
(1996) 09 P&H CK 0089

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9161-M of 1995

Hari Singh Verma

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 03-09-1996

Acts Referred:

Citation : (1997) 1 AICLR 567 : (1997) 1 AICLR 357 : (1997) 1 RCR(Criminal) 156

Hon'ble Judges : P.K.Jain, J

Advocate : Raman Gaur, Ravinder Chopra, Advocates for appearing Parties

Judgement

P.K. Jain, J.

1. This petition has been filed under section 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") read with Article 227 of the Constitution of India for quashing complaint Annexure P.2 filed under section 29(i) of the Insecticides Act, 1968 (hereinafter referred to as "the Act") pending in the Court of the Chief Judicial Magistrate and all the consequent proceedings arising therefrom.

2. The necessary facts for the disposal of this petition are that on 16.8.1993, the Insecticides Inspector visited the business premises of M/s Kissan Agro Agencies, Rania, and purchased a sample of Monocrotophos 36% SL being manufactured by petitioner No. 2. The sample, on analysis, was found to be misbranded. A showcause notice along with a copy of the Analysis report was sent to M/s. Kissan Agro Agencies as well as petitioner No. 2 vide letter dated 1.10.1993. M/s. Kissan Agro Agency moved an application under section 24 of the Act and the counter sample was sent for analysis to the Central Insecticide Laboratory, Faridabad, and according to the report received, the sample was found to be misbranded. After obtaining the necessary consent as required under the Act, the Insecticides Inspector filed a complaint under section 29(1) of the Act and Rules made thereunder against M/s. Kissan Agro Agency, its proprietor and the petitioners.

3. The petitioners have challenged the competency of the impugned complaint (Annexure P.2) on the grounds that on the receipt of the showcause notice, petitioner No. 2 did not accept the report of the Public Analyst and requested the department to send the counter sample to the Central Laboratory for analysis which was not done and thereafter the complaint has been filed after the expiry of the shelf life of the insecticide which deprived the petitioners of their valuable right under section 24 of the Act, that there is no proper consent for prosecution of the petitioners as required by Section 31 of the Act and that there is violation of Section 33 of the Act.

4. In reply, the respondent State has stated that the sample was taken in accordance with law and the rules framed thereunder, that the same was found to be misbranded by the State Laboratory, that on a request made by M/s. Kissan Agro Agency, from whom the sample was purchased, the counter sample was sent to the Central Laboratory, Faridabad, for analysis under the orders of the Court and the sample was again opined to be misbranded. It has been further stated that proper consent to prosecute the petitioners has been obtained and the provisions of Section 33 have also not been violated.

5. I have heard the learned counsel for the parties and have perused the record.

6. Shri Ravinder Chopra, Advocate, learned counsel for the petitioners, has argued that since the petitioners had challenged that correctness of the report of the Public Analyst, the complaint ought to have been filed before the expiry of the shelf life, and as such the petitioners have been deprived of their valuable right under section 24 of the Act. The learned counsel for the petitioners has further argued that the consent has been given on a cyclostyled form by the authority without applying its mind, which is contrary to the provisions contained in Section 33 of the Act. It has been further argued by the learned counsel that there is no averment in the complaint as to in what capacity Hari Singh Verma, petitioner No. 1, is being prosecuted which is in violation of Section 33 of the Act.

7. While replying, Shri Raman Gaur, learned counsel for the State of Haryana, has argued that once the counter sample was sent to the Central Laboratory, Faridabad, under the orders of the Court on a request made by the dealer for analysis, from whom the sample was purchased, the same was reported to be misbranded which is conclusive under the provisions of Section 24 of the Act and this plea is not now open to the petitioners. It has been further argued by the learned counsel that the competent authority granted consent for the prosecution of the petitioners after applying its mind. It has also been argued by the learned counsel that the petitioner No. 1 is the responsible officer of petitioner No. 2 Company, which has been expressly mentioned in the complaint, and as such there is no violation of Section 33 of the Act.

8. Respective contentions have been considered. Being faced with the report of the Central Laboratory regarding the analysis of the counter sample sent on a request made by M/s. Kissan Agro Agency, from whom the sample was

purchased, the learned counsel for the petitioner has not pressed the plea under section 24 of the Act at this stage, and has confined his arguments regarding the pleas under sections 30 and 33 of the Act.

9. It is now well settled by a long course of decisions of the apex Court that for the purpose of exercising its powers under section 482 of the Code or its extraordinary jurisdiction under Articles 226 and 227 of the Constitution of India to quash an FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations. These powers cannot be exercised to stifle a legitimate prosecution.

10. In *State of Bihar and another etc. etc. v. Shri P.P. Sharma and another*, AIR 1991 Supreme Court 1260 (at page 1285), their Lordships observed that the commission of offence cannot be decided on affidavit evidence, nor the High Court can take short course in annihilating the still born prosecution by going into the merits of the plea of proof of prima facie case and advert to those facts and give findings on merits. It was further clarified that grossest error of law would be committed by the High Court in making a pretrial of a criminal case in exercising its extra ordinary jurisdiction under Article 226. Finally, in another landmark judgment of the apex Court rendered in *State of Haryana and others v. Ch. Bhajan Lal and others*, AIR 1992 Supreme Court 604, their Lordships listed certain categories by way of illustration wherein the High Court can exercise its powers under section 482 of the Code or under Article 226 of the Constitution of India to quash an FIR or a complaint. It was expressly pointed out by their Lordships in the said illustrations that the FIR or the complaint can be quashed only when the allegations made in the first information report or the complaint along with other materials accompanying therewith do not prima facie constitute an offence or make out a case against the accused, or where the allegations made in the FIR or the complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

11. Turning to the case in hand, it may be stated that the consent order dated February 17, 1995 (Annexure P.5) contains a specific averment that the Director of Agriculture, Haryana, who was the competent authority under the Act, accorded his consent for the prosecution of the petitioners after careful examination of the analysis report. The question as to what record was produced before him and whether he applied his mind before granting this consent, is a question of fact which can be determined only after taking evidence during the trial. Such question cannot be decided on affidavit evidence.

12. Similarly, the plea regarding the compliance of provision of Section 33 of the Act is a mixed question of law and facts. It is expressly mentioned in the impugned complaint (Annexure P.2) that petitioner No. 1 is the responsible person of the manufacturer i.e. petitioner No. 2. The consent for prosecution has

also been accorded for prosecution of petitioner No. 1, being a responsible officer of the said manufacturer. In these circumstances, the question as to whether petitioner No. 1 was responsible to petitioner No. 2 for the conduct of its business is again a question of fact to be decided after taking evidence during the trial. Thus, both the pleas sought to be raised for quashing the complaint cannot be decided merely on the basis of the affidavits filed by the parties. From a bare perusal of the complaint and the accompanying documents, it is prima facie shown that the petitioners as well as the dealer have committed the offence under section 29 of the Act. I do not find any infirmity or illegality either in the complaint or in the accompanying documents to exercise jurisdiction of this Court either under section 482 of the Code or under Articles 226 and 227 of the Constitution of India.

13. For the reasons mentioned above, I do not find any merit in this petition and the same is hereby dismissed.