
(1993) 10 P&H CK 0057

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 7771-M of 1992

National Farm Chemicals

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-10-1993

Acts Referred:

Citation : (1994) 1 RCR(Criminal) 479

Hon'ble Judges : H.K.Sandhu, J

Advocate : S.S. Gill, Ravinder Chopra, Advocates for appearing Parties

Judgement

Harmohinder Kaur Sandhu, J.

1. On 28th August 1991, Quality control Inspector, office of Deputy Director of Agriculture, Jind made a surprise check on the premises of M/s Shree Balaji Beej Bhandar, Bhiwani Road, Jind, and checked the stock and record of the firm. He took few samples of Methyl Parathion 50% EC which was manufacture by M/s National Farm Chemical, B16 Industrial Area, Sikandrabad, District Bulandsahar (U.P.) One sample was sent for analysis to the Senior Analyst Quality Control Laboratory Karnal. The Analyst reported that the insecticide was misbranded. A complaint was then filed against Dal Chand Proprietor of M/s Shree Balaji Beej Bhandar, Bhiwani Road, Jind being the dealer and Shri K.R. Jain, Partner of the manufacturer M/s National Farm Chemicals for violation of Section 17I(a) and 3(k) of (The Insecticides Act, 1968 (for short "the Act") M/s. National Farm Chemicals through its partner Shri K.R. Jain has filed this petition under Section 482 Code of Criminal Procedure for quashing the complaint pending in the court of Chief Judicial Magistrate, Jind (Annexure P2).

2. It was alleged in the petition that the insecticide of which sample was taken was manufactured in August 1991 and its expiry date was January 1992. The petitioner was summoned when the shelf life of the sample had already expired. In this way the petitioner was deprived of this right to get the second sample examined from the Central Insecticides Laboratory and to controvert the correctness of the report of the analyst. In the complaint, it was nowhere

motioned as in which manner the sample was taken. So the low active ingredients reported in the report of the analyst were either due to improper sampling or mishandling of the sample at any stage or due to faulty analysis. It was further alleged that proper sanction for the prosecution of the petitioner was not obtained as required under Section 31 of the Act. The sanction was given on a stereo typed proforma in which the names of the dealer and manufacturer were entered. There was no mention of the contents of the report of the Analyst nor there was any mention specifically regarding the provision of the law under which the petitioner was sought to be prosecuted. There was no averment in the complaint as to who was incharge of the manufacturing concern and was responsible for the conduct of its business. It had to be mentioned in the complaint that the offence was committed with the consent or connivance of the petitioner in the absence of any averment to that effect, the complaint was liable to be quashed and the petitioner could not be prosecuted.

3. In the return filed by the respondent, this fact was admitted that sample of Methyl Parathion 50% EC was taken from the premises of M/s Shree Balaji Beej Bhandar, Jind. It was alleged that the sample was got analysed from State Quality Control Laboratory, Karnal on 28th January 1991. It was declared misbranded and information to that effect was given to the authorised dealer. Dealer appeared in the trial court and prayed for getting the second sample tested by the Central Insecticides Laboratory before expiry of the product. The sample was again declared as misbranded. The petitioner was thus not denied the opportunity to controvert the correctness of the report of the Analyst. The other averments made in the petition were denied.

4. I have heard the learned counsel for the parties.

5. In the instant case as per the return filed by the respondent, the second sample was got tested from the Central Insecticides Laboratory at the instance of the dealer. So, the learned counsel for the petitioner did not press the ground contained in Para No. 4 of the petition that the petitioner was deprived of his right to get the second sample examined from the Central Insecticides laboratory. The only contention of the learned counsel for the petitioner before me was that there is no averment in the complaint to the effect that Shri K.R. Jain partner of M/s National Farm Chemicals was responsible to the company for the conduct of its business and thus provisions of Section 33 were not complied with. The petitioner firm was a partnership concern having four partners and in the absence of specific averment as to which of the partner was incharge and responsible to the company for the conduct of its business, no prosecution could be launched against Shri K.R. Jain.

6. The case of the complainant was that the insecticide of which sample was taken from M/s Shri Balaji Beej Bhandar, Jind was a product manufactured by M/s National Farm Chemicals and the manufacturing Company was liable for the offence when sample was found misbranded. Section 33 of the Act provides :

"1) Whenever an offence under this Act has been committed by a company, every person who at the time of offence was committed was incharge of or was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this subsection shall render any such person liable to any punishment under this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. For the purpose of this Section

a) "Company" means any body corporate and includes a firm or other association of individuals; and

b) "director" in relation to a firm, means a partner in the firm."

From the provisions the abovementioned Section, it is evident that when the offence is committed by a company, only those persons who at the time when the offence was committed was incharge of or otherwise responsible to the company for the conduct of the business of the company was liable. Admittedly, in the instant case, the complaint has been filed against the company and Shri K.R. Jain, a partner of M/s National Farm Chemical and in the complaint, it is nowhere mentioned that Shri K.R. Jain was incharge of or responsible to the company for the conduct of its business. But the present petition has not been filed by Shri K.R. Jain in his personal capacity alleging that he was not in charge of or responsible for the conduct of the business of the company. In fact, he is not a party to the present petition. The petition has been filed by M/s National Farm Chemical alone. According to the provisions of Section 33, the company is also liable to prosecution along with the persons incharge of its business. Sanction for the prosecution of the company, was duly obtained by the competent authority vide Annexure P3. There are averments in the petition that insecticide in question was manufactured by the company and the complaint disclosed a prima facie offence. The present complaint does not suffer from any infirmity so far as the petitioner is concerned, I find no merit in the petition and the same is dismissed.