

(1995) 08 P&H CK 0012

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8079-M of 1995

Jai Chemical and Another

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 11-08-1995

Acts Referred:

Insecticides Act, 1968 — Section 24(2), 24(3)

Citation : (1996) 112 PLR 580 : (1995) 3 RCR(Criminal) 444

Hon'ble Judges : Sarojnei Saksena, J

Bench : Single Bench

Advocate : S.M. Singh Pasricha, for the Appellant; J.S. Rathi, for the Respondent

Final Decision : Allowed

Judgement

Sarojnei Saksena, J.—The petitioners have filed this petition u/s 482 of the Code of Criminal Procedure for quashing the complaint Annexure P-1 dated February 10, 1994, filed against them u/s 29(1) and 3(k)(i) of the Insecticides Act, 1968 (hereinafter in short, the Act).

2. The petitioners' contention is that complaint has been filed against them alongwith other accused persons on the allegations that a sample of insecticide Monocrotophos of batch No. GC-06 was drawn from the premises of M/s Kissan Beej Bhandar, Mandi Dabwali, District Sirsa, on May 16, 1993, by the complainant-Insecticide Inspector. The said sample was sent to the Regional Pesticides Testing Laboratory, Chandigarh, for analysis. The sample was found not in conformity with the ISI specification. Petition No. 1 is shown as the manufacture of the said insecticide, while in the complaint no allegation is made against petitioner-Ashok Kumar as to how he is responsible for the commission of this offence. Petitioners' learned counsel further contends that no show cause notice was given to the petitioners. Copy of the analyst report was never supplied to them. u/s 24 (2) and (3) of the Act, if the copy of the analyst report would have been supplied to them, they could have availed of their right of getting the second sample reanalysed. The said insecticide was manufactured on

March 12, 1992. The sample was drawn on May 16, 1993, and its shelf life expired on March 11, 1994. The complaint was lodged on February 10, 1994, and first date fixed for the appearance of the accused person was February 23, 1994. They could not get the information of the summons before the shelf life expiry date of the insecticide i.e. March 11, 1994. Hence, it is prayed that the complaint be quashed against them.

3. The respondent has filed a detailed reply. It is admitted that the sample was drawn on May 16, 1993, and the complaint was filed on February 10, 1994, but it is alleged that a copy of the analyst report was sent to Messrs Kissan Beej Bhandar, Old Grain Market, Dabwali, u/s 24(2) of the Act. Since petitioner No. 1 is the manufacturer, under the law he is not entitled to get a copy of the said report. Show cause notice was also given on July 17, 1993. The complaint was filed one month before the expiry date of the shelf life of the insecticide. Summons were issued for Feb. 23, 1994, but the accused persons did not present themselves on this date before the learned Magistrate. He himself served the summons on the dealer on February 23, 1994, Mr. Bihari Lal of Messrs Kissan Beej Bhandar appeared on, February 28, 1994, before the learned Magistrate, but on that date deliberately no application was filed by him for sending the second sample for reanalysis, but such an application was filed by him on March 1, 1994, in his absence. Its notice was given to him for appearing on March 9, 1994. On this date by the time he appeared in the Court, the case was already adjourned to March 16, 1994. Thus, the accused M/s Kissan Beej Bhandar has deliberately not availed of the opportunity given to him to send the second sample for reanalysis. Hence there is no merit in this petition and it be dismissed.

4. Petitioner's learned counsel, relying on *Salil Singhal v. State of Haryana* 1992 (1) R.C.R. 224 and *Trilok Singh v. State of Punjab* 1990 (3) R.C.R. 194, contended that the basis of this complaint is the analyst report. u/s 24 (2) and (3) of the Act copy of the report is required to be sent to the person from whom the sample is taken, but if on the basis of this analyst report the manufacturer is to be prosecuted for the said offence, he is also entitled to get a copy of the analyst report, so that he may apply that the second sample be sent for reanalysis. Since he has been deprived of this legal right, the complaint filed against him is liable to be quashed. He further contended that the complaint was filed on February 10, 1994, while the expiry date of the shelf life of the said insecticide was March 11, 1994. Before March 11, 1994, the petitioners could not get the notice of the filing of the complaint. No summons of the date of February 23, 1994, were received by them. They could know about the filing of the complaint only after the said expiry date. Hence on this ground also the complaint is liable to be quashed, as thereby they have been further deprived of the aforesaid right. To buttress his contention, he has relied on *Sant Lal and Anr. v. State of Punjab* 1995 (1) A.J. 275.

5. Petitioners' learned counsel further contended that so far as Ashok Kumar petitioner is concerned, in the complaint (copy of which is appended with the

petition) there is no averment how this petitioner is involved in the commission of the said offence. He contended that only the person who is responsible for carrying on business and during relevant time was incharge of business can be convicted for such an offence. Simply if he is named in the complaint is not enough. In support of this contention, he has relied on *Sham Sunder v. State of Haryana* AIR 1982 S.C. *Sardari Lal v. State of Punjab* 1985 (1) PAC. 85.

6. The respondent's learned counsel contended that the complaint was filed a month before the expiry date of the shelf life of the insecticide. The summons were issued in the names of the accused persons for the date i.e. February 23, 1994. The complainant himself served the summons on Bihari Lal for Messrs Kissan Beej Bhandar for February 23, 1994. Bihari Lal appeared in the Court on February 28, 1994, in his presence, but on this date he did not file any application for getting the sample reanalysed. Such an application was filed by him on March 1, 1994, in his absence. Fresh summons was sent for March 9, 1994, for him to appear. On March 9, 1994, before he could reach the Court, the case was adjourned to March 16, 1994. Thus, due to the said trick adopted by this accused, the sample could not be reanalysed before the shelf life expiry date of the said sample. Hence it cannot be said that the accused persons have been denied this right.

7. Respondent's learned counsel further contended that u/s 24 (2) and (3) of the Act the Inspector is duty bound to send the copy of the analyst report to the person from whom the sample was drawn. There is no provision in the Act that a copy of such report should be sent to the manufacturer as well. So far as the last contention is concerned, he submitted that this is a question of fact. In the title of the complaint it is mentioned that Ashok Kumar is prosecuted being the responsible person of the manufacturer. While adducing evidence, the complainant would prove how Ashok Kumar is responsible for manufacturing this insecticide.

8. Admittedly, petitioner No. 1 is the manufacturer of the said insecticide, and Ashok Kumar is its employee. Sample of this insecticide was drawn on May 16, 1993, from Messrs Kissan Beej Bhandar, Dabwali, District Sirsa. The complainant sent this sample to the Regional Pesticides Testing Laboratory, Chandigarh for analysis. As per the analyst report, the sample was not found in conformity with the ISI specification. Thus, the complaint was filed on February 10, 1994. Copy of this report was sent to Messrs Kissan Beej Bhandar as per the law, but copy of this report was not sent to the petitioners. u/s 24(2) of the Act, the Insecticide Inspector is duty bound to deliver one copy of the report to the person from whom the sample was taken. No doubt, in this section there is no provision that such a copy should be sent to the manufacturer as well, but the manufacturer is made liable for manufacturing these insecticides which are not found in conformity with the ISI specification. The sample is not drawn from the manufacturer but from the dealer. If through this sample the manufacturer is to be held guilty for the said offence, he is entitled to get a copy of the report of the

analysis within time, so that he may also apply for the sample being sent for reanalysis, if he does not accept that report. This is a legal right which cannot be denied to the manufacturer as he is being prosecuted on the said count. In the aforesaid authorities also, it is held that the manufacturer is entitled to get a copy of the report of the analysis. Principles of natural justice also demand that if on the basis of said¹ report, a manufacturer is to be prosecuted, he should also get a copy of the report within a reasonable time before the shelf life of the sample expires, so that he may apply for its reanalysis. On this count, in my considered view the complaint is liable to be quashed against petitioner No. 1. So far as petitioner No. 2 is concerned, no doubt in the complaint at the evidence stage the complaint could have proved how he is responsible for the business of petitioner No. 1, but since the petition is being allowed for petitioner No. 1, petitioner No. 2 is also entitled to the same relief.

9. Consequently, the petition is allowed. The complaint Annexure P-1 is quashed qua the petitioners.