
(1991) 09 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4009-M of 1991

National Organic Chemicals Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-09-1991

Acts Referred:

Citation : (1991) 2 AICLR 820 : (1992) 1 RCR(Criminal) 157

Hon'ble Judges : G.S.Chahal, J

Advocate : Sh. Azad Singh AAG, Sh. Arun Nehra, Advocates for appearing Parties

Judgement

G. S. Chahal, J.

1. National Organic Chemicals Ltd., New Delhi has moved this criminal miscellaneous under Section 482, Criminal Procedure Code for quashing of the complaint dated `nil, titled as State Government of Haryana v. Gian Chand and others, under Sections 29(1)(a) and 17(1)(a) of the Insecticide Act, pending in the Court of the Chief Judicial Magistrate, Kurukshetra and now transferred as Sub Divisional Judicial Magistrate Kaithal.

2. The petitioner Company is the manufacturer of insecticides. On 6121988, Sh Moti Ram Verma, Asstt. Plant Protection Officer (F&S), Kurukshetra (declared as Insecticide Inspector) drew sample of insecticide, named Aldrin 30% E.C., Batch No. 32 (in short the substance") from the stock of M/s. Gian Chand Brij Lal, dealer1 Manufacturing date of the substance was 5101987 and expiry date as 4101989. The sample was got analysed and it was opined to have active ingredients to be 21.2% against the prescribed 30% ingredients. The sample was, thus, found to be misbranded, vide report of the Public Analyst, Annexure P 1. The petitioner, having come to know about the report of the Quality Control Laboratory (Insecticides) (State Agriculture Department). Karnal, got tested the sample from Batch No. 32, and it was found to contain active ingredients 29.69%. Then he vide letter dated 2221989, Annexure P. 2, addressed to the Inspector, requested for the sample to be got reanalysed from the Central Insecticide Laboratory. The petitioner having learnt from dealer, about the filing

of the complaint and the summoning order, has presented this criminal miscellaneous.

3. Sections 24(3) and (4) of the Insecticides Act provide

"24. Report of Insecticide Analyst :

(1)

(2)

(3) Any document purporting to be a report signed by the Insecticide Analyst shall be evidence of the facts stated therein, and such evidence shall be conclusive unless the person from whom the sample was taken has within twentyeight days of the receipt of a copy of the report, notified in writing the Insecticide Inspector or the Court before which any proceedings in respect of the sample are pending that intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Insecticide Laboratory where a person has under subsection(3) notified his intention of adducing evidence in controversion of the Insecticide Analyst's report, the Court may, of its own motion or in its discretion at the request either of the complainant or of the accused, cause the sample of the insecticide produced before the Magistrate under subsection (6) of Section 22 to be sent for test or analysis to the laboratory, which shall make the test or analysis and report in writing signed by, or under the authority of, the Director of the Central Insecticides Laboratory the result thereof. and such report shall be conclusive evidence of facts stated therein.

(5) "

4. The petitioner had, vide Annexure P. 2, called upon the Insecticide Inspector to get the substance reanalysed from the Central Insecticide Laboratory. This was the right of the petitioner. However, no sample was sent to the Laboratory for getting the sample reanalysed A reference to the Zimni order would show that the complaint was presented on 1461989 and notice was issued to the accused petitioner for 1081989. On the adjourned date, no proceedings could be taken as the Presiding Officer was on departmental training. The case was taken up before the Presiding Officer on 26989 and the accused persons were ordered to be summoned for 21111989. Prior to this date the shelflife of the substance. expired on 4101989. The petitioner had no opportunity to request the Court for sending the second sample for reanalysis. The Insecticide Inspector had failed in his duty under the Act to get the second sample reanalysed from the Laboratory. The opportunity given to the petitioner by the Act was a very valuable right and on account of negligence of the Insecticide Inspector, he has been deprived of the same. The only defence which was possibly open to the petitioner was the reanalysis of the sample from the Laboratory of which he has been deprived for no fault of his. The prosecution, in these circumstances cannot end in a

conviction and the continuation of the prosecution will, thus amount to an abuse of process of the Court. I hereby accept the Criminal miscellaneous and quash to the impugned complaint and the subsequent proceedings.