
(2000) 05 RAJ CK 0077

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1108 of 1999

Cyanamid Agro India Ltd. and Another

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-05-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Limitation Act, 1963 — Section 22, 24, 29

Citation : (2000) 3 RLW 1779 : (2000) WLC 533 : (2000) 2 WLN 76

Hon'ble Judges : G.L. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.L. Gupta, J.—M/s Cyanamid Agro India Limited and four others have invoked the jurisdiction of this court u/s 482 Cr. P.C. for quashing the proceedings pending against them in the court of Judicial Magistrate, Todaraisingh u/s 29(1) (A) of the Insecticides Act, 1968, (for short "the Act").

2. The facts of the case are these. On 23.7.1992 the Insecticide Inspector inspected the shop of M/s Todaraisingh, Krya Vikrya Sahkari Samiti and took the sample of insecticide known as Dramet 20 E.C. chemical (chlorpyrifos) for analysis. The sample was sent to the Insecticide Laboratory at Durgapura from where it was opined vide letter dated 14.9.1992 that the insecticide was mis branded. Thereupon, the Insecticides Inspector gave notice to the vend or from whom the sample was taken and also the manufacturer of the insecticide and filed a criminal complaint against the vendor, the distributor and the manufacturer, on 17.6.1994.

3. The contention of Shri Bhargava is that the insecticide was not retested despite the request of the vendor and therefore, the right of the petitioner of retesting provided u/s 24(4) has been violated and the proceedings are liable to be quashed. He submits that in the complaint, it is not stated that the petitioners are the incharge and responsible to the business of the company and therefore,

the prosecution is liable to be quashed on that ground also. Shri Bhargava relying on the cases of State of Punjab Vs. National Organic Chemical Industries Ltd., . State of Haryana Vs. Unique Farmaid P. Ltd. Ors., , Krishna Kumar Bagla v. B.L. Sharma, Superintendent (Prosecution) Central Excise and Customs, Jaipur 1994 (2) WLC 547, M/s Bharat Insecticides Limited and Ors. v. State of Rajasthan and Ors. 1997 (1) WLC 657, M/s Gupta Chemicals Pvt. Ltd. and Ors. v. State of Rajasthan & Insecticide Inspector 1996 (2) WLC 690 , Hindustan Ciba Geigy Ltd. and Others etc. Vs. State of Rajasthan and Others, Bayer India Ltd. and Ors. v. State of Rajasthan and Ors. 1997 WLC (UC) 630, Mohan Lal v. State of Rajasthan 2000 WLC (UC) 22, M/s. Raj Hans Chemicals v. State of Punjab 1995 (1) CC Cas 556 (P & H), A.L. Batra v. State of Haryana 1988 91 CC Cas 11 (Supp.), Ravi Kant v. State of Punjab 1997 FAJ 95 (P & H), Delhi Agriculture Store and Ors. v. State of Punjab 1996 (3) CC Cas 564 (P & H), Vyapak Puri v. State of Punjab and Anr. 1988 91 CC Case 318 (P & H), Surinder Pal Singh Saini v. State of Punjab and Anr. 1994 (3) CC Cas 415 , prays that the proceedings pending against the petitioners be quashed.

4. Per contra, the learned Public Prosecutor argues that the report of the Insecticide Inspector fully establishes the charges against the vender as also the manufacturer and distributor and therefore, the proceedings should not be quashed.

5. I have given the matter my thoughtful consideration, Section 24 of the Act reads as follows:

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 sixty days, deliver to the Insecticide Inspector submitting it a signed report in duplicate in the prescribed form.

(2) The Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and shall retain the other copy for use in any prosecution in respect of the sample.

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty-eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticides Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under Sub-section (6) of Section 22 to be sent for test or analysis to the said laboratory, which shall make the test or analysis

and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

(5) The cost of a test or analysis made by the Central Insecticides Laboratory under Sub-section (4) shall be paid by the complainant or the accused, as the Court shall direct.

6. Under Sub-section (3), a document purporting to be a report signed by the Insecticide Analyst is conclusive unless the person from whom the sample was taken has within 28 days of the receipt of a copy of the report informs to the Insecticide Inspector or the court that he intends to adduce evidence in controversion of the report. Under Sub-section (4), the sample can be retested or analysed by the Central Insecticides Laboratory when an accused notifies his intention of adducing the evidence to controvert the report of the Insecticide Analyst. Sub-section (4), gives a valuable right to an accused to get the sample of the insecticide retested by the Central Insecticides Laboratory. The Apex Court, as also this court, in a number of cases has held that if an accused is deprived of his right of retesting of sample by the Central Insecticides Laboratory, the proceedings against him are liable to be quashed.

7. It is noticed that the insecticide, of which sample was taken was manufactured in April 1992 and the expiry of the shelf life of the product was March 1994. The complaint itself has been filed in the court on 17.6.1994. It is, thus, obvious that the complaint has been filed after the expiry of the shelf life of the insecticide.

8. It is further noticed that as the vendor was informed about the report of the Insecticide Analyst, he immediately requested the Insecticide Inspector to send the sample for retesting to the Central Insecticides Laboratory. The letter of the vendor dated 1.12.1992 has been placed on record by the prosecution itself. It is admitted position that despite the request of the vendor, the sample was not got retested by the Central Insecticides Laboratory.

9. Even the distributor of the sample, i.e. M/s Choudhary Trading Company had also requested the Insecticide Inspector vide letter dated 28.12.1992 to get the sample retested by the Central Insecticide Laboratory, but their request was also not accepted.

10. The petitioners, who are the manufacturers of the insecticide, could certainly take advantage of the report of the Central Insecticide Laboratory, had the sample been retested by that Laboratory. The effect of deprivation of the right of the accused to get the sample retested u/s 24(4) of the Act, entitles the petitioners to get the proceedings quashed.

11. Since the petition deserves to be allowed on the first ground, there is no need to deal with the second contention of the learned Counsel for the petitioners.

12. Consequently, the petition succeeds. The proceeding pending against the

petitioners in the court of Judicial Magistrate, Todaraisingh in criminal case No. 187/96 are hereby quashed.