

(1989) 03 MAD CK 0058
In the Madras High Court
Case No : Criminal R.C. 577 of 1988

Narayanan

APPELLANT

Vs

State, by the Assistant Director of Agriculture (Quality Control) Office of the Joint Director of Agriculture, Coimbatore.

RESPONDENT

Date of Decision : 21-03-1989

Acts Referred:

Insecticides Act, 1968 — Section 13(1), 17(l)(a), 18(l)(a), 22, 24

Citation : (1989) LW(Cri) 206

Hon'ble Judges : Arnnachalam, J

Bench : Single Bench

Advocate : V. Gopinathan, for the Appellant; Munirathinam Naidu, for the Respondent

Judgement

Arnnachalam, J.—The first accused in C.C. No. 164 of 1986 on the file of the Judicial First Class Magistrate, Coimbatore, is the Petitioner. This revision is restricted to the return of sulphur seized from the Petitioner by the prosecuting agency on 20.12.1985, marked as M. Os.1 to 4 series.

2. A few facts will be necessary to dispose of this revision. The Petitioner along with the firm Agro Chemicals and Fertilizers of which he is the proprietor, and four others were tried for offences under Ss. 9(l), 13(1), 17(l)(a) and 18(l)(a) of the Insecticides Act, 1968 read with Section 29(l)(a) (b) and (c) of the said Act. Accused Nos. 3 to 6 are stated to be buyers of sulphur from the 1st and second accused. On 20.12.1985, the complainant who is the Assistant Director of Agriculture (Quality Control), Coimbatore, on suspicion, inspected the manufacturing unit and sales office of the Petitioner at Coimbatore when the Petitioner was present and seized certain records from the sales office and sulphur from the manufacturing unit situate at another place. It was the case of the prosecution that the Petitioner did not have a valid licence for manufacturing and selling sulphur under the Insecticides Act. The samples taken of the seized

sulphur, were sent for analysis to the pesticides testing laboratory, Coimbatore. The report, marked as Ex. P6, declares that the sample sent was misbranded under Sub-clause (i) of Cl.(k) of Section 3 of the Insecticides Act, 1968. Prosecution was thereafter launched.

3. The trial Magistrate found that the provisions under Ss. 22 and 24 of the Act had not been complied with by the prosecution, denying thereby the valuable right provided by law to the Petitioner to challenge the report of the analyst. All the accused were acquitted. But the trial Magistrate, on the view that the seizure was misbranded incurring to the analyst report, Ex. P6, directed confiscation of M.Os. 1 to 4 series, u/s 25(2) of the Insecticides Act.

4. Aggrieved by the order of confiscation made by the trial Court, the Petitioner preferred C.A. No. 117 of 1987 on the file of the First Additional Sessions Judge, Coimbatore. The appellate Judge concurred with the findings of the trial Magistrate and held that the substance involved was sulphur dust and confiscation had been rightly made u/s 25(2) of the Act.

5. Mr. V: Gopinathan, learned Counsel for the Petitioner submits that the order of confiscation is liable to be set aside as it had not been made in consonance with law and further was not feasible on the facts unfurled in this case. To substantiate this contention, he has taken me through the relevant portions of the oral evidence and has referred to Ss. 25 and 3(k)(i) of the Act. He would further contend that sulphur has not been defined in the Act, but in the schedule, lime sulphur, dusting sulphur, sulphur dust and sulphur wettable or colloidal, have been listed. Learned Government Advocate countered the arguments of the learned Counsel for the Petitioner.

6. Section 25 of the Act reads as under:

Confiscation ; (1) Where any person has been convicted under this Act for contravening any of the provisions of this Act or of the rules made thereunder, the stock of the insecticide in respect of which the contravention has been made shall be liable to confiscation.

(2) Without prejudice to the provisions contained in sub-S (1), where the Court is satisfied on the application of an Insecticide Inspector or otherwise and after such inquiry as may be necessary, that the insecticide is a misbranded insecticide, such insecticide shall be liable to confiscation.

Obviously, Section 25(1) of the Act will not be attracted since no person has been convicted for contravening any provision. Though learned Counsel for the Petitioner had taken a ground in the memorandum of grounds that Section 25(2) of the Insecticides Act will also be not applicable in view of the application not having been filed by the Insecticide Inspector, had given up the stand in view of the latter part of the section "or otherwise and after such inquiry as may be necessary".

7. It is apparent that to confiscate the stock of insecticides u/s 25(2) of the Act,

there must be evidence to positively indicate that the seizure was misbranded insecticide. A perusal of the report, Ex P6, of the analyst shows that the seizure was misbranded under Sub-clause (i) of Cl.(k) of Section 3 of the Act. Section 3(k)(i) of the Act reads as under:

In this Act, unless the context otherwise requires:-

(k) "misbranded"-an insecticide shall be deemed to be misbranded-

(i) if its label contains any statement or graphic representation relating thereto which is false or misleading in any material particular, or if its packing is otherwise deceptive in respect of its contents.

Therefore, if an insecticide should be deemed to be misbranded, its label must contain a statement, design or graphic representation relating to that which is false or misleading in any material particular or if its packing is otherwise deceptive in respect of its contents.

8. Now let us see whether the prosecution has proved this salient aspect by acceptable evidence. The analyst, Y. Akbarkhan, who has been examined as P.W.2 categorically admits that the substance sent for analysis was not sulphur dust. He is not the person who had conducted the test and he is unable to depose as to who exactly conducted the analysis. He is also certain that the sample was not analysed in his presence. He would depose that since the sample was in the form of granules containing sulphur, he tested it for specification I.S./64/44/79. He found that the sample contained 54.4% of sulphur. Since it was informed to him that the packing showed the percentage of sulphur at 99.9%, he declared the sample as misbranded. He has frankly admitted that the sample had been sent to him for finding out whether it was sulphur dust within the purview of the Insecticides Act. It will be significant to note at this stage that the acknowledgment from the laboratory marked as Ex.P9 shows the name of the seized article as sulphur and not as sulphur dust. It is, in this background, that we may have to refer to the evidence of P. Ws.1 and 4, the Agricultural Officer and Assistant Director of Agriculture respectively. P.W.1 seizes only the records from the office of the Petitioner while P.W.4 seized the stock of sulphur from the manufacturing unit of the Petitioner. P.W.1 admits that he did not go to the manufacturing unit of the Petitioner. During the investigation, he became aware that the Petitioner had a licence to buy sulphur and he was also aware that the stock of sulphur was obtained by the Petitioner from the Minerals and Metal Trading Corporation, which is a Government concern. It is also conceded by him that to sell sulphur, no licence is required under the Insecticides Act. It is also admitted that on the container of the seizure though 99.9% was mentioned, it was not stated as sulphur dust. According to him, there is no record to show what exactly was found on the container.

9. P.W.4 would make it abundantly clear that the seizure was not kept in the containers which are polythene bags, but were kept in heaps in the manufacturing unit and it was he who had the substance filled up in polythene

bags with the help of the employees in the manufacturing unit. This is not a case of substance already kept in packed form by the Petitioner with a label showing that the sulphur was of 99.9% purity. There is a lacuna in the evidence for it is quite possible to conceive that before filling the substance in the manufacturing unit, the Petitioner could have in all possibility made it comply with the specification printed on the bag. The consistent case of the Petitioner has been that he was only selling sulphur for which he had a licence under the Arms Act and he was not in the habit of selling sulphur dust. This stand of the Petitioner gets substantiated by the averment in the complaint where the word sulphur is used and the word sulphur dust is nowhere found. Taken in conjunction with Ex.P9 the acknowledgement from the analyst, this will indisputably indicate that the seizure was in all probability sulphur and not sulphur dust. P.W.4 also concedes that for sale of sulphur there was no need for obtaining a licence under the Insecticides Act. It is, therefore, clear that what had been seized is sulphur, plain and simple, and not any one of the varieties of sulphur which formed part of the list of insecticides mentioned in the schedule to the Act. As long as the seized article will not be covered by the definition u/s 3(k)(i) of the Act, confiscation u/s 25(2) of the Act will not be feasible on the facts of this case.

10. Both the Courts below have not applied their minds to the way in which the seizure has been made to this case and the substance forwarded to the analyst being sulphur and not sulphur dust. This non consideration of the material evidence has resulted in grave miscarriage of justice which can be set right by the exercise of revisional powers. The order of confiscation of M. Os. 1 to 4 series made by the trial Court and confirmed by the lower appellate Court; is set aside. The Petitioner will be entitled to return of M. Os. 1 to 4 series.

11. It is represented by Mr. V. Gopinathan, learned Counsel for the Petitioner that after the seizure in this case, the Petitioner had not renewed his licence under the Arms Act to possess sulphur. In view of the said position, he would make a prayer that sulphur stock could be sold by the Respondent and the sale proceeds handed over to him. Mr. T. Manirathana Naidu, learned Government Advocate does not have any objection for this course, I, therefore, direct the Respondent to sell M. Os. 1 to 4 series at the prevailing market rate and deposit the sale proceeds thereof before the Judicial First Class Magistrate, Coimbatore and intimate such deposit to the Petitioner. The Petitioner will be entitled to draw the sale proceeds from the said Court. Ordered accordingly.