

(1996) 10 P&H CK 0069

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 21572-M of 1995

Jai Shri Agro Industries (P) Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 14-10-1996

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 88

Hon'ble Judges : Swatanter Kumar, J

Advocate : S.K. Hooda, Ravinder Chopra, Advocates for appearing Parties

Judgement

Swatanter Kumar, J.

1. The petition under section 482, Code of Criminal Procedure, read with Articles 226 and 227 of the Constitution of India has been filed by the petitioner, with the prayer for quashing the complaint under section 29(1)(a), read with section 3(k) (1) and section 17(1)(a) of the Insecticide Act, 1968 pending in the Court of the Chief Judicial Magistrate, Kaithal. Further prayer is for quashing of all the consequential proceedings.

2. The petitionerfirm is a registered manufacturer and holds a licence for manufacturing different types of insecticides/pesticides. The petitioner also became registered with the Central Insecticides Board, Government of India, Ministry of Agriculture, New Delhi. Petitioner No. 2 is stated to be the Chief Chemist of petitioner No. 1. The complaint was filed by Sh. Sapattar Singh, who at the relevant time was working as SubDivisional Agricultural Officer, Cheeka (Haryana). According to the averments made in the complaint, Messrs Jindal Pesticide, Chhoti Mandi, Cheeka, was carrying on the aforesaid business and the complainant had visited the said concern on 30.12.1992 and the sample of 24D Ethyl Ester 34% EC under the provisions of Insecticide Act, 1968 was taken. The sample was taken in the sealed container of 250 mililitre of product. One sample was given to the proprietor of the dealer, whilst other two samples were kept by the authorities the second one was sent to the State Quality Control Laboratory, Karnal 4.1.1993. The sample was declared misbranded by the Senior Analyst,

Quality Control (Insecticide) Laboratory, Karnal, and his report is dated 2.2.1993. Thus for violation of the above provisions, the complaint was filed and came up before the learned Magistrate on 20.7.1993.

3. The short submission of the learned counsel for the petitioner is that a valuable right as had accrued to the petitioner under the provisions of the Act has been taken away by unnecessary delay and laches on the part of the respondents. According to the learned counsel for the petitioner, the right of the petitioner to have third sample with the dealer analysed by the Laboratory has been frustrated by delay and inaction on the part of the respondents. This has resulted in substantial prejudice to the right of the defence of the petitioner and as for the settled principles of law, the complaint and the proceedings initiated thereupon are liable to be quashed.

4. On the other hand, the learned counsel for the State has argued that the petitionerfirm are manufacturers and they are not entitled to protection available to the dealer irrespective of the fact that they have been prosecuted by the complainant.

5. After hearing the learned counsel for the parties and keeping in view the scheme of the aforestated Act, it cannot be disputed that a valuable right accrues in favour of the accused, which relates to pressing for sending the third sample to the concerned Laboratory. This protection has been provided to an accused as a double safe guard against malicious prosecution or a prosecution, which may lack basis. Once under the scheme of the Act or by virtue of judicial pronouncements protection becomes available to an accused, then the prosecuting agency or the complainant has to show adherence to such procedure for a successful prosecution.

6. The undisputed facts are that the sample was collected on 30.12.1992 which was sent to the Laboratory in January, 1993, the expirydate indicated on the Insecticide was October, 1994. The complainant issued the "show cause notice" on 2nd of February, 1993, a reply to which was filed by the accused on 8.2.1993. In this reply, a specific request was made by the petitioner that the third sample be sent to the Laboratory in accordance with Law. This reply, though was considered by the respondents, but no action, as requested for, was taken by them. The complaint was filed on 20.7.1993. The accused was summoned and he appeared for the first time on 17.5.1995. Admittedly by that time, the expiry date indicated on the sample had already expired. In this view of the matter, the petitioners were not able to obtain any benefit of the protection available to them in law and it has certainly prejudicially affected their right of defence.

7. Learned counsel for the petitioner has relied upon the judgment of this Court in National Organic Chemicals Industries Ltd. v. State of Haryana, 1992(1) Recent C.R. 137 and Sh. Sant Lal and another v. State of Haryana, 1995(2) Recent C.R. 101.

In view of the aforestated discussion and wellsettled principles of law, I accept

this petition. The complaint and the proceedings taken in furtherance thereto are quashed. Consequently, the petitioners are discharged.