
(2009) 08 P&H CK 0102

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. M-3297 of 2009

Jai Rath Seed Store, Bhangala and others

APPELLANT

Vs

Punjab State through Insecticide Inspector

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Citation : (2009) 08 P&H CK 0102

Hon'ble Judges : Harbans Lal, J

Advocate : Mr. Navkiran Singh, Advocate. Mr. Arshvinder Singh, Deputy Advocate General, Punjab., Advocates for appearing Parties

Judgement

Harbans Lal, J.

1. This petition has been moved by M/s Jai Rath Seed Store Bhangala and others under Section 482 of the Code of Criminal Procedure for quashing of complaint bearing caption "State v. M/s Jai Rath Seed Store and Others" filed under Section 29(i) of the Insecticides Act, 1968 (for brevity, "the Act") (Annexure P.1) pending in the Court of learned Chief Judicial Magistrate, Hoshiarpur and all other subsequent proceedings arising out of the said complaint.

2. The brief facts giving rise to this petition are that the petitioners No. 1 to 4 are dealer and distributor of M/s Thakur Chemical Limited New Delhi. M/s Jai Rath Seed Store Bhangala (Mukerian) District Hoshiarpur has a licence No. 920 which is valid upto 31.12.2005. This firm has been licensed to sell, stock and exhibit insecticide mentioned in the licence. On 27.7.2005 at about 3:00 P.M., the Insecticide Inspector of Block Mukerian along with Agriculture Development Officer, Dasuya visited the premises of petitioners No. 1 and demanded a sample of Butachlor 50% EC (Topchlor) bearing Batch No. 703 with manufacturing date as April, 2004 and expiry date March, 2006. The Insecticide Inspector purchased three containers of packing of Butachlor 50% EC (Topchlor) costing Rs. 450/ on the basis of Bill No. 231 dated 27.7.2005 from M/s Jai Rath Seed Store Bhangala, District Hoshiarpur. Petitioner No. 1 was issued an intimation under Rule 33 of the Insecticides Rules, 1971 regarding the sample being taken from its store.

Petitioner No. 1 produced Bill No. 12852 dated 13.6.2005 showing that the said insecticide containers were purchased from M/s Master Di Hatti Dasuya who are the distributors i.e. petitioner No. 3. As per Annexure P.1 complaint, one part of the sample was sent to the Senior Analyst in Insecticide Testing Laboratory at Amritsar by the Insecticide Inspector vide Form XXI i.e., Memorandum to Government Analyst. The analyst report revealed that the said sample did not conform to the ISI specifications as the active ingredients of Butachlor were found to be 46.22% instead of 50% EC. So, the sample was found misbranded. That under Section 30(3)(4) of the Act, the dealer M/s Jai Rath Seed Store availed the chance to get the second sample analysed from the Director Central Quarantine and Storage Faridabad (Central Insecticides Lab Faridabad). As per the analysis report the active ingredients were found to be 47.6% as against 50%. The said sample was contained in its original packing of 1 liter, which was originally purchased from the distributor, namely, M/s Master Di Hatti Dasuya. As per the provisions of Section 30(3) of the Act, in case the sample is drawn from sealed containers and the insecticide is stored in a proper condition, the manufacturer is liable for any loss of the potency of the ingredients. As per the report of Central Insecticide Laboratory Faridabad, there was only marginal loss of active ingredients. The petitioners cannot be held liable for the wrong of the manufacturer i.e. M/s Thakur Chemical Limited. Since the petitioners are the dealer and distributor, they cannot be held liable for lapse, if any and their prosecution on the basis of such complaint would be an abuse of process of the Court. As such, the same may be quashed.

3. As averred in the reply, petitioners No. 1 to 4 are dealer/distributor of M/s Thakur Chemical Limited New Delhi. Petitioner No. 1 has been granted insecticide licence No. 920, which was valid upto 31.12.2005. As per analyst's report, the sample has been found misbranded as it did not conform to ISI specification in respect of its percentage of active ingredients Butachlor 46.6% EC (Topchor). Lastly, it has been prayed that this petition may be dismissed.

4. I have heard the learned counsel for the parties, besides perusing the record with due care and circumspection.

5. Learned counsel for the petitions eloquently urged that it is an admitted case of the parties that the sample in question was contained in its original packing of 1 litre and that being so, in view of the provisions enshrined in Section 30(3) of the Act, the petitioners are not liable in any manner, rather the manufacturer is liable for the alleged deficiency in the sample. Sequelly, the complaint Annexure P.1 as also the subsequent proceedings arising out of the same are liable to be quashed. To buttress this stance, he has sought to place abundant reliance upon the observations rendered in re : M/s Sandeep Pesticides & Fertilizers v. State of Punjab, 2005(2) RCR(Crl.) 940 : 2005 Criminal Law Journal 2843, Sukhdev Kumar v. State of Punjab, 2005(2) RCR(Criminal) 525, M/s Sidhu Brothers Store v. State of Punjab, 2004(2) RCR(Criminal) 366, Rajinder Kumar v. State of Punjab, 2003(2) RCR(Criminal) 244 and M/s Kisan Beej Bhandar, Abohar v. Chief

Agricultural Officer, Ferozepur and another, 1990 (Supplementary) Supreme Court Cases 111.

6. To controvert these submission, learned State Counsel maintained that in view of the observations rendered in re : M/s Chiranji Lal Lakhmi Chand, Malout through its partners v. State of Punjab, 2008(2) RCR(Criminal) 393, the complaint Annexure P.1 as well as the consequently proceedings are not liable to be quashed.

7. I have given a deep and thoughtful consideration to the rival contentions. There is no gainsaying the fact that the petitioners are the dealer/distributors of M/s Thakur Chemical Limited, New Delhi and petitioner No. 1 has been granted insecticide licence No. 920 which was valid upto 31.12.2005. The sample was drawn on 27.7.2005 at about 3:00 P.M. It implies that the same was taken during the validity period of the licence. The provisions of section 30(3) of the Act read as under :

"(3) A person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof, shall not be liable for a contravention of any provisions of this Act, if he proves

(a) that he acquired the insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof;

(b) that he did not know and could not, with reasonable diligence, have ascertained that the insecticide in any way contravened any provision of this Act; and

(c) that the insecticide, while in his possession, was properly stored and remained in the same state as when he acquired it."

8. In re : Sandeep Pesticides and Fertilisers (supra), the sample of insecticide was taken, from the container as supplied by the manufacturer. It was purchased from the dealer. It was held that the dealer has a right to seek protection under Section 30(3) *ibid*. The proceedings qua the dealer were quashed. Further in re : Sukhdev Kumar (supra), the sample of insecticide purchased from the dealer was found to be misbranded by the analyst. The sample was taken in a packed and sealed condition as supplied by the manufacturer. It was held that even if analyst's report is to be accepted, the accused who is a dealer cannot be held liable. In re : M/s Sidhu Brothers Store (supra), the sample of weedicide was taken from the accused a retailer. The same was found to be misbranded. It was taken from original packing of manufacturer and stored in the same state. It was held that the dealer is entitled to get benefit of the protection of 30(3) of the Act. In re : M/s Kisan Beej Bhandar, Abohar (supra), on facts, it was found that it was a full tin in a sealed condition. It was held that the liability arising out of misbranding was not of the appellant, who was dealer.

9. The concept of judicial precedents as emerges out of these rulings is that if the sample is taken from original packing of manufacturer and stored in the

same state, the dealer is entitled to get the benefit of protection of Section 30(3) of the Insecticides Act, 1968, if the substance/sample drawn was in its original condition. Herein, it is own case of the parties that the sample in question was contained in its original packing of 1 litre. It implies that the contents thereof were not tampered with by the petitioners at any stage. Had the same been tampered with, the original packing would have not been in the same state. That being so, the petitioners being the dealer/distributors cannot be held liable. With utmost humility and great respect to his Lordship in the face of plethora of rulings referred to hereinbefore, it is very difficult for me to follow the verdict given by his Lordship in re : M/s Chiranji Lal Lakhmi Chand, Malout through its partners (supra). It has been consistently held that when the sample is taken from a packed and sealed container as supplied by the manufacturer, the dealer and the distributor cannot be held liable.

10. As a sequel of the above discussion, this petition is accepted. Consequently, the complaint tilted as `Punjab State v. M/s Jai Rath Seed Store and Others" (Annexure P.1) pending in the Court of learned Chief Judicial Magistrate, Hoshiarpur as well as all other subsequent proceedings arising out of the same are hereby quashed.