
(2001) 11 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : Criminal M. No. 10686-M of 1997

Dhaliwal Agro Centre, Sahnewal

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 23-11-2001

Acts Referred:

Citation : (2002) 2 AICLR 458 : (2002) 1 RCR(Criminal) 716

Hon'ble Judges : Ashutosh Mohunta, J

Advocate : Mr. Rakesh Verma, Advocate. Ms. S.K. Bhatia, Senior D.A.G. Punjab.,
Advocates for appearing Parties

Judgement

Ashutosh Mohunta, J

1. The present petition has been filed under Section 482, Cr.P.C., for quashing the complaint dated January 25, 1996 (Annexure P1) under the Insecticides Act, 1968, as also the summoning order (Annexure P2) passed by the Chief Judicial Magistrate, Ludhiana.

2. The petitioner deals in insecticides and pesticides and has a licence in this regard. It sells them in the same packed condition as are taken from the manufacturers. As per the complaint it was alleged that on August 5, 1995 the complainant Lakhbir Singh, Agricultural Development Officer, Ludhiana, notified as Insecticide Inspector, raided the premises of the petitioner along with Satnam Singh Ankhy, Agricultural Officer, Ludhiana, and Jagjit Singh, Agricultural Development Officer (Enforcement), Ludhiana. During the course of checking it was found that the insecticides were stored in an unauthorised godown, which was not permitted to store insecticides by the Licensing Officer. A sample of 2, 40 34% (Ethyleaster) having its expiry date as January 1996, was taken. This insecticide was manufactured by M/s. Haryana Pesticides, Mandhaur. It was stored at a place which was unauthorised under the provisions of the Insecticides Act, 1968 as per clause 13 of the Act read with Rule 10 of the Insecticides Rule, 1971.

3. Three samples were drawn of the ethyleaster out of which one sample was sent to the Senior Analyst, Insecticides Testing Laboratory, Bathinda, who opined that the sample did not conform to the I.S.I. specifications and hence was misbranded under the provisions of the Insecticides Act, 1968.

4. After receiving the report from the Analyst, the complainant filed the present complaint before the Chief Judicial Magistrate, Ludhiana. The Chief Judicial Magistrate vide order dated January 25, 1996 found sufficient grounds to proceed against the petitioner under Sections 3k(i), 13, 17, 18, 23, 29 and 33 of the Insecticides Act, 1968.

5. Counsel for the petitioner has challenged the filing of the complaint as well as the issuance of summons to the petitioner primarily on the ground that the samples were drawn from a sealed packet and the petitioner being a dealer, could not possibly have known the contents in the sealed tin containing the insecticide. He, thus, contends that if any prosecution has to be launched, then it should be against the manufacturer and not the dealer. According to the counsel, the misbranding and the sealing of the insecticides is done at the place of the manufacturer and, therefore, the dealer cannot be held liable for any misbranding. He has relied upon the decision in *M/s. Rajindra Prasad v. State of Haryana*, 1998(1) RCR(Criminal) 163, and *Safex Chemicals India Limited v. State of Haryana*, 2001(1) RCR(Criminal) 654; wherein the complaints were quashed against the dealers as the samples had been drawn from the sealed packets. It was held that the dealers could not have known with reasonable diligence that the insecticides, in any manner, contravened any of the provisions of the Insecticides Act.

6. The State has filed the written statement and it has been contended that every dealer, who wants to sell, stock or exhibit any insecticide, has to obtain Insecticides Licence in accordance with Rule 10(4) read with Clause 13 of the Insecticides Act, 1968. The dealer must possess a certificate from the manufacturer, whose insecticides are to be sold or stocked, and as per Form VI, Sr. Nos. (5) and (8), it must state "I enclose a certificate from the Principal whom I represent or whom I intend to represent and the source/sources from which insecticide will be obtained" and "the names of insecticides in which the applicant desires to carry on business." It is contended by the State counsel that the petitioner had not applied for the sale/stock of M/s Haryana Pesticides Products. Thus, the petitioner was selling insecticides without permission and unauthorizedly. It is further contended that the sample taken of the ethyleaster, manufactured by M/s Haryana Pesticides was found to be misbranded and, therefore, the petitioner cannot escape from its responsibility for selling or stocking this misbranded product. It has further been argued by the State counsel that as per application Form VI under Rule 10(1) of the Insecticides Rules, 1971, and also as per Section 7 of the Insecticides Act, 1968, the location of the premises, where the product is to be stored, has to be mentioned, whereas in the present case, no such sanction had been obtained.

7. I have considered the rival contentions. In the present case the sample was taken from a sealed container. But the question is : Were the insecticides stored in a proper place, so as to keep the product in its original condition in which the dealer had received from the manufacturer ? Moreover, it is yet to be determined whether the misbranding of the insecticides was done by the manufacturer or by the dealer. Still further, it is yet to be determined whether the petitioner had the permission to sell the product manufactured by M/s Haryana Pesticides or whether it had the permission for storing the product at a place which was not mentioned in the licence. To answer these questions, evidence has to be recorded and the case would have to be tried.

8. The primary function of the Court is to examine whether the complaint discloses a prima facie case or not. A bare perusal of the complaint clearly shows that specific allegations have been made with regard to the contravention of various provisions of the Insecticides Act. Prima facie the version, as given in the complaint, makes out a case under Sections for which the petitioner is required to be tried. The Court at this stage cannot adopt a conjectural approach. Once a prima facie case is made out, it is not the function of the High Court under Section 482, Cr.P.C., to substitute its own opinion while invoking the inherent powers. The powers under Section 482, Cr.P.C., are meant to be exercised sparingly and with circumspection. Hon'ble the Supreme Court in the case reported as Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and others, AIR 1976 SC 1947, has observed as under :

".... Thus it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside :

(1) where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like. The cases mentioned by us are purely illustrative and provide sufficient guidelines to indicate contingencies where the High Court can quash proceedings."

The same principle would apply mutatis mutandis to a criminal complaint.

9. Apart from the above, we cannot lose sight of the fact that the sample drawn

was misbranded. Thus, the Chief Judicial Magistrate, Ludhiana, rightly issued the summoning order (Annexure P2).

10. In view of the above, I find no merit in this petition and the same is dismissed. The petitioner is directed to appear before the Chief Judicial Magistrate, Ludhiana, on January 17, 2002.

11. As the matter is very old, the Chief Judicial Magistrate is directed to expedite the proceedings in the case.

12. Nothing stated herein shall have any bearing on the merits of the case.