filing of the complaint as well as on the date fixed for summoning of the petitioner. To put it differently, by the time, the matter came up before the court; the shelf life of the sample had already expired. It would have been an exercise in futility on the part of the petitioner to inform the Court of his intention for retesting of the second part of the sample. In these circumstances, it would be an abuse of process of the Court, if the prosecution is allowed to continue against the petitioner. It is pertinent to mention here that firstly, the sample was not despatched forthwith, in flagrant violation of the mandatory provisions of Section 22(6) *ibid*, secondly, it is height of things that it took about one year to reanalyse the sample, though it was required to be analysed within 30 days which speaks volumes of blatant contravention of the mandatory provisions of section 24 (1) *ibid*. Thirdly, the complaint was lodged on 11th May, 2005, when the shelf life of the sample had either expired or it was going to expire. It appears as if at every stage, the delay was allowed to creep either wittingly or unwittingly. The above-referred delay at

every step in itself speak that the afore-quoted mandatory provisions of law were thrown to the wind. The rationale behind the use of expressions "forthwith" and "thirty days" in the language of Sections 22(6) as well as 24(1) of the Act, respectively, is to expedite the analysis of the sample well before the expiry of shelf life of the sample. Herein the delay of about one year in analysing the sample is unheard of.

As a sequel, of the preceding discussion, this petition is allowed and the complaint Annexure P-10, the summoning order Annexure P-11 and the subsequent proceedings arising therefrom are hereby quashed.