
(1993) 02 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 1724-M of 1992

Jot Ram Dharam Chand, Tappa

APPELLANT

Vs

State of Punjab through Insecticide Inspector, Barnala

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Citation : (1993) 2 AICLR 783 : (1993) 2 RCR(Criminal) 456

Hon'ble Judges : Harmohinder Kaur Sandhu, J

Advocate : A.G. Masih, Arun Chandra, Ravinder Chopra, Advocates for appearing Parties

Judgement

Harmohinder Kaur, Sandhu, J.

1. M/s. Jot Ram Dharam Chand Tappa are dealers in pesticide under a licence which was issued by Chief Agricultural Officer, Sangrur. On 26th August, 1987 Mehar Singh Insecticide inspector visited the premises of the dealer and took sample of Fenvalrate 20% E. C. Batch No. 101 according to the provisions of the Insecticides Act, 1968 (the Act for short). Three original containers of Batch No. 101 were taken and were put in three polythene packets alongwith seizure memo and each sample was sealed with seal No. 4. One sealed sample was handed over to Hukam Chand partner of the firm. Another sealed packet was sent to Central Insecticides Testing Laboratory. Faridabad. The Senior Scientific Officer, Faridabad declared that the sample of pesticide was misbranded as it contained low active ingredients than required in the container 20% F.C. and pesticide did not meet the label claim. On these averments Shri Mehar Singh Insecticide Inspector, Barnala filed a complaint against the dealer as well as the manufacturer of the pesticide for offences under Sections 17, 18, 31 and 33 of the Act. The dealer firm through its partners has now filed the present petition under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India for quashing the complaint Annexure P1 and subsequent proceedings arising therefrom, pending in the court of Judicial Magistrate Ist Class, Barnala.

2. It was averred in the petition that the date of the manufacture of the pesticide was July 1987 and the date of expiry was June, 1989 but the complaint was filed on 8.2.1990 i.e. after the expiry of the sample. There thus no time left with the petitioner firm to send the sample for reanalysis as shelf life of the sample had expired. The petitioner was deprived of his right to controvert the report of the Central Insecticides Laboratory which vitiates the proceedings against the petitioner. It was further pleaded that the Insecticide Inspector instead of sending the sample to the Insecticide Analyst sent the same to the Central Insecticides Laboratory and thus the right to send the sample to the Central Insecticides Laboratory was not available to the petitioner. Before launching prosecution it was necessary to obtain sanction from the higher authority under Section 31 of the Act but in the present case no valid sanction was granted. The sanction was granted on a cyclostyled form and name of the licensee and the manufacturer were filled in. There was no mention of the contents of the report of the Analyst nor there was any mention of the specific provisions of the law under which the petitioner was sought to be prosecuted. The petitioner was protected under the provisions of Sub section 3 of Section 30 of the Act, as the pesticide was being sold in sealed containers and the seals on the containers were intact. After exercising due diligence, the petitioners could not have ascertained that the pesticide was in any way misbranded. The pesticide was stored in a proper form and had remained in the same State as when acquired from the licensed manufacturer i.e. Markfed Agro Chemicals, Mohali.

3. In the return filed by respondent No. 1 this fact was admitted that date of manufacture of the pesticide was July 1987 and expiry date was June, 1989. The complaint was, however, filed on 821990. It was maintained that the Insecticide Inspector sent the same to Central Insecticides Laboratory, Faridabad because there was no testing facility for Fenvalrate 20% in the State Insecticides Testing Laboratory and as the sample was already tested by Central Insecticides Laboratory the petitioner was not deprived of any right. The provisions of the Act, were fully complied with. It was further contended that the petitioner being dealer could not escape liability for the sample which was found misbranded simply on the ground that the pesticide was acquired from a licensed manufacturer in a sealed container.

4. I have heard the counsel for the parties and have perused, the record.

5. The first contention of the learned counsel for the petitioner was that the petitioner had a right to get the sample reanalysed and when the petitioner was informed that the sample was found misbranded, he submitted an application on 4111987 i.e. immediately After receipt of the information, requesting the departmental authorities to sent the sample for reanalysis to some other laboratory as the petitioner firm was not satisfied with the report given by the Central Irresecticides Laboratory but neither the sample was sent for reanalysis nor any reply was sent to the petitioner. The complaint was filed after the expiry of the shelf, life of the sample and the petitioner was thus deprived of his right

even to apply to the court to get the second sample reanalysed. In support of his contention the learned counsel placed reliance on the case of National Organic Chemicals Industries Ltd. v. State of Haryana, 1992(2) Recent Criminal Reports 137 and National Organic Chemicals Industries Ltd. v. State of Haryana, 1992(1) Recent Criminal Reports 157. In both these cases prosecution was launched before the expiry of the shelf life of insecticide but summoning order was passed after the expiry of shelf life of the sample and it was held that the accused was deprived of his right to get the second sample examined from Central Insecticides Laboratory and proceedings were liable to be quashed on that ground. This fact has not been denied that the petitioner had a right to get the sample reanalysed. As soon as the petitioner was informed that the sample was found misbranded the petitioner notified in writing to the concerned authority that he intended to adduce evidence to controvert the report by getting the sample reanalysed. The complainant did not send any reply to the petitioner nor made any effort to get the sample reanalysed. Admittedly the complaint was present in the court after the expiry of shelf life of the sample and the petitioner was debarred from applying to the court for reanalysis of the sample as no proceedings were pending against him at that time when the sample was in a fit condition for retesting. The opportunity even to the petitioner to get the sample reanalyzed was a valuable right which was defeated on account of the negligence of the Insecticide Inspector and in these circumstances the complaint is liable to be quashed.

6. It was next urged on behalf of the petitioner that the petitioner had purchased the pesticide from a licensed manufacturer and the pesticide was properly stored and remained in the same state as when it was acquired. The petitioner could not know with reasonable diligence that the pesticide was in any way contravening any provision of the Act so he was not liable for any offence. Reference was made to SubSection 3 of Section 30 of the Act in this behalf which reads as under :

"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 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."

7. A perusal of the complaint Annexure P1 shows that the sample of pesticide was in original container which had not been tampered with and there is nothing to show that pesticide was not properly stored or it was not in the same state as when acquired from the manufacturer. The petitioner is not an agent of the

manufacturer for the distribution of the pesticide. He is a licensed dealer and a retail dealer having purchased misbranded pesticide from a licensed manufacturer cannot be convicted under the Act when the pesticide was found stored in the same state.

8. Lastly it was urged that the sanction Annexure P.3 was not accorded after full application of mind. This contention of the learned counsel is quite valid as the Joint Director gave sanction on printed form wherein the name of the petitioner firm was filled in.

9. The sanction did not contain even the name of the Insecticide Inspector who took the sample nor the date on which the sample was taken and no detailed facts of the sample being misbranded were mentioned. The provisions of Section 31(1) of the Act were not complied with, which reads as under :

"No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a person authorised in this behalf by the State Government."

The provisions regarding grant of sanction are mandatory in nature and cognizance of the offences under the Act is barred except by or with the written consent of the State Government or a person authorised in that behalf by the State Government. The sanction is, therefore, required to be given by the authorised person after full application of mind which is lacking in this case. On similar ground complaint was quashed in the case of S.K. Khurana v. State of Punjab and another, 1992 Punjab Law Times 93.

10. In view of the above infirmities I allow this petition and quash the complaint Annexure P1 as well as proceedings arising thereof pending in the Court of Judicial Magistrate 1st Class, Barnala.