

(1989) 11 AP CK 0001

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1857 of 1989

Paushak Ltd.

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 17-11-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Insecticides Act, 1968 — Section 33(1), 33(2)

Citation : (1990) 1 APLJ 160 : (1990) CriLJ 1879

Hon'ble Judges : N.D. Patnaik, J

Bench : Single Bench

Advocate : K.V. Upendra Gupta, for the Appellant;

Judgement

1. This petition is filed u/s 482, Cr.P.C. to quash the proceedings against the petitioner who is the third accused in C.C. No. 216/89 on the file of the Munsiff Magistrate Court, Addanki. The case is filed under the Insecticides Act for misbranding some insecticides. In the cause title the third accused is shown as M/s. Paushak Ltd., Vadodara, Gujarat, represented by its Manager and Chief Chemist Satyaprakash Gupta, Penelov Factory, Penelov (Post) Halal Taluk, Baroda District, Gujarat State. The contention of the learned counsel for the petitioner is that the Chief Chemist is not responsible for the conduct of the business of the Company and that the prosecution should have been filed against the company represented by its Managing Director.

(2) Section 33(1) of the Insecticides Act, 1968 says that whenever an offence under the Act has been committed by a company, every person who at the time when the offence was committed was incharge of or was responsible to the Company for the conduct of the business of the Company as well as the Company shall be deemed to be guilty of the offence and shall also be liable to proceed against and punished accordingly. As I have pointed out above, the third accused is the Company represented by its Manager and Chief Chemist, the learned counsel for the petitioner has referred to two orders of my learned

brother Bhasker Rao, J. in Crl. P. No. 1189/88 and Crl. P. No. 851/89 in which the proceedings against the Chemist were quashed on the ground that there were no allegations in the complaint to show that they were incharge of or were responsible for the conduct of the business of the Company. With great respect to my learned brother, I am unable to follow the said decisions. What Section 33(1) says is that every person who at the time when the offence was committed was in charge of or was responsible to the Company for the conduct of the business of the Company as well as the Company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly if the evidence on record establishes that a particular person was responsible for the conduct of the business of the Company he can be made punishable. If on the other hand, the evidence does not show that he is responsible for the business of the Company even though there is an allegation to that effect in the complaint, he cannot be made liable. Therefore, it is for the prosecution to establish whether the Chief Chemist is responsible to the Company for the conduct of its business and it is a matter to be decided after the evidence is adduced as to who is incharge of the conduct of the business of the Company.

(3) Another contention is that two tests have been conducted one by the State Laboratory and another by Central Laboratory and there is difference between the two tests. Therefore, the reports cannot be accepted. That is also a matter to be urged before the trial court after placing on record the two reports. It is not possible in this petition to investigate into these questions of fact which have to be proved on evidence.

(4) As there is no abuse of the process of the Court, the petition is dismissed.

(5) Another submission made by the learned counsel for the petitioner is that the accused is working somewhere in Gujarat and it is inconvenient for him to attend the court on every date of hearing. The petitioner may file an application before the learned Magistrate to dispense with his presence and the learned Magistrate will consider the matter and pass appropriate orders.

(6) Petition dismissed.