

(2000) 08 P&H CK 0128

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 40672-M of 1999

Northern Minerals Ltd. and another

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 25-08-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2000) CriLJ 4278 : (2000) 4 RCR(Criminal) 189

Hon'ble Judges : S.S. Nijjar, J

Bench : Single Bench

Advocate : Arun Nehra, for the Appellant; Vikas Cuccoria, A.A.G., for the Respondent

Judgement

1. This petition has been filed u/s 482 of Code of Criminal Procedure with a prayer for quashing the proceedings pending in the Court of Chief Judicial Magistrate, Amritsar, on the basis of the complaint (Annexure 4) under Sections 3(k)(1), 17, 18, 29 and 33 of the Insecticides Act, 1968 (herein after referred to as the Act) read with Rule 27(5) of the Insecticides Rules, 1974 (hereinafter referred to as the Rules).

2. On 7-7-1992, Insecticide Inspector, Jandialai, drew a sample of pesticide Dimethoate 30 % (Dialdan 30 %) Batch No. 775 from the premises of M/s. Zamindara Pesticides Katani Kalan. The said insecticide was manufactured by the petitioners. The date of manufacture of the sample was Sept. 1991 and the date of expiry was February 1993. The sample was sent by the Insecticide Inspector to the Chief Agricultural Officer, Ludhiana, who in turn sent the sample for analysis to the Insecticides Analyst, Amritsar. The Analyst, by his report dated 16-7-1992, held that the sample was misbranded. Attested copy of the Analyst report was sent to the petitioner No. 1 on 21-7-1992. The letter was received by the petitioner on 25-7-1992. Within the stipulated period of 28 days, the petitioner sent a reply dated 8-8-1992. In the reply, it was, inter alia, stated that the insecticide is manufactured as per relevant ISI specifications. It is stated that

at the time of manufacture, Batch No. 755 was found to contain the correct ingredients conforming to the relevant ISI specifications. On receipt of the letter from the respondents, the petitioner had again analysed the sample and found the same to be within the ISI specifications. Thereafter, it is mentioned as follows :-

"Under the circumstances, we adduce the evidence and request you to kindly arrange to get the sample retested from the Central Insecticides Testing Laboratory as per provisions of Section 24(3) and 24(4) of the Insecticides Act 1968 and Rules made thereunder. Kindly inform us the retesting charges so that the same can be remitted to you without any delay."

3. This letter was duly received by the respondents. In spite of the request having been made, the same was not sent for analysis to Central Insecticides Testing Laboratory, as required u/s 24 of the Act. Thereafter, the complaint was filed on 26-8-1993, which is clearly beyond the expiry date of the sample.

4. Mr. Nehra, appearing for the petitioners, submitted that the matter is squarely conversed by the judgment of Supreme Court in the case of State of Haryana Vs. Unique Farmaid P. Ltd. Ors., . After examining the relevant provisions of the Act, the Supreme Court observed that the petitioner therein had made a request to have the sample retested. However, as in the present case, no action was taken by the respondents. In the meantime, when the complaint was filed, the shelf life of the insecticide, from which the sample was taken, had already expired. In such circumstances, the Supreme Court held that the valuable right of defence of the petitioner has been prejudiced. Therefore, it was held that it would be an abuse of process of the Court if the complaint proceeds further. While coming to this conclusion, the Supreme Court also observed under (at p. 2966 of Cri LJ) :

"11. Sub-section (1) of Section 30 which appears to be relevant only prescribed in effect that ignorance would be no defence but that does not mean that if there is contravention of other mandatory provisions of the Act, the accused have no remedy. Procedure for testing the sample is prescribed and if it is contravened to the prejudice of the accused, he certainly has right to seek dismissal of the complaint. There cannot be two opinions about that. Then in order to safeguard the right of the accused to have the sample tested from Central Insecticide Laboratory, it is incumbent on the prosecution to file the complaint expeditiously so that the right of the accused is not lost. In the present case, by the time the respondents were asked to appear before the Court, expiry date of the insecticide was already over and sending of sample to the Central Insecticides Laboratory at that late stage would be of no consequence. This issue is no longer res integra. In the State of Punjab Vs. National Organic Chemical Industries Ltd., this Court in somewhat similar circumstances said that the procedure laid down u/s 24 of the Act deprived the accused to have sample tested by the Central Insecticides Laboratory and adduce evidence of the report so given in his defence. This Court stressed the need to lodge the complaint with utmost dispatch so that the accused may opt to avail the statutory defence. The Court

held that the accused had been deprived of valuable right statutorily available to him. On this view of the matter, the Court did not allow the criminal complaint to proceeds against the accused. We have cases under the Drugs and Cosmetics Act, 1940 and State of Haryana Vs. Brij Lal Mittal and Others, the Prevention of Food Adulteration Act, 1954 involving the same question. In this connection reference be made to decisions of this Court in State of Haryana Vs. Brij Lal Mittal and Others, under the Drugs Cosmetics Act, 1940; Municipal Corporation of Delhi Vs. Ghisa Ram, ; Chetumal Vs. State of Madhya Pradesh and Anr, and Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, all under the Prevention of Food Adulteration Act. 1954."

5. Mr. Cuccoria, appearing for the respondents, submitted that a perusal of letter dated 16-9-1992 (Annexure P 5) written by the Chief Agricultural Officer, Ludhiana, to the petitioner, would show that it does not indicate as to what was the defence taken in the letter dated 8-8-1992. Therefore, he submitted that the matter has to be tested on the basis of the evidence in the trial Court.

6. I do not find much substance in the aforesaid submission. Letter dated 16-9-1992 talks of the show cause notice which was served on the petitioner by letter dated 21-7-1992. Immediately thereafter, it is stated that "your reply has been received." Thereafter, the petitioner has been directed to appeal personally and explain the matter in the office of the Chief Agricultural Office, Ludhiana, on 28-7-1992 at 2.30 p.m.

7. In view of the above, it cannot be held that there is any room for doubt that the petitioner had made a request for re-analysis of the sample u/s 24 of the Act. This request was totally ignored by the respondents. Therefore, the valuable right of the petitioner of re-analysis has been denied. Therefore, the defence of the petitioner is likely to be prejudiced.

8. In view of the above, continuation of the proceedings on the basis of the complaint would be an abuse of process of the Court. The petitioner s, therefore, allowed. The proceedings pending in the Court of the Chief Judicial Magistrate, Ludhiana, on the basis of the complaint. Annexure P-4, are hereby quashed No. costs.

9. Petition allowed.