
(2010) 05 RAJ CK 0006

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 320 of 2003

Northern Minerals Ltd. and Others

APPELLANT

Vs

State of Raj. and Another

RESPONDENT

Date of Decision : 28-05-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 173, 173(2), 482
Insecticides Act, 1968 — Section 29

Citation : (2011) 8 RCR(Criminal) 2895 : (2010) 4 RLW 3294

Hon'ble Judges : Mahesh Chandra Sharma, J

Bench : Single Bench

Judgement

Mahesh Chandra Sharma, J.—This miscellaneous petition has been filed against order dated 26.11.1994 passed by the Chief Judicial Magistrate Dholpur in Criminal Complaint Case No. 695/1994 (776/1996) for taking cognizance against the accused petitioner and summoning them through warrant and for quashing the complaint filed by the Agriculture Officer (Plant Protection) Dholpur now pending before the Judicial Magistrate No. 1, Dholpur.

2. Facts giving rise to this petition are that Agriculture officer (plant Protection) Dholpur filed a complaint before the Chief Judicial Magistrate Dholpur on 27.10.1994 about samples taken on 23.2.1993 from M/s. Mittal Beej and Tobacco Store, Sadar Bazar Bari District Dholpur. It was alleged in the complaint that the firm was selling insecticides Dhanuka M 45 (Mancozeb 75% WP). The sample was sent to Government Insecticides Laboratory Durgapura, Jaipur (Rajasthan). On analyses the sample was found to be misbranded. In the complaint it was prayed that the accused persons may be dealt with as per Section 29 of the Insecticides Act, 1968. The complaint was filed on 27.10.1994 and the process issued against the accused persons on 26.11.1994. The learned Counsel for the petitioner argued that the process by way of cognizance was taken against the accused petitioners on 26.11.1994 while the expiry date of the substance i.e. Mancozeb 75% WP it's common name is Dhanuka M 45 is July, 1994. Thus the complaint was filed after expiry of sample, hence the cognizance

taken or process issued on 26.11.94 or thereafter is only an abuse of process of the court. The learned Counsel argued that no cognizance can be taken in such situation where the complaint is filed after expiry of the shelf life itself. Reliance has been placed on *Gupta Chemicals Pvt. Ltd. v. State of Rajasthan and Ors.* 20 (1995) RLR 299; *State of Haryana v. Unique Farmaid (P) Ltd.* 1999 SCC (Cr.) 1404 and *Hindustan Ciba Geigy v. State of Rajasthan 2* (1994)RLR 514 . The learned Counsel further argued that in the complaint itself no clear allegation against the Managing Director/Directors/Principal Officer that they were/are responsible for the conduct of business about the disputed sample. Reliance has been placed on *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others, State of Haryana v. Brij Lal Mittal* 1998 (2) RCR 608, *KPG Nair v. Jindal Manthol India Ltd.* 2000 C. LR (SC) 778. *Gupta Chemicals Pvt. Ltd. v. State of Rajasthan 2* (1995) RLR 298; *Rallis India Ltd. and Ors. v. State of Rajasthan* 1998 (2) 667; *B.L. Industries and Ors. v. State of Rajasthan* 1990 RCC 371; *Smt. Harshilla Lodha and Ors. v. State of Rajasthan* 2002 (3) RCC 1507 . The learned Counsel further argued that the consent which has been taken from the authority concerned does not reveal that the consenting authority has applied its mind at the time of giving consent against the present accused petitioners for initiation of criminal proceedings. Reliance has been placed on *S.M.S. Pharmaceuticals Ltd. Vs. Neeta Bhalla and Another, and Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others,*

3. On the other hand the learned Public Prosecutor opposed the arguments raised by the learned Counsel for the accused petitioners and argued that the Chief Judicial Magistrate rightly took cognizance against the accused petitioners after considering the material available on record.

4. Before proceeding further it would be necessary to have a look at the provisions of Section 482 Code of Criminal Procedure, which reads as under:

482. Saving of inherent powers of High Court. 482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

5. It is also necessary to have a look at the principles enunciated by the Apex Court in *State of Haryana and Ors. v. Bhajan Lal and Ors.* which are as under:

(a) where the allegations made in the First information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without order of a Magistrate as contemplated u/s 155(2) of the Code.

(e) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E]

6. In *State of Karnataka and Anr. v. Pastor P. Raju*, the Apex Court in para 11 observed as under:

11. there is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15.1.2005 and the petition u/s 482 Code of Criminal Procedure was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High Court on 23.2.2005 when the investigation was still under progress. No report as contemplated by Section 173 Code of Criminal Procedure had been submitted by the incharge of the police station concerned to the Magistrate empowered to take cognizance of the offence. Section 482 Code of Criminal Procedure saves inherent powers of the High Court and such a power can be exercised to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any Court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence. This question has been examined in detail in *Union of India (UOI) Vs. Prakash P. Hinduja and Another*, where after referring to *AIR 1945 18 (Privy Council) H.N. Rishbud and Inder Singh Vs. The State of Delhi*, *State of West Bengal Vs. S.N. Basak, Abhinandan Jha and Others Vs. Dinesh Mishra*, and *State of Bihar and Another Vs. J.A.C. Saldanha and Others*, , it was observed as under in para 20 of the reports:

20. Thus the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the

First Information Report till the submission of the report by the officer in charge of police station in court u/s 173(2) Code of Criminal Procedure, this field being exclusively reserved for the investigating agency.

This being the settled legal position, the High Court ought not to have interfered with and quashed the entire proceedings in exercise of power conferred by Section 482 Code of Criminal Procedure when the matter was still at the investigation stage.

7. I have gone through the complaint and the record and the arguments submitted by both the parties and cases relied upon by them and the principles enunciated above in the cases of State of Haryana and Ors. v. Bhajan Lal and Ors. (supra) and State of Karnataka and Anr. v. Pastor P. Raju (supra), in my considered opinion at this stage in the instant case, the allegations made in the complaint, do clearly constitute an offence under the Insecticides Act, does not call for the exercise of inherent powers of this Court u/s 482 Code of Criminal Procedure to quash the complaint and the criminal proceedings before the trial Court. The accused petitioners shall be at liberty to raise all the points raised in the misc. petitions at the appropriate stage before the trial Court.

In view of the above, the misc. petition filed by the accused petitioners is rejected. The record of the trial Court may be sent back immediately to the trial Court. The trial Court is directed to expedite the trial as early as possible.