
(2004) 02 P&H CK 0019

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7910-M of 1998

B.Shiva Rama Reddy and another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 11-02-2004

Acts Referred:

Citation : (2005) 1 RCR(Criminal) 28

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

Advocate : Mr. Gaurav Chopra, Advocate.For the Respondent-State, Mr. Yashwinder Singh, A.A.G., Punjab., Advocates for appearing Parties

Judgement

S.S. Grewal, J.

1. This petition has been filed under Section 482 of Code of Criminal Procedure for quashing the complaint dated 24.4.1997 (Annexure P1) under Sections 3(k) (1), 17, 18, 33 punishable under Section 29 of the Insecticide Act, 1968 (for short, "the Act") read with Rule 27(5) of the Insecticide Rules, 1971 and all the consequent proceedings arising out of the said complaint.

2. It has been averred in the petition that petitioner No. 1 is the Assistant Manager, Quality Control of M/s. Bhaskar Agro Chemicals Limited (for short, "the Company"), a registered manufacturing company of different types of insecticides and pesticides, situated at Survey No. 286, Lingo Ji Dugam Choutuppall Mandal, Nalagonda (Andhra Pradesh) and petitioner No. 2 is the Manager of the Company. The Insecticide Inspector on 9.7.1996 inspected the premises of M/s Lekh Raj and Sons, Mandi No. 2, Abohar who is a dealer of the Company and drew the sample of Monocrotophos 36% S.L. Manufactured by the Company in three original packing containers of Monocrotophos 36% SL, batch No. 024, manufacturing date 8/95 expiry date 1/97 each containing 250 mls. Two parts of the sample were sent to the office of the Chief Agricultural Officer, Ferozepur and one part was handed over to the dealer. One part of the sample was sent to the Insecticide Testing Laboratory, Amritsar. From the test report, it was found by the Senior Analyst that the sample did not conform to the relevant

ISI specifications in its active ingredients percentage as the sample contained 32.93% active ingredients instead of 36%. On the basis of the report of the Senior Analyst, complaint Annexure P1 was lodged in the Court of Shri B.S. Mangat, SubDivisional Judicial Magistrate, Abohar against the proprietors of the dealer firm and two officers of the Company. The officers of the company filed the present petition before this Court on the ground that they could not be prosecuted because they were not the persons Incharge and responsible for the conduct and business of the Company and thus the complaint be quashed qua them.

3. On 1.4.1998 notice to the State of Punjab was issued and further proceedings in the trial Court were stayed.

4. I have heard learned counsel for the parties.

5. Learned counsel for the petitioner argued that in this case, complaint Annexure P1 has been filed in which the petitioners have been arrayed as accused. They could not be prosecuted as they were not the Incharge and responsible persons of the Company and that the complaint is liable to be dismissed being contrary to Section 33 of the Act which clearly provides that whenever an offence under this Act has been committed by a company, "Every person who at the time the offence was committed, was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."

6. Learned counsel also argued that in the absence of specific allegations in the complaint, the petitioners could not be arrayed as accused and there is no allegation against them. They have only been implicated being the officers of the company. He has referred to the judgment in this behalf of this Court in Criminal Misc. No. 39287M of 2001, Shabbir Itarsi and another v. State of Haryana, decided on January 14, 2004. He has further referred to the decision of this Court in the case of K.R. Dass M.D. Vantech Industries Ltd. v. State of Punjab, 1998(2) RCR(Crl.) 611. In the case of Shabbir Itarsi (supra), it has been held as under :

"13. In view of the aforesaid position of law, I have examined the averments made in the complaint (Annexure P1). The only averment made against the petitioners is that they are the responsible persons of the company. In my opinion, that averment is not enough to hold them responsible for the offence committed by the company. There must be clear averment in the complaint against the petitioners to the effect that they were responsible for the conduct of the business at the time when the offence was committed. According to Section 33 of the Act, only those persons can be prosecuted who at the time of commission of the offence were incharge and were responsible to for the conduct of the business of the company. Subsection (2) of this Act further makes it clear that when it is proved that offence was committed with the consent or

connivance which can be attributed to any neglect on the part of the director, manager, secretary or other officer of the company, he shall also be liable to be proceeded against and punished. But there is no allegation in the complaint that the offence in question was committed with the consent or connivance or is attributed to any neglect on the part of the petitioners.

14. In view of the aforesaid discussion and position of law, this petition is allowed. Complaint (Annexure P1) qua the petitioners and subsequent proceedings are hereby quashed."

7. On the other hand, learned State counsel contended that the petitioners are liable to be prosecuted against in the complaint, Annexure P1 and punished under the provisions of the Act.

8. A perusal of paragraph 11 of the complaint Annexure P1, shows that it has not been alleged therein as to how both the petitioners were Incharge and responsible for the day to day conduct and business of the Company at the time when the offence was committed. In view of the settled law, referred to above, this petition is allowed and the complaint, Annexure P1, qua the petitioners and subsequent proceedings thereof, initiated if any, are hereby quashed.