

(1994) 09 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 149-M of 1993

C.S.Krishnamurthy

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Citation : (1995) 1 AICLR 86 : (1994) 3 RCR(Criminal) 618

Hon'ble Judges : H.S.Brar, J

Advocate : G.S. Nihal Singh Walia, Promila, Arun Nehra, Advocates for appearing Parties

Judgement

H.S. Brar, J.

1. In this petition under Section 482 Cr.P.C. read with Article 227 of the Constitution of India, the petitioner seeks quashment of complaint dated 29.8.1990 annexed as annexure P5 with the petition on various grounds including the one that the consent/sanction much less the proper sanction which is sine qua non under Section 31(1) of the Insecticides Act, 1968 (hereinafter referred to as the Act), to prosecute the petitioner has not been taken. The alleged consent/sanction order which is annexed as annexure P4 with the petition, reads as under :

"Whereas I am satisfied from the perusal of the relevant record placed before me of M/s. Ude Bhan Gupta and Sons, Faridkot and others regarding committing of a breach of the provisions of Sections 3K(1), 17, 18, 29 and 33 of the Insecticides Act, 1968 read with Rule 27(5) of Insecticides Rules, 1971 by M/s. Ude Bhan Gupta and Sons, Faridkot (Dealer) and others. Now, therefore, in exercise of the powers conferred upon me under Section 31(1) of the Insecticides Act, 1968 vide Punjab Government Notification No. 15/5/86Agri.II (3) 9264 dated 23.6.1986. I. B. Singh Virk, Joint Director of Agriculture (ICDP) give consent/sanction to Sh. Kuldeep Singh, Insecticides Inspector, Faridkot for instituting prosecution against M/s. Ude Bhan Gupta and Sons, Faridkot (Dealer) M/s. Garg Brothers and Co., Kotkapura (Distributor). M/s. Evid and Chemicals Pesticides Ltd., Delhi."

2. Learned counsel for the petitioner further states that as the alleged consent/sanction order has been given in a mechanical manner without application of mind and on a cyclostyled form, there is no mention of the contents of the report of the Analyst in the consent and the consent order does not refer to the name of petitioner C.S. Krishnamurthy at all. It only refers to M/s. Evid and Chemicals Pesticides Limited, Delhi. At the best, according to the counsel, the consent could be considered for the prosecution of M/s. Evid and Chemicals Pesticides Limited, C.S. Krishnamurthy could not be prosecuted without there being specific consent for his prosecution. His prosecution is, thus, wholly without jurisdiction and without the authority of law. Even in the original complaint, the learned counsel states that accused No. 2 was M/s. Evid and Company Chemicals, Limited. Surat Getal Wad, IDCP, 356 Katargon Surat. (a) B.L. Daruwala Export (b) K.M. Shah Export." On an application filed by Sarv Shri B.I. Daruwala & K.M. Shah they were discharged. It is not mentioned as to how and under what authority of law the name of C.S. Krishnamurthy (petitioner) was added in the array of the accused. The learned counsel for the petitioner thus, states that the complaint qua petitioner C.S. Krishnamurthy and further proceedings in consequence thereof are nothing but an abuse of the process of the Court.

3. I have heard the learned counsel for the parties and have gone through the complaint as well as the written consent/sanction order attached with the petition.

4. Subsection (1) of Section 31 of the Act clearly mandates that no prosecution for an offence under this Act shall be instituted except by or with the written consent of the State Government or a person authorised in this behalf by the State Government. The written consent/sanction under Section 31(1) of the Act has been reproduced above and has also been annexed as annexure P4 with the petition. A reading of the consent/sanction order annexure P4 reveals that the consent/sanction is at the most in respect of prosecution against M/s. Evid and Chemicals Pesticides Limited, Delhi and not against C.S. Krishnamurthy, the petitioner. Not to talk of mentioning the name of the petitioner C.S. Krishnamurthy, as to whether he was incharge of or was responsible to the said Firm for the conduct of its business, even his name does not find mention in the complaint. The following authorities are relevant to mention :

(i) Raghbir Chand v. State of Punjab, 1993(1) RCR 111 ,

(ii) J.P. Somaiya Company Secretary v. Charan Singh Bhullar, Insecticide Inspector and another, 1992(2) RCR 229 ,

(iii) Gian Chand v. State of Punjab, 1994(2) RCR 114 , and

(iv) D.N. Chaturvedi v. State of Punjab, 1994(2) RCR 133 .

5. In these circumstances, to proceed against the petitioner C.S. Krishnamurthy on the basis of the complaint and the written consent/sanction, which, according to me, is not valid, shall certainly be an abuse of the process of the Court. I,

therefore, allow this petition and quash the complaint annexure P5 and further proceedings, if any. It is, however, made clear that the respondent authority will be at liberty to proceed against the petitioner after taking proper consent/sanction in accordance with law, if so advised.