
(1997) 01 P&H CK 0104

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 10000-M of 1996

N.K.Sahni

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 16-01-1997

Acts Referred:

Citation : (1997) 2 RCR(Criminal) 755

Hon'ble Judges : P.K.Jain, J

Advocate : S.K. Hooda, S.M.S. Pasricha, Advocates for appearing Parties

Judgement

P.K. Jain, J.

1. This petition has been filed under section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India for quashing a complaint (Annexure P1) filed under section 3(k) and section 29(1) of the Insecticides Act, 1968 (hereinafter referred to as the Act) and pending before Chief Judicial Magistrate, Sirsa and all consequent proceedings arising thereof or in relation thereto.

2. The necessary facts for the disposal of this petition are that M/s Konkan Pesticides is the manufacturer and M/s Singla Khad Bhandar is their dealer in respect of an insecticide Cypermethrin 10% EC. The petitioner is the Regional ManagercumCoordinator of the said manufacturing company. On 18.8.1993, the Insecticides Inspector purchased a sample of the said Insecticide from the said dealer in accordance with the provisions of the Act and rules made thereunder. On analysis, the sample was found to be misbranded. The Deputy Director Agriculture sent a copy of the report of the Analyst to the manufacturing company as well as the dealer vide letter dated 11.10.1993. After obtaining the necessary written consent of the competent authority, prosecution has been launched against the dealer, its responsible person, the manufacturing company and the petitioner alleging to be a responsible person of the manufacturing company.

It has been stated in the petition that there is no allegations whatsoever against the petitioner in the entire complaint and the same is liable to be quashed qua him; that no copy of the Analyst's report was sent to him and as such the petitioner has been deprived of his right guaranteed under section 24 of the Act, that no legal and valid consent has been obtained to prosecute the petitioner. It has also been stated that the variation found in the sample is marginal one and for such a variation no prosecution should be allowed to continue.

3. Notice was given to the respondent. In reply it has been stated that the petitioner is an officer responsible for the conduct of the business of the manufacturing company and as such is liable to be prosecuted for an offence committed by the company; that copy of the Analyst report was sent to the manufacturing company which meets the legal requirement of Section 24 of the Act and that written consent has been obtained from the competent authority before launching the prosecution. It has been further stated that on a request made by the dealer, the second sample was set to the Central Insecticides Laboratory and the sample in question was found to be misbranded.

4. I have heard the learned counsel for the parties and have perused the record. After giving my careful thought to the respective pleas raised before me, I am of the view that all the pleas now being sought to be raised by the petitioner are either questions of fact or mixed questions of law and fact. All these pleas can be decided only after taking evidence at the trial. If any opinion is expressed by this Court in respect of such pleas, only on the basis of the affidavits filed by the parties, that may not prejudice the case of the either of the parties. Under these circumstances, the inherent powers under section 482 of the Code or the extraordinary jurisdiction under Article 227 of the Constitution of India, of this Court, cannot be invoked in this case.

As a result of the above discussion, the petitioner is relegated to his remedy before the trial Magistrate by raising all the pleas comprised in the present petition which shall be decided on the basis of the evidence recorded during the trial. With these observations, this petition stands disposed of.