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(1996) 02 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 13559-M of 1995

K.G. Pappu APPELLANT

Vs

The State of Punjab and Others 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 17, 18, 29, 3, 31

Citation : (1996) CriLJ 2985 : (1996) 1 RCR(Criminal) 795

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

Bench : Single Bench

Advocate : Rajesh Girdhari, for the Appellant; I.P.S. Sidhu, AAG, for the Respondent

Final Decision : Allowed

Judgement

P.K. Jain, J.—Shri K.G. Pappu and his wife Smt. Makli Pappu 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-1) pending in the Court of Judicial Magistrate 1st Class, Malout summoning order (Annexure P-2) and consequent proceedings arising out of the same.

2. The facts in brief are that on 28-9-1989 Shri Joginder Singh Boparai, Agricultural Inspector visited the shop of M/s. Vijay Kumar Satish Kumar Malout and took a sample of insecticide, which on analysis was found to be misbranded. After serving show cause notice and copies of Analyst''s report upon the manufacturer, distributor and dealer and after obtaining sanction for prosecution. Shri Joginder Singh Boparai filed a complaint (Annexure P-1) under Sections 3(k), 17, 18, 29 and 33 of the Insecticides Act. 1968 (hereinafter referred to as the Act) against the dealer, distributor and manufacturer of the said insecticide, Judicial Magistrate 1st Class took cognizance and summoned the accused for 8-5-1991 by order dated 4-3-1991 (Annexure P. 2).

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3. The present petitioners have challenged the complaint as well as the summoning order on the ground that no sanction was obtained to prosecute them for any offence under the said Act, that there is no averment in the complaint as to in what capacity the petitioners are to be prosecuted for the aforesaid offences that sample was sent to the Central Insecticide Laboratory thereby depriving the petitioner of his right to rebut the report of the Laboratory.

4. Notice of motion was given to the respondents.

5. In reply it has been stated that there is a legal and valid sanction obtained from the competent, authority for the prosecution of the accused persons; that the petitioners are the partners of the manufacturing company and petitioner No. 1 is the overall incharge thereof. It has been further stated that the petitioners never expressed their intention to for ward the second sample for analysis and therefore, the plea that the sample was sent to the Central Insecticides Laboratory does not affect any right of the petitioners.

6. I have heard the counsel for the parties and have perused the record.

7. The learned counsel for the petitioners has mainly laid stress on the plea that no sanction to prosecute the petitioners at all has been obtained before launching this prosecution and as such the complaint and the subsequent proceedings are liable to be quashed. It has also been argued that the sanction was granted on a cyclostyled pro forma and it does not contain the necessary details required by law and as such the same cannot be said to be valid sanction. The support of this plea, the learned counsel has placed reliance upon four judgments of this Court reported as Manjit Singh v. State of Punjab 1994 (1) RCR 650, D.N. Chaturvedi v. State of Punjab 1994 (2) RCR 133, C.S. Krishnamurthy v. State of Punjab 1994 (3) RCR 618 and Sat Paul Rajender Parshad Sunam v. State of Punjab 1995 (1) RCR 245.

8. On the other hand Shri I.P.S. Sidhu, learned Assistant Advocate General, Punjab has argued that both the petitioners are partners of the manufacturing firm, that sanction has already been obtained to prosecute the partnership firm, and therefore, the petitioners have been rightly summoned by the trial Court in the present complaint.

9. Section 33 of the Act relates to offences by companies. It reads as under:-

Offences by companies :- (1) Whenever an offence under this Act has been committed by a company, every person who at the time of offence was committed was in charge of, or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this subsection shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to

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prevent the commission of such offence.

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and is it proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :- For the purpose of this section -

(a) "company" means any body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

This section appears to be plain enough. If the offences under the Act has been committed by the company, the persons who may be held guilty and punished are : (1) the Company itself (2) every person who, at the time, the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company whom for short we may describe as the person in charge of the company, and (3) any director, manager, secretary or other officer of the company with whose consent or connivance of because of neglect attributable to whom the offence has been committed, whom for short we may describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person in charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted.

10. Section 31 of the Act relates to the taking of cognizance and trial of offences under the Act. Sub-section (1) thereof provides 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.

These provisions mandate that no prosecution for an offence under the Act can be instituted except by or with the written consent of the Stale Government or a person authorised in this behalf by the Stale Government. In other words, the sanction of the State Government or authorised officer is sine-qua non for launching prosecution against any individual or Corporation. Reading this provision along with Section 33 of the Act, reproduced above, it becomes clear that if prosecution is to be launched against the company or the person in charge of the company or an officer of the company, sanction to prosecute is the condition precedent for each of them. If the partnership firm and its partners are to be prosecuted for an offence under the Act, sanction to prosecute is required in respect of the partnership Firm as well as the partners. A sanction granted to prosecute a partnership firm would not cover the prosecution of the partners

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constituting that firm. The obvious reasons is that the partnership firm within the ambit of term company as contained in Section 33 can be prosecuted and punished alone without prosecuting partners constituting that firm. Therefore, when the partners of such a firm are also to be prosecuted along with the firms, Section 31(1) mandates sanction to prosecute against its partners also.

11. In the present case, sanction u/s 31 (1) of the Act has been accorded for instituting prosecution against:-

(1) M/s. Vijay Kumar Satish Kumar, Malout (Dealer). .

(2) M/s. Indian Cropicales Pvt. Ltd., 309 Meghdoot, 94, Nehru Palace, New Delhi (Distributor).

(3) M/s. Southern Insecticides and Fertilizers, Madras (manufacturers).

The suction does not authorise the prosecution of the petitioner for any offence under the Act. Without the necessary sanction to prosecute them, the petitioners could not have been summoned as. accused persons in this complaint. It is absolutely different thing that the manufacturing firm is being prosecuted which may be a partnership firm. Therefore, the complaint Annexure P-1 and the summoning order Annexure P. 2 are liable to be quashed against the petitioners on this short ground. I need not go into the other pleas raised by the petitioners in their petition.

12. As a result of the above discussion, this petition is allowed. The complaint Annexure P-1, the summoning order Annexure P. 2 and the consequent proceedings qua the petitioners (herein) are hereby quashed. It is made clear that the prosecution of the three concerns mentioned in the complaint will not be affected by this order. It is also made clear that the respondents will be at liberty to proceed against the petitioners after taking proper sanction/ consent in accordance with law, if so advised.

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