

(1996) 10 P&H CK 0070

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 6174-M of 1996

Hindustan Pulverising Mills

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-10-1996

Acts Referred:

Citation : (1997) 4 AICLR 296 : (1997) 2 RCR(Criminal) 116

Hon'ble Judges : Swatanter Kumar, J

Advocate : Sanjiv Sheoran, Chopra, Ravinder, Advocates for appearing Parties

Judgement

Swatanter Kumar, J. (Oral)

1. I have heard the learned counsel for the parties at some length.
2. The short submission of the learned counsel for the petitioner is that in the facts and circumstances of this case, valuable right available to the defence of the accused has been taken away by negligence and irresponsible attitude of the respondent. To substantiate his submission, the learned counsel has referred to very limited facts. M/s. Hindustan Pulverising Mills, petitioner herein is the manufacturing of various insecticides and pesticides and M/s. Sham Beej Bhandar, Adampur, District Hisar is their dealer. The premises of the dealer were inspected and the sample of Dimethoate 30% EC bearing Batch No. 90 having manufacturing date i.e. Jan 1988 with expiry date December, 1988 was taken by Insecticides Inspector on 22.8.1988. Three samples were taken in accordance with law. One part of the sealed sample was sent to the Senior Analyst, Quality Control Laboratory (Insecticides), Karnal for analysis. On analysis, it was found to be misbranded and not adhering to the standard prescribed. After sanction, the complaint was filed by the Department on 3.1.1989 against the dealer only. After lapse of more than five years, an application was filed before the learned Magistrate praying that the manufacturer i.e. the petitioner should be summoned to face the prosecution in this case. Consequently vide order dated 1.6.1994, the learned Magistrate directed summoning of the present petitioner and summoned him for 8.8.1994.

3. Learned counsel appearing for the Department has fairly conceded that life of the sample had expired even prior to the order of summoning i.e. 1.6.1994.

4. In view of the above facts, there cannot be any dispute that the life of the sample had expired on December, 1988 when the complaint itself was filed in Jan. 1989 and the petitioner was summoned in 1994. Under sub section 4 of Section 24 of the Insecticides Act, a right is given to an accused to make an application to the court or even the court on its own motion can direct the sample to be tested from the Central Laboratory. This statutory right provided under the Act has to be treated as weapon of main defence available to an accused, to show that the sample collected was not misbranded or it was violative of the standards prescribed.

5. The right of the manufacturer, if he is to be prosecuted for the sample collected from his dealer, has to be placed at par with the dealer. The manufacturer would also be entitled to the same protections as the dealer is entitled to. It is for the Department to see that the compliance of the provisions of the Act is made. In this regard reference can be made to the following judgments of this case :

(1) 1991 RCR 336

(2) 1992(1) RCR 224

(3) 1992(1) RCR 244

The consistent view of the court is that the manufacturer has right of protection under section 24(4) of the Act and if the complaint is filed or the manufacturer is summoned after life of the sample taken, a valuable right of the accused is taken away and it is bound to prove fatal to the prosecution launched by the complainant.

At this stage, I consider it appropriate to make reference to the judgment of this Court in the case of Balwant Singh v. State of Haryana, Cri. Misc. 5596M of 1996, decided on 14.10.96.

After discussing the entire law on the subject, not only the complaint was quashed, but various directions were issued to the State of Punjab for adhering to the statutory provision of the Act.

6. Learned counsel for the petitioner has also relied upon the judgments of the Supreme Court reported in AIR 1967 SC 970, and of this Court reported as 1992(1) RCR 137, 1992(1) RCR 157, 1992(1) RCR 494, 1992(1) RCR 557, 1994(2) RCR 139, 1996(2) RCR 285 and 1996(3) RCR 117 to substantiate his submissions aforestated.

7. For the reasons aforestated I have no hesitation in holding that the petitioner has been deprived of the valuable right which was available to him in law as a result of negligent and irresponsible attitude of the complaints. The complaint has been filed without proper application of mind, accused has been put to

unnecessary inconvenience without sufficient cause and that too at the cost of unnecessary public expense and wastage of time and manpower. Consequently the complaint dated 3.1.1989 Annexure P1 to this petition and the order of summoning dated 1.6.1994 are quashed and all the proceedings taken thereupon are also quashed. The petitioner stands discharged.

8. In the connected matter i.e. criminal Misc. No. 7807M of 1996 on 9.10.1996, I had directed the Director, Agriculture, Haryana Chandigarh to be present in Court. The Director, Agriculture, Haryana Chandigarh, is present in Court. The Director has assured the Court that appropriate steps would be taken to ensure proper functioning in the Department and further to ensure that all the complaints which are filed on behalf of the Department would be well scrutinised and would not suffer from any apparent palpable error resulting in wastage of time of the court as well as public money. In view of the assurance given by the Director, I refrain from passing any further comments in this case and direct that the Director, Agriculture, Haryana, Chandigarh shall formulate proper scheme of functioning in the Department within a period of one month from today and appropriate instructions shall be issued to various branches of the Department to ensure the compliance of various judgments of this Court and the provisions of the Insecticides Act, 1968.

9. This petition is allowed in the above terms subject to payment of Rs. 2500/ as costs. These costs shall be paid initially by the State but would be recovered from the salary of defaulting official within a period of three months from today and report with regard to the compliance of these directions shall be submitted by the Director under this signature to the Registrar of this Court who shall put up the case on administrative side before the Court concerned.