
(1996) 05 P&H CK 0121

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 15606-M of 1996

Gharda Chemicals Limited

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 29-05-1996

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 99

Hon'ble Judges : V.S.Aggarwal, J

Advocate : Ravinder Chopra, J.S. Brar, Advocates for appearing Parties

Judgement

V.S. Aggarwal, J.

1. Insecticide Inspector, Muktsar had taken three samples of Anilophos bearing Batch No. 82 having manufacturing date of July, 1991 and expiry date of June, 1993 from the premises of M/s. Jain Traders, Muktsar. This samples were taken on 22.6.1992. Three sealed containers were taken for purposes of sample. One sealed sample was sent to the Central Insecticide Laboratory. Report was received that it does not conform to the physical description required. It was misbranded. On the basis of the said report, the complaint was filed on 28.5.1994. It was filed against S.S. Upadhaya, E. Philips and J.S. Syed besides others.

2. Petitioners seek quashing of the complaint and contend that when sample was found misbranded, a show cause notice was given to the petitionercompany as to why action may not be initiated under the provisions of Insecticides Act, 1968. A reply was sent that no law had been violated. The petitioners did not accept the results mentioned in the report. The request of the petitioners was ignored and the complaint was filed after the shelf life of the product had expired. In this process a valuable right of the petitioner was lost. Besides that it is contended that proper sanction has not been granted. There is no averment in the complaint as to who was the person incharge of the company and responsible for the conduct of business of the company. In the absence of any such averment, the petitioners mentioned above could not be prosecuted.

3. Reply has been filed. It is denied that there is delay in filing of the complaint. The sanction was stated to be valid and that the complaint has rightly been filed against the petitioners.

4. Learned counsel for the petitioners at the outset argued that petitioners namely S.S. Upadhaya, E. Philips and J.S. Syed could not be prosecuted because they were not the persons incharge of and responsible to the company for the conduct of the business of the company. Section 33 of the Insecticides Act, 1968 runs as under :

"33. Offences by companies. (1) 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 :

Provided that nothing contained in this subsection shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purpose of this section,

(a) "company" means by body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

5. This provision spells out that when an offence is alleged to have been committed by the company, then every person who at the time the offence was committed, was incharge of or was responsible to the company for the conduct of the business of the company, besides the company shall be deemed to have committed the offence. It is obvious from plain reading of sub section (1) of Section 33 of the said Act that merely being a responsible person is not enough. He should be responsible to the company for the conduct of the business of the said company. Subsection (2) of Section 33 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.

6. Annexure P2 is the copy of the complaint. There is no assertion made anywhere that S.S. Upadhaya, E. Philips and J.S. Syed were responsible to the company for the conduct of the business of the company. In the absence of any specific allegation, it is surprising that these persons have been arrayed as accused. Unless specific assertions are made, they cannot be asked to undergo the agony of the trial.

7. A similar question cropped up before this Court in the case of B.B. Nagpal, Ex. Company Secretary v. State of Haryana, 1995(2) RCR 291. Therein the accused was the Company Secretary of the concerned company. There was no assertion that the said person was incharge of or responsible to the company for the conduct of the business of the company. There was nothing to indicate that the offence had been committed with the consent, connivance or neglect of the said person. Taking note of other facts also, the complaint was quashed.

8. By and large identical are the facts in the present case. As already pointed out above, there is not even an iota of assertions about S.S. Upadhaya, E. Philips and J.S. Syed that they were responsible to the company for the conduct of the business of the company. Therefore, the complaint qua these persons is liable to be quashed.

9. For these reasons, the petition is accepted. The complaint qua S.S. Upadhaya, E. Philips and J.S. Syed and the subsequent proceedings are, quashed.