
(2002) 02 RAJ CK 0103

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 775 of 2001

Hindustan Palvarising Mills and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 29(1)

Citation : (2003) 1 RLW 423 : (2002) 3 WLC 198 : (2002) 3 WLN 681

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : I.R. Choudhary and R.K. Soni, for the Appellant; R.R. Chhapparwal, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Garg, J.—This criminal misc. petition u/s 482 Cr.P.C. has been filed by the petitioners, who are Manufacturers with the prayer that the proceedings of State v. Kumawat Krishi Sewa Kendra and Ors., for the offence punishable u/s 29(1)(a) of the Insecticides Act, 1968 (hereinafter referred to as "the Act of 1968") pending in the Court of Chief Judicial Magistrate, Bhilwara be quashed.

2. It arises in the following circumstances :-

On 16.8.1996, a complaint was filed by Shiv Dayal, Insecticide Inspector, Bhilwara in the Court of Chief Judicial Magistrate, Bhilwara against the present petitioners, who are Manufacturers and some other persons. It was stated in the complaint that on 28.7.1994, the Insecticide Inspector Bhilwara inspected the shop of M/s. Kumawat Krishi Sewa Kendra near Charbhuja Mandir Asind (Bhilwara), who was dealer and took sample of the insecticide B.H.C. 10% dust and prepared fard and divided the sample into three parts as required by the law. One of the samples was sent for analysis to the State Pesticide Testing Laboratory, Durgapura, Jaipur and the Analyst Incharge. State Pesticide Testing Laboratory, Jaipur gave his report dt. 20.9.3994, in which it was reported that

the sample did not confirm to the relevant specification in the tests reported and hence, it was misbranded. It was also stated in the report that batch number of the insecticide was B 549 and date of manufacturing was June 1994 and date of expiry was May, 1996.

3. When the sample was not found in accordance with the prescribed standard, a notice dated 27.9.1994 was given by the Insecticide Inspector and Agriculture Officer (Plant Protection) Bhilwara to the dealer M/s Kumawat Krishi Sewa Kendra, Near Charbhujia Mandir, Asind (Bhilwara) from whom, sample was taken and in response to the said notice, a reply was filed by M/s. Kumawat Krishi Sewa Kendra on 20.10.1994, in which it was prayed that sample be get re-tested through Central Insecticide Laboratory.

On 27.9.1994, a notice was also given by the Insecticide Inspector and Agriculture Officer (Plant Protection), Bhilwara to the petitioners, who are manufacturers, and in response to the said notice, a reply was filed by the petitioners through letter dated 25.10.1994, in which it was prayed that the sample be sent to the Central Insecticide Laboratory for re-testing as per the provisions laid down under Sections 24(3) and 24(4) of the Act of 1968.

The above request of the petitioners was not entertained by the Dy. Director, Agriculture Department. Bhilwara through letter dated 11.11.1994 on the ground that no evidence was produced by them as per the provisions of Section 24(3) of the Act of 1968 nor they made any request for producing evidence as per the provisions of Section 24(4) of the Act of 1968, meaning thereby the prayer of the petitioners for getting the sample re-tested through Central Insecticide Laboratory was refused by the Dy. Director, Agriculture Department, Bhilwara.

Thereafter on 4.1.1995, show cause notices were given by Dy. Director, Agriculture (Extn...), Bhilwara to the petitioners, who are manufacturers, M/s. Kumawat Krishi Sewa Kendra, Asind (Bhilwara), who were dealers, and M/s. Hindustan Seeds & Pesticides, Bhilwara, who were distributors.

Through letter dated 14.1.1995, a reply was filed by the distributors M/s. Hindustan Seeds & Pesticides, Bhilwara in which it was prayed that the sample be got re-tested through Central Insecticide Laboratory and it was further prayed that in case Central Insecticide Laboratory confirms that the alleged sample was misbranded, the responsibility lies with the manufacturers.

Thereafter, on 16.8.1996, the complaint was filed by the Insecticide Inspector, Bhilwara in the Court of Chief Judicial Magistrate, Bhilwara against the manufacture (present petitioners), dealers and distributors.

On the said complaint, the learned Chief Judicial Magistrate, Bhilwara vide order dated 16.8.1996 took cognizance against the petitioners and some other persons for the offence punishable u/s 29(1)(a) of the Act of 1968.

4. In this petition u/s 482 Cr.P.C., it has been submitted by the learned counsel appearing for the petitioners that since the complaint was filed after the expiry of

shelf life of the insecticide in question and before that, their request for re-testing the sample through Central Insecticide Laboratory was rejected, therefore, in these circumstances, the petitioners were deprived of their valuable right to get the sample re-tested from Central Insecticide Laboratory and it has prejudiced in their defence and in these circumstances, continuation of the proceedings against the accused petitioners amount to abuse of the process of the court and it should be set aside.

5. I have heard the learned counsel for the petitioners and the learned Public Prosecutor and perused the record of the case.

6. Before proceeding further, it would be worthwhile to quote here Section 24 of the Act of 1968.

"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."

7. Section 21 of the Act of 1968 empowers the Insecticide Inspector to take samples of any insecticide and send such samples for analysis to the Insecticide Analyst for test in the prescribed manner and as per Sub-section (5) of Section 22 of the Act of 1968, he shall divide the sample into three portions and

effectively seal and as per Sub-section (6) of Section 22, one of the samples shall be forwarded by him to the Insecticide Analyst for test or analysis. As per Section 24(1) of the Act of 1968, 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 and according to Sub-section (2) of Section 24, the Insecticide Inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and the report of the Insecticide Analyst shall be conclusive evidence unless the person from whom 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. Sub-section (4) of Section 24 casts a duty on the Insecticide inspector to make compliance of the provisions for re-testing etc.

8. From perusing the record of the present case, it appears that the sample was taken by the Insecticide Inspector, Bhilwara on 28.7.1994 from M/s. Kumawat Krishi Sewa Kendra, Asind (Bhilwara). Thereafter, the said sample was sent to the State Pesticide Testing Laboratory, Government of Rajasthan, Jaipur for analysis and the Analyst Incharge, State Pesticide Testing Laboratory, Jaipur gave his report on 20.9.1994 and found that the sample was misbranded. The date of manufacturing of the insecticide in question was June, 1994 and the date of expiry was May, 1996. The complaint was filed on 16.8,1996, meaning thereby after the expiry of shelf life of the insecticide in question. It may be stated here that in this case, the present petitioners, who are manufacturers of the insecticide in question, made a request for re-testing of the sample in question from Central Insecticide Laboratory, but that request was refused by the Dy. Director, Agriculture Department, Bhilwara through letter dated 11.11.1994.

9. The next question that arises for consideration is whether in the facts and circumstances just mentioned above when the complaint was filed after the expiry of the shelf-life of the insecticide in question and before that, the prayer of the petitioners for re-testing of the sample in question from Central Insecticide Laboratory was refused, proceedings u/s 482 Cr.P.C. can be quashed or not.

10. So far as the point whether the expiry date of the sample is relevant or not, it may be stated here that in the prescribed form for submission of the report by the Insecticide Analyst, the dates of manufacture of the article and the expiry date are mentioned. It means the expiry date of sample is very much material in deciding such type of matters.

11. Section 30 of the Act of 1968 provides for defences which may or may not be allowed in prosecution under the Act of 1968. Section 30(1) of the Act of 1968 only prescribes in effect that ignorance would be no defence but that does not mean that if there are contraventions of other mandatory provisions of the Act of 1968, the accused have no remedy. The procedure for testing the sample is

prescribed and if it is contravened to the prejudice of the accused, he certainly has the right to seek dismissal of the complaint. Then in order to safeguard the right of the accused to have the sample tested from the Central Insecticides Laboratory, It is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost.

12. In the present case, by the time complaint was filed before the Court, the expiry date of the insecticide was already over and sending of the sample to the Central Insecticides Laboratory at that late stage would be of no consequence. Furthermore, the request of the petitioners for re-testing the sample from the Central Insecticide Laboratory was refused. Therefore, in view of Sections 24(3) and 24(4) of the Act of 1968, the report of the Analyst Incharge, State Pesticide Testing Laboratory, Government of Rajasthan, Jaipur was not conclusive. A valuable right had been conferred on the accused petitioners to have the sample tested from the Central Insecticides Laboratory and in these circumstances of the case, the petitioners have been deprived of that right, thus, prejudicing them in their defence. In these circumstances, it would be abuse of the process of the Court if the prosecution against the accused petitioners is allowed to continue. In coming to the above conclusion, reliance has been placed on the decision of the Hon'ble Supreme Court in *State of Haryana v. Unique Farmaid (P) Ltd. and Ors.* (1).

13. Apart from this, Section 24 of the Act of 1968 confers two rights, the right to challenge the correctness of the report of the analysis on the receipt of the show cause notice and secondly, to challenge the same and to make a request before the Court for reanalysis of the counter sample after the complaint is filed. The provisions of this section simply provides that in case a written request is made by the dealer or the manufacturer expressing its intention to controvert the report of the Analyst, the report shall not be conclusive evidence of the facts contained therein.

14. The material requirement of the Act of 1968 is that the complaint should be filed and the accused should be served well in time before the expiry of the shelf life of the insecticide in question so as to enable the accused persons to challenge the correctness of the report of the Analyst by forwarding the counterpart of the sample to the Central Insecticide Laboratory. If this right of an accused under the Act of 1968 is violated by in action or omission on the part of the Department, the same is fatal to the prosecution.

15. From this point of view also, the right of the accused petitioners to get the sample re-tested from the Central Insecticide Laboratory has been violated, as the complaint was filed after the expiry of the shelf-life of the insecticide in question. Apart from this, the request made by the petitioners for re-testing of the sample in question from the Central Insecticide Laboratory was refused by the Dy. Director, Agriculture Department, Bhilwara.

16. In the following authorities, it has been held that complaint filed after expiry

of shelf life of insecticide would result in the denial of right of the accused to get the sample analysed by the Central Insecticide Laboratory and the complaints were quashed :-

(1) TVV Reddy, Regional Manager v. The State of Andhra Pradesh (2)

(2) Jot Ram Dharam Chand Thappa v. State of Punjab (3)

(3) Dr. D.H. Desai v. State of Punjab (4)

(4) Hindustan Ciba Geigy Ltd. and Ors. v. State of Raj. and Ors. (5)

(5) R.P. Gupta and Ors. v. State of Rajasthan (6)

17. Looking to the above authorities, since in the present case also complaint was admittedly filed after the expiry of shelf life of insecticide, it would result in the denial of right of the accused to get the sample re-analysed by the Central insecticide Laboratory and in these circumstances, the proceedings against the present petitioners are nothing but abuse of process of court and are liable to be quashed in exercised of the powers u/s 482 Cr.P.C.

For the reasons stated above, this petition filed by the petitioners u/s 482 Cr.P.C. is allowed and the proceedings of criminal case No. 283/96 State v. Kumawat Krishi Sewa Kendra and Ors. for the offence punishable u/s 29(1)(a) of the Act of 1968 pending in the Court of Chief Judicial Magistrate, Bhilwara against the present petitioners are quashed.