
(1996) 02 P&H CK 0004

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 9158-M of 1995

Jhajhan Lal Gupta, Director and Another

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 05-02-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 22, 24, 24(4), 29(1), 3K(1)
Prevention of Food Adulteration Act, 1954 — Section 13(2)

Citation : (1997) CriLJ 190 : (1996) 3 RCR(Criminal) 42

Hon'ble Judges : P.K. Jain, J

Bench : Single Bench

Advocate : Ravinder Chopra, for the Appellant; P.S. Sullar, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—M/s. Unique Farmaid, Private Limited, Delhi petitioner No. 2 is licensed manufacture of an insecticide known as Monocrotophos 36% S.L. Petitioner No. 1 is its Director.

2. On August 17, 1989, Insecticides Inspector visited the business of M/s Bansal Radio and Company, Ellenabad, adcalerof the aforesaid insecticide being manufactured by petition No. 2 and purchased samples of the said insecticide having manufacturing date Feb. 1989 and expiry date July, 1990, in accordance with the provisions of the Insecticides Act, 1968 (hereinafter referred to as the Act). On being analysed the said sample was declared mis-branded by the Sen or Analyst Quality Control Laboratory, Karnal vide its report dated 12-10-1989 (Annexure P.I). The Deputy Director of Agriculture, Sirsa issued a show cause notice dated 24-10-1989 along with the copy of the said report of the Analyst. After obtaining the necessary sanction (Annexure P.6), the Insecticides Inspector filed a complaint under Sections 29(1) read with Section 3K(1) of the Act and the Rules framed thereunder, on 25-4-1990 against the petitioners as well as its

dealer M/s Bansal Radio and Company. The Magistrate took cognizance and summoned the accused persons for 1-8-1990.

3. The petitioners, who are the manufacturers of the insecticide in question have filed this petition u/s 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India for quashing the complaint (Annexure P-2), and the summoning order dated 25-4-1990 (Annexure P.5) being the abuse of the process of the Court. It has been stated in the petition that on the receipt of the show cause notice dated 24-10-1989 the petitioners had sent a detailed reply and made a specific request for sending counter sample to the Central Insecticides Laboratory, in view of the provisions under the Act for retesting purposes; that instead of sending counter sample as prayed for, the present complaint was filed against the petitioner; and that the petitioners were summoned by the Chief Judicial Magistrate for 1 -8-1990 by which the shelf life of the insecticide in question had already expired. It has been stated that the petitioners have been deprived of their valuable right u/s 24(4) of the Act as they could not avail the remedy for getting the sample reanalysed and the complaint is liable to be quashed on this short ground.

4. Notice of motion was given to the respondent. In reply the factual position has not been disputed by the respondent-State. It has been stated the sample was found to be misbranded and as such the complaint cannot be quashed. It has been further stated that the provisions of Section 24 of the Act have been complied with by the respondent and the complaint cannot be quashed on this ground as well.

5. I have heard learned counsel for the parties and have perused the record.

6. Shri Ravinder Chopra Advocate learned counsel for the petitioners has pointed out that the sample of the insecticide in question was taken on 17-8-1989, the manufacturing date of which was Feb. 1989 and the expiry date was July, 1990. It has been further pointed out by the learned counsel that the report of the Senior Analyst was sent by the department vide letter dated 12-10-1989 to which a proper reply dated 31-10-1989 (Annexure P-4) was sent and it was made clear that the report of the Senior Analyst was not correct and request was made that counter part of the sample be sent for retesting in the Central Laboratory. The learned counsel has further pointed out that the counter sample was not sent as prayed for by the petitioners and directly the impugned complaint was filed on 25-4-1990 and the petitioners were summoned for 1-8-1990 when the shelf life of the insecticide in question had already expired. It has been argued that even all the allegations in the complaint are accepted correct, a valuable right granted u/s 24 of the Act stands defeated and this itself is good ground to quash the complaint. In support of this contention learned counsel has placed reliance upon a judgment of this Court delivered in Criminal Misc. No. 192-M of 1995 decided on 1-8-1995 and the judgment referred to therein.

7. On the other hand. Shri P.S. Sullar, learned Assistant Advocate General, Haryana has argued that a show cause notice along with a report of the Senior Analyst was sent well in time and it was for the petitioners to take appropriate steps to apply to the court for exercising their right u/s 24 of the Act since the re analysis of the counter sample could be made only under the orders of the Court. Thus it has been contended that the petitioners are not entitled to the benefit of the alleged omission and there is no violation of the right of the petitioners as alleged.

8. I have carefully considered the respective arguments advanced at the Bar.

9. To appreciate the respective contentions of the learned counsel for the parties, the relevant portion of Section 24 of the Act may be noticed as under:-

(3) Any document purporting to be a report signed by an Insecticide Analyst shall be evidence of the facts stated therein and such evidence shall be conclusive unless the person from whom the sample was taken has within twenty -eight days of the receipt of a copy of the report notified in writing the Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in contravention of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticide Laboratory, where a person has under Sub-section (3) notified his intention of adducing evidence in controversy of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the Insecticide produced before the Magistrate under sub-sec. (6) of Section 22 to be sent for test or analysis to the said Laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of the Director of the Central Insecticides Laboratory the result thereof and such report shall be conclusive evidence of the facts stated therein.

It is, thus obvious from the above provisions that petitioner No. 2 had right to get the sample reanalysed since it was informed that the sample was found to be misbranded. Admittedly, immediately on the receipt of the show cause notice along with a report, the petitioner No. 2 intimated the respondent vide their letter Annexure P-4 that the report of the Senior Analyst was not acceptable as the same was not correct and the counter sample be got reanalysed from another laboratory. It is also not disputed that the complaint in question was filed on 25-4-1990 wherein the petitioners were summoned for 1-8-1990. It is also the admitted case of the parties that the manufacturing date of the insecticide in question was Feb. 1989 and the expiry date was July, 1990 Thus it becomes clear that the petitioners were summoned in the complaint case for a date by which the shelf life of the insecticide in question had already expired.

10. There is no provision under the Act that the manufacturer can get the sample re-tested before launching prosecution against him except in subsection (3)

whereby he can challenge the report of the Insecticide Analyst only. Section 24 of the Act confers two rights i.e. the right to challenge the correctness of the report of the analysis on the receipt of the show cause notice, and secondly to challenge the same and to make a request before the court for re-analysis of the counter sample after the complaint is filed. The provisions of this section simply provides that in case a written request is made by the manufacturer expressing its intention to controvert the report of the Analyst, the report shall not be conclusive evidence of the facts contained therein. Therefore, the service of the notice regarding the sample being misbranded or intimating the manufacturer that the re-analysis can be ordered by a Court before the date of expiry of shelf life of the insecticide, is of no consequence. The material requirement of the Act is that the complaint should be filed and the accused should be served well in time before the expiry of the shelf life of the insecticide in question so as to enable the accused persons to challenge the correctness of the report of the analyst by forwarding the, counter part of the sample to the Central Laboratory. If this right of an accused under Act is violated by inaction or omission on the part of the department, the same is fatal to the prosecution.

11. In *Municipal Corporation of Delhi Vs. Ghisa Ram*, , due to inordinate delay in instituting the prosecution, a valuable right conferred by Section 13(2) of the Prevention of Food Adulteration Act was taken away. In these circumstances, the apex court made the following observations (Para 7):-

It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory is to be expected that the prosecution will proceed in such a manner that the right will not be denied to him. The right is a valuable one because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously the right has been given to the vendor in order that for his satisfaction and proper defence he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst even though that report continues to be evidence in the case of the facts contained therein. While placing reliance upon the aforesaid judgment a complaint under Insecticides Act, on identical facts and circumstances, was quashed by this Court in *Mewa Singh v. Prithipal Singh* (1994) 1 RCR 94 and *Raj Hans Chemicals v. State of Punjab* (1994) 2 RCR 139 similar views were expressed by this court in *Hindustan Pulverising Mills v. State of Haryana* (1992) 2 RCR 313 *National Organic Chemicals Ltd. v. State of Haryana* (1992) 1 RCR 157 and *Jai Chemical v. State of Punjab* (1994) 3 RCR 610. An identical view was expressed by this Court recently in Criminal Misc. No. 1102-M of 1995 titled as *Thakur Chemicals v. State of Haryana* decided on 26-3-1996.

12. In view of the law and the facts of present case discussed above, it becomes clear that on account of sheer negligence on the part of the complainant inspector, the petitioners have been deprived of a valuable right to defend themselves in the proceedings initiated on the basis of the complaint (Annexure P-2). This omission on the part of the respondent in itself is fatal to the complaint.

13. Consequently I accept this petition and hereby quash the complaint (Annexure P-2), summoning order (Annexure P-5) and further proceedings thereon passed and pending in the court of Chief Judicial Magistrate, Sirsa qua the petitioners.