
(2002) 01 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 2403-M of 1999

Onkar Presticides

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Citation : (2002) 2 AICLR 541 : (2002) 1 CLR 346 : (2002) 2 CurLJ 69 : (2002) 2 RCR(Criminal) 101

Hon'ble Judges : V.M.Jain, J

Advocate : Mr. Arun Chandra, Advocate. Ms. Rita Kohli, DAG, Punjab., Advocates for appearing Parties

Judgement

V.M. Jain, J.

1. This is a petition under Section 482, Cr.P.C. filed by the accusedpetitioner, seeking quashment of the criminal complaint under Sections 3(k)(1), 17, 18, 29 and 33 of the Insecticides Act, 1968 (hereinafter referred to as the Act) read with Rule 27(5) of the Insecticides Rules, 1971 (hereinafter referred to as the Rules), and for quashing all the subsequent proceedings arising therefrom.

2. In the present petition, it was alleged that the Insecticides Inspector had inspected the premises of the petitioner on 4.9.1996 and had taken a sample of the insecticides, which was manufactured by M/s. Jaswant Rasayan Pvt. Ltd. and was marketed through M/s. Vital Agrotech Pvt. Ltd. It was inter alia alleged that the Insecticides Inspector had taken a sample from the sealed container and that the petitioner being the dealer, could not have been prosecuted, in view of the provisions of Section 30(3) of the Act. Accordingly, it was prayed that the criminal complaint and all subsequent proceedings, taken thereon, against the present petitioner, be quashed.

3. In the written reply, the fact that the sample was taken from a sealed container, has not been controverted.

4. I have heard learned Counsel for the parties and gone through the record

carefully.

5. Learned counsel for the petitioner submitted before me that the sample of insecticide was taken from the sealed container and that this fact is admitted by the Insecticides Inspector in the criminal complaint, in which it was mentioned that the sample was taken from onelitre packing, which was manufactured by M/s. Jaswant Rasayan Pvt. Ltd. It has been submitted that in view of Section 30(3) of the Act, the petitioner could not have been prosecuted. Reliance has been placed on the law laid down by the Hon"ble Supreme Court in M/s. Kisan Beej Bhandar v. Chief Agricultural Officer and another, 1990 SCC (CrL.) 623.

6. Annexure P2 is the copy of the complaint, filed by the State through the Insecticides Inspector against the accused, including the accusedpetitioner, who is admittedly a dealer. As per the said complaint, the Insecticides Inspector had found 190 litres of insecticide in onelitre packing and that the Insecticides Inspector had taken three sealed onelitre containers (out of 190) by way of sample. Even in Form (XX), copy Annexure P1, it was mentioned by the Insecticides Inspector that the sample was taken from the "original packing".

7. In 1990 SCC (CrL.) 623 (supra), it was held by the Hon"ble Supreme Court that subsection (3) of Section 30 of the Insecticides Act would apply whether it was a case of prosecution or contravention leading to cancellation of licence. It was further held that where it was found that it was a full tin in a sealed condition, the liability, arising out of misbranding, was not of the appellant (dealer) and that the dealer was entitled to the protection of subsection (3) of Section 30. Similar view had been taken by this Court, in the cases reported as Hardit Singh v. Union of India, 1998(4) RCR(CrL.) 865 , Kheti Sewa Centre v. State of Punjab, 1998(1) RCR(CrL.) 272 and Amrit Lal v. State of Punjab, 2001(1) RCR(CrL.) 599 .

8. In view of the above, in my opinion, the continuation of the criminal complaint and subsequent proceedings against the present petitioner, would be abuse of process of law, especially when the petitioner, being dealer, could not be prosecuted under Section 30(3) of the Act.

9. For the reasons recorded above, the present petition is allowed, the criminal complaint and all subsequent proceedings taken thereon, against the present petitioner, are hereby quashed.