
(2009) 10 P&H CK 0014

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous M-7038 of 2008

Deepak Sharma and others

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 07-10-2009

Acts Referred:

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

Citation : (2010) 2 RCR(Criminal) 274

Hon'ble Judges : Jora Singh, J

Bench : Single Bench

Advocate : Rakesh Verma, for the Appellant; P.S. Sidhu, Addl. AG, Punjab, for the Respondent

Final Decision : Allowed

Judgement

Jora Singh, J.—Deepak Sharma and others filed this petition u/s 482 Cr.P.C. for quashing of complaint titled as State v. M/s. Friends Agro Chemicals and others under Insecticides Act, 1968, read with Insecticides Rules, 1971, pending in the Court of JMIC, Amritsar (Annexure P-1) and summoning order (Annexure P-2).

2. State of Punjab filed complaint u/s 29 read with Sections 3(k)(i), 17, 18 and 33 of Insecticides Act, 1968 (for short 'the Act'), read with Rules 10 and 27(5) of Insecticides Rules, 1971 (for short 'the Rules'), on the allegation that Satwinder Singh is working as Agriculture Development Officer (Plant Protection), Block Verka, District Amritsar, and was notified as Insecticide Inspector. All the Insecticide Inspectors are public servants. He was authorized to file complaint under Rule 27(5) of the Rules. Deepak Sharma and others are the partners of M/s. Friends Agro Chemicals (India). Licence was issued to the firm and it was valid upto 31.12.2005 for selling, stocking and exhibiting for the sale of insecticides. On 21.6.2004, the Insecticide Inspector along with other employees had inspected the premises of M/s. Friends Agro Chemicals (India). Deepak Sharma, partner of the firm, was found present at the shop premises.

After introducing himself as Insecticide Inspector, notice in Form XX was issued to draw a loose sample of Butachlor 50% EC for test/analysis. One container of Butachlor 50% EC in 5 lts. Packing, brand as Butatox bearing Batch No. B-5041, manufacturing date 29.3.2004 and expiry date 28.3.2006, manufactured by M/s. Singhal Pesticides, 9/122, Moti Bagh, Jamunapar, Agra, was taken out of 21 tins of 5 lts. packing. After breaking seal of the container of 5 lts. packing, sample was drawn.

3. Learned counsel for the petitioners argued that the petitioners had a licence on the date of checking. Sample of insecticide was drawn out of sealed container from the premises of the petitioners. The petitioners are not liable in case the sample on analysis was found to be misbranded. Paras No. 2 and 3 of the complaint are reproduced as under :-

2. That Deepak Sharma s/o Darshan Kumar Sharma, r/o 486-A, Basant Nagar, Majitha Road, Amritsar, and Sukhchain Singh s/o Sewa Singh, r/o 120, Partap Avenue, GT Road, Amritsar, are partners of the firm M/s. Friends Agro Chemicals (India), 46, Hide Market, GT Road, Amritsar (attested copy of partnership deed and affidavit enclosed as Annexure-B). The firm was issued a licence in Form VIII bearing licence No. INS/218/12/88 by the Licencing Officer (Chief Agriculture Officer, Amritsar), which was valid upto 31.12.2005 for selling, stocking and exhibiting for the sale of insecticide of those companies only whose names were mentioned in the licence subject to term and condition of the licence (attested copy of licence enclosed as Annexure-C).

3. That I Satwinder Singh, Insecticide Inspector, Block Verka, Distt. Amritsar, exercising the powers conferred upon me under the provisions of Sections 21 and 22 of the Insecticides Act, 1968, and Rule 27 of the Insecticides Rules, 1971, inspected the premises of M/s. Friends Agro Chemicals (India), 46, Hide Market, Amritsar, on 21.06.2004 along with Sh. Raman Kumar, Agriculture Development Officer (Distt. Work), Block Verka, Distt. Amritsar. Deepak Sharma s/o Darshan Kumar Sharma, partner of M/s. Friends Agro Chemicals (India), Amritsar, was present at the shop premises and selling, stocking and exhibiting for sale the Weedicide 21 tins of 5 lt. packing of Butachlor 50% EC (Brand name BUTATOX). The label of each tin bars Batch No. B-5041, manufacturing date 29.03.2004 and expiry date 28.03.2006, manufactured by M/s. Singhal Pesticides, 9/122, Moti Bagh, Jamunapar, Agra.

4. Reply to paras No. 2 and 3 by the State is to the effect that contents of para No. 2 of the petition are admitted. The contents of para No. 3 of the petition are also admitted being matter of record that the sample was drawn out of the sealed container of 5 lts.

5. Learned State counsel argued that u/s 29 of the Act, whoever stocks or exhibits for sale or distributes any insecticide deemed to be misbranded is liable for punishment. The petitioners are not appearing before the trial Court. Only manufacturer is appearing before the trial Court. If the petitioners are not liable,

then they can appear before the concerned Court and move an application for discharge.

6. Submissions of learned State counsel seem to be not reasonable one. The petitioners are not the manufacturer of the relevant insecticide. The petitioners were licensed dealer and the licence was valid at the time of raiding the premises of the petitioners.

7. The petitioners were only licensed dealer. Secondly, the sample was seized from a sealed container lying in the premises of the firm. Admittedly, the sample on analysis was found to be misbranded, but learned State counsel failed to cite any authority that the petitioners being licensed dealer were liable when the sample was drawn from a sealed container.

8. In 2008(2) RCR (Cri.) 24, Gurmej Singh and another v. State of Punjab; 2008(2) RCR (Cri.) 24, Deepak Sharma and others v. State of Punjab; 2008(4) RCR (Cri.) 515, Jagtar Singh and another v. State of Punjab; 1998(4) RCR (Cri.) 865, Hardit Siugh v. Union of India, and M/s Kisan Beej Bhandar, Abohar v. Chief Agricultural Officers, Ferozepur and Anr. Hon''ble High Court as well as Hon''ble Apex Court held that if the sample seized from a sealed container on analysis was found to be misbranded, then the licensed dealer cannot be held liable.

9. In the light of above discussion, the petitioners being licence holder and sample drawn from a sealed container, complaint (Annexure P-1) and summoning order (Annexure P-2) with all consequential proceedings arising there from are ordered to be quashed.

10. The petition is allowed accordingly.