
(1998) 02 P&H CK 0080

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7465-M of 1997

Kissan Oil Store

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 27-02-1998

Acts Referred:

Citation : (1998) 2 RCR(Criminal) 759

Hon'ble Judges : K.K.Srivastava, J

Advocate : S.S. Radhawa, Pawan Bansal, Advocates for appearing Parties

Judgement

K.K. Srivastava, J.

1. This is petition filed under Section 482 Cr.P.C. seeking the quashing of the complaint (copy Annexure P1) and the summoning order (copy Annexure P2) dated 6.2.1998 passed by Judicial Magistrate, Samrala.

2. The petitioner is a dealer in Insecticides/weedicides and is holder of a valid licence No. 785/89 issued by the Licencing Authority, i.e. Chief Agriculture Officer, Ludhiana. The petitioner used to purchase various insecticides from different manufacturers and used to store them properly and sell them in the same state, i.e. in the sealed container, as received from the manufacturers. The petitioner firm was selling Anilophos 30% EC in sealed container. On 29.5.95 the Insecticide Inspector drew a sample of Anilophos 30% EC from the shop of the petitioner. The Insecticide Inspector found the container intact and properly sealed. The said insecticide was manufactured by M/s Shakti Insecticides, H.O. Delhi (now known as Derrick Insecticide Ltd., Delhi). The sample was sent to the Insecticide Testing Laboratory, Ludhiana and as per the report of the Laboratory, the sample did not conform to the ISI specification in respect of its percentage active ingredients contents. The percentage shown was 34.04% instead of 30%.

3. A show cause notice was issued to the petitioner firm, which sent a detailed reply, taking various pleas, such as, the said insecticide was purchased form M/s. Shakti Insecticide, New Delhi, which had given a written warranty to the

petitioner. It was also contended that the insecticide was kept in the same condition and situation, in which it was purchased from the said manufacturer and as such the question of its being misbranded by the petitioner, did not arise. A request was made for sending the second sample of the insecticide, which was given to the petitioner, for reanalysis from the Central Insecticide Laboratory, Faridabad, but the said request of the petitioner was never considered by the respondent, who filed a complaint under Sections 3(k)(1), 13, 17, 18, 29 and 33, read with rule 27(5) of the Insecticides Rules, 1971 (in short to be referred as "the Rules of 1971") on 6.2.1996 in the Court of Judicial Magistrate, Samrala, for launching prosecution against the petition. The learned Magistrate summoned the petitioner vide the impugned order dated 6.2.1996.

4. The petitioner seeks quashing of the complaint and the summoning order on the ground that the expiry date of the sample was in February, 1996, whereas the summoning order was passed on 6.2.1996, directing the petitioner to appear in Court on 26.4.1996, i.e. after expiry of the shelf life of the insecticide aforesaid. The case remained pending in the court and on 17.7.1996 the respondent submitted reply to the application of the petitioner, stating therein that the second part of the sample had already expired in February, 1996.

5. Notice of motion was issued to the respondent, who put in appearance and filed reply, contending therein to the show cause notice on 5.7.1995 and had earlier on 1.7.1995 filed application (copy Annexure P3) for sending the second sample for insecticide to Central Insecticide Laboratory for re analysis. The application of the petitioner was not decided till February, 1996 when the shelf life of the insecticide expired. The complaint was filed on 6.2.1996 and the summoning order was also passed on the same day. The summons were, however, issued on 26.4.1996. The petitioner had a right in law in requesting for his second sample to be sent for reanalysis by the Central Insecticide Laboratory and undisputedly he applied well within time for it, but this request was not considered till the shelf life of the insecticide expired.

7. Resultantly, the petitioner was deprived of a valuable right by not sending his second sample for reanalysis to the Central Insecticide Laboratory and this has considerably prejudiced the defence of the petitioner. In somewhat similar circumstances, this Court in *Surinder Pal Saini v. State of Punjab*, 1997(1) R.C.R. 602 , quashed the complaint and the summoning order. The present petition has considerable force and is allowed. The impugned complaint (copy Annexure P1) and the summoning order (Annexure P2) are hereby quashed qua the petitioner.