

(2002) 01 P&H CK 0086

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2859-M of 1999

Nagra Khad Stores

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Citation : (2002) 2 RCR(Criminal) 221

Hon'ble Judges : V.M.Jain, J

Advocate : Mr. Arun Chandra, Advocate. Ms. Rita Kohli, DAG, Punjab., Advocates for appearing Parties

Judgement

V.M. Jain, J.

1. This is a petition under Section 482, CrPC, filed by the accusedpetitioners, seeking quashment of the criminal complaint under Sections 3(k)(i), 17, 18, 29 and 33 of the Insecticides Act, 1968, (hereinafter referred to as 'the Act) read with Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred to as the Rules), and for quashment of all subsequent proceedings, taken thereon.

2. In the petition, it was alleged that the Insecticides Inspector had taken the sample of insecticides from petitioner No. 1, M/s Nagra Khad Stores, and that the said insecticide was manufactured by M/s Pesto Chem India Limited, Delhi, and was supplied through the distributor, M/s Randhawa Kheti Stores. it was further alleged that the sample was taken from sealed containers and that the petitioners being the dealer and the distributor, were entitled to the protection under Section 30(3) of the Act. It was further alleged that in the criminal complaint, copy Annexure P2, and the Form (XX), copy Annexure P1, it was specifically admitted by the Insecticides Inspector that the sample was taken from the original packing, which was in a sealed container.

3. In the written statement, filed by the Hardev Singh, Insecticides Inspector, the fact that the sample was taken from the sealed container, which was the original packing, has not been controverted.

4. I have heard learned counsel for the parties and gone through the record carefully.

5. Learned counsel for the petitioners submitted before me that petitioners being the dealer and the distributor, they could not be prosecuted, in view of the provisions of Section 30(3) of the Act, especially when the sample was taken from the sealed container and from the original packing.

6. Reliance has been placed on the law laid down by the Hon'ble Supreme Court, in the case reported as *M/s Kisan Beej Bhandar v. Chief Agricultural Officer and another*, 1990 SCC (Cri.) 623.

7. The fact that the sample was taken by the Insecticides Inspector from the original packing and from the sealed container, is not controverted in the written statement. Infact, in the criminal complaint, copy annexure P2, and Form (XX), copy annexure P1, it is admitted that the sample was taken from the original packing and in the form of sealed tins. Under Section 30(3) of the Act petitioner No. 1 *M/s. Nagra Khad Stores*, which is the dealer, and from whom the sample was taken, would be entitled to the benefit of Section 30(3) of the Act, in view of the law laid down in 1990 SCC (Cri.) 623 (supra). So far as petitioner No. 2, *M/s Randhawa Kheti Stores* is concerned, in my opinion, as at present, petitioner No. 2 would not be entitled to the benefit of Section 30(3) of the Act, being the distributor. The benefit of Section 30(3) of the Act can be taken by a person not being an importer or a manufacturer of an insecticide or his agent for the distribution thereof. As at present the allegations are that petitioner No. 2 was the distributor, who had supplied the misbranded insecticides (manufactured by *M/s Pesto Chem (India) Limited*), to *M/s Nagra Khad Stores* (dealer). Under these circumstances, as at present, the criminal complaint qua petitioner No. 2, *M/s. Randhawa Kheti Stores*, cannot be quashed.

8. For the reasons recorded above, the present petition is partly allowed, the criminal complaint and all subsequent proceedings, taken thereon, qua petitioner No. 1, *M/s Nagra Khad Stores*, are hereby quashed. So far as petitioner No. 2, *M/s Randhawa Kheti Stores*, is concerned, no case for quashing the criminal complaint and subsequent proceedings taken thereon, at this stage, is made out. Hence, the present petition, qua petitioner No. 2, *M/s. Randhawa Kheti Stores*, is hereby dismissed.

9. However, it is made clear that petitioner No. 2, *M/s. Randhawa Kheti Stores*, would be entitled to take up all the pleas, available to him, before the trial Court, at the appropriate stage. The trial Court shall proceed to consider the matter in accordance with law, without being prejudiced by the observations made by this Court above.

10. Since the proceedings qua the petitioners were stayed by this Court, petitioner No. 2, *M/s. Randhawa Kheti Stores*, and the respondent, through their counsel, are directed to appear before the trial Court on 1.3.2002, for further proceedings, in accordance with law.