
(1985) 11 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Criminal Revision No. 3-M of 1985

H.Lange, a German National, Managing Director, M/S Byer
(India) Ltd.

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 04-11-1985

Acts Referred:

Citation : (1986) 1 PLR 262

Hon'ble Judges : S.S.Dewan, J

Advocate : V.K. Kataria, Arun Nehra, Advocates for appearing Parties

Judgement

S.S. Dewan, J.—In this Petition filed under Article 227 of the Constitution of India and Section 482 of Code of Criminal Procedure, the petitioner has challenged his prosecution launched under Section 29 of the Insecticide Act, 1968 (for short, the Act) and also the process issued in pursuance therefore.

2. The petitioner is a Managing Director of M/S Bayer (India) Ltd. having its office at Express Towers, Nariman Point, Bombay. The company manufactures amongst other things pesticide known as Metasystox and its products are sold throughout India through its distributors and dealers. It is alleged that on 19.3.1981 Parvinderjit Singh Insecticide Inspector, Budhlada, purchased some quantity of insecticide known as Matasystox from the shop of M/S Bachna Ram Sita Ram, Bareta Mandi to check its efficiency. One of its samples was sent to the Insecticide Testing Laboratory, Hyderabad, for analysis. Report of the Analyst revealed that the sample contained 20.88% contents of oxydemeton methyl instead of 25 as provided in the Act and thus it was found to be substandard and misbranded under Section 3(K)(1) of the Act. This report is Annexure PG to this petition. This sale of such misbranded insecticide is prohibited under Ss. 17(1)(a) and 18(a)(c) of the Act. The case of the prosecution was that pesticide was manufactured by M/s Bayer (India) Limited and they sold this misbranded pesticide to M/S Bachna Ram Sita Ram, Bareta Mandi. On these allegations a complaint was filed in the Court of Judicial Magistrate 1st Class, Mansa, on

2.11.1983 and the petitioner was sought to be served with the summons in the month of April, 1985.

3. The learned counsel for the petitioner has strenuously urged that a copy of the report of the Analyst was not furnished to the petitioner and due to inordinate delay, he was deprived of a right to get the sample analysed under sub section (4) of Section 24 of the Act. The learned counsel has contended that the petitioner having not been given an opportunity to controvert the report and the prosecution having been launched more than 21/2 years after the sample was purchased by the Insecticide Inspector, the prosecution must fail. To buttress his arguments he has drawn support from a view taken in a Supreme Court decision in *Municipal Corporation of Delhi v. Ghisa Ram*, A.I.R. 1967 S.C. 970, where it was observed in the following terms:

"That section 13(2) of the Prevention of Food Adulteration Act confers a right on the accused vendor to have a sample given to him examined by the Director of the Central Food Laboratory and to obtain a certificate from him. It is only when the accused exercise this right that the certificate given by the Director supersedes the report given by the Public Analyst. If in any case, he does not choose to exercise this right, the case against him can be decided on the basis of the report of the Public Analyst. But when the accused is denied this right on account of the deliberate conduct of the prosecution, for example, delay in institution of the prosecution, and the sample becoming unfit for test the accused is so seriously prejudiced that it would not be proper to up hold his conviction on the basis of the cases where the conduct of the prosecution has resulted in the denial to the accused of opportunity to exercise this right."

4. The learned counsel for the State has, however submitted that there was no obligation upon the Insecticide Inspector to supply or deliver a copy of the report to the manufacturers of the insecticide sample of which was taken. It is correct that under subsection (2) of Section 24, there is no obligation on the Insecticide Inspector to supply a copy of the report of the Analysts to the manufacturer of the insecticide but if the manufacturer of insecticide is so sought to the prosecuted, there is no reason why a copy of the report could not be supplied to him. The object of making the provision for delivery of the copy of the report is to give an opportunity to the person concerned is to controvert the report in case he is prosecuted. Therefore, irrespective of the provision contained in subsection (2), the end of justice demands that the person who is sought to be prosecuted must be supplied with a copy of the report. In the present case, the Insecticide Inspector supplied a copy of the report only to the dealer from whom the sample was taken but not to the petitioner's company. Applying the test laid down by the Supreme Court in the case of *Municipal Corporation of Delhi v. Ghisa Ram*'s case (supra), there cannot be any doubt that the petitioner has been denied the right to controvert to report of the Analyst. As observed by the Supreme Court, it is to be expected that the prosecution will proceed in such a manner that right, will not be denied to the person or persons who are prosecuted. The report of the

Analyst is made conclusive evidence of its contents. Therefore, it cannot be gainsaid that unless the petitioner was given an opportunity to controvert the correctness of the report of the Analyst, the prosecution based on the report cannot succeed..

5. It is significant to note that the Insecticide Inspector filed the complaint in the Court more than 21/2 years after the sample was taken from the dealer. The sample of pesticide was taken on 19.3.1981 while the complaint was lodged in the year 1984. It is not disputed that the pesticide known as Matasystox remains effective for a maximum period of one year from the date of its manufacture. The petitioner learnt about his prosecution only after the process was served on him. Thus, by the time the petitioner came to know about the complaint, the sample which was taken by the Inspector was more than 21/2 years old. Therefore, no useful purpose could have been served even if the petitioner would have been permitted to get the sample sent to the Director. Thus, the petitioner has been denied the opportunity to controvert the correctness of the report of the Analyst on which the prosecution is based.

6. The learned counsel for the State has submitted that it is open to the petitioner to raise the contentions which are raised in this petition before the learned Magistrate by whom he has been summoned and that the learned Magistrate would consider the contentions raised by him on merits and if he is inclined to accept them, he would acquit the petitioner. The learned counsel submitted that this Court should not exercise its jurisdiction under Article 227 of the Constitution of India or Section 482 of the Code of Criminal Procedure to interfere at this stage and quash the proceedings pending before the learned Magistrate. Now, it is well settled that the proceedings should be quashed to prevent the abuse of the process of Court and in order to secure the ends of justice. As pointed out above, the petitioner having been denied an opportunity to controvert the correctness of the report of the Analyst, the prosecution based on the report of the Analyst cannot succeed. Even otherwise, there appears to be not a shred of evidence on which any Court or Tribunal would reasonably convict the petitioner. Therefore, in my opinion, to allow the trial of the petitioner to proceed would amount to an abuse of the process of Court. Therefore, the proceedings pending before the trial Magistrate qua the petitioners must be quashed in order to secure the ends of justice. The name of the petitioner in the complaint has thus obviously to be treated as nonexistent for the view I have taken.

7. For the foregoing reasons, this petition is allowed but to the extent aforeindicated.