

(2001) 12 P&H CK 0032

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1418-M of 1998

Hindustan Pulverising Mills

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 21-12-2001

Acts Referred:

Citation : (2002) 2 AICLR 256 : (2002) 1 CLR 234 : (2002) 1 RCR(Criminal) 710

Hon'ble Judges : R.C.Kathuria, J

Advocate : Shri Ravinder Chopra, Advocate. Shri K.K. Baniwal, Deputy Advocate General, Punjab., Advocates for appearing Parties

Judgement

R.C. Kathuria, J.

1. In this petition, the petitioners seek quashing of the complaint filed by the Insecticides Inspector under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1960 (hereinafter referred to as 'the Act') against the petitionersaccused.

On 16.6.1994. Insecticides InspectorRachhpal Singh, visited the shop of M/s Karam Chand & Sons, Baghapurana along with Jarnail Singh Brar, A.D.O., Baghapurana where Sushil Kumar, Salesman of the firm was present. After disclosing his identity, the Insecticides Inspector expressed his desire to take sample of Anilogas 30% EC. Thereafter, he served a notice on Form XII upon Sushil Kumar in the presence of Jarnail Singh Brar. He took three original packs of one litre each with batch No. 44, manufacturing date May, 1994 and expiry date April, 1996 manufactured by M/s Hindustan Pulverising Mills, 209210, Anupam Bhawan, Azadpur, Commercial Complex, Azadpur, Delhi. The three packs of sample were separately sealed in accordance with the prescribed procedure. One sealed portion of the sample was handed over to Sushil Kumar. The remaining two portions of the sample were given to Paramjit Singh, Beldar, Baghapurana on 7.6.1994 who deposited the same with Harsangeer Singh, A.D.O., Faridkot in the office of Chief Agriculture Officer, Faridkot. Harasngeer Singh, A.D.O. sent one of the samples along with FormXII to Punjab Insecticide

Quality Control Laboratory, Bathinda for analysis. On analysis of the sample, it was found that it did not conform to IS specification with respect to its percentage active of 30% EC. On receipt of the analysis report, copies of the same were sent to the dealer and the manufacturer along with show cause notice bearing No. 382830 dated 17.8.1984. Thereafter, the present complaint was filed against M/s Karam Chand & Sons, Bhagapurana through Sushil Kumar, Salesman and its two partners, namely, Karam Chand and Smt. Shimla Rani, who had been arrayed as accused Nos. 1(a), (b) and (c) in the complaint for violating the provisions of Sections 3(k)(i), 17, 18 and 29 of the Act and against the distributor M/s Aggarwal Trading Company, Baghapurana through Ashok Kumar, who had been arrayed as accused No. 2 and also against M/s Hindustan Pulverising Mill, Delhi through its Director H.C. Aggarwal, Mohinder Singh Chauhan, Manager Production and M.N. Murli Kumar, Chief Chemist respectively, who had been arrayed as accused No. 3(a), (b) and (c) for committing offences under Sections 3(k)(i), 17, 18 and 29 of the Act. On the basis of these allegations, the complaint was instituted on 16.4.1996 in the Court of Judicial Magistrate Ist Class, Moga, who summoned the accused on the same day to face the prosecution in this complaint and directed them to appear in the Court on 24.5.1996. Thereafter, fresh summons were again issued on 24.5.1996 and by that time shelf life of the same had already expired. Aggrieved by the summoning order the present petition was filed.

2. It was pleaded in the petition that after the show cause No. 8537 dated 17.8.1994 was received by the petitioners, they furnished a detailed reply vide letter dated 1.9.1994 wherein a request was made for getting the sample reanalysed at the cost of the company as the report furnished by the State Insecticides Quality Control Laboratory, Bathinda was not acceptable to them. The copy of the said Letter is Annexure P.1. Thereafter, the manufacture also moved an application under Section 24 of the Act for sending the second sample for reanalysis in the Court of Judicial Magistrate Ist Class, Moga, but the same was dismissed on 28.11.1995 by the said Court on the ground that no complaint had been filed in the Court. Under these circumstances, the complaint could not be filed against the petitioners accused and the summoning order deserves to be quashed.

3. In pursuance to the notice served upon the respondent, reply has been filed by the Rachhpal Singh, Insecticide Inspector, Bhagapurana, District Moga on behalf of the respondent. It was pleaded by the respondent that the petitioners had failed to apply for reanalysis of the sample to the answering respondent within the specified time and that the petitioners had already availed the remedy by filing an application before the Court of Judicial Magistrate Ist Class, Moga, who had dismissed the same on 28.11.1995. Thus, the respondent has justified the prosecution of the petitioners accused in the complaint filed against them.

4. I have heard learned counsel representing the petitioners and the learned Deputy Advocate General, Punjab for the State.

5. The main grievance of the counsel of the petitioner is that after the copy of analysis report was received by the petitioners they had exercised their right to get the sample reanalysed from the Central Insecticides Laboratory in terms of the requirement of Section 24 of the Act but no action was taken by the Insecticide Inspector and a valuable right of the petitioners had been denied and for that reason the proceedings be quashed. It was also pointed out by him that no alternative was left with the petitioners when the Insecticide Inspector did not take any action on the request made vide letter dated 1.9.1994, copy of which is AnnexureP.1. An application was moved to the Judicial Magistrate Ist Class, Moga in this regard but as the complaint was not filed in the Court at that time, it was dismissed on 28.11.1995 and for that reason no fault can be attributed to the petitioners accused in not moving the Court in time for getting the sample reanalysed.

6. So far as factual position is concerned, except a bare denial on the part of the respondent, no other supporting document has been placed on record. Copy of the complaint has been annexed with the petition as AnnexureP.3 which reveals that definite stand has been taken by the Insecticide Inspector in the complaint that copies of the analysis report were served upon the dealer and the manufacturer along with show cause notice No. 382830 dated 17.8.1994. The petitioners in para 3 of the petition have also stated that they were informed through a show cause notice No. 8537 dated 17.8.1994 that sample in question had been found misbranded and for that reason they were asked to explain as to why action should not be taken against them. In answer to the show cause notice, they addressed letter dated 1.9.1994, copy of which is AnnexureP.1, wherein a prayer was made to the Chief Agriculture Officer, Faridkot for getting the sample reanalysed from the Central Insecticide Laboratory. The definite stand taken in paras (iv) and (v) of the above letter are as under :

"(iv) Assuming, although it is not admitted, that the product belongs to this company, even then you will certainly appreciate that as per the provisions of the Insecticides Act, 1968 we are vested with the fundamental rights under section 24(3)(4) of the Insecticides Act, 1976, to request to send the sample for reanalysis to the referee laboratory at the cost of the company.

(v) The alleged report of the Senior Analyst, State Insecticides Quality Control Laboratory, Bathinda, is not acceptable to us. You are fully aware of the fact that in the said analysis report a high degree of variations has been found in the matter of active ingredients only, whereas, acidity test, emulsion, stability test and cold test have been found according to ISI specifications."

7. It means that in terms of the requirement of Section 24(3) of the Act within 28 days of the receipt of the copy of the report notified in writing by the Insecticide Inspector, the petitioner has a right to get the sample reanalysed. Apparently, no steps were taken by the Chief Agriculture Officer to get the sample reanalysed from the Central Insecticide Laboratory as prayed for by the petitioners. It is well settled as laid down in *M/s Raj Hans Chemicals v. State of*

Punjab, 1994(2) RCR 139 that manufacturer also has a right under Section 24(3) of the Act to get the sample retested from the Central Insecticides Laboratory and his right is not confined only to the dealer from whom the sample was taken. Therefore, the Chief Agriculture Officer by not accepting the request made by the petitioners had denied the right available to them under Section 24(3) of the Act.

8. It is further apparent from the record that the petitioners had also applied to the Court through an application dated 19.8.1995 for reanalysis of the sample in terms of the requirement of Section 24(4) of the Act but the said application was dismissed by the Court vide order dated 28.11.19895, copy of which is AnnexureP.2. The reasons which prevailed upon the learned Judicial Magistrate Ist Class to dismiss the application are given in the order which reads as under :

"Present : Applicant with counsel and Shri Madan Lal, Agricultural Inspector for the respondents.

Ahlmad has reported that no such original complaint is presented in Court so far. When no main complaint is presented then application under Section 24(4) of the Insecticide Act, 1968 to send second sample for reanalysis can not proceed. Hence, the application under Section 24(4) of the Insecticide Act is dismissed. File be consigned.

Pronounced.

Sd/

28.11.1995.

Judicial Magistrate Ist Class Moga."

9. The above mentioned circumstances leave no manner of doubt that by the time the complaint came to be filed the right of the petitioner to get the sample reanalysed in terms of the requirement of law stood defeated. As to the legal consequence that would result therefrom has been lucidly discussed in State of Haryana v. Unique Farmaid Private Limited, 1999(4) RCR(Criminal) 540 , wherein it was observed as under :

"It cannot be gainsaid, therefore, that the respondents in these appeals have been deprived of their valuable right to have the sample tested from the Central Insecticides Laboratory under subsection (4) of Section 24 of the Act. Under subsection (3) of Section 24 report signed by the Insecticide Analyst shall be evidence of the facts stated therein and shall be conclusive evidence against the accused only if the accused do not, within 28 days of the receipt of the report, notify in writing to the Insecticides Inspector or the Court before which proceedings are pending that they intend to adduce evidence to controvert the report. In the present cases Insecticide Inspector was notified that the accused intended to adduce evidence to controvert the report. By the time the matter reached the court, shelf life of the sample had already expired and no purpose would have been served informing the court of such an intention. The report of

the Insecticide Analyst was, therefore, not conclusive. A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case accused have been deprived of that right, thus, prejudicing them in their defence."

10. The above judgment has further been followed in Dalta Insecticides Limited v. State of Punjab, 2001(1) RCR(Criminal) 614 ; Ashok Kumar Chauhan v. State of Punjab, 2001(2) RCR(Criminal) 174 ; M/s Bawa Agro Centre v. State of Punjab, 2001(2) RCR(Criminal) 175 and M/s Thakur Chemicals v. State of Punjab, 2001(2) RCR(Criminal) 772 .

In view of the facts stated above and the position of law explained, the petition deserves to be accepted. Consequently, the complaint and the subsequent proceedings taken thereof qua the petitioners are quashed.