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**(1996) 07 P&H CK 0085**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. 62450-M of 1996

Jandu Mal Desh Raj

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 17-07-1996

**Acts Referred:**

**Citation :** (1996) 3 RCR(Criminal) 736

**Hon'ble Judges :** M.L.Singhal, J

**Advocate :** Kapil Aggarwal, R.K. Jain, Advocates for appearing Parties

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## **Judgement**

M.L. Singhal, J.

1. M/s. Jandu Mal Desh Raj was a dealer in the sale of Insecticide and Pesticide appointed by the Director of Agriculture, Haryana through licence issued by him. On 8.7.1993, Sh. D.S. Malik, Insecticide Inspector visited the business premises of M/s. Jandu Mal Desh Raj with a view to seize sample of some insecticide or pesticide for having the same analysed from the analyst. At the time of raid, Shri Sushil Kumar proprietor of the business concern was present at the business premises. Anilophoz Ec was found stored in the shop for sale. After disclosing him his identity, expressing his intention to seize sample of Anilophoz 30 Ec, Sh. D.S. Malik, Inspector, Insecticide Inspector purchased Anilophoz 30 Ec. Sample taken was in sealed packing in original pack. Each sample part was put in polythene bag which was further put in cloth bag. Three samples were prepared. Sample slip was affixed on each bag. Sh. Ajmer Singh also signed each sample who was present at the spot. One sealed sample was sent to the Regional Quality Control Insecticide Laboratory, Chandigarh who found the sample misbranded.

2. After the receipt of the report of the analyst, complaint was instituted by the Quality Control Insecticide Inspector against M/s. Jandu Mal Desh Raj (dealer), Sushil Kumar proprietor of this business concern and manufacturer M/s. Montari Industries Ltd. and Rakesh viz., Manager Quality Control Montari Industries Ltd., District Ropar in the Court of the Chief Judicial Magistrate, Kurukshetra under Section 29(1)(a) and section 17(1)(a) of the Insecticide Act, 1968.

3. Dealer M/s. Jandu Mal Desh Raj through its proprietor Sushil Kumar has attacked the launching of this prosecution against them and has prayed for its quashment in exercise of the powers vesting in this Court under Section 482 Cr.P.C. read with Article 227 of the Constitution of India and also the consequential proceedings having been taken in pursuance thereto.

4. It is averred in this petition that sample when taken was in sealed packing in the original pack. Dealer supplied the same thing to the Insecticide Inspector for analysis which had been supplied to them by the manufacturer i.e. M/s. Montari Industries Ltd., its manufacturer. Product after it had been received by the dealer from the manufacturer was never tampered with nor there was any negligence on the part of the dealer in preserving the sample in the same state in which it had been supplied to them by the manufacturer. Complaint against the dealer is misconceived. In para 4 of the complaint, there is averment that the Insecticide Inspector had taken sample in sealed packing in original pack. If that was so, the dealer is protected by virtue of Section 30(3) of the Insecticide Act. Dealer could not have assured that the product was of the standard and was not misbranded. So far as standard of the product sold is concerned, that was known only to the manufacturer who was supposed to market it after test in their laboratories. Manufacturer was solely responsible for the quality of the product.

5. Respondent State has resisted this prayer of the petitioner (dealer) urging that the petitioner dealer has failed to justify his stand that the product is the same which has been purchased from the manufacturer and further that he sold the same very product and in the same state in which he had purchased it from the dealer. This plea can be taken up by the dealer at the trial of the complaint. Dealer would be entitled to the benefit of doubt if he is able to substantiate this plea at the trial.

6. I have heard the learned counsel for the petitioner, learned Advocate for the State of Haryana and have gone through the record.

7. Before adverting to the merits of the petition, the question that falls for determination is as to what are the facts and circumstances where criminal prosecution can be quashed by this Court in exercise of the powers vesting in it under Section 482 Cr.P.C.

8. In *State of Haryana v. Chaudhry Bhajan Lal*, AIR 1992 SC 604, the Hon'ble Supreme Court has enumerated a few instances where criminal prosecution can be quashed at the threshold which are as follows :

"(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an

order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR of complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

9. In *Janta Dal v. H.S. Choudhary*, AIR 1993 SC 892, the Apex Court examined the extent of the inherent powers conferred by Section 482 of the Code of Criminal Procedure on the High Court and it was held as under :

"This inherent power conferred by Section 482 of the Code of Criminal Procedure should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a premature decision in a case where the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. This court in *State of Haryana v. Ch. Bhajan Lal*, 1990(3) Supp. SCR 259 to which both of us were parties have dealt with this question at length and enunciated the law listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings."

10. It is thus clear that criminal prosecution can be quashed by this Court in the exercise of the power vesting in it under Section 482 Cr.P.C. at the threshold if the allegations made are either absurd or inherently improbable on the basis of which one can never reach a just conclusion that there is sufficient ground for proceeding against the accused or where the uncontroverted allegations made in

the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. High Court should not exercise this extraordinary power to stifle prosecution in a legitimate case.

11. In the instant case, there is no warrant for the continuance of this prosecution against the dealer M/s. Jandu Mal Desh Raj and its proprietor Sushil Kumar in the face of this allegation in the complaint that the sample when taken was in sealed packing in original pack.

12. In view of the provisions of Section 30(3) of the Insecticides Act, dealer could not have been prosecuted when the dealer supplied insecticides to the Insecticide Inspector in the same condition in which it had been purchased by him from the manufacturer. Section 30(3) of the Insecticides Act reads as follows :

"A person not being an importer or a manufacturer of an insecticides or his agent for the distribution thereof, shall not be liable for contravention of any provision 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."

13. In *Ajit Singh v. State of Punjab*, 1992(1) RCR 613 and in *Birbal v. State*, 1993(1) RCR 687 prosecution was quashed against the dealer in similar circumstances.

14. In view of what has been said above, the conclusion is that complaint Annexure P1 is unsustainable so far as dealer M/s. Jandu Mal Desh Raj and Sushil Kumar its proprietor are concerned. Complaint Annexure P1 is quashed qua them. Consequential proceedings having arisen thereto are also quashed qua them. This petition is thus accepted.