

(1986) 04 P&H CK 0029
In the Punjab And Haryana At Chandigarh

Madan Dangi and Others

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 07-04-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 17, 18, 24, 3, 31
Penal Code, 1860 (IPC) — Section 420

Citation : (1987) CriLJ 138 : (1987) 1 ILR (P&H) 245 : (1986) 2 RCR(Criminal) 237

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Judgement

Surinder Singh, J.—This is a petition filed u/s 482, Code of Criminal Procedure, with a prayer for quashing of the proceedings pending in the Court of Judicial Magistrate First Class, Patti, District Amritsar, in consequence of First Information Report No. 144, dated May 23, 1984, of Police Station Patti registered for offences Under Sections 3K(viii), 17(1), 18(1)(c) read with Section 24(1) of the Insecticides Act, 1968 and Section 420, Indian Penal Code.

2. The facts as narrated in the petition, may be briefly recapitulated. A letter was addressed by the Chief Agricultural Officer, Amritsar, on April 19, 1984 to the Station House Officer, Patti stating that the Plant Protection Inspector had obtained a sample of a Pesticide having the trade name of Saturn 50 E.C. from the premises of the Firm Messrs Sharma Kheti Sewa Centre Patti. The sample, on analysis was found to possess "higher active ingredient" and, thus, the Pesticide was misbranded. Proceedings were, therefore, sought to be launched against Mohan Lai of the said Firm which had sold the "misbranded" Pesticide. On the basis of this letter First Information Report was registered and prosecution was launched in the Court of the Judicial Magistrate First Class, Patti, who framed a charge against Mohan Lai aforesaid for the offences, referred to above. During the trial of the said case, the statement of Karam Singh, Plant Protection Inspector was recorded and it is thereafter that the trying Magistrate passed an

order summoning the three petitioners as accused in the case. The order is to the following effect:

During the examination of P. W. 1 Karam Singh Plant Protection Inspector, it came to light through record that purchased pack of Pesticides from M/s. Janta Pesticides, Store, Tarn Taran and manufactured by M/s. Pesticides India Pvt. Ltd. The sample taken out of the stock was found to be below standard, therefore I find there is sufficient evidence to summon Shri M. L. Dangi, Regional Manager (North Circle) and Mr. J. P. Khanna, Asstt. Sales Officer of M/s. Pesticides India, Udaipur and Mr. Vijay Kumar of M/s. Janta Pesticides Stores, Tarn Taran. All are liable individually and collectively to face the trial u/s 3 of Insecticides Act and u/s 24 of the said Act, therefore, the accused be summoned accordingly to face their trial for the offence on 23-5-1985.

Sd/- Hukam Chand (JMIC, Patti)

3. A large number of grounds have been raised in the present petition, on the basis of which the order summoning the three petitioners has been impugned. As the order itself indicates, M. L. Dangi (petitioner No. 1) has been summoned in his capacity as Regional Manager (North Circle) and J. P. Khanna (Petitioner No. 2) as Assistant Sales Officer of Messrs Pesticides India, i.e. the manufacturing Firm Vijay Kumar (Petitioner No. 3) has been summoned as a representative of the Firm Messrs Ajanta Pesticides Store, Tarn Taran. Although the order itself does not indicate so, but it is stated at the bar that the said respondent is the Distributor of the Pesticides at Tarn Taran. At the time of the arguments, the learned Counsel for the petitioners confined his address to the two grounds mentioned at Serial Numbers (a) and (b) of Para 7 of the petition. Let us examine the same.

4. The learned Counsel has referred to the provisions of Section 3(k)(viii) of the Insecticides Act, 1968 which provides that an insecticide shall be deemed to be misbranded if it has a toxicity which is higher than the level prescribed etc. etc. The straight contention in this behalf is that the toxicity level of various types of insecticides has not been prescribed under any rule or regulation, much less of the product of which the sample was obtained. A written statement has been filed in this case on behalf of the respondents. Queerly enough, in reply to the above objection contained in Clause (a), what is recited is merely Rule 24(2) of the Insecticides Rules, 1971 which lays down the method of examination of samples. The argument adopted is that since the sample was analysis as per the method of examination approved by the I.S.I., and the same was found to contain "higher active ingredient", it should be deemed to be "misbranded" as postulated u/s 3(k) of the Act. In view of this stand taken on behalf of the respondents, the petitioners filed a Rejoinder to the written statement and along with the said Rejoinder, certain important documents have been annexed. Annexure "A" is a letter from the Central Insecticides Board and Registration Committee addressed to Messrs Pesticides India, Udaipur, on the subject of "Clarification of Section 3, Sub-section (k)(viii) of the Insecticides Act". It is

stated in the letter issued by the Secretary of the Board that the "toxicity level" and "active ingredient" are two completely different entities. It is further stated that the toxicity level for any registered product has not yet been notified under the Insecticides Act, 1968. Annexure "B" to the Rejoinder is a letter addressed by Dr. H. C. L Gupta, Insect Toxicologist to Mohan Lai Sukhadia, University Department of Entomology respondent No. 1. The point to which the learned Counsel has made a reference is that in this letter it has been stated that the percentage of active ingredient and toxicity are two different items. Still another letter is Annexure "C" from the Deputy Director (Agr. and Food) Indian Standards Institution, addressed to Messrs Pesticides India, New Delhi, saying that it is confirmed that ISI has not published any standard on Benethiocarb 50% EC, which as mentioned in Annexure "B" is the chemical of which the trade name is Saturn. On the basis of this material, the learned Counsel for the petitioners has rightly submitted that in the absence of any standard of toxicity prescribed by any authority under the Act or otherwise, there was no question of the article being substandard or misbranded. There is no effective reply to this contention and the same must prevail.

5. Coming now to the objection contained in Clause (h) of Para 7 of the petition, it is surprising, the way the trial Court has bypassed a mandatory and salutary provision of law before summoning the petitioners as accused in the case. The trial Court, while dealing with the matter in its order dated August 28, 1985, directing the framing of the charge, completely ignored the provisions of Section 31 of the Insecticides Act, as per which no prosecution for an offence under the said Act could be instituted except by, or with the written consent of the State Government or a person authorised in this behalf by the State Government. In fact, it adopted a novel course to by-pass the said provision by observing that Section 420, Indian Penal Code, had also been added as one of the offences for which the accused had been charged. It was further observed that "the dealers have cheated the innocent farmers by supplying substandard medicines and have thus caused loss to the poor farmers and have given undue profit to the manufacturers, dealers and the suppliers". Even the learned Counsel for the State has not been able to point out any material whatsoever on the basis of which this observation was made by the trying Magistrate. It is obvious that the mere addition of Section 420, Indian Penal Code, would not nullify the requirements of law for offences under the Insecticides Act.

6. It is needless to go into another serious objection in regard to the summoning of the three petitioners who are not even prima facie, shown to be Incharge of the manufacturing process of the item concerned. The trial Court could not just pick and choose a person connected with the Firms in question, to face a criminal charge.

7. The result is that the order summoning the three petitioners as accused in the case is nothing but an abuse of the process of Court and the same is quashed. The present petition is accordingly allowed.