

(2008) 02 P&H CK 0330
In the Punjab And Haryana At Chandigarh
Case No : Criminal Misc. No. 12882-M of 1990

M/s Chiranji Lal Lakhmi Chand

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 05-02-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 17, 18, 24(5), 29, 3(k)(i)

Citation : (2008) 2 RCR(Criminal) 393

Hon'ble Judges : Uma Nath Singh, J

Bench : Single Bench

Advocate : Gaurav Chopra, for the Appellant; N.K. Sanghi, Addl. AG, Punjab, for the Respondent

Final Decision : Dismissed

Judgement

Uma Nath Singh, J.—This is an old petition of 1990 for quashing the complaint (Annexure P-1) and the consequent proceedings against the petitioner u/s 482 Cr.P.C. As per the petitioners' case, a sample of Endosulphan 35% EC (Hexasulphan 35% E.C.) manufactured by M/s Bharat Pulverising Mills Limited, New Delhi (hereinafter referred as 'the manufacturer') was taken on 39.8.1989 from the sealed 1 litre packing, and three samples thereof, each measuring 250 mls. were taken for the purpose of examination. Out of the three samples, one sample was handed over to Ram Partap, petitioner No. 1. The containers of Endosulphan 35% EC are stated to be in sealed condition at the time of taking sample and during the possession of the petitioners, it was properly stored and remained in the same state as when they had been acquired from the licensed manufacturer. One sample was sent to the Central Insecticides Testing Laboratory, Faridabad, and it was found not to be in conformity with relevant ISI specifications in the active ingredients. On the basis of the report, the Insecticides Inspector filed a complaint under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968 (for short the Act) read with Rule 27(5) of the Insecticides Rules (for short the Rules), punishable u/s 29 of the Act. From the

complaint, it appears that the petitioners are the licensee for the purpose of selling insecticides and pesticides. They purchased the said insecticides from the manufacturer and distributor "M/s. Bharat Pulverising Mills Limited, New Delhi", who issued a letter of warranty to the firm. According to the petitioners, it has been admitted by the Insecticides Inspector that at the time of taking the sample, container of Endosulphan 35% EC of 250 ml. each was sealed. The said averments also find support from the report of the Central Insecticides Testing Laboratory, Faridabad which shows that the sample was found to be intact and it was sealed. The petitioners have stated that they are the licensee for the sale of insecticides and the sample was taken by the Insecticides Inspector from the premises of the licensee firm. They have contended that they are not liable for any offence for contravention of the provisions of the Act and the rules framed thereunder inasmuch as they were merely licensee and had acquired insecticide from a licensed manufacturer/distributor. Even by exercising of due diligence, they could not have come to know that the insecticides have been sold in contravention of the provisions of the Act or the rules and while being in their possession, there was breach of any provision. According to the petitioners, they being a licensee are protected u/s 30(3) of the Act. They have asserted that they are neither importer or the manufacturer of the insecticides or the agents but are a licensee for the purpose of selling the insecticides and for the purpose of stocking or exhibiting for sale or distribution by way of retail insecticides. On that count they have challenged the launching of the prosecution. They have also mentioned that in the complaint or in the statement made by the prosecution witnesses, there is no such averment that petitioner no. 1 committed any offence with the consent or connivance of, or is attributable to any negligent act on the part of any Director, Manager, Secretary or other officer of the manufacturing company. Rather the petitioners were only a licensed dealer for selling insecticides and the said item was purchased from a licensed manufacturer. It is also averred that the petitioner firm M/s Chiranji Lal Lakhmi Chand is a partnership firm, consisting of eight partners, namely, Sarv Shri Ram Partap, Chiranjeet Lal, Abinash Chander, Smt. Anguran Devi, Mohan Lal, Ramesh Kumar, Mohinder Kumar and Satish Kumar. In case the offence has been committed by the firm, it was incumbent upon the complainant to point out as to who was the partner being in charge of, or was responsible to the firm for conduct of the business of the company as well as the company, at the time of the alleged contravention. In the complaint, there was no such allegation. According to the petitioners, under the circumstances, the complaint is an abuse of process of law. In support, petitioners have reiterated provisions of Section 33(1) of the Act. This is also an averment of the petitioners that despite their request to the Court for sending the sample for re-analysis, no order was passed, therefore, the proceedings are liable to be vitiated.

2. On the other hand, State of Punjab in its affidavit has supported the prosecution. It is mentioned in the reply that the Insecticides Inspector took the sample in three dry and neat plastic bottles from one litre pack. He took the

sample according to the provisions of the Act. While admitting that the petitioners are licensee, the respondent State has denied knowledge as to whether letter of warranty was issued to the petitioners by the company. The State has also mentioned that the Insecticides Inspector has nowhere mentioned that he had taken sample of 250 Mls. from sealed container of insecticide. The report of the Central Insecticides Testing Laboratory only indicated that the metal seal of the department used to seal the insecticides sample was intact. The State has also referred to an order of a learned single Judge in CrI.M. No. 1298-M of 1989 decided on 5.10.1989, which reads as under:-

"The next limb of the arguments advanced on behalf of the petitioner that a dealer is not liable for contravention of any provisions of the Act in case he complies with the conditions and clauses (a) to (c) of sub-section (3) of Section 30 of the Act, are without any merit. The opening words of sub-section (3) of Section 30 of the Act do indicate that " a person not being an importer, or a manufacturer of an insecticide or his agent for the distribution thereof shall not be liable for the contravention of any provision of this Act." In order to seek protection according to clause (a) of sub-section (3) of Section 30 of the Act it is obligatory to fulfill either of the three preconditions. One such precondition is that the person concerned should have acquired insecticide from an importer or a duly licensed manufacturer, distributor or dealer thereof. This connotes that the dealer himself cannot seek protection for contravention of the provisions of the Act as contemplated under sub-section (3) of Section 30 of the Act. I am further supported on this point from the definition of the dealer given in Insecticides (price, stock, display and submission of reports) Order, 1986 which means a person carrying on the business of selling insecticides whether wholesale or retail and includes an agent of a dealer as well as its definition given in Fertilizer Control Order, 1985, which means a person carrying on the business of selling fertilizers whether wholesale or retail and includes a manufacturer and a pool handling agency carrying on such business and the agents of such persons, manufacturer or pool handling agency.

For the foregoing reasons, the complaint (Annexure P-2) or the subsequent proceedings against the petitioner on the basis of said complaint are not liable to be quashed. This petition is accordingly dismissed."

3. It is further mentioned that petitioner No. 1 Ram Partap was present at the time of sample and he signed Form XII. All the partners are responsible for profit and loss of the firm, hence, they are liable for punishment. It is also pointed out that petitioner No. 1 Ram Partap was present at the time of sampling and he was in charge of the sale proceeds. According to the State affidavit, a dealer does not fall in a category u/s 33(i) of the Act and it applies only to the companies. It is also mentioned on the basis of analysis report that the firm sold this mis-branded insecticide to the farmers. The State has also mentioned that as the sample had already been sent to the Central Insecticides Testing Laboratory u/s 24(5) of the Act, therefore, it could not have been sent for re-analysis.

4. This is a petition u/s 482 Cr.P.C. for quashment. A three Judges Bench of Hon''ble the Apex Court in a judgment reported in R.P. Kapur Vs. The State of Punjab, has categorised the cases where the inherent powers of this Court to quash the proceedings should be exercised. They are:-

(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under S.561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

5. Learned counsel submitted that in terms of Section 33 of the Act, it is not clear as to who was at the time of offence committed, incharge of or was responsible to the firm for the conduct of the business of the firm as well as the firm, so that he shall be deemed to be guilty of offence and shall be proceeded against. This question stands answered in a judgment reported in N. Rangachari Vs. Bharat Sanchar Nigam Ltd., wherein while dealing with the exercise of power u/s 482 Cr.P.C., Hon''ble the Apex Court has held that questions whether the accused at the relevant time were not incharge of the affairs of the company or any restriction on their power or existence of any special circumstance made them not liable to be convicted, could be considered during trial. As regards the submission that the Inspector had taken the sample of 250 ml. from sealed container, it is nowhere mentioned like that and further the report of the Central Insecticides Testing Laboratory only indicated that metal seal of the department used to seal the insecticides sample was intact. Hon''ble the Apex Court in a judgment reported in Central Bureau of Investigation Vs. Shri Ravi Shankar Srivastava, IAS and Another, has held that the proceeding instituted on a complaint can be quashed in exercise of inherent power only where complaint does not disclose any offence or is frivolous, vexatious and oppressive and this

power should not be exercised to stifle a legitimate prosecution. Further this power should be exercised with circumspection, ex debito justitiae to do real and substantial justice and to prevent abuse of process of court. A similar view was taken earlier by Hon"ble the Apex Court in a judgment reported in State of Andhra Pradesh Vs. Golconda Linga Swamy and Another,

6. Thus, I do not find any ground to exercise inherent powers u/s 482 Cr.P.C., as this Court is not to evaluate the materials, like appreciation of evidence, and if, prima facie, the complaint discloses the presence of ingredients of offence, the inherent power should not be exercised.

7. Hence, Crl.Misc. No. 12882-M of 1990 is, hereby, dismissed. However, since this is an old complaint of 1990, the trial Court is directed to expedite the disposal of the trial and complete the exercise within a period of six months from receipt of a copy of this order. Moreover, the trial Court may also consider to grant exemption to the petitioners from personal appearance in view of the fact that this matter is pending for the last over 17 years.